Deferred Fee at December 31, 1996, of $10,784,028 had been paid in shares at the net asset value of such shares at December 31, 1996 ($24.00), the Fund would have issued 449,334 shares with an aggregate current market value on that date of $7,245,511, or $16.125 per share, a discount of approximately 33%.

12. The shares of Fund's common stock issued in payment of the Deferred Fee will not be registered under the Securities Act of 1933 (''Securities Act''). Consequently, they will be restricted from resale for a minimum of one year as ''restricted securities'' under rule 144(d) under the Securities Act and will be subject to the volume limitations on the amount of securities that may be sold thereafter. Under Rule 144(e), based on the 4,300,682 shares of Fund's common stock outstanding on December 31, 1996, and assuming that approximately 450,000 shares are issued to ECMC in payment of the deferred fee, ECMC could sell approximately 47,500 shares (1% of the shares of common stock outstanding) every three months after it has held the shares for one year.[2] Thus, without taking into account the average weekly trading volume of the shares (which did not exceed 47,500 shares in a recent four calendar week period), it would take more than three years for ECMC to realize the total value of the Deferred Fee after receiving the shares representing payment of the Fee.

Applicants' Legal Analysis

1. Section 63 of the Investment Company Act provides that section 23 of the Act shall apply to a BDC to the same extent as if it were a registered closed-end investment company, with certain exceptions. Section 23(a) prohibits registered closed-end companies from issuing their securities for services. Applicants believe that, to the extent that the payment of the Deferred Fee in shares of the Fund's common stock represents the issuance of such shares for services, the payment may be deemed to violate section 23(a).

2. Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from having an advisory agreement that provides for it to receive compensation on the basis of a share of capital gains upon or capital appreciation of a client's funds. Section 205(b)(3) of the Advisers Act provides that section 205(a)(1) shall not apply to an agreement between an investment adviser and a BDC for the adviser to receive a limited performance fee based on realized gains computed net of realized and unrealized losses, provided that, among other things, the BDC does not also have outstanding any option issued pursuant to section 61(a)(3) of the Investment Company Act.[3] Applicants believe that, to the extent that the calculation of the Deferred Fee provides that all unrealized capital appreciation or gains be deemed realized, such calculation may be deemed to violate section 205(a)(1).

3. Section 6(c) of the Investment Company Act and section 206A of the Advisers Act provide that the SEC may exempt any person or transaction from any provision of the Investment Company Act and the Advisers Act if such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of each Act. Applicants believe that these standards are satisfied for the reasons stated below.

4. Applicants contend that payment of the Deferred Fee in shares of the Fund's common stock is beneficial to the Fund and its shareholders because it will permit the Fund to retain cash otherwise required to pay the Deferred Fee and assist in better aligning management's compensation with the Fund's shareholders' objective of increasing the market value of the Fund's shares. Applicants believe that the loss of the accrued incentive compensation by ECC and ECMC would not be in the best interest of the Fund because it would penalize the very persons for whom the board of directors wishes to create incentives.

5. Applicants argue that elimination of the Deferred Fee also will significantly reduce expenses and the expense ratio of the Fund. By eliminating the Deferred Fee, applicants note that the expenses of the Fund would have been reduced from $10,857,087 to $3,310,381 for the year ended December 31, 1996, and the expense ratio of the Fund would have been reduced from 13.1% to 4.0% for 1996.

6. Applicants believe that Congress may have excluded unrealized gains from the calculation of performance fees under section 205(b)(3) in part because it was concerned about the possible overcompensation of the BDC's adviser resulting from overvaluation of the BDC's portfolio securities. Applicants assert that this concern will be addressed by basing the Deferred Fee on a valuation of the Fund's portfolio securities provided by an independent appraiser selected by the Independent Directors.

7. Applicants state that Congress permitted the payment of incentive compensation under section 205(b)(3) only if the BDC did not also have a stock option plan. Applicants believe that this condition may have arisen from a concern that management might be paid twice with respect to the same capital gains. Applicants note that the Fund proposes to issue to directors and officers of the Fund stock options exercisable at the market price on the date of issuance. Applicants therefore believe there would be a risk that management may receive additional compensation based on the same capital gain if the shares of common stock issued in payment of the Deferred Fee were issued at market value and the subsequent realization of a capital gain previously deemed realized in determining the Deferred Fee reduced the market discount on the Fund's net asset value. Applicants assert that payment of the Deferred Fee in shares of common stock at net asset value eliminates this risk because ECMC and ECC would not receive any benefit from the current market discount on the Fund's net asset value.

Applicants' Condition

Applicants agree that any order of the SEC granting the requested relief will be subject to the condition that the shares of the Fund's common stock to be issued in payment of the Deferred Fee will be valued at the net asset value of such shares on the same date as of which the Deferred Fee is determined.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9804 Filed 4–15–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Rule 144(e) provides that, after the one-year holding period has expired, a holder of restricted securities that is an affiliate of the issuer may not sell, in any three-month period, more than the greater of (1) 1% of the issuer's outstanding shares or (2) the average weekly reported volume of trading in the shares over the preceding four calendar weeks.

[3] Section 61(a)(3) permits a BDC to issue options pursuant to an executive compensation plan provided that certain requirements are satisfied.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22612; 812–10400]

Smith Barney Inc., et al.; Notice of Application

April 9, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Smith Barney Incorporated (the ''Sponsor''); and Corporate Securities Trust, Directions Unit Investment Trust, Government Securities Trust, Harris Upham Tax Exempt Fund, E.F. Hutton Corporate Income Trust, E.F. Hutton Tax-Exempt Trust, E.F. Hutton Trust for Government Guaranteed Securities, Hutton Investment Trust, Hutton Telephone Trust, Hutton Utility Trust, Michigan Fund, Penn State Tax-Exempt Investment Trust, Pennsylvania Fund, Smith Barney Shearson Unit Trusts, Tax-Exempt Municipal Trust, Tax Exempt Securities Trust, The Tax-Exempt Trust, The Uncommon Values Unit Trust, Equity Focus Trust, Angels With Dirty Faces Trust, The Countryfund Opportunity Trust (each an ''Existing Trust''); and any other future unit investment trust sponsored by the Sponsor (collectively, with the Existing Trusts, the ''Trusts'').

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions from sections 2(a)(3), 2(a)(35), 22(d) and 26(a)(2) of the Act and rule 22c–1 thereunder, and pursuant to section 11(a) for an exemption from section 11(c).

SUMMARY OF APPLICATION: Applicants request an order to modify a condition to an existing order (the ''Prior Order'') [1] and to permit the Trusts to impose sales charges on a deferred basis and waive the deferred sales charge in certain cases, exchange Trust units having deferred sales charges, and exchange units of a terminating series of a Trust for units of the next available series of that Trust.

FILING DATE: The application was filed on October 8, 1996, and amended on February 26, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 on May 5, 1997 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certification of service. Hearing requests should state the nature of the writer's request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

[1] Investment Company Act Release Nos. 20296 (May 16, 1994) (notice) and 20344 (June 8, 1994) (order).

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Laurie A. Hesslein, Smith Barney Inc., 388 Greenwich Street, 23rd Floor, New York, NY 10013.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517 or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Trusts is a unit investment trust registered or to be registered as an investment company under the Act and is sponsored or will be sponsored by the Sponsor. Each of the Trusts consists of one or more series of separate unit investment trusts issuing securities registered or to be registered under the Securities Act of 1933 (the ''Series''). Applicants request that the relief sought herein apply to the Trusts and to future series of the Trusts.

2. Each Series is created by a trust indenture among the Sponsor, a banking institution or trust company as trustee, and an evaluator. The Sponsor acquires a portfolio of securities, which is then deposited with a trustee in exchange for certificates representing fractional undivided interests in the deposited portfolio (''Units''). The Units are then offered to the public through the Sponsor, underwriters and dealers at a public offering price which, during the initial offering period, is based upon the aggregate market value of the underlying securities plus an up-front sales charge. The sales charge currently ranges from 1.50% to 4.70% of the public offering price, generally depending upon the terms of the underlying securities. The maximum charge is usually subject to reduction in compliance with rule 22d–1 under the Act under certain stated circumstances disclosed in the prospectus, such as for a volume discount purchase.

3. Applicants seek exemptive relief to permit payment of the sales charge for Units of any Series of any of the Trusts to be made on a deferred basis (the ''deferred sales charge'' or ''DSC''). The Sponsor will determine the maximum amount of the sales charge per Unit, and this maximum amount will be stated in the prospectus for the applicable Series. The Sponsor will have the flexibility to defer the collection of all or part of the sales charge initially determined as described above over a period (the ''Collection Period'') subsequent to the settlement date for the purchase of Units, provided that the Sponsor will in no event add to the deferred amount of the sales charge determined as described above any additional amount for interest or any similar or related charge to reflect or adjust for in any way any ''time-value of money'' calculation related to such deferral. Applicants also intend to offer certain scheduled variations to the deferred sales charge such as volume discounts and waivers under certain circumstances.

4. The Sponsor presently anticipates collecting a portion of the total sales charge ''up front,'' *i.e.*, immediately upon purchase of Trust Units. The outstanding balance of the sales charge per Trust Unit as of the initial date of deposit will be collected over the remaining collection Period relevant to each particular Trust Series.

5. The amount of the DSC per Unit as of the initial date of deposit will be stated in the prospectus as a dollar amount and/or as a percentage. The table required by item 2 of Form N–1A (modified as appropriate to reflect the difference between unit investment trusts and open-end management investment companies) and a schedule setting forth the number and date of each installment payment will be included in the prospectus. The duration of the Collection Period shall also be stated in such prospectus.

6. A ratable portion of the sales charge remaining to be collected will be deducted (''Distribution Deductions'') from income distributions on the Units, from amounts received on the maturity or sale of securities or from a combination thereof, or may be paid by the Series on a periodic basis. Such payment amounts may be advanced by the trustee, who will be reimbursed from the income account of the Series (the ''Income Account'') or from the capital or principal account of the Series (the ''Capital Account'') upon the receipt of the proceeds from the maturity or sale of securities, until the total amount per Unit is collected, or deducted from the proceeds of sale, exchange, redemption or termination. The total of all these amounts will not exceed the sales charge per Unit. The DSC may be paid out of the Income or Capital Accounts of the Series and securities may be sold in order to pay any portion of the DSC due on a certain date in the event that income is insufficient to pay any amount due on such date.

7. The Sponsor intends to deduct any amount of the unpaid DSC expense from the proceeds of any redemption of Units

or of any sale of Units to the Sponsor. In general, if the Sponsor were to impose a DSC on the redemption or sale of Units, a determination would be made as to whether a DSC applies to a particular redemption or sale of Units. For such purposes, it will be assumed that Units owned by a particular investor on which the total aggregate of Distribution Deductions have been collected (and therefore for which no DSC is due) are liquidated first. Any Units disposed of over and above such amounts will be subject to the DSC, which will be applied on the assumption that Units held for the longest time by such investor are redeemed first.

8. The Sponsor may adopt a procedure of waiving the DSC payable out of net sales or redemption proceeds under certain circumstances which will be disclosed in the current prospectus for each Series of Trust affected. Any such waiver of the DSC will be implemented in accordance with the provisions of rule 22d–1.

9. Applicants' Prior Order permits the applicants to: (a) make certain exchange offers between specified funds (the ''Exchange Privilege''); (b) make certain exchange offers to holders of any registered unit investment trust carrying a specified sales load (the ''Conversion Privilege''); and (c) publicly offer units of the trusts without previously privately placing at least $100,000 of units. Under the Prior Order, applicants may charge a sales charge at the time of the exchange or conversion not to exceed 1.5% of the unit being acquired on each exchange. Applicants seek to modify a condition to the Prior Order to permit exchanges and conversions of Units of Series at a reduced, as opposed to specified, sales charge (the ''Revised Exchange and Conversion Privilege'').

10. Applicants also propose to offer a rollover privilege (the ''Rollover Privilege'') which would allow holders the ability to roll over any or all of their Units in a Series which is terminating (the ''Terminating Trust'') for Units in one or more new Series (the ''Rollover Trust'') at a reduced sales charge. The Revised Exchange and Conversion Privilege and Rollover Privilege would extend to all exchanges, conversions, and rollovers of Units sold either with a fixed sales charge or with a DSC for Units of one or more Series (''Exchange Trust'' or ''Conversion Trust'') or Rollover Trust sold either with a fixed sales charge or with a DSC.

11. A holder must notify the Sponsor of this desire to exercise his Rollover Privilege. Exercise of the Rollover Privilege is subject to the following conditions: (i) the Sponsor must be maintaining a secondary market in the Units of the available Rollover Trust, (ii) at the time of the Holder's election to participate in the Rollover Privilege, there must also be Units of the Rollover Trust available for sale, and (iii) exchanges will be effected in whole Units only.

12. Investors who purchase Units under the Revised Exchange and Conversion Privilege or Rollover Privilege will pay a lower sales charge than that which would be paid by a new investor. The applicable reduced sales charge will be applied when an investor exchanges or converts his Units within five months of his acquisition for Units of a Series with a lower sales charge. An adjustment would be made, however, if Units of any Series are exchanged or converted within five months of acquisition for Units of a Series with a higher sales charge. In such cases, the exchange or conversion fee will be the greater of (i) the applicable reduced sales charge or (ii) an amount which, together with the sales charge already paid on the Units being exchanged or converted, equals the normal sales charge on the Units of a Trust Series being acquired through such exchange or conversion. This method of determining the exchange fee will also be applied in the case where the exchange of Units is from a Series of a Trust which is terminating for Units of one or more new Series of such Trust.

Applicant's Legal Analysis

1. Under section 6(c), the Commission may exempt any person or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the pubic interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 2(a)(32) defines a ''redeemable security'' as any security, other than short term paper, under the terms of which the holders upon its presentation to the issuer or a person designated as the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 4(2) defines a unit investment trust as an investment company that issues only redeemable securities. Applicants submit that the imposition of the DSC would not cause the Units of the Trusts to fall outside the definition of redeemable securities in section 2(a)(32) of the Act. In order to avoid uncertainty in this regard, however, applicants request an exemption from section 2(a)(32) to the extent necessary to permit implementation of the DSC under the proposed deferred sales charge program.

3. Section 2(a)(35) defines the term ''sales load'' to be the difference between the sales price and that portion of the proceeds from its sale which is received and invested or held for investment by the depositor or trustee. Applicants submit that the DSC is within the section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicants therefore request an exemption from section 2(a)(35) to the extent necessary to implement the proposed DSC.

4. Section 22(c) and rule 22c–1 require that the price of a redeemable security issued by an investment company for purposes of sale, redemption, and repurchase be based on the security's current net asset value. Applicants submit that, although the DSC will be deducted at the time of redemption or repurchase from the holder's proportionate liquidation proceeds, such deduction does not in any way affect the calculation of net asset value used to determine the redemption price for the Units. In order to avoid any possibility that questions might be raised regarding the applicability of rule 22c–1, applicants request an exemption from the rule to the extent necessary or appropriate to permit applicants to implement the DSC under the proposed deferred sales charge program.

5. Section 22(d) requires an investment company and its principal underwriter and dealers to sell any redeemable security issued by such investment company only at the current public offering price described in the investment company's prospectus. Sales loads were historically deemed to be subject to the provisions of section 22(d) because they were traditionally a component of the public offering price; hence all investors were charged the same sales load. Rule 22d–1 was adopted to permit registered investment companies and principal underwriters and dealers thereof to sell any redeemable securities issued by such company with scheduled variations in its sales load, subject to certain conditions. In the interest of clarity, applicants request that an exemption from the provisions of section 22(d) in order to permit scheduled variations or waivers of the DSC under certain circumstances.

6. Section 26(a)(2) prohibits a trustee or custodian of a unit investment trust from collecting from the trust as an expense any payment to a depositor or principal underwriter thereof. Applicants state that in order to avoid any possibility that questions may be

raised as to the propriety of the trustee disbursing these charges to the Sponsor, applicants request an exemption from section 26(a)(2) to the extent necessary to permit the trustee to collect these deductions and disburse them to the Sponsor as contemplated by the deferred sales charge program.

7. Section 11(c) prohibits any type of offers of exchange of the securities of a registered unit investment trusts for securities of any other investment company unless the terms of the offer have been approved by the SEC. Applicants assert that certain savings in sales related expenses involving repeat investors may appropriately be passed along to such investors, which savings will be recognized by a reduction in the sales charge of the unit exchanged into. Applicants maintain that the reduction in the sales charge paid for units of the Series exchanged into is consistent with the provisions of the Act whether the sales charge on the units exchanged into is collected up-front and/or on a deferred basis.

8. Applicants represent that holders will not be induced or encouraged to participate in the Revised Exchange and Conversion Privilege or Rollover Privilege through an active advertising or sales campaign. The Sponsor recognizes its responsibility to its customers against generating excessive commissions through churning and represents that the sales charge collected will not be a significant economic incentive to salesmen to promote inappropriately the Revised Exchange and Conversion Privilege or Rollover Privilege. The Sponsor also believes that the operation and implementation of the DSC program will be adequately disclosed and explained to potential investors as well as unitholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants agree that whenever the Revised Exchange and Conversion Privilege or Rollover Privilege is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Revised Exchange and Conversion Privilege or the Rollover Privilege, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of an Exchange, Conversion or Rollover Trust under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) an Exchange, Conversion or Rollover Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Revised Exchange and Conversion Privilege or Rollover Privilege will pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expense of providing such service, and may include an amount that will fairly and adequately compensate the Sponsor.

3. Applicants agree that the prospectus of each Series and any sales literature or advertising that mentions the existence of the Revised Exchange and Conversion Privilege or the Rollover Privilege will disclose that they are subject to termination and that their terms are subject to change.

4. Each Series offering Units subject to a DSC will include in its prospectus the table required by Item 2 of Form N–1A (modified as appropriate to reflect the differences between unit investment trusts and open-end management investment companies) and a schedule setting forth the number and date of each installment payment.

5. Applicants agree to continue to comply with all of the conditions contained in the Prior Order, except that condition 2 of the Prior Order is amended by condition 2 above.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9802 Filed 4–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38491; File No. SR–NASD–97–06]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Scope of the Uniform Practice Code

April 9, 1997.

On February 20, 1997, the NASD Regulation, Inc., (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] To amend Rule 11100 of the Uniform Practice Code (''Code'') of the National Association of Securities Dealers, Inc., (''NASD'' or ''Association''), to clarify the scope of the Code and the exception for transactions settled through a clearing agency.[2] No comment letters were received. The Commission is approving the proposed rule change.

I. Background

The introductory language in paragraph (a) of Rule 11100 states the general standard that ''all over-the-counter secondary market transaction in securities between members shall be subject to the provisions of this Code. * * *'' According to NASD Regulations, that introductory language does not encompass those provisions of the Code that address the rights and liabilities of the members participating in the transaction or provide procedures that are not related to securities transactions, *e.g.*, the setting of ex-dates and the transfer of customer accounts. In addition, subparagraph (a)(1) of the Rule 11100 of the Code excludes securities transactions compared, cleared or settled through a registered clearing agency from the provisions of the Code. NASD Regulation believes that exception is technically not available when the rules of the clearing agency require that the Code or the rules of other relevant markets apply to the transaction. Finally, since the SEC's adoption of Rule 144A in 1991, NASD Regulation believes that members were uncertain as to whether the Code is applicable to transactions in restricted

[1] 15 U.S.C. § 78s(B)(1)(1988).

[2] The proposed rule change was originally submitted on January 29, 1997. The NASD subsequently submitted Amendment No. 1 that removed certain unnecessary text. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulations, SEC, dated February 20, 1997.