

with the CRD if Form BD has already been filed with the CRD; if not, file with the SEC.

Attach a copy of FOCUS Report Part II (or Part IIA for non-carrying or non-clearing firms) "Statement of Financial Condition" and "Computation of Net Capital" sections. Firms that are not required to file FOCUS Reports should attach a Statement of Financial Condition giving the type and amount of the firm's assets, liabilities, and net worth. The FOCUS Report and Statement of Financial Condition must reflect the finances of the firm no earlier than 10 days before Form BDW is filed.

Non-NASD Members only should send a copy of Form BDW and all attachments to the Office of Filings, Information, and Consumer Services, SEC, 450 5th St., NW., Washington, DC 20549.

Check with the States where registered for additional filing requirements.

Partial Withdrawal

File Form BDW with the CRD. Check with the States where registered for additional filing requirements. Amend Form BD and file with the CRD in accordance with the instructions to the form.

By the Commission.

Dated: December 28, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-31868 Filed 12-31-92; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Parts 240, 241 and 276

[Release No. 34-31661; IA-1357]

RIN 3235-AE54

58 FR 7 01/04/93

Registration of Successors to Broker-Dealers and Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments; interpretive statement.

SUMMARY: The Commission is adopting amendments to the rules under the Securities Exchange Act of 1934 governing the registration of successors to registered broker-dealers. The Commission also is issuing interpretive guidance in this release regarding the registration of successors to broker-dealers and the registration of successors to investment advisers under the Investment Advisers Act of 1940. The amendments and interpretive statement are intended to clarify which entities may file as successors to registered broker-dealers and advisers, whether such filings should be in the form of an amendment to the predecessor's registration statement or in the form of a new application, and when such filings must be made.

EFFECTIVE DATES: The rule amendments will become effective on February 3, 1993. The interpretive positions become effective on December 28, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, or Belinda A. Blaine, Branch Chief, at (202) 504-2418, Office of Chief Counsel, Division of Market Regulation (with respect to broker-dealer successors); Eric C. Freed, Senior Counsel, at (202) 272-2107, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management (with respect to investment adviser successors); Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The Securities Exchange Act of 1934 ("Exchange Act") and the Investment Advisers Act of 1940 ("Advisers Act") respectively provide for the registration of "successors" to registered broker-dealers and investment advisers.¹ A successor is an unregistered entity that assumes and continues the business of

¹ Section 15(b)(2) of the Exchange Act (15 U.S.C. 78o(b)(2)); section 203(g) of the Advisers Act (15 U.S.C. 80b-3(g)).

a registered broker-dealer or adviser, which then ceases its broker-dealer or advisory activities. The purpose of the statutory provisions is to enable the successor to operate without an interruption of business by relying for a limited period of time on the registration of the predecessor broker-dealer or adviser. The Commission has adopted several rules to effectuate the statutory provisions of the Exchange Act and the Advisers Act.²

In general, the statutory provisions and rules provide that a successor may rely on the registration of the predecessor until such time as its own registration becomes effective if it files an application for registration within thirty days of the succession.³ The successor rules also provide that, in certain limited circumstances, the successor may file an amendment to the predecessor's registration statement, instead of an original application for registration, within the prescribed time period.⁴

II. Amendments to Broker-Dealer Successor Rules

The Commission is adopting several technical amendments to the broker-dealer successor rules under the Exchange Act in order to address certain ambiguities in the rules.⁵ As originally adopted, paragraph (a) of rule 15b1-3⁶ allowed a broker-dealer that succeeded to and continued the business of a registered broker-dealer to operate

² Rules 15b1-3, 15Ba2-4, 15Ba2-8, and 15Ca2-3 under the Exchange Act (17 CFR 240.15b1-3, 15Ba2-4, 15Ba2-8, and 15Ca2-3); rule 203-1 under the Advisers Act (17 CFR 275.203-1).

³ See, e.g., paragraph (a) of rule 15b1-3 under the Exchange Act; section 203(g) of the Advisers Act.

⁴ See, e.g., paragraph (b) of rule 15b1-3 under the Exchange Act; paragraphs (b), (c) and (d) of rule 203-1 under the Advisers Act.

Currently, broker-dealers that are members of the National Association of Securities Dealers, Inc. ("NASD") must make all filings with both the Commission and the NASD. In a companion release published today, the Commission announced that it is joining the Central Registration Depository ("CRD"), a computer system operated by the NASD that maintains registration information regarding NASD member firms and their registered personnel. Thus, effective January 25, 1993, all broker-dealers filing for succession by application (or amendment) will be required to file with the Commission through the CRD. See Securities Exchange Act Release No. 31680 (Dec. 28, 1992). Investment advisers will continue to file directly with the Commission.

⁵ These amendments, as well as an interpretive statement regarding the broker-dealer successor rules, were proposed for public comment in Securities Exchange Act Release No. 30959 (July 27, 1992), 57 FR 34048. No comments were submitted in connection with the proposed amendments or the interpretive statement.

⁶ Rule 15b1-3 was adopted in 1985 pursuant to section 15(b)(2)(A) of the Exchange Act. See Securities Exchange Act Release No. 22468 (September 26, 1985), 50 FR 41867.

under the registration of the predecessor for seventy-five days if, within thirty days of the succession, it filed its own application for registration on Form BD.⁷ Paragraph (b) of the rule permitted a successor broker-dealer to file an amendment to the predecessor's Form BD if the succession was based on a change in the date or state of incorporation, form of organization, or composition of a partnership.

In addition to minor revisions to the language of the rule, the amendments adopted today make two notable changes. First, paragraph (a) has been amended to provide that the predecessor's registration terminates forty-five days after the date on which the successor files its own application for registration on Form BD, rather than seventy-five days after the date of the succession.⁸ This amendment is intended to address situations in which a successor broker-dealer submits an application within thirty days of the succession, but because the application is incomplete in certain minor respects, the seventy-five day period expires before the successor broker-dealer's registration becomes effective. Under the modified rule, the forty-five day period will not begin to run until a complete application has been filed with the Commission.⁹

Second, paragraph (b) of rule 15b1-3 has been revised to clarify that successors may register by filing an amendment to the predecessor's Form BD, rather than a complete application on Form BD, only in certain limited circumstances, discussed below in part III. Rule 15Ca2-3, which governs the registration of successors to government securities broker-dealers, and rules 15Ba2-4 and 15Ba2-6,¹⁰ which govern the registration of successors to municipal securities dealers,¹¹ also have

⁷ 17 CFR 249.501.

⁸ This 45-day period is consistent with section 15(b)(1)(B) of the Exchange Act, which provides that the Commission has 45 days in which to grant registration or to institute proceedings to determine if registration should be denied.

In addition, as discussed further below, the predecessor must file for withdrawal from registration.

⁹ For further discussion of the timing requirements for successor filings, see discussion at part III.D. *infra*.

¹⁰ Rule 15Ba2-6 also has been redesignated as rule 15Ba2-4(b).

¹¹ Specifically, these rules permit a municipal securities dealer that succeeds to and continues the business of a registered municipal securities dealer to rely on the registration of the predecessor if it files an application or an amendment for registration on Form MSD (17 CFR 249.1100) (for a municipal securities dealer that is a bank or a separately identifiable department or division of a bank), or Form BD (for all other municipal securities dealers).

been revised to be consistent with amended rule 15b1-3.

III. Interpretive Position on Broker-Dealer and Investment Adviser Successions

A. General

As discussed above, the purpose of the successor rules under both the Exchange Act and the Advisers Act is to facilitate the legitimate transfer of business between two or more entities.¹² The successor rules therefore are intended to be used only where there is a direct and substantial business nexus between the predecessor and the successor. They are not designed to allow registered broker-dealers or advisers to sell their registrations, eliminate substantial liabilities, spin off personnel, or to facilitate the transfer of the registration of a "shell" organization that does not conduct any business.¹³ To ensure that there is a legitimate connection between the predecessor and successor, no entity may rely on the successor rules unless it is acquiring or assuming substantially all of the assets and liabilities of the predecessor's broker-dealer or advisory business.¹⁴ Although under this standard the successor need not acquire every asset and liability of the predecessor, it may not exclude any significant asset or liability.¹⁵ Therefore, an entity that is

¹² The interpretive positions set forth in this release apply to both broker-dealers and investment advisers. Comparable treatment of broker-dealers and advisers eases compliance burdens on registrants that maintain dual registrations, and simplifies the review of registration materials by Commission staff.

¹³ See Securities Exchange Act Release No. 22468 (Sept. 26, 1985), 50 FR 41867.

¹⁴ An entity's status under the successor rules, however, is not determinative of whether it will be held liable for the acts of its predecessor. See generally, *Ricciardello v. J.W. Cant & Co.*, [1989-1990] Fed. Sec. L. Rep. (CCH) ¶ 94,798 (July 7, 1989); Securities Exchange Act Release No. 25531 (March 30, 1988) (successor broker-dealer held liable for the predecessor's failure, prior to the succession, to maintain the required balance of cash or qualified securities in its reserve account for the exclusive benefit of customers); *Hutson Management Co.*, Investment Advisers Act Rel. No. 1078 (Aug. 17, 1987) (successor investment adviser held liable for predecessor's violations of section 10(f) of the Investment Company Act of 1940).

¹⁵ The predecessor's liabilities, for example, may include: Customer claims, monies or securities due to customers or other broker-dealers or advisers, unsatisfied judgments, and outstanding fees or fines. In a few instances, the staff of the Commission has granted no-action relief to allow successors to rely on rule 15b1-3 without assuming a specific asset or liability of the predecessor. See, e.g., *Alpha Management Inc.* (December 21, 1989) [available on LEXIS] (permitting a successor broker-dealer to file an application under paragraph (a) of Rule 15b1-3 without acquiring the shares of a subsidiary not engaged in broker-dealer activities); and *Franklin Financial Services, Inc.*, [1987-1988] Fed. Sec. L. Rep. (CCH) ¶ 78,529 (July 2, 1987) (allowing a successor to proceed under paragraph

not assuming substantially all of the assets and liabilities of its predecessor is not entitled to rely on the successor rules, and must wait until its own registration becomes effective before engaging in business as a broker-dealer or investment adviser.

Because the successor rules are intended to allow an unregistered successor to rely on the registration of its predecessor for a limited period of time, they do not apply to reorganizations that involve only registered entities. In those situations, the registered entities need not use the successor rules because they can continue to rely on their existing registrations. For instance, if two registered broker-dealers merge, the surviving broker-dealer would file an amendment to its Form BD, while the acquired broker-dealer would file to withdraw its registration on Form BDW.¹⁶ Furthermore, if a person or entity acquires some or all of the shares of a registered adviser, or if one registered adviser purchases or otherwise assumes part or all of the business assets or personnel of another registered adviser, there would be no need to rely on the successor provisions.¹⁷

In addition, the successor rules do not apply to situations in which the predecessor intends to continue to engage in broker-dealer or advisory activities.¹⁸ Otherwise, confusion may result as to the identities and registration statuses of the parties. Thus, if a registered broker-dealer or adviser shifts a portion of its business operations to a new unregistered entity,

(a) without assuming unknown contingent liabilities of the predecessor. The predecessor represented that it would retain adequate funds in escrow to meet any such contingent liabilities).

¹⁶ 17 CFR 249.501a.

¹⁷ In the case of the purchase of the business assets or personnel of one registered adviser by another, the purchasing adviser would file an amendment to Form ADV (17 CFR 279.1) to reflect any changes in its operations, while the other adviser would file either Form ADV-W (17 CFR 279.3) or an amendment to its Form ADV, depending on whether it remained in the advisory business.

Of course, there is generally no difference in substance between the acquisition of an entity's shares and the acquisition of its assets, but in the latter case the presence of a new entity that will act as the broker-dealer or adviser necessitates reliance on the successor rules. The successor rules parallel state corporate laws in this regard, under which it is necessary to incorporate or register a new corporation, while no similar action is required if the ownership of an existing corporation changes.

¹⁸ See generally *F.W. Home & Co., Inc.*, 38 S.E.C. 104 (1957) (finding that a broker-dealer did not succeed to the registration of another broker-dealer, where the first broker-dealer continued to exist as a corporate entity with the ability to resume business, and where the acquiring broker-dealer failed to acquire all of the assets of the first broker-dealer).

but remains in the broker-dealer or advisory business, the new entity must file a complete application for registration and refrain from doing business until its application is approved by the Commission pursuant to section 15(b)(1) of the Exchange Act or section 203(c)(2) of the Advisers Act.¹⁹

B. Succession by Amendment

In limited circumstances, the successor rules permit the successor to file an amendment to the predecessor's Form BD or Form ADV, rather than its own original application for registration.²⁰ The only successions that may be completed by filing an amendment are those that are the result of a formal change in the structure or legal status of the broker-dealer or adviser; *i.e.*, successions that involve the creation of a new legal entity, but no practical change in the control or operations of the broker-dealer or adviser.²¹ Whether an actual change of control has occurred depends upon the facts and circumstances of the particular transaction. For purposes of the successor rules, however, the presumption of "control" in the instructions to Form BD and Form ADV offers some guidance.²²

The types of successions that may be effected by filing an amendment are listed below. In all of these situations,

¹⁹ 15 U.S.C. 78o(b)(1), 80b-3(c)(2). In addition, the registered broker-dealer or adviser would be required to promptly file an amendment on Form BD or Form ADV to reflect any changes in its operations. Like dual successions, discussed below, this type of reorganization is classified as a "partial acquisition" under the CRD system. See n.28, *infra*, and accompanying text.

²⁰ See, e.g., Rule 15b1-3(b) under the Exchange Act, Rule 203-1(b)-(d) under the Advisers Act.

In the case of a broker-dealer, the amendment to Form BD would include page 1 (the execution page), page 2 (indicating that the applicant is a successor), Schedule D, and any other pages containing information that is no longer accurate as a result of the change in the form of organization of the broker-dealer. See rule 15b3-1(b) (17 CFR 240.15b3-1(b)) under the Exchange Act. In the case of an investment adviser, the amendment to Form ADV would include page 1, page 2, Schedule E and any other pages containing information required to be updated by rule 204-1(b) (17 CFR 275.204-1(b)) under the Advisers Act.

²¹ The successor rules provide that a succession that is based solely upon certain events, such as a change in form of organization, may be effected by amendment. See, e.g., rule 15b1-3(b) under the Exchange Act (as amended); Rule 203-1(d) under the Advisers Act. A succession that involves a change in control is not based solely upon an event enumerated in the rules, and therefore cannot be effected by amendment.

²² Under the Advisers Act, a change of control of an adviser results in the "assignment" of its advisory contracts. Rule 202(a)(1)-1 under the Advisers Act (17 CFR 275.202(a)(1)-1). The adviser must obtain client consent to the assignment under section 205(a)(2) of the Advisers Act (15 U.S.C. 80b-5(a)(2)).

the predecessor must cease operating as a broker-dealer or adviser.

1. Change in Form of Organization

An internal corporate reorganization or restructuring in which broker-dealer or advisory activities are transferred from one entity to another within the same organization, but that does not result in a change of control of the broker-dealer or adviser, would be filed by amendment.²³

2. Change in Legal Status

A succession resulting from a change in the state of incorporation or a change in the form of business, such as from a partnership to a corporation, does not typically involve a change of control. Therefore, such a succession may generally be completed by amending the predecessor's Form BD or Form ADV promptly after the succession.²⁴

3. Change in Composition of a Partnership

A change in the composition of a partnership (by death, withdrawal, or inclusion of a partner) that results in the dissolution of the partnership under local law, but does not result in a change in control of the partnership, would be completed by filing an amendment to the predecessor's Form BD or Form ADV in order to reflect the changes in the partnership.

C. Succession by Application

In all other successions, the successor may operate under the registration of the predecessor for a limited period of time only if it files its own complete application for registration on Form BD or Form ADV. The following are examples of the types of reorganizations that must be completed by filing an application.²⁵

²³ For example, an unregistered entity that acquires substantially all of the assets and liabilities of a registered entity owned by the same parent corporation may file an amendment to its predecessor's registration, provided that it (the surviving entity) continues to be wholly-owned by the parent corporation. In contrast, a corporate reorganization involving a change of control, such as a change in the beneficial owners of the broker-dealer or advisory operation, must be filed by application, as discussed in part III.C, *infra*.

²⁴ Other changes in legal status that may be completed by filing an amendment include: (i) A change from general corporation to S corporation status under subchapter S of the Internal Revenue Code of 1986, as amended; and (ii) a change in a registered entity's name that results in the dissolution of the entity under local law. If a name change does not alter the entity's legal status, however, the successor rules do not apply. Instead, the registered entity would be required to promptly file an amendment to Form BD or Form ADV to reflect its new name. See rule 15b3-1(b) under the Exchange Act; rule 204-1(b) under the Advisers Act.

²⁵ Unless otherwise indicated, the titles below correspond to the classification of the succession

1. Acquisitions

In a typical succession, an unregistered entity purchases or assumes substantially all of the assets and liabilities of a registered broker-dealer or adviser, and the unregistered entity then operates the business of the broker-dealer or adviser.²⁶ Under the successor rules, the new entity must file a complete application within thirty days of the succession, while the predecessor must file for withdrawal from registration on Form BDW or Form ADV-W.²⁷

2. Consolidations

If two or more registered entities consolidate their firms and conduct their business through a new unregistered entity, which assumes substantially all of the assets and liabilities of the predecessor entities, the new entity would be required to file a complete application on Form BD or Form ADV, while the predecessor firms would each be required to file for withdrawal from registration on the appropriate form.

3. Dual Successions²⁸

Successions in which one registered entity subdivides its business into two or more new unregistered entities are known as "dual successions," and may be effected by application under the successor rules. A dual succession may occur, for instance, when a clearing broker-dealer decides to separate its own retail broker functions from its clearing broker functions by creating two new entities. In that case, the successors in combination must acquire substantially all of the assets and liabilities of the predecessor. Each successor must then file a complete application on Form BD within thirty days of the succession, while the predecessor broker-dealer must file an application for withdrawal on Form BDW.²⁹

under the CRD's "mass transfer" program, which determines whether registered representatives of a broker-dealer may have their registrations transferred to another entity.

²⁶ However, if no change in control occurs in connection with the transaction (*e.g.*, the beneficial owners of the adviser or broker-dealer remain the same), the succession could be effected by filing an amendment. See part III.B, *supra*.

²⁷ See rule 15b6-1 under the Exchange Act (17 CFR 240.15b6-1); rule 203-2 under the Advisers Act (17 CFR 275.203-2).

²⁸ Under the CRD's mass transfer program, this type of reorganization is classified as a "partial acquisition."

²⁹ Both successors in a dual succession must file original applications for registration, regardless of whether there is a change in control of the broker-dealer or advisory operation.

4. Division of Dual Registrants³⁰

For business reasons, an entity registered as both an investment adviser and as a broker-dealer may wish to separate its services by transferring either the broker-dealer or advisory activities to a new unregistered entity. If that unregistered entity acquires substantially all of the assets and liabilities of the broker-dealer or advisory operation or division, and there is a change of control of that operation or division, the unregistered entity would be a successor required to file by application.³¹

D. Timing Requirements

In order to temporarily rely on its predecessor's registration, a successor must file the required application or amendment within thirty days of the succession.³² Occasionally, situations arise in which a successor broker-dealer or adviser submits an application within thirty days of the succession, but because the application is incomplete in certain minor respects, the application is not considered "filed" until after the thirty-day period has expired.³³ Notwithstanding the fact that the filing requirements technically have not been met, the Commission would permit a successor that submits a substantially complete application or amendment within thirty days of the succession to rely on its predecessor's registration under the successor rules. A successor entity, however, will not be permitted to "lock in" the thirty-day window period by submitting an application that is incomplete in major respects, or by otherwise failing to file an application that represents a good faith attempt at compliance with the successor rules.³⁴

³⁰ In the case of a division of dual registrants, the CRD category will be based on the type of broker-dealer reorganization.

³¹ The predecessor also would be required to file Form BDW or ADV-W. See, e.g., *Alpha Management Inc.* (December 21, 1989) (available on LEXIS).

³² Rule 15b1-3 under the Exchange Act; section 203(g) of the Advisers Act.

³³ Rule 0-3 under the Exchange Act (17 CFR 240.0-3) provides that a report or application is not "filed" for purposes of the Act until it fully complies with all of the requirements of the applicable rule or provision of the statute. While there is no comparable rule under the Advisers Act, the Commission likewise does not consider incomplete documents to be "filed" under the Advisers Act.

³⁴ As discussed above, the Commission is amending paragraph (a) of rule 15b1-3 under the Exchange Act to provide that the registration of a predecessor broker-dealer ceases to be effective as the registration of the successor broker-dealer forty-five days after the application for registration on Form BD is filed by the successor, rather than seventy-five days after the succession. Therefore, because the Commission must act on applications for registration within forty-five days (see note 8,

IV. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act³⁵ requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission believes that the clarifying amendments to the broker-dealer successor rules will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") pursuant to the requirements of the Regulatory Flexibility Act,³⁶ regarding the revisions to the rules. A copy of the FRFA may be obtained from Belinda Blaine, Branch Chief, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects

17 CFR Parts 240 and 241

Registration of brokers and dealers, Registration of government securities brokers and government securities dealers, Registration of non-bank municipal securities dealers; Reporting and recordkeeping requirements, Securities, Broker-Dealers.

17 CFR Part 276

Investment advisers, Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

supra), the registration of the predecessor will not expire during the period that the successor needs to rely on such registration. Neither the Advisers Act nor the rules thereunder specify when the registration of the predecessor expires. However, Form ADV-W must be filed to withdraw the registration of the predecessor, and Form ADV-W becomes effective on the 60th day after filing. See Rule 203-2(b) under the Advisers Act. Therefore, the predecessor's registration will expire only after the successor has established its own registration, which, as under the Exchange Act, will occur within forty-five days after the filing of the successor application. See section 203(c)(2) of the Advisers Act (15 U.S.C. 80b-3(c)(2)).

³⁵ 15 U.S.C. 78w(a)(2).

³⁶ 5 U.S.C. 603.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

2. By revising § 240.25b1-3 to read as follows:

§ 240.15b1-3 Registration of successor to registered broker or dealer.

(a) In the event that a broker or dealer succeeds to and continues the business of a broker or dealer registered pursuant to section 15(b) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form BD, and the predecessor files a notice of withdrawal from registration on Form BDW; *Provided, however,* That the registration of the predecessor broker or dealer will cease to be effective as the registration of the successor broker or dealer 45 days after the application for registration on Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a broker or dealer succeeds to and continues the business of a registered predecessor broker or dealer, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor broker or dealer on Form BD to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

3. By revising § 240.15Ba2-4 to read as follows:

§ 240.15Ba2-4 Registration of successor to registered municipal securities dealer.

(a) In the event that a municipal securities dealer succeeds to and continues the business of a registered municipal securities dealer, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form MSD, in the case of a municipal securities dealer that is a bank or a separately identifiable department or division of a bank, or

Form BD, in the case of any other municipal securities dealer, and the predecessor files a notice of withdrawal from registration on Form MSDW or Form BDW, as the case may be; *Provided, however,* That the registration of the predecessor dealer will cease to be effective as the registration of the successor dealer 45 days after the application for registration on Form MSD or Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a municipal securities dealer succeeds to and continues the business of a registered predecessor municipal securities dealer, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor dealer on Form MSD, in the case of a predecessor municipal securities dealer that is a bank or a separately identifiable department or division of a bank, or on Form BD, in the case of any other municipal securities dealer, to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

§ 240.15Ba2-6 [Removed and reserved]

4. By removing and reserving § 240.15Ba2-6.

5. By revising § 240.15Ca2-3 to read as follows:

§ 240.15Ca2-3 Registration of successor to registered government securities broker or government securities dealer.

(a) In the event that a government securities broker or government securities dealer succeeds to and continues the business of a government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form BD, and the predecessor files a notice of withdrawal from registration on Form BDW; *Provided, however,* That the registration of the predecessor government securities broker or government securities dealer will cease to be effective as the registration of the successor government securities broker or government securities dealer 45 days after the application for registration on Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a government securities broker or government securities dealer succeeds to and continues the business of a predecessor government securities broker or government securities dealer that is registered pursuant to section 15C(a)(1)(A) of the Act, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor broker or dealer on Form BD to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 241 is amended by adding this Interpretive Release [Release No. 34-31661] to the lists of Interpretive Releases.

PART 276—INTERPRETIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 276 is amended by adding this Interpretive Release [Release No. IA-1357] to the lists of Interpretive Releases.

Dated: December 28, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-31867 Filed 12-31-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31662; File No. SR-NASD-92-40]

58 FR 370 01/05/93

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Payment of Gratuities or Anything of Value by Members to Others

December 28, 1992.

On November 2, 1992 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change consisting of amendments to Article III, Section 10(a) of the Rules of Fair Practice.

The proposed rule change was published for comment in Securities Exchange Act Release No. 31486 (November 19, 1992), 57 FR 55607 (November 25, 1992). No comments were received.

Article III, Section 10(a) of the NASD's Rules of Fair Practice currently sets a limit of \$50 per person per year for the payment of anything of value, including gifts and gratuities, by a member or associated person of a member to another person where the payment is in relation to the business of the employer of the person receiving the payment or gratuity. The rule protects against improprieties which might arise in connection with the giving by members or associated persons of substantial gifts or monetary payments to certain persons without their employer's knowledge.

Prior to 1969, Section 10 completely prohibited the payment of gratuities or anything of value to employees of others. The current \$50 limitation was increased from \$25 in 1984.³ Because of the amount of time that has elapsed since the dollar limitation was last adjusted, the NASD is proposing to increase the dollar limitation for the payment of gratuities or anything of value to \$100 per person per year.

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1992).

³ See Securities Exchange Act Release No. 21074 (June 20, 1984), 49 FR 26330 (June 26, 1984).