

information contained in such Notice, including the disclosure required by condition II.A.2 above, as an exhibit to its next filed Form N-CSR; and

C. The Fund will post prominently a statement on its (or its adviser's) Web site containing the information in each Notice, including the disclosure required by condition II.A.2 above, and will maintain such information on such Web site for at least 24 months.

#### IV. Delivery of 19(a) Notices to Beneficial Owners:

If a broker, dealer, bank or other person ("financial intermediary") holds common stock issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the Notice to all beneficial owners of the Fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the Notice to each beneficial owner of the Fund's stock; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the Notice to such beneficial owners.

#### V. Additional Board Determinations for Funds Whose Stock Trades at a Premium:

If:

A. The Fund's common stock has traded on the exchange on which it primarily trades at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common stock as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

B. The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

1. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board, including a majority of the Independent Trustees:

(a) Will request and evaluate, and the Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(b) will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and in the best interests of the Fund and its stockholders, after considering the information in condition V.B.1.a above; including, without limitation:

(1) Whether the Plan is accomplishing its purpose(s);

(2) the reasonably foreseeable effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common stock; and

(3) the Fund's current distribution rate, as described in condition V.B above, compared to with the Fund's average annual total return over the 2-year period, as described in condition V.B, or such longer period as the Board deems appropriate; and

(c) based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

2. The Board will record the information considered by it and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

#### VI. Public Offerings:

The Fund will not make a public offering of the Fund's common stock other than:

A. A rights offering below NAV to holders of the Fund's common stock;

B. an offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

C. an offering other than an offering described in conditions VI.A and VI.B above, unless, with respect to such other offering:

1. the Fund's average annual distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,<sup>4</sup> expressed as a percentage of NAV per share as of such date, is no more than

1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date;<sup>5</sup> and

2. the transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified in accordance with the terms of any outstanding preferred stock that such Fund may issue.

#### VII. Amendments to Rule 19b-1:

The requested relief will expire on the effective date of any amendment to rule 19b-1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Acting Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8975; 34-58747; File No. 4-573]

### SEC Study of Mark to Market Accounting

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Request for comment.

**SUMMARY:** The Securities and Exchange Commission is requesting public comment related to the study to be conducted by the Commission under the Emergency Economic Stabilization Act of 2008 of "mark-to-market" accounting applicable to financial institutions, including depository institutions.

**DATES:** Comments should be received on or before November 13, 2008.

**ADDRESSES:** Comments may be submitted by any of the following methods:

<sup>4</sup> If the fund has been in operation fewer than two years, the measured period will begin immediately following the fund's first public offering.

<sup>5</sup> If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail message to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-573 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. 4-573. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on its Internet Web site (<http://www.sec.gov/rules/other.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Jenifer Minke-Girard, Senior Associate Chief Accountant, at (202) 551-5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6561.

**SUPPLEMENTARY INFORMATION:** In connection with the study to be conducted by the Securities and Exchange Commission ("Commission") under the Emergency Economic Stabilization Act of 2008 (the "Act")<sup>1</sup> of "mark-to-market" accounting applicable to financial institutions, including depository institutions, the Commission welcomes public comments on the issues, point-of-view, research and opinions that the Commission's staff should consider in conducting the study.

The Act, which was enacted and signed by the President on October 3, 2008, requires the Commission to conduct a study of "mark-to-market" accounting and submit a report to Congress with the findings and determinations within 90 days. Specifically Section 133 of the Act provides as follows:

**Study on Mark-to-Market Accounting**

(a) **STUDY.**—The Securities and Exchange Commission, in consultation with the Board [of Governors of the Federal Reserve System] and the Secretary [of the Treasury], shall conduct a study on mark-to-market accounting standards as provided in Statement Number 157 of the Financial Accounting Standards Board, as such standards are applicable to financial institutions, including depository institutions. Such a study shall consider at a minimum—

(1) The effects of such accounting standards on a financial institution's balance sheet;

(2) The impacts of such accounting on bank failures in 2008;

(3) The impact of such standards on the quality of financial information available to investors;

(4) The process used by the Financial Accounting Standards Board in developing accounting standards;

(5) The advisability and feasibility of modifications to such standards; and

(6) Alternative accounting standards to those provided in such Statement Number 157.

(b) **REPORT.**—The Securities and Exchange Commission shall submit to Congress a report of such study before the end of the 90-day period beginning on the date of the enactment of this Act containing the findings and determinations of the Commission, including such administrative and legislative recommendations as the Commission determines appropriate.

All interested parties are invited to submit their views, in writing, on any or all of the subjects identified, whether subjects in addition to those identified should be included in the study for any reason or on any other matter relating to the current use of fair value accounting (including mark-to-market) in the U.S. financial reporting system that should be considered.

Dated: October 8, 2008.

By the Commission.

**Florence E. Harmon,**

*Acting Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58739; File No. SR-FINRA-2008-005]

**Self-Regulatory Organizations:  
Financial Industry Regulatory  
Authority, Inc.; Notice of Filing of  
Amendment No. 1 and Order Granting  
Accelerated Approval of Proposed  
Rule Change as Modified by  
Amendment No. 1 Thereto To Adopt  
Rule 12905 of the Code of Arbitration  
Procedure for Customer Disputes and  
Rule 13905 of the Code of Arbitration  
Procedure for Industry Disputes To  
Permit Submissions Under Limited  
Circumstances to Arbitrators After a  
Case Has Closed**

October 6, 2008.

**I. Introduction**

On February 7, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a/ National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the NASD Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the NASD Code of Arbitration Procedure for Industry Disputes ("Industry Code") to permit submissions to arbitrators after a case has closed only under limited, enumerated circumstances. The proposed rule change was published for comment in the **Federal Register** on March 18, 2008.<sup>3</sup> The Commission received 13 comment letters in response to the proposed rule change.<sup>4</sup> On June

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 34-57525 (March 18, 2008); 73 FR 15815-15817 (March 25, 2008) (notice).

<sup>4</sup> The following submitted comment letters: Steven B. Caruso, Maddox Hargett & Caruso, P.C. (March 21, 2008) ("Caruso letter"); Jeff Sonn, Sonn, Erez, PLC (March 26, 2008) ("Sonn letter"); Seth E. Lipner, Professor of Law, Zicklin School of Business, Baruch College, CUNY, Member, Deutsch Lipner (March 28, 2008) ("Lipner letter"); Steve Buchwalter, Attorney (March 29, 2008 and May 15, 2008) ("Buchwalter letters"); William A. Jacobson, Associate Clinical Professor, Director, Cornell Securities Law Clinic, Cornell Law School (March 31, 2008) ("Cornell letter"); Scott R. Shewan, Born, Pape & Shewan, LLP (April 1, 2008) ("Shewan letter"); Barry D. Estell, Attorney (April 9, 2008) ("Estell letter"); Timothy Canning, Canning & Associates (April 10, 2008); Joseph Fogel, Fogel Associates (April 11, 2008) ("Fogel letter"); David P. Neuman, Stoltmann Law Offices, P.C. (April 14, 2008) ("Neuman letter"); Debra B. Hayes, Attorney (April 15, 2008) ("Hayes letter"); Karen Tyler, President, North American Securities Administrators Association ("NASAA"), Inc., and North Dakota Securities Commissioner (April 17,

<sup>1</sup> H.R. 1424.