

# Notice To Members

National Association of Securities Dealers, Inc.

June 1990

## Number 90 - 39

### Suggested Routing:\*

- |   |  |                                       |   |
|---|--|---------------------------------------|---|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit                | <input type="checkbox"/> Operations   | <input checked="" type="checkbox"/> Syndicate |
| <input checked="" type="checkbox"/> Corporate Finance | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options      | <input type="checkbox"/> Systems              |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal                     | <input type="checkbox"/> Registration | <input type="checkbox"/> Trading              |
| <input type="checkbox"/> Institutional                | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research     | <input checked="" type="checkbox"/> Training  |

\*These are suggested departments only. Others may be appropriate for your firm.

### REQUEST FOR COMMENTS

**Subject: Amendments to Schedule E to the NASD By-Laws Regarding Potential Conflicts of Interest; Last Date for Comment: July 5, 1990**

#### EXECUTIVE SUMMARY

The NASD requests membership comment on proposed changes to Schedule E to the NASD By-Laws that, if adopted, would require compliance with its provisions if a member participating in a distribution of a public offering of debt or equity securities has a conflict of interest with the issuer. A conflict of interest would be deemed to exist if the member or its affiliates own an aggregate of 10 percent or more of the debt, 10 percent or more of preferred stock, or 10 percent or more of the common stock of an issuer.

#### BACKGROUND

In 1972, the NASD adopted Schedule E to the By-Laws to regulate the potential conflicts of interest that exist when a member participates in the public distribution of its own securities or the securities of an affiliate. The presumptions contained within Schedule E used to determine affiliation are generally either voting control through ownership of equity securities or common control of management through interlocking officerships or director-

ships. Schedule E addresses the conflicts by requiring a qualified independent underwriter to render an opinion on the price of the securities offered, conduct due diligence, and participate in the preparation of the registration statement and prospectus. The qualified independent underwriter also assumes underwriter's liability for the offering. The NASD believes that the objectivity and independence provided by a qualified independent underwriter resolves these conflicts.

Last year, the NASD Board of Governors asked the Corporate Financing Committee to consider whether the ownership of debt of an issuer by an NASD member that intends to distribute the issuer's securities creates a conflict of interest and, if so, whether the conflict should be regulated by the provisions of Schedule E.

In December 1989, the Committee concluded, after review of numerous leveraged buy-out offerings and discussions with several member firms, that a potential conflict of interest exists when a member owns debt, preferred equity, or voting or nonvoting common equity of an issuer while engaged in an offering of the issuer's securities. As a result, the Board of Governors is soliciting comments on a proposal to apply the provisions of Schedule E to any public distribution of the securities of an issuer when a member that proposes to

participate in the distribution or its associated persons, parent, or affiliates own 10 percent or more of the aggregate dollar amount of the outstanding debt of the issuer, 10 percent or more of the aggregate dollar amount of the outstanding preferred stock of the issuer, or 10 percent or more of the combined voting and nonvoting common stock of an issuer.

### EXPLANATION

The proposed changes to Schedule E include modifications to the general provisions of the Schedule, the addition of four definitions, and modifications to four sections of the Schedule. A section-by-section analysis of the proposed modifications appears below. Initially, the NASD proposes to modify the title of Schedule E by adding "... Conflicts of Interest" to more appropriately describe the proposed breadth of the Schedule.

#### Section 1 — General

A new subsection (b) is proposed that will provide that no member or person associated with a member shall participate in the distribution of a public offering of debt or equity securities of a company if the member, its associated persons, parent, or affiliates have a conflict of interest with the company. The holdings of debt or equity by a member and its associated persons and affiliates will be aggregated to determine whether the prohibition will be applicable. However, holdings by one or more members will not be aggregated.

#### Section 2 — Definitions

The proposal would amend Section 2 of Schedule E to add four definitions. The principal definition to be added is "conflict of interest." A conflict of interest will be deemed to exist if the member owns 10 percent or more of the dollar amount of a company's aggregate debt outstanding. Similarly a conflict will be deemed to exist if the member owns in the aggregate 10 percent or more of the dollar amount of the preferred stock outstanding without regard to class, whether voting or nonvoting, convertible or nonconvertible. Finally, a conflict will be deemed to exist if a member owns 10 percent or more of the total number of shares of common stock outstanding without regard to class, whether voting or nonvoting, convertible or nonconvertible.

The definition of conflict of interest does not

include conflicts that may arise as a result of an issuer owing 10 percent or more of the aggregate debt, aggregate preferred stock, or voting and nonvoting common equity of a member. The NASD seeks comment on whether a conflict should be deemed to exist and, if so, whether the provisions of the Schedule should apply.

With respect to the ownership of debt, a conflict of interest would exist when the member owns 10 percent or more of the short- and long-term outstanding debt of the issuer. For purposes of calculating the percentage of debt, the NASD would include all long-term debt as well as the current portion of long-term debt, bank credit facilities, and bridge loans. A member's ownership of the preferred equity of a company would be measured by comparing the aggregate capital invested by all persons in the preferred equity outstanding with the member's holdings of preferred equity without regard to whether one or more classes of preferred stock are outstanding or whether the preferred stock has any distinguishing characteristics such as convertibility or exchangeability.

The amendments also propose to aggregate all shares of all classes of common stock outstanding, whether voting or nonvoting, convertible or nonconvertible, and compare that amount to the shares of common stock of the company owned by the member, its associated persons, parent, or affiliates to determine whether a conflict exists.

Definitions of debt, common equity, and preferred equity are also proposed to be added to the Schedule. Common equity is defined as the total number of shares of common stock outstanding without regard to class, voting rights, or other distinguishing characteristics as reflected on the consolidated financial statements of the company.

The term debt is defined as the short- and long-term debt as reflected on the consolidated financial statements of the company. The term preferred equity is defined to include the aggregate capital invested by all persons in the preferred securities outstanding without regard to class, voting rights, or other distinguishing characteristics as reflected on the consolidated financial statements of the company.

#### Section 3 — Participation in Distribution of Securities of Member or Affiliate

It is proposed that Section 3 be retitled "Participation in Distribution of Securities." Subsection

(a) has been modified by the addition of a prohibition on any member underwriting or participating as a member of the underwriting syndicate or selling group or otherwise assisting in the distribution of a public offering of the securities of a company with which the member or its associated persons, parent, or affiliates have a conflict of interest unless the member complies with subsection 3(b) and subsection 3(c).

Subsection 3(b) remains unchanged. The majority of the Board of Directors of the member that is deemed to have a conflict with the issuer must have been actively engaged in the investment banking or securities business as that term is defined in Article I, Section 1(h) of the NASD By-Laws. Section 3(c) has been amended to indicate that if a member proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of securities of a company with which it or its associated persons, parent, or affiliates have a conflict, one or more of the three criteria of Section 3(c) must be met.

As proposed under subsection 3(c)(1), if a member has a conflict of interest with an issuer, in order for the member to participate in the distribution of a public offering of the issuer's securities, a qualified independent underwriter that satisfies the objective criteria of the definition found at subsection 2(l) must be engaged. The qualified independent underwriter will be required to participate in the preparation of the registration statement and the prospectus or offering circular or other similar document and exercise the usual standards of due diligence in respect thereto. It will also be required to issue an opinion that the price at which an equity issue or the yield at which a debt issue is to be distributed to the public has been established at a price no higher or a yield no lower than that which it recommends.

Alternatively, if the public offering is of a class of equity securities for which a bona fide independent market exists as of the date of filing and as of the effective date of the registration statement, or if the offering is a class of securities rated investment grade by a nationally recognized rating agency, then a qualified independent underwriter will not be required.

#### Section 4 — Disclosure

As proposed, Section 4 of Schedule E would

be amended at subsection (b) to require the disclosure in the registration statement, offering circular, or similar document that the offering is being made pursuant to the provisions of Schedule E because member(s) that have a conflict of interest with the company are participating in the distribution.

#### Section 11 — Suitability;

#### Section 12 — Discretionary Accounts

Similarly, the suitability provisions of Section 11 and the prohibition on sales to discretionary accounts contained within Sections 11 and 12 of Schedule E, respectively, are being modified to require compliance by member(s) if the offering is one in which a conflict of interest exists.

The NASD encourages all members and other interested persons to comment on the proposed amendments to Schedule E. Comments should be directed to:

Mr. Lynn Nellius, Corporate Secretary  
National Association of  
Securities Dealers, Inc.  
1735 K Street, NW  
Washington, DC 20006-1506.

Comments should be received **no later than July 5, 1990**. Comments received by this date will be considered by the Corporate Financing Committee and the NASD Board of Governors. Any changes to the Schedule that are approved by the Board must be filed with and approved by the Securities and Exchange Commission before becoming effective.

Questions regarding this notice may be directed to Charles L. Bennett, Assistant Director, NASD Corporate Financing Department, at (202) 728-8258.

### NASD MANUAL SCHEDULES TO THE BY-LAWS

#### Schedule E

(Note: New language is underlined; deleted text appears in brackets.)

#### Distribution of Securities of Members and Affiliates — Conflicts of Interest

#### Section 1 — General

(a) No member or person associated with a mem-

ber shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by the member, the parent of the member, or an affiliate of the member and no member or parent of a member shall issue securities except in accordance with this Schedule.

(b) No member or person associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by a company if the member and/or its associated persons, parent, or affiliates have a conflict of interest with the company as defined herein, except in accordance with this Schedule.

**Section 2 — Definitions**

**Note:** Definitions in this section appear in alphabetical order designated by letters. Existing definitions will be given new letters on adoption of the proposed amendments to maintain alphabetical order.

\* \* \* \* \*

(e) Common Equity — the total number of shares of common stock outstanding without regard to class, whether voting or nonvoting, convertible or nonconvertible, exchangeable or nonexchangeable, redeemable or nonredeemable, as reflected on the consolidated financial statements of the company.

\* \* \* \* \*

(g) Conflict of Interest — shall be deemed to exist if:

(1) a member and/or its associated persons, parent, or affiliates in the aggregate beneficially own 10% or more of the outstanding debt of a company or its parent;

(2) a member and/or its associated persons, parent, or affiliates in the aggregate beneficially own 10% or more of the common equity of a company, or its parent which is a corporation, or in the case of a partnership, beneficially own a general, limited, or special partnership interest, in 10% or more of the distributable profits or losses of a company or its parent; or

(3) a member and/or its associated persons, parent, or affiliates in the aggregate beneficially own 10% or more of the preferred equity of a company or its parent.

(h) Debt — the short- and long-term debt as reflected on the consolidated financial statements of the company.

\* \* \* \* \*

(m) Preferred Equity — the aggregate capital invested by all persons in the preferred securities outstanding without regard to class, whether voting or nonvoting, convertible or nonconvertible, exchangeable or nonexchangeable, redeemable or nonredeemable, as reflected on the consolidated financial statements of the company.

**Section 3 — Participation in Distribution of Securities [of Member or Affiliate]**

(a) No member shall underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of an issue of debt or equity securities issued or to be issued by the member or an affiliate of the member, or of a company with which the member or its associated persons, parent, or affiliates have a conflict of interest, unless the member is in compliance with subsection 3(b) and subsection 3(c) below.

\* \* \* \* \*

(c) If a member proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of its own or an affiliate's securities or proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of securities of a company with which it or its associated persons, parent, or affiliates have a conflict of interest, subject to this Section without limitation as to the amount of securities to be distributed by the member, one or more of the following three criteria shall be met:

\* \* \* \* \*

**Section 4 — Disclosure**

\* \* \* \* \*

(b) All offerings included within the scope of this Schedule shall disclose in the underwriting section of the registration statement, offering circular or similar document that the offering is being made pursuant to the provisions of this Schedule, that the offering is being made by a member of its own securities or those of an affiliate, or those of a company with which the member or its associated persons, parent, or affiliates have a conflict of interest, the name of the member acting as qualified independent underwriter, if any, and that such member is assuming the responsibilities of acting as a qualified independent underwriter in pricing the offering and conducting due diligence.

### Section 11 — Suitability

Every member underwriting an issue of its securities, or securities of an affiliate, or the securities of a company with which it has a conflict of interest, pursuant to the provisions of Section 3 hereof, who recommends to a customer the purchase of a security of such an issue shall have reasonable grounds to believe that the recommendation is suitable for such customer on the basis of information furnished by such customer concerning the customer's investment objectives, financial situation, and needs, and any other information known by such member. In connection with all

such determinations, the member must maintain in its files the basis for its determination.

### Section 12 — Discretionary Accounts

Notwithstanding the provisions of Article III, Section 15 of the Corporation's Rules of Fair Practice, or any other provisions of law, a transaction in securities issued by a member or an affiliate of a member, or by a company with which a member has a conflict of interest shall not be executed by any member in a discretionary account without the prior specific written approval of the customer.

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\*These are suggested departments only. Others may be appropriate for your firm.

**Subject: SEC Approval of an Amendment to Schedule H to the NASD By-Laws Requiring Members to Demonstrate Compliance With Rule 15c2-11 Before Initiating Quotations in a Quotation Medium**

### EXECUTIVE SUMMARY

On May 1, 1990, the SEC approved an amendment to Schedule H of the NASD By-Laws to require member firms to file specified information with the NASD before initiating (or resuming) a quotation of a non-NASDAQ over-the-counter security ("non-NASDAQ security") in any quotation medium. Quotation mediums include the OTC Bulletin Board, the National Quotation Bureau's Pink Sheets™ publication, regional/local mediums comparable to the Pink Sheets™, and any other service that falls within the broad definition of "quotation medium," as defined in Rule 15c2-11(e)(1) under the Securities Exchange Act of 1934 (the "Act").

The new NASD filing requirements encompass information that broker-dealers must

maintain pursuant to paragraphs (a)(1) - (5) of Rule 15c2-11. For example, paragraph (a)(1) specifies maintenance of a copy of an issuer's prospectus relating to certain offerings registered with the SEC under the Securities Act of 1933.

In addition, member firms will have to specify the factors considered in establishing their initial priced entries for a non-NASDAQ security before such entries may be published in any quotation medium. In those instances where a member firm can rely on one of the stated exemptions from Rule 15c2-11, including the so-called "piggyback" exemption, no filing would be necessary. These new requirements will take effect on July 2, 1990. The text of the amendment follows this notice.

### BACKGROUND

On May 1, 1990, the SEC approved an NASD rule change that amends Schedule H to the NASD By-Laws to require member firms, before initiating or resuming the quotation of a non-NASDAQ security in any quotation medium, to file with the NASD copies of the information needed to comply

with Rule 15c2-11 under the Act and certain additional information.<sup>1</sup> The NASD's review of this material is intended to ensure strict compliance by member firms with Rule 15c2-11.

<sup>1</sup>See Release No. 34-27968 (May 1, 1990), 55 FR 19132 (May 8, 1990).

Furthermore, this rulemaking initiative complements other regulatory efforts undertaken by the NASD as well as the SEC to curtail abusive practices involving so-called "penny stocks."

### SUMMARY OF NEW REQUIREMENTS

A principal purpose of the new filing requirement in Schedule H is to ensure that members have complied with the information maintenance requirements of Rule 15c2-11. This rule requires that broker-dealers gather and maintain certain information before initiating or resuming the quotation of a non-NASDAQ security<sup>2</sup> in a quotation medium such as the OTC Bulletin Board or the NQB's Pink Sheets™ publication. The rule specifies maintenance of categories of information depending, for example, on whether the issuer is an Exchange Act reporting company or whether the issue to be quoted was the subject of a recent offering registered with the Commission under the Securities Act of 1933. Similarly, if the issue represents the outstanding stock of a nonreporting company, paragraph (a)(5) of Rule 15c2-11 specifies 16 elements of information that the broker-dealer must have before starting to quote the security in any quotation medium.

As amended, Schedule H requires members to file with the NASD, before initiating or resuming the quotation of a non-NASDAQ security in any quotation medium, a Form 211 accompanied by two copies of the information needed to comply with Rule 15c2-11. Although the amendment establishes a new filing requirement, the amount of information to be furnished approximates what member firms currently are required to file and maintain to satisfy Rule 15c2-11.<sup>3</sup> Amended Schedule H, however, requires submission of additional information relating to the initial or resumed publication of a priced entry in certain instances.

Amended Schedule H further provides that all required information be received by the NASD at least three business days before a member initiates (or resumes) the publication of quotations for a non-NASDAQ security in any quotation medium.<sup>4</sup> During this three-day period, the NASD staff will conduct a substantive review of the member's submission and notify the member about the adequacy of its submission by the end of this period. If any deficiency is found, the NASD staff will advise the firm either to amend or supplement its submission.

If additional information is submitted, the NASD staff will act on it within seven business days of receipt. Significantly, until the member has demonstrated full compliance with Rule 15c2-11 and Schedule H, a member will not be able to access the OTC Bulletin Board for the affected security. The member will be promptly notified in writing of such a determination.<sup>5</sup> Nonetheless, if a member proceeded to publish its quotation in another quotation medium without fully complying with Schedule H and Rule 15c2-11, such action would be reviewed by a District or Market Surveillance Committee to determine if disciplinary action is warranted.

A member must demonstrate compliance with Rule 15c2-11 regardless of whether its initial or resumed quotation is a priced entry.<sup>6</sup> Rule 15c2-11(e)(3) defines "quotation" to mean actual bids/offers, indications consisting only of the firm's name and the telephone number of its OTC trading desk, and bid wanted/offer wanted indications reflecting proprietary trading interest. The definition of "quotation" in Section 1(d) of amended Schedule H tracks the language of paragraph (e)(3) of the rule. In situations where a firm's initial or resumed quotation is a priced entry, amended Schedule H obligates the member firm, when filing with the NASD, to specify the basis for determin-

<sup>2</sup>Following the termination of a Commission trading suspension pursuant to Section 12(k) of the Act, a broker-dealer must reestablish compliance with Rule 15c2-11 before reentering a quotation for that security in a quotation medium.

<sup>3</sup>No filing would be required if the member can qualify for one of the enumerated exemptions from Rule 15c2-11, including the piggyback exemption.

<sup>4</sup>The three-day period corresponds to the Commission's proposed amendment to paragraph (d) of Rule 15c2-11. See Release No. 34-27247 (September 14, 1989), 54 FR 39194 (September 25, 1989), at 39205.

<sup>5</sup>If the NASD's review disclosed only minor or technical deficiencies, the NASD would have the option to contact the member firm by telephone and request submission of supplemental or revised Rule 15c2-11 information.

<sup>6</sup>Section 1(f) of amended Schedule H defines "priced entry" as a quotation consisting of a bid, offer, or both at a specified price.

ing the proposed bid and/or offer as well as the factors considered in making that determination.

A broker-dealer cannot avoid having to justify its first priced entry simply by initiating or resuming quotation of a non-NASDAQ security on a "name only" basis and later inserting a priced entry for that security in the same quotation medium. In this circumstance, amended Schedule H would require a supplemental filing explaining the basis for the initial priced entry. The obligation to make this supplemental filing arises only if the broker-dealer previously made a filing under Section 4 of amended Schedule H to initiate or resume quotation of that particular non-NASDAQ security and that initial or resumed quotation did not constitute a priced entry.

A member firm has no obligation to file information under amended Schedule H when it properly qualifies for one of the exemptions contained in paragraphs (f)(1), (2), (3), and (5) of Rule 15c2-11.<sup>7</sup> The most significant of these is the so-called "piggyback" exemption provided by paragraph (f)(3) of the rule. To rely on the piggyback exemption, a firm must first determine whether the subject non-NASDAQ security has met the frequency-of-quotation test found in paragraphs (f)(3)(i) or (ii) of Rule 15c2-11. (With respect to the OTC Bulletin Board, this capability will be available on-line to market-maker participants after the 60-day startup period.) If so, a firm can begin to enter quotations for the security in that quote medium. Thus, in instances where a member can validly claim the piggyback exemption, no filing whatsoever would be required under Section 4 of amended Schedule H. Nevertheless, in the event that a member firm decides to publish a quotation in the NQB "Pink Sheets,"<sup>TM</sup> claiming the piggyback exemption, the Form 211 should be sent to the NASD.

Rule 15c2-11 currently permits the practice of "self-piggybacking." This refers to situations where a broker-dealer initiates or resumes quotation of a non-NASDAQ security in a quote medium by complying with the applicable information maintenance requirement under paragraph (a) of Rule 15c2-11. If, after 30 calendar days have elapsed, the broker-dealer's quotes satisfy the frequency requirement for piggybacking, Rule 15c2-11 does not obligate the member to obtain updated issuer information to continue quoting the company's non-NASDAQ security in that quote

medium. The ability of a broker-dealer to self-piggyback does not alter a firm's filing obligation under amended Schedule H to justify its first priced entry. Specifically, if a firm makes an acceptable filing under Section 4 of Schedule H but publishes no priced entry in the medium during the ensuing 30 days, it must make a supplemental filing to justify its first priced entry at any time thereafter. Similarly, if the same firm initially published an unpriced entry (i.e., indication of interest) and wished to change to a priced entry during the first 30 days, it must make a supplemental filing to justify that first priced entry. In sum, the obligation to make a supplemental filing arises only where the firm's initial (or resumed) quotation required a filing under amended Schedule H and that filing did not contain disclosure of the basis for and factors considered in the firm's first priced entry.

The NASD also wishes to address how amended Schedule H would apply following a Commission trading suspension pursuant to Section 12(k) of the Act. Upon expiration of the suspension, any firm wishing to initiate or resume the quotation of the suspended security in a quote medium must first compile the requisite issuer information under paragraph (a) of Rule 15c2-11. Next, the firm would make the filing with the NASD required by amended Schedule H. If the firm proposed to publish a priced entry in a quote medium, the Schedule H filing must include statements setting forth the basis and factors considered in determining the priced entry. Assuming that the NASD's review disclosed no deficiency with the filing, the firm could proceed to publish its proposed quotation in the medium(s) identified in the filing. Other firms wishing to quote the same security during the next 30 days would have to follow the same procedure. Thereafter, additional firms could initiate or resume quotation of the subject security under the piggyback exemption, provided that the conditions in paragraph (f)(3) of Rule 15c2-11 can be met. If so, those firms would have no obligation to make any filing with the NASD under amended Schedule H.

In sum, the proposed amendment would not

<sup>7</sup>Paragraph (4) establishes an exemption for the publication of a quotation on a municipal security. Because municipals are not within the scope of amended Schedule H, the latter exemption is not referenced.



subject member firms to any filing requirement whenever they can validly claim one of the exemptions provided under paragraph (f) of Rule 15c2-11, including the piggyback exemption. These exemptions are specifically referenced in the first sentence of Section 4 of amended Schedule H.

The new filing requirements prescribed by Schedule H will take effect on July 2, 1990. Questions regarding compliance with amended Schedule H and requests for Form 211 should be directed to Dan Sibears, Roger Sherman, or Ken Worm of the NASD's NNOTC Compliance Unit at (202) 728-8149. Members' filings pursuant to Section 4 of Schedule H should be sent to:

National Association of  
Securities Dealers, Inc.  
NNOTC Compliance Unit, 5th Floor  
1735 K Street, NW  
Washington, DC 20006-1506

### TEXT OF AMENDED SCHEDULE H TO THE NASD BY-LAWS

#### Section 1 — Definitions

\* \* \* \* \*

(c) "Quotation medium" means any inter-dealer quotation system (except for the PORTAL<sup>SM</sup> Market) or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any non-NASDAQ security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(d) "Quotation" shall mean any bid or offer at a specified price with respect to a non-NASDAQ security, or any indication of interest by a broker or dealer in receiving bids or offers from others for such a security, or any indication by a broker or dealer that it wishes to advertise its general interest in buying or selling a particular non-NASDAQ security.

(e) "Issuer," in the case of quotations for American Depositary Receipts ("ADRs"), shall mean the issuer of the deposited shares represented by such ADRs.

(f) "Priced entry" shall mean a quotation consisting of a bid, offer, or both at a specified price.

\* \* \* \* \*

#### Section 4 — Submission of Rule 15c2-11 Information on Non-NASDAQ Securities

Except as provided in subsections (f)(1), (2), (3) and (5) of Rule 15c2-11 under the Securities Exchange Act of 1934, no member shall initiate or resume the quotation of a non-NASDAQ security in any quotation medium unless the member has demonstrated compliance with this rule and the applicable requirements for information maintenance under Rule 15c2-11. A member shall demonstrate compliance by making a filing with, and in the form required by, the Association, which filing must be received at least three business days before the member's quotation is published or displayed in the quotation medium. The information to be filed shall contain one copy of all information required to be maintained under subsections (a)(1), (2), (3)(iii), (4)(ii), or (5) of Rule 15c2-11, including any information that may be required by future amendments thereto. In addition, this filing shall identify the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-NASDAQ security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of Rule 15c2-11 with which the member is demonstrating compliance. Additionally, if a member is initiating or resuming quotation of a non-NASDAQ security with a priced entry, the member's filing must specify the basis upon which that priced entry was determined and the factors considered in making that determination.

If a member's initial or resumed quotation does not include a priced entry, a member shall supplement its prior filing under this section, in the form required by the Association, before inserting a priced entry for the affected non-NASDAQ security in a quotation medium. The supplemental filing shall specify the basis upon which the proposed priced entry was determined and the factors considered in making that determination. This supplemental filing must be received by the Association at least three business days before the member's priced entry first appears in a quotation medium.

All filings made with the NASD under this Section must be reviewed and signed by a principal of the member firm.

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### Suggested Routing:\*

- Senior Management
- Corporate Finance
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\*These are suggested departments only. Others may be appropriate for your firm.

### Subject: Independence Day: Trade Date-Settlement Date Schedule

Securities markets and the NASDAQ System will be closed on Wednesday, July 4, 1990 in observance of Independence Day. "Regular way" transactions made on the preceding business days will be subject to the settlement date schedule listed below.

Trade Date	Settlement Date	Reg. T Date*
June 26	July 3	July 6
27	5	9
28	6	10
29	9	11
July 2	10	12
3	11	13
4	Markets Closed	—
5	12	16

These settlement dates should be used by brokers, dealers, and municipal securities dealers

for purposes of clearing and settling transactions pursuant to the NASD Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of these settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (212) 858-4341.

\*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within seven (7) business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column entitled "Reg. T Date."

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| <input type="checkbox"/> Government Securities | <input type="checkbox"/> Municipal                 | <input type="checkbox"/> Registration          | <input checked="" type="checkbox"/> Trading |
| <input type="checkbox"/> Institutional         | <input type="checkbox"/> Mutual Fund               | <input type="checkbox"/> Research              | <input type="checkbox"/> Training           |

\*These are suggested departments only. Others may be appropriate for your firm.

### Subject: NASDAQ National Market System (NASDAQ/NMS) Additions, Changes, and Deletions As of May 14, 1990

As of May 14, 1990, the following 21 issues joined NASDAQ/NMS, bringing the total number of issues to 2,658:

Symbol	Company	Entry Date	SOES Execution Level
CALGF	Cal Graphite Corporation	4/17/90	500
MUSA	Martech USA, Inc.	4/17/90	1000
MCHS	Micro Healthsystems, Inc.	4/17/90	1000
PESC	Pool Energy Services Co.	4/17/90	1000
SULL	Sullivan Dental Products, Inc.	4/18/90	1000
GCCO	Granite Construction Incorporated	4/20/90	1000
UNIT	Unitrin, Inc.	4/23/90	1000
BEAV	BE Avionics, Inc.	4/24/90	1000
ORBI	Orbital Sciences Corporation	4/24/90	1000
HFMO	Home Federal Savings Bank of Missouri	4/25/90	1000
TBIT	Telebit Corporation	4/27/90	1000
TDSSF	3-D Systems, Inc.	5/1/90	1000
AFTI	American Film Technologies, Inc.	5/1/90	1000
AFTIW	American Film Technologies, Inc. (Wts)	5/1/90	1000
ASPT	Aspect Telecommunications Corporation	5/1/90	1000
NRGN	Neurogen Corporation	5/1/90	1000
CLRXR	Colorocs Corporation (Rts)	5/2/90	500
IMNR	Immune Response Corporation (The)	5/2/90	1000
DNST	Dynasty Classics Corporation	5/3/90	1000
IGLI	IG Laboratories, Inc.	5/3/90	1000
ROPS	RasterOps	5/9/90	200

### NASDAQ/NMS Symbol and/or Name Changes

The following changes to the list of NASDAQ/NMS securities occurred since April 12, 1990.

New/Old Symbol	New/Old Security	Date of Change
CTBK/SKAN	Center Banks, Inc./Skancateles Savings Bank	4/18/90
WEYS/WEYS	Weyco Group, Inc./Weyenberg Shoe Manufacturing Company	4/26/90

### NASDAQ/NMS Deletions

Symbol	Security	Date
ACPT	Acceptance Insurance Holdings Inc.	4/16/90
PCSI	PCS, Inc.	4/17/90
VEOXF	Veronex Resources Ltd.	4/17/90
DELE	Del Electronics Corp.	4/18/90
INTCW	Intel Corporation (5/15/95 Wts)	4/18/90
TTOR	Transtector Systems, Inc.	4/19/90
ELRRF	Elron Electronic Industries Ltd. (Rts)	4/20/90
CIFR	Cipher Data Products, Inc.	4/25/90
CATLB	Cantel Industries, Inc. (CI B)	4/26/90
ORFAQ	ORFA Corp. of America	4/26/90
PTRL	Petrol Industries, Inc.	4/26/90
WNSIC	WNS, Inc.	4/26/90
FSAK	Franklin Savings Association	4/27/90
WIMI	Warwick Insurance Managers, Inc.	4/27/90
VIST	Vista Resources, Inc.	4/30/90
FIWI	First Interstate Corporation of Wisconsin	5/1/90
DLTK	Deltak Corporation	5/2/90
ISBJ	Interchange Financial Services Corporation	5/2/90
MFED	Maury Federal Savings Bank	5/3/90
AIRC	AIRCOA Hospitality Services Inc.	5/4/90
LUSK	Luskin's, Inc.	5/7/90
UDRT	United Dominion Realty Trust, Inc.	5/7/90
NWPS	Northwestern Public Service Company	5/8/90
PSLA	Preferred Savings Bank, Inc.	5/8/90
HBOL	Hartford Steam Boiler Inspection and Insurance Co.	5/9/90
MMRHQ	MMR Holding Corporation	5/9/90
LPLI	LPL Technologies, Inc. (CI A)	5/11/90
SESL	Southeastern Savings Bank, Inc.	5/14/90

Questions regarding this notice should be directed to Kit Milholland, Senior Analyst, Market Listing Qualifications, at (202) 728-8281. Questions pertaining to trade reporting rules should be directed to Leon Bastien, Assistant Director, NASD Market Surveillance, at (301) 590-6429.

# Disciplinary Actions

National Association of Securities Dealers, Inc.

June 1990

## Disciplinary Actions Reported for June

The NASD is taking disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice, securities laws, rules, and regulations, and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions began with the opening of business on Monday, June 4, 1990. The information relating to matters contained in this notice is current as of the 20th of the month preceding the date of the notice. Information received subsequent to the 20th is not reflected in this publication.

### FIRMS FINED, INDIVIDUALS SANCTIONED

Normandy Securities, Inc. (New York, New York), Norman Gottlieb (Registered Principal, East Chester, New York), and Paul Lenok (Financial and Operations Principal, New Rochelle, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm and Gottlieb were fined a total of \$110,915, jointly and severally, and Lenok was fined \$30,000. Without admitting or denying the allegations, they consented to the described sanctions and findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, the firm, acting through Gottlieb, sold shares of a new issue that traded at a premium in the immediate aftermarket to restricted accounts and placed additional shares of this same offering in its trading account. It was alleged that Lenok purchased units in this new issue through an account of a corporation wholly owned by him and his wife.

Prescott, Ball & Turben (Cleveland, Ohio), Andrew Geller (Registered Principal, Bayside, New York), Theodore Geller (Registered Representative, Bellmore, New York), and Leonard Greenberg (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which the firm was fined \$15,000 and ordered to comply with certain undertakings; and Andrew Geller, Theodore Geller, and Greenberg were each suspended from association with any member of the NASD in any capacity for 10 business days. Without admitting or denying the allegations, they consented to the described sanctions and findings that, on 60 occasions, Andrew

Geller, Theodore Geller, and Greenberg caused Prescott to execute transactions in a security at or near the close of the market for the purpose of affecting the last-sale price at the close. The transactions were executed at prices higher than the previously reported trades. The NASD also found that Prescott failed to report 28 transactions in the same security within 90 seconds of execution, as is required.

### INDIVIDUALS BARRED OR SUSPENDED

Robert D. Cornelius (Registered Representative, Pinson, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any member of the NASD in any capacity for one business day. Without admitting or denying the allegations, Cornelius consented to the described sanctions and to entry of findings that he recommended the liquidation of one mutual fund and the purchase of another with similar investment goals in the account of two customers without having reasonable grounds for believing that the recommendations were suitable for the customers. In so doing, Cornelius also failed to disclose to these customers that they could have received an additional breakpoint or reduced sales charge if they increased their investments in the subject mutual funds.

Richard J. Demeree (Registered Representative, Tucson, Arizona) was fined \$2,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were imposed by the NASD's Board of Governors on review of a decision by the District

Business Conduct Committee for District 6. The sanctions were based on findings that Demeree received \$427,782 from a customer for the purchase of securities. He deposited the funds into his own account, thereby negligently commingling his personal funds with those of his customer.

**Robert Dornfeld (Registered Representative, Somerset, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Dornfeld consented to the described sanctions and to the entry of findings that he collected \$5,000 in insurance premiums and a \$1,000 insurance refund from public customers and converted such funds to his own use and benefit.

**David M. Droubay (Registered Representative, Denver, Colorado)** was fined \$7,500 and suspended from association with any member of the NASD in any capacity for 10 business days. The sanctions were based on findings that Droubay effected a total of six unauthorized securities transactions in three customer accounts.

**Mark Alan Elsea (Registered Representative, La Jolla, California)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any member of the NASD in any capacity for 30 days. Without admitting or denying the allegations, Elsea consented to the described sanctions and findings that he deposited two checks that were returned for insufficient funds with his member firm to pay for securities purchased in his personal account. The NASD also found that Elsea violated Regulation T of the Federal Reserve Board by executing the purchase of securities in restricted accounts that did not contain sufficient cleared funds to pay for the securities. Elsea also failed to make a timely response to NASD requests for information.

**Paul D. Enright (Registered Representative, Littleton, Colorado)** was fined \$2,500 and suspended from association with any member of the NASD in any capacity for 10 business days. The sanctions were based on findings that Enright effected two unauthorized securities transactions in the account of two public customers.

**Peter Foley (Registered Principal, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any member of

the NASD in any principal capacity for 10 days. Without admitting or denying the allegations, Foley consented to the described sanctions and to the entry of findings that he failed to implement existing supervisory procedures intended to detect and prevent excessive and unsuitable trading in customer accounts.

**Kenneth Paul Hahn (Registered Representative, E. Palo Alto, California)** submitted an Offer of Settlement pursuant to which he was fined \$7,500 and suspended from association with any member of the NASD in any capacity for six months. Without admitting or denying the allegations, Hahn consented to the described sanctions and to the entry of findings that he purchased shares of common stock without having orders for the stock and placed the shares into the accounts of three customers without their knowledge or consent. The findings also stated that Hahn recommended and effected 221 purchases of securities on margin for the account of a public customer without having reasonable grounds for believing that the recommendations were suitable for the customer considering the customer's financial situation and investment objectives.

**Anthony Hamilton-Smith (Registered Representative, Boulder, Colorado)** was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hamilton-Smith made improper use of customer funds by forging the signatures of three customers to checks totaling \$10,600.

**George D. Keaton (Registered Representative, Murray, Utah)** was fined \$125,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Keaton engaged in a private securities transaction by selling interests in a newly formed company, with which he was associated, to public customers without having provided prior written notice to his member firm. He also made false representations in recommending these securities to the customers.

**Bryan S. Kogut (Registered Representative, Orchard Park, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Kogut consented to the described sanctions

and to the entry of findings that he forged the signature of a customer on an insurance form in order to obtain a \$30,000 loan against the customer's insurance policy, and caused the proceeds to be deposited in a bank account of a company controlled by another customer.

**Karol Ann McKinster (Associated Person, Englewood, Colorado)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that McKinster caused four checks totaling \$2,726.63, drawn on her member firm's bank account and made payable to her husband, to be altered to show a total of \$357,646.43. She then delivered these checks to her husband, who negotiated them and retained the funds. McKinster also falsified and destroyed records to conceal these activities from her member firm.

**Thomas O. Mulkey (Registered Representative, Denver, Colorado)** was fined \$2,000 and suspended from association with any member of the NASD in any capacity for 10 business days and required to requalify by examination as a registered representative. The sanctions were imposed by the NASD's Board of Governors on review of a decision by the District Business Conduct Committee for District 3. The sanctions were based on findings that Mulkey effected a total of 12 unauthorized transactions in the accounts of six public customers.

**John Robert Petrash (Registered Representative, Del Mar, California)** was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Petrash failed to respond to NASD requests for information concerning his termination from a member firm.

**Gary Lee Pierce (Registered Representative, Lakewood, Colorado)** was fined \$35,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Pierce engaged in a private securities transaction by selling shares of preferred stock to two public customers without having provided his member firm with prior written notification. He issued two stock certificates in a nonexistent corporation to these customers, received a check for \$10,000 from the same customers as payment for the shares, and deposited the funds into his personal account. In addition, Pierce made false and fraudulent representations to these customers to in-

duce them to purchase the securities. Pierce also failed to honor an arbitration award for \$975 and failed to respond to NASD requests for information.

**Christopher Richard Prycewood (Registered Representative, Desert Hot Springs, California)** was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Prycewood failed to respond to NASD requests for information concerning his termination from a member firm.

**Kenneth Roberts, Jr. (Registered Representative, Crestwood, Kentucky)** was fined \$40,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Roberts accepted a \$10,000 check from a customer for the purchase of a mutual fund but instead converted the funds to his own use and benefit. In order to conceal such activity, Roberts provided the customer with a fictitious account statement. Roberts also executed an unauthorized purchase of shares in one mutual fund and failed to follow instructions from the customer's attorney regarding the purchase of shares in another mutual fund.

**Charles A. Roth (Registered Representative, Denver, Colorado)** was fined \$510,038.13, suspended from association with any member of the NASD in any capacity for six months, and required to requalify by examination as a registered representative. The sanctions were imposed by the NASD's Board of Governors on review of a decision by the District Business Conduct Committee for District 3. The sanctions were based on findings that Roth conducted business as a broker-dealer without being registered as required, and that he effected private securities transactions without properly notifying his member firm. The NASD also found that, in connection with these transactions, Roth accepted a total of \$510,038.13 in fees and expenses from seven insurance companies for his participation in securities transactions involving these companies.

Roth has appealed this decision to the Securities and Exchange Commission, and the sanctions against him are not in effect pending consideration of the appeal.

**Howard M. Russell (Registered Representative, Harahan, Louisiana)** submitted an Offer of Settlement pursuant to which he was fined \$15,000

and suspended from association with any member of the NASD in any capacity for two years. Without admitting or denying the allegations, Russell consented to the described sanctions and to the entry of findings that he recommended and engaged in the purchase and sale of option transactions in five customer accounts without having reasonable grounds for believing the transactions were suitable for the customers considering their financial situations and investment needs. The NASD also found that Russell guaranteed 25 customers against loss in options trading, prepared and distributed sales literature that omitted or misstated material facts, and made misrepresentations to a public customer concerning the purchase of a government securities mutual fund.

**Dale Robert Schneider (Associated Person, Forest Park, Ohio)** was fined \$5,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Schneider had in his possession unauthorized, handwritten material during the course of a Series 6 qualification examination. Schneider also failed to respond to NASD requests for information.

**Mark Sam Simon (Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was fined \$12,000 and suspended from association with any member of the NASD in any capacity for 90 days. Without admitting or denying the allegations, Simon consented to the described sanctions and to the entry of findings that he effected unauthorized securities purchases in the accounts of seven customers.

**William F. Spitzer (Registered Representative, St. Joseph, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any member of the NASD in any capacity for three months. Without admitting or denying the allegations, Spitzer consented to the described sanctions and to the entry of findings that he recommended and effected four direct participation program purchases in a customer's account without having reasonable grounds for believing the transactions were suitable in light of the customer's financial situation and investment needs.

**Eric George Vincent (Registered Representative, Brooklyn, New York)** was fined \$7,500 and suspended from association with any member of the NASD in any capacity for 10 business days.

The sanctions were based on findings that Vincent effected an unauthorized purchase of securities in each of three customer accounts.

### INDIVIDUALS FINED

**Wayne Edward Humphreys (Registered Representative, Orlando, Florida)** was fined \$17,200. The sanction was based on findings that Humphreys effected unauthorized securities transactions in six customer accounts.

**Ely Jay Mandell (Registered Representative, Agoura Hills, California)** was fined \$15,000. The sanction was imposed by the NASD's Board of Governors on review of a decision by the District Business Conduct Committee for District 2. The sanction was based on findings that Mandell forged the signature of his operations manager on letters sent to two public customers stating that transactions in their accounts would be reversed.

**Curtis Irving Wilson (Registered Representative, Bellevue, Washington)** was fined \$10,000. The sanction was based on findings that, in contravention of the Board of Governors' Interpretation concerning Private Securities Transactions, Wilson sold shares of a company in which he was a principal shareholder to three investors without providing prior written notification to his member firm. Also, Wilson used a private placement memorandum that erroneously listed his member firm as underwriter for this offering.

### FIRMS EXPELLED FOR FAILURE TO PAY FINES AND COSTS IN CONNECTION WITH VIOLATIONS

**1st Capital Assets Group, Inc.,** New York, New York

**American Heritage Securities Corp.,** Buffalo, New York

**Biscayne Securities Corp.,** Lauderhill, Florida

**Bottom Line Securities, Inc.,** Springfield, Massachusetts

**William M. Cadden & Co., Inc.,** Woodbury, New York

**W. D. Fard Securities, Inc.,** Atlanta, Georgia

**Flagler Securities, Inc.,** Palm Beach, Florida

**Flaherty Associates, Inc.,** Dallas, Texas

**Nicholas, Lawrence & Co., Inc.,** Seaside Heights, New Jersey



**Pro-Financial Securities, Inc.**, Fort Collins,  
Colorado

**Tejas Securities, Inc.**, Houston, Texas  
**W.N. Whelen & Co., Inc.**, Georgetown,  
Delaware

### FIRMS SUSPENDED

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of Article IV, Section 5 of the NASD Rules of Fair Practice and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after each entry. If the firm has complied with the request for information, the listing also includes the date the suspension concluded.

**Aesir Securities, Inc.**, Salt Lake City,  
Utah (April 17, 1990)  
**Allied Equity Group**, Bodega Bay, California (April 17, 1990)  
**American National Equities, Inc.**, Phoenix,  
Arizona (April 17, 1990)  
**Bagnell & Associates, Inc.**, Philadelphia,  
Pennsylvania (April 17, 1990 - April 26, 1990)  
**Brokers First Financial Corp.**, La Jolla,  
California (April 17, 1990)  
**Charter Securities**, Lancaster, Pennsylvania  
(April 17, 1990)  
**M. Curley & Co., Inc.**, New York, New  
York (April 17, 1990)  
**Dinerstein Securities, Inc.**, Houston,  
Texas (April 17, 1990)  
**First Swiss International Securities Corp.**,  
New York, New York (April 17, 1990)  
**First Technology Securities, Inc.**, Boston,  
Massachusetts (April 17, 1990)  
**Flagship Investments, Inc.**, Atlanta, Georgia  
(April 17, 1990)  
**Geotech Securities Corp.**, Houston, Texas  
(April 17, 1990)  
**Hathaway Securities, Inc.**, Little Rock,  
Arkansas (April 17, 1990)  
**Independent Resource Securities, Inc.**,  
Biloxi, Mississippi (April 17, 1990)  
**Integrated Assets Group, Inc.**, New York,  
New York (April 17, 1990)  
**Integrated Financial Services, Int'l. Inc.**,  
Orlando, Florida (April 17, 1990)  
**Jay Securities Corporation**, Dallas,

Texas (April 17, 1990)

**Key Biscayne Brokers, Inc.**, Key Biscayne,  
Florida (April 17, 1990 - May 2, 1990)

**LMC Corporation**, South Hadley,  
Massachusetts (April 17, 1990)

**Landed Securities**, Larkspur, California  
(April 27, 1990)

**Lorac Financial Services, Inc.**, West  
Springfield, Massachusetts (April 17, 1990)

**Lowenthal Financial Services, Inc.**, New  
York, New York (April 17, 1990)

**Majestic International, Inc.**, Torrance,  
California (April 17, 1990 - April 25, 1990)

**Pro-Financial Securities, Inc.**, Fort Collins,  
Colorado (April 17, 1990)

**Puritan Financial Centers**, Altamonte  
Springs, Florida (April 17, 1990)

**Sabine Associates, Inc.**, Los Angeles,  
California (April 17, 1990)

**Sausley Securities, Inc.**, League City,  
Texas (April 17, 1990)

**J.B. Sterling Corp.**, Aurora, Colorado (April  
17, 1990)

**Taylor, Garret and Co., Inc.**, Monroe,  
Louisiana (April 17, 1990)

**Tejas Securities, Inc.**, Houston, Texas (April  
17, 1990)

**Time Investments**, North Miami Beach,  
Florida (April 17, 1990)

**Turner Medical Marketing Services, Inc.**,  
Winter Park, Florida (April 17, 1990)

### SUSPENSIONS LIFTED

The NASD has lifted suspensions from membership for the following firms since they have complied with formal written requests to submit financial information. Each listing also includes the date the suspension was lifted.

**Cartwright & Goodwin, Inc.**, New York,  
New York (January 10, 1990)

**Dania Securities, Inc.**, Irvine, California  
(March 23, 1990)

**Hayes Brothers, Inc.**, Stratton Mountain, Ver-  
mont (January 24, 1990)

**G.G. Hoza & Company, Inc.**, Boca Raton,  
Florida (March 15, 1990)

**MLC Securities Corporation**, Ridgefield,  
Connecticut (March 20, 1990)

**Pacific Coast Equities, Inc.**, Chicago,  
Illinois (January 12, 1990)

**The R.J. Forbes Group, Inc.**, St. Petersburg,

Florida (May 2, 1990)

**Simon Securities, Inc.**, Burlington, Massachusetts (May 2, 1990)

**Smith Bellingham International, Inc.**, San Francisco, California (March 26, 1990)

**Trademark Investment Services, Inc.**, El Cajon, California (March 20, 1990)

**INDIVIDUALS WHOSE REGISTRATIONS WERE REVOKED FOR FAILURE TO PAY FINES AND COSTS IN CONNECTION WITH VIOLATIONS**

Robert J. Armstrong, Waldwick, New Jersey  
 David W. Arthur, Albuquerque, New Mexico  
 David M. Ashmore, Little Rock, Arkansas  
 Robert P. Beeson, Seattle, Washington  
 John Bowles, Denver, Colorado  
 Richard M. Brucki, Little Rock, Arkansas  
 Timothy K. Cahill, Paradise Valley, Arizona  
 Robert R. Crosby, Palos Verdes, California  
 David A. Davis, Shreveport, Louisiana  
 Jeffrey G. Dompierre, Valrico, Florida  
 Eugene M. Felten, La Canada, California  
 Donna R. Flaherty, Dallas, Texas  
 Peter F. Gaffney, Jersey City, New Jersey  
 David M. Gordon, Los Angeles, California  
 Nicholas J. Guiliano, Seaside Heights, New

Jersey

David H. Gwaltney, Memphis, Tennessee  
 Larry Z. Hubbard, Mathews, North Carolina  
 Jonathan O. Jensen, Overland Park, Kansas  
 Raymond R. Khalif, Marietta, Georgia  
 Luis E. Kinlecheene, Albuquerque, New

Mexico

Ira Robert Landis, New York, New York  
 Warren Leggiere, Jr., Deer Park, New York  
 Theodore Len, Manhasset Hills, New York  
 Stephen C. Love, Waynesburg, Pennsylvania  
 Robert M. Marsano, West Springfield,

Massachusetts

Dennis C. Mazur, Charlottesville, Virginia  
 Stephen M. McIntosh, Council Bluffs, Iowa  
 George McKovich, III, Palm Beach, Florida  
 Charles R. Meckley, Clearwater, Florida  
 Joseph W. Melton, Memphis, Tennessee  
 John G. Messina, Atco, New Jersey  
 Joseph F. Messineo, Brooklyn, New York  
 James P. Miles, East Providence, Rhode Island  
 James A. Miller, Bowie, Maryland  
 Roy F. Miller, Jr., Pocatello, Idaho  
 Joseph Miyamoto, Jr., Arvada, Colorado  
 William J. Mueger, East Meadow, New York

Sharieff Mustakeem, Atlanta, Georgia  
 Gerald W. Nannen, East Long Meadow,

Massachusetts

Harold B. Neilsen, Woodland, California  
 Harry Niehus, Sandy, Utah  
 James D. Oltman, Minneapolis, Minnesota  
 Lauren A. Providence, Chicago, Illinois  
 Sheri L. Rizzuto, Roy, Utah  
 Stuart L. Russell, Glendale, California  
 Rick J. Saunders, Collierville, Tennessee  
 Mark B. Schrutt, Toronto, Canada  
 Danny R. Shobe, Golden, Colorado  
 Sarah R. Speno, New York, New York  
 Marion S. Spitler, Camarillo, California  
 William Swearingen, Ft. Myers, Florida  
 Jay M. Vermonty, Flushing, New York  
 Gregory E. Wagner, Huntington, West Virginia  
 Thomas R. Warren, Salt Lake City, Utah  
 George Wasson, Jr., Minneapolis, Minnesota  
 James L. Weiland, Greeley, Colorado  
 Robert S. Welsh, Phoenix, Maryland  
 David A. Wheeler, McQueeney, Texas  
 Norman E. Wretlind, Golden, Colorado  
 Nathan Kendrick Yu, Washington, D.C.

**NASD IMPOSES FINES IN EXCESS OF \$2 MILLION AND OTHER SANCTIONS AGAINST THE STUART-JAMES COMPANY, ITS PRESIDENT, FORMER CHAIRMAN OF THE BOARD, AND HEAD TRADER FOR CHARGING EXCESSIVE PRICES TO THEIR CUSTOMERS**

The National Association of Securities Dealers, Inc. (NASD), has announced a disciplinary action taken by its Market Surveillance Committee against The Stuart-James Company; James Padgett, President; Stuart Graff, former Chairman of the Board; and Steven Pata, Head Trader. This action is based on NASD proceedings that involved a Letter of Acceptance, Waiver and Consent (AWC). The AWC is a document submitted by a member without a hearing wherein findings and sanctions are accepted by the respondents without admitting or denying the allegations of the NASD complaint.

Pursuant to the AWC, Stuart-James was fined \$1.9 million and agreed to comply with certain undertakings relative to the scope of its business; and Padgett, currently the President and sole shareholder of Stuart-James, was fined \$105,000 and will be prohibited from acting as a supervisor over the markup area for a period of not less than

six months. In addition, Graff, formerly Chairman of the Board and a principal shareholder of Stuart-James, was fined \$25,000, suspended from acting as a principal for 60 days, and ordered, thereafter, to requalify by examination as a principal; and Pata, Stuart-James' head trader, was fined \$30,000 and suspended in all capacities for 20 days.

Without admitting or denying the allegations, Stuart-James, Padgett, Graff, and Pata consented to findings of violations of NASD rules related to excessive markups charged to customers of Stuart-James in principal transactions in four low-priced securities. Additionally, without admitting or denying the allegations, Padgett and Pata consented to violations of NASD rules that require registered persons to provide information on the request of the NASD.

Pursuant to the terms of the AWC, Stuart-James has agreed to make certain changes in its business practices. Specifically, Stuart-James, on January 1, 1990, ceased market-making activity and executing principal transactions in non-NASDAQ over-the-counter securities. In addition, Stuart-James has agreed that it will not trade or underwrite so-called "blind pool" or "blank check" companies and has agreed to disclose on written confirmations sent to customers the highest bid and lowest ask prices (i.e., inside market) in the security at the time of purchase or sale and that the spread between bid and ask could constitute revenue for Stuart-James in principal transactions. Stuart-James has also agreed to use its best efforts to ensure broader distribution of new issues of securities by syndications through other independent dealers and by registering and delivering certain shares being held in safe-keeping for its customers.

Stuart-James has further agreed that a senior executive of the firm other than the named respondents will be designated as a "senior trading official" to ensure Stuart-James' compliance with these undertakings. The AWC provides for the retention of an independent consultant, acceptable to and approved by the NASD, who will review Stuart-James' practices and procedures in the markup area and forward a report and recommendation to the Market Surveillance Committee for final approval.

The NASD action relates to markups charged by the firm to its customers in principal transactions in four securities. The Market Surveillance Committee found that Stuart-James, acting through

the named respondents, charged excessive markups in its retail sales in these securities ranging from 6.9 percent to 153 percent above over its contemporaneous cost, in circumstances where Stuart-James dominated and controlled the trading of these securities. To the extent that the markups exceeded 10 percent, Stuart-James consented to a finding of a violation of Section 18 of the NASD's Rules of Fair Practice. Section 18 is the NASD's anti-fraud provision that prohibits the use of manipulative, deceptive, or other fraudulent devices in the purchase or sale of any security. The activity involved at least 4,340 transactions reviewed by the NASD which occurred during several months in 1988.

In a separate disciplinary action that was consolidated for purposes of this settlement, respondents Padgett and Pata consented to findings that they violated NASD rules with respect to their failure to provide "on the record" testimony as required by those rules.

This proceeding and the sanctions are part of the NASD's continuing commitment to address fraud and other abuses in the "penny stock" market. The investigation was conducted jointly by the NASD's District 3 office in Denver and its Market Surveillance Department. The disciplinary action was taken by the NASD's Market Surveillance Committee, which consists of 12 executives of securities firms from across the country.

#### **NASD CANCELS MEMBERSHIP OF WELLSHIRE SECURITIES, INC., PURSUANT TO REVOCATION PROCEEDINGS**

The National Association of Securities Dealers, Inc. (NASD), has cancelled the membership of Wellshire Securities, Inc., as a result of a revocation proceeding instituted under Article VI of the NASD's Code of Procedure.

This proceeding began as a result of the entry of an order of preliminary injunction on April 30, 1990, in the United States District Court for the Southern District of New York that enjoined Wellshire and two of its principals, Robert Cohen and Carol Martino, from violating Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder. The entry of this injunction caused the firm and the named principals to become statutorily disqualified, and thus they were ineligible for continued membership in the NASD or association

with NASD members pursuant to Sections 3(a)(39)(E) and 15(b)(4)(C) of the Securities Exchange Act of 1934 and Article II, Section 3 and Article II, Section 4(g) of the NASD By-Laws.

The Securities and Exchange Commission (SEC) had instituted a civil injunctive proceeding in March 1990 against Wellshire and various individuals, and this action resulted in the April 30 injunction order. The SEC's complaint, which was filed on March 14, 1990, alleges that from June 1988 to the present, Wellshire, under the direction and supervision of Cohen and Martino, has operated as a penny-stock "boiler room," selling speculative over-the-counter securities to the public through the use of false and misleading statements about various securities and abusive sales practices.

The judge in this order for preliminary injunction found that the record was replete with evidence that Wellshire employed misleading tactics to defraud its customers. The judge also found that, together with evidence that Wellshire employed misleading tactics to defraud its customers and, with and through certain of its prin-

cipals, the firm encouraged investments based on misleading information contained in its market letters, telephone scripts, and correspondence. In addition, the judge stated that Wellshire brokers, under the guidance and training of certain principals, encouraged investment in "house" stocks based on unfounded price predictions, bogus assurances that the "house" stocks would be imminently listed on the exchange, and actual manipulation of stock prices absent market forces. The opinion also stated that Wellshire's brokers pushed the "house" stocks regardless of a customer's investment needs and contrary to his or her demonstrated investment history.

The NASD has the authority pursuant to Section 15A(g)(2) of the 1934 Act and Article VI of the NASD's Code of Procedure to institute a proceeding to cancel or suspend the membership of a member or to bar or suspend from being associated with a member a person who is subject to a statutory disqualification as defined in Section 3(a)(39) of the 1934 Act or is ineligible for membership in or registration with the NASD pursuant to Article II, Section 3 of the NASD By-Laws.

# For Your Information

National Association of Securities Dealers, Inc.

June 1990

## Arizona, Maryland Increase Fees; Arizona Participates in TAT Program

Effective May 11, 1990, the Arizona Securities Commission increased its agent and broker-dealer fees. Agent registration, transfer, and renewal fees rose to \$40. The broker-dealer renewal fee climbed to \$300. In addition, the state began to allow Temporary Agent Transfers (TATs) on May 11th.

Beginning July 1, 1990, the Maryland Securities

Commission will increase its agent and broker-dealer fees. Agent registration, transfer, and renewal fees will increase to \$35, while broker-dealer registration and renewal fees will be hiked to \$250.

If you have questions regarding these changes, call NASD Member and Market Data Services at (301) 590-6500.

## Sites for Qualification Examinations Change in Four Locations

### Series 7 Test Site Changes

The June 16, 1990, Series 7 examination in Atlanta will be held at the Sheraton Century Center Hotel, 2000 Century Boulevard, NE, Atlanta, Georgia.

The June 16, 1990, Series 7 examination in Dallas will be held at Southern Methodist University, Underwood Law Library, 6400 Hillcrest at University Boulevard, Dallas, Texas.

The June 16, 1990, Series 7 examination in Washington, D.C., will be held at George Mason

University, Metro Campus, Law School and Professional Campus, 3401 North Fairfax Drive, Arlington, Virginia. Candidates should report to Rooms 220 and 224.

### Permanent Site Change

The first Saturday test site that appears in the current PLATO® booklet for Anchorage, Alaska, is incorrect. The correct address is the University of Alaska, Providence Drive, Building C, Room 107, Anchorage, Alaska.

## June 16 Series 7 is Final Paper and Pencil Administration

*Notice to Members 90-23* (April 1990) announced the conversion of the General Securities Representative (Series 7) examination to a PLATO® computer-based delivery effective May 1, 1990.

The June 16, 1990, Series 7 examination will be the last opportunity for candidates who wish to take the Series 7 at the traditional paper and pencil

test centers. Thereafter, the Series 7 examination will be offered in the United States only by appointment at PLATO® Development Center locations.

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