

Notice To Members

National Association of Securities Dealers, Inc.

July 1990

Number 90 - 43**Suggested Routing:*** Senior Management Corporate Finance Government Securities Institutional Internal Audit Legal & Compliance Municipal Mutual Fund Operations Options Registration Research Syndicate Systems Trading Training

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

REQUEST FOR COMMENTS

Subject: Proposed Amendment to Part I of Schedule C to the NASD By-Laws Regarding Written Notification About Certain Events; Last Date for Comment: August 3, 1990

EXECUTIVE SUMMARY

The NASD requests comments on a proposal to add a new section to Part I of Schedule C to the NASD By-Laws that would require members to provide notification in writing to the appropriate district office on the occurrence of certain events affecting the ownership or control of a member.

days. In certain cases, a previously dormant member can become active unexpectedly or be sold or taken over by new management. While a new pre-membership interview can be conducted, regulatory problems may have already occurred in reference to the merger, purchase, or change of ownership of a member. The NASD believes that prompt notification of such a change in ownership will allow the NASD to act more expeditiously in determining whether a new pre-membership interview should be scheduled.

BACKGROUND

Schedule C to the NASD By-Laws currently permits an NASD member to experience a change in ownership or control without prior review by the appropriate NASD district office. Pursuant to Section (4) to Part I of Schedule C to the NASD By-Laws, in cases where the ownership or control of an existing member changes, the NASD has the discretion to condition continuance in membership on prompt compliance with the pre-membership interview procedures. Notice of a change in ownership or control of a member must be filed on a revised Form BD whenever the information previously on file changes. Since the form does not specify a time for filing, a general rule of thumb has developed that filing is required within 30

EXPLANATION

The amendment would require prompt notification to the member's district office after a specified significant event, rather than prior notification of such event. The amendment would require members to provide notification in writing to the applicable district office no later than five business days after a specific event, thereby indicating that prenotifying the district is permitted but not required.

The amendment would focus on four significant events the NASD has determined require prompt notification: (1) the merger of a member; (2) an acquisition by a member; (3) an acquisition of a member or substantially all of its assets; and (4) any change of more than 50 percent of the equi-

ty or partnership capital of a member. The NASD also considered whether the new provision should require notification in the case of a change in the president or chief executive officer of a member. It was determined, however, that prompt notification should focus on a change in the ownership structure of the member. A change in the president or chief executive officer of a member would not normally require notification unless accompanied by one of the four triggering events.

The NASD encourages all members and other interested persons to comment on the proposed amendment to Schedule C to the By-Laws. 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 must be received **no later than August 3, 1990**. All comments will be made available for public inspection. Comments received by

this date will be considered by the NASD's Membership Committee and the NASD Board of Governors. If approved by the Board, the amendments must be filed with and approved by the Securities and Exchange Commission before becoming effective.

Questions concerning this notice should be directed to Craig L. Landauer, Assistant General Counsel, at 202-728-8291.

PROPOSED NEW SECTION (5) TO PART I OF SCHEDULE C TO THE BY-LAWS

(Note: New language is underlined.)

(5) Notification to the District Office of Certain Events

Members are required to notify the Corporation's District Office for the District in which the member's main office is located no later than five (5) business days after any of the following specified events: (1) any merger of the member; (2) an acquisition by the member; (3) an acquisition of the member or substantially all of its assets; and (4) any change of more than 50 percent in the equity ownership or partnership capital of the member.

Notice To Members

National Association of Securities Dealers, Inc.

July 1990

Number 90 - 44**Suggested Routing:***

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| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit | <input type="checkbox"/> Operations | <input type="checkbox"/> Syndicate |
| <input 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.

Subject: SEC Approval of Amendment to Code of Procedure Regarding Summary Remedial Proceedings, Effective July 1, 1990

EXECUTIVE SUMMARY

The Securities and Exchange Commission has approved an amendment to the Code of Procedure that would create a new procedure by which the NASD could take appropriate remedial actions against an NASD member or an associated person if such member or person has engaged, and there was a reasonable likelihood that the member or person will again engage, in securities law violations. The text of the amendment follows this notice.

EXPLANATION

The Securities and Exchange Commission (SEC) has approved an amendment to the Code of Procedure that will permit the NASD to suspend membership of, or condition the membership of a broker-dealer, or suspend or condition a person's association with a broker-dealer if the broker-dealer or person has engaged, and there is a reasonable likelihood the broker-dealer or person will again engage, in acts or practices inconsistent with just and equitable principles of trade.

The amendment provides the NASD with a wide range of actions it could take against a mem-

ber or associated person for ongoing violations, including imposing limitations or conditions on or the suspension of the firm's membership or the person's registration. This range of permissible actions will allow the NASD to tailor the action taken to meet the needs of the situation. The firm or person that is the subject of such a proceeding would have the right to a hearing prior to the NASD taking any action and, once the Board acts in reviewing the action, that decision could be appealed to the SEC.

Under the new procedure, such a proceeding will be initiated only after a finding by the NASD Executive Committee that the proceeding is needed to protect the public interest. The NASD will notify the member and/or associated person of the time and place of the hearing. The matter will be considered by a District Committee hearing panel consisting of at least three persons, and this panel will render its decision within five days of the hearing.

Any party aggrieved by the decision, or the Board itself, will have the opportunity to ask that this decision be reviewed by a committee of the Board of Governors. Any such request will not operate as a stay of the district panel's decision. Upon any application for review, a hearing before a Special Hearing Committee of the Board will be held within five days. Any decision rendered by

the Special Hearing Committee will be a final action of the NASD and can be appealed to the SEC. All decisions rendered will be in writing, and any member or person will have the right to appear in person, submit any relevant evidence, and be represented by counsel.

Questions concerning this notice may be directed to Craig L. Landauer, Assistant General Counsel, NASD Office of General Counsel, at (202) 728-8291.

TEXT OF PROPOSED RULE CHANGE

(Note: New text is underlined.)

NASD CODE OF PROCEDURE

ARTICLE XI

Expedited Remedial Proceedings

Purpose

Sec. 1. This Article establishes procedures for Expedited Remedial Proceedings. These proceedings are in addition to those established for summary suspension or revocation pursuant to Article VI or VIII of this Code of Procedure. Pursuant to the Expedited Remedial Proceedings, the Corporation may suspend the membership of a member or impose conditions upon its continued operation or suspend a person from being associated with a member or impose conditions on such person's continued association with a member. These procedures are adopted pursuant to and in implementation of Section 15A(b)(6) and Section 15A(g)(3)(A) and (B) of the Securities Exchange Act of 1934 which permits the Association to take such action if the broker or dealer or person has engaged, and there is a reasonable likelihood the broker or dealer or person will again engage, in acts or practices inconsistent with just and equitable principles of trade.

Commencement of Expedited Remedial Proceedings

Sec. 2. A determination to commence an Expedited Remedial Proceeding pursuant to Section 1 shall be made only upon approval of the Executive Committee of the Board of Governors and a conclusion by it that such action is in the public interest. In arriving at this conclusion the Executive Committee shall consider the egregious nature of the conduct and the likelihood of continuing viola-

tions. Upon commencement of this proceeding, the Corporation shall send notice thereof to the member or person associated with a member. Such notification shall contain a statement of the specific grounds on which such action is taken. The date and location of the hearing shall be sent to the member or person at least five (5) business days prior to the hearing. The matter shall be presented to a hearing panel designated by the District Business Conduct Committee or Market Surveillance Committee and shall consist of at least three members from the Committee which has jurisdiction over the proceeding.

District or Market Surveillance Committee Decision

Sec. 3. A written decision setting forth the findings made and the grounds upon which that determination is based shall be issued by the District or Market Surveillance Committee hearing panel within five (5) business days of the date of the hearing, and a copy shall be sent to the party against whom the Corporation has taken expedited action and, in the case of a person associated with a member, the member with whom the party is presently an associated person. Any decision conditioning or suspending a member or person associated with a member under this Article shall specify the time period, not to exceed six months, for which the conditions or suspension shall remain in effect and the conditions, if any, which must be fulfilled during the specified time period in order to have the conditions or suspension removed.

Review by Board

Sec. 4. The District or Market Surveillance Committee decision shall be subject to review by the Board of Governors on its own motion within five (5) business days after issuance of the written decision. Any such decision shall also be subject to review upon application of any person aggrieved thereby filed within five (5) business days after issuance. The institution of a review, whether on application of the aggrieved person or on the initiative of the Board, shall not operate as a stay of the decision. Upon receipt of an application for review, a hearing will be held within five (5) business days after receipt of such application. Unless extended by the Board hearing panel in its discretion for good cause shown, oral argument in hear-

ings held under this Article shall be limited to 30 minutes each for the respondents and for a representative of the District or Market Surveillance Committee. The introduction of new evidence shall not be permitted unless good cause is shown for not introducing it at the hearing held before the District or Market Surveillance Committee hearing panel.

Board Decision

Sec. 5. Upon consideration of the record, and after such further hearings as it shall order, the Board shall, in writing, affirm, modify, reverse, dismiss, or remand the decision to the District or Market Surveillance Committee. The Board shall set forth the findings made and the specific grounds upon which its determination is based. Any decision conditioning or suspending a member or person associated with a member under this Article shall specify the time period, not to exceed six months, for which the conditions or suspension shall remain in effect and the conditions, if any, which must be fulfilled during the specified time period in order to have the conditions or suspension removed. A decision rendered by a three member hearing panel designated by the Board shall constitute final action by the Corporation. A written decision shall be issued by the Board hearing panel within five (5) business days of the date of

the hearing, and a copy shall be sent to the party against whom the Corporation has taken expedited action and, in the case of a person associated with a member, the member with which the party is presently an associated person.

Hearings

Sec. 6. At any hearing held under this Article, a record shall be kept and the member or person associated with a member and the Corporation shall be entitled to be heard in person and be represented by counsel.

Other Action Not Foreclosed

Sec. 7. Action by the Corporation under this Article shall not foreclose action by the Corporation under any other provisions of this Code or the Rules of Fair Practice where a violation of the Rules of the Corporation may be involved.

Application to Commission for Review

Sec. 8. Any party against whom expedited action has been taken by the Board of Governors may make application for review to the Securities and Exchange Commission in accordance with Section 19 of the Securities Exchange Act of 1934, as amended. There shall be no stay of the Board's action upon appeal to the Commission unless the Commission determines otherwise.

Notice To Members

National Association of Securities Dealers, Inc.

July 1990

Number 90 - 45

Suggested Routing:*

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|---|--|---------------------------------------|------------------------------------|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit | <input type="checkbox"/> Operations | <input type="checkbox"/> Syndicate |
| <input 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 type="checkbox"/> Training |

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

Subject: SEC Approval to Articles II and III of the NASD's Code of Procedure Regarding Board of Governors and Committee Proceedings in Disciplinary Actions, Effective August 1, 1990

EXECUTIVE SUMMARY

The Securities and Exchange Commission has approved amendments to Articles II and III of the NASD's Code of Procedure ("Code"). The amendments modify existing procedures and establish new procedures in connection with hearings before a District Business Conduct Committee, Market Surveillance Committee, or an Extended Hearing Committee ("Committee"), pursuant to Article II of the Code, and proceedings in connection with Board of Governors' reviews of disciplinary actions taken by a Committee, pursuant to Article III of the Code.

The amendments to Article II establish requirements for the submission of documentary evidence and the names of witnesses

prior to a Committee hearing. The amendments to Article III convert Board reviews of Committee decisions into more appellate-type proceedings and codify practices as to matters reviewed on the basis of the written record.

The amendments will become effective August 1, 1990, and will apply only to proceedings in which a new complaint is issued on or subsequent to August 1, 1990. The amendments will *not* apply to disciplinary proceedings already in progress on August 1, 1990 (i.e., proceedings in which a complaint was issued prior to August 1, 1990). The full text of the amended Articles II and III of the Code follows this notice.

EXPLANATION

Under Article II of the Code, respondents are given a full opportunity to participate in and produce evidence in proceedings before a Committee, and Committees are given the opportunity to conduct a full review of each matter.

Under the amended Article II of the Code,

respondents will be required, and the Committee staff or complainant (if other than a Committee), upon request, will be required to submit documentary evidence and the names of witnesses to each other no later than five business days prior to a hearing. This requirement will eliminate any question as to whether the parties were given sufficient

notice of additional documentary evidence or witnesses in advance of the hearing.

Under Article III of the Code, respondents in disciplinary actions taken by a Committee may appeal those actions to the NASD's Board of Governors, or the Board may, on its own motion, call a matter for review. In either case, respondents may elect to attend or waive a hearing before a hearing panel of the Board. Under the amended Article III, Board hearings will be limited to 30-minute oral arguments by the parties, unless extended by the hearing panel because good cause was shown. The introduction of additional evidence will be prohibited except in exceptional circumstances and upon a demonstration of good cause for failure to introduce the evidence before a Committee. Parties to the review must apply to the Board for leave to adduce additional evidence no later than 10 business days before the date of the hearing. The Board may, however, direct that the record be supplemented with such additional evidence as it may deem relevant.

The amendments also address those situations in which the appealing party did not participate in the proceedings before a Committee. The amendments to Article III permit the Board to remand to a Committee matters in which the appealing party did not participate in the proceedings before a Committee but showed good cause for the failure to participate. If the appealing party fails to show good cause for not participating in the proceedings before a Committee, the matter will be considered by the Board on the basis of the written record developed by the Committee, including written briefs submitted to the Board.

Parties that failed to request a hearing before a Committee pursuant to Article II, Section 4 of the Code will be permitted to request a hearing. Such parties may request leave to adduce additional evidence, but they must demonstrate good cause for failure to introduce the evidence before a Committee. The amended Article III will also permit the Board to dismiss as abandoned any application for review in which the appealing party failed to advise the Board of the basis for seeking review, or failed to provide the Board with responses to requests for information in a timely manner.

Article III of the Code will continue to permit the National Business Conduct Committee to designate a matter as an extended proceeding.

Questions concerning this notice may be

directed to Shirley H. Weiss, Attorney, Office of General Counsel, at (202) 728-8844.

TEXT OF RULE CHANGE

(Note: New material is underlined; deleted material is in brackets.]

NASD CODE OF PROCEDURE ARTICLE II

Sec. 1 - Sec. 6 No change.

Evidence and Procedure in Committee Hearings

Sec. 7. (a) The Committee staff, or the complainant, if other than a Committee, shall upon request make available to respondents and their counsel any documentary evidence and the names of any witnesses the staff intends to present at the hearing no later than five (5) business days prior to [within a reasonable time before] the hearing.

(b) Respondents shall submit to the Committee staff or the complainant any documentary evidence and the names of any witnesses respondents intend to present at the hearing no later than five (5) business days prior to [within a reasonable time before] the hearing.

(c) If a hearing is held, both the complainant and the respondent shall be entitled to be heard in person and by counsel. Formal rules of evidence shall not be applicable. Notwithstanding paragraphs (a) or (b), the parties may submit any additional [documentary] evidence at the hearing as the hearing panel, in its discretion, determines may be relevant and necessary for a complete record. A record of the hearing shall be kept in all cases.

Sec. 8 - Sec. 13 No change.

ARTICLE III

Review of Disciplinary Actions and [Hearings] Proceedings Before The Board of Governors

Sec. 1. No change.

[Hearings] Proceedings Before the Board

Sec. 2. (a) In the case of an appeal or call for review, the [complainant, if other than the Committee, or the respondent] party seeking review may request a hearing. If the party desires a hearing, it

should be requested in his application for review. A party subject to a call for review may request a hearing within fifteen (15) calendar days of notification of the call for review. [may request a hearing before a hearing panel of the Board of Governors.] If a request is made, a hearing shall be granted, subject to the limitations of Section 2(f) below. In the absence of a request for a hearing, the Board of Governors may have any matter set down for a hearing.

(b) If a hearing is held, a [A] notice stating the date, time and place of the hearing shall be mailed to the complainant [, if other than the Committee] and respondent at least ten (10) calendar days before the hearing. The notice period may be waived in writing by the respondent or a shorter notice given where extraordinary circumstances require.

(c) If a hearing is not held, the matter shall be considered on the basis of the record before the Committee, and written briefs, if submitted. For purposes of this section, the record before the Committee shall include the complaint, respondent's answer, the transcript of the Committee hearing, any exhibits reviewed by the Committee, and the Committee decision.

[(c)] (d) Unless otherwise consented to by the parties, all hearings shall be held before a hearing panel, and all on-the-record reviews shall be conducted by a review panel, appointed by the National Business Conduct Committee consisting of two or more persons, all of whom are associated with members of the Corporation, at least one of whom shall also be a current member of the Board of Governors.

[(e)] (e) If a hearing is held, the hearing panel shall consider the record before the Committee and any new material submitted by the complainant and the respondent. If respondent has waived a hearing and the Board does not order a hearing on its own motion, the panel shall consider the matter on the record, which may include new evidence as long as all parties have previously been tendered the new evidence.]

(e) A hearing on review by the Board shall consist of oral arguments limited to a total period of thirty (30) minutes each for argument and response by respondent and for argument and response by a complainant, unless extended by the hearing panel in its discretion for good cause shown. The Board's review shall be limited to consideration of oral ar-

guments, written briefs, and the record before the Committee. A record of the hearing shall be kept in all cases.

(f) Any application for review of a matter in which the party seeking review did not participate in the proceedings before the Committee but shows good cause for the failure to participate, shall normally be dismissed by the Board and remanded to the Committee for further proceedings. If the party seeking review did not participate in the proceedings before the Committee and does not show good cause for the failure to participate, the matter shall be considered by the Board on the basis of the record before the Committee, including written briefs submitted to the Board. For purposes of this paragraph, failure to participate shall mean failure to file an answer or otherwise respond to a complaint or failure to appear at a hearing which has been scheduled and shall not include failure to request a hearing pursuant to Article II, Section 4 of this Code. A party seeking review who failed to request a hearing before a Committee pursuant to Article II, Section 4 of this Code, shall be permitted to have a hearing on review as provided in this section.

(g) Any application for review as to which the party seeking review fails to advise the Board of the basis for seeking review, or otherwise fails to provide information or submit a written brief in response to a request, may be dismissed as abandoned and the decision of the Committee shall become final Association action.

(h) Upon consideration of the length of expected testimony, the volume and complexity of documentary evidence before the Committee [and] , or other factors it may deem material, and subject to the provisions of Section 2(a) through (g) above, the National Business Conduct Committee may determine that a matter shall be set for an Extended [Hearing] Proceeding. Notice of an Extended [Hearing] Proceeding shall be given as provided in Section [2(a)] 2(b).

(i) All Extended [Hearings] Proceedings shall be held before an Extended [Hearing] Proceeding Committee appointed by the National Business Conduct Committee consisting of two or more persons, all of whom previously shall have served as members of the Board of Governors; provided, however, that the Chairman of the National Business Conduct Committee shall have the discretion to appoint to an Extended [Hearing] Proceeding

Committee one or more current members of the Board of Governors and to compensate any or all members of the Extended [Hearing] Proceeding Committee at the rate then in effect for arbitrators appointed under the Code of Arbitration Procedure.

[(f)] (j) The hearing or on-the-record review panel shall present its recommended findings and sanctions to the National Business Conduct Committee. The National Business Conduct Committee shall make its recommended findings and sanctions to the Board of Governors which shall make the final determination.

Evidence [and Procedure] in Board [Hearings] Proceedings

Sec. 3. [(a) Upon request, the Corporation staff or the complainant, if other than a Committee, shall make available to respondents and their counsel any documentary evidence which was not part of the record before the Committee, within a reasonable time before the hearing.]

(a) A party to the Board's review may apply to the Board for leave to adduce additional evidence. If the party provides notice of the intention to introduce such evidence no later than ten (10) business days prior to the date of the hearing, identifies and describes the evidence, and satisfies the burden of demonstrating that there was good cause for failing to adduce it before the Committee and that the evidence is material to the proceeding, the Board

may, in its discretion, permit the evidence to be introduced into the record on review or may remand the case to the Committee for further proceedings in whatever manner and subject to whatever conditions the Board considers appropriate. On its own motion, the Board may direct that the record on review be supplemented with such additional evidence as it may deem relevant.

[(b) Respondents shall also make available to the Corporation staff or the complainant, any documentary evidence, which was not part of the record before the Committee, within a reasonable time before the hearing.]

(b) Where leave to adduce additional evidence is granted, the Corporation staff or the complainant, if other than a Committee, and the respondent shall make available to the Board hearing or review panel and to the parties all documentary evidence which was not part of the record before the Committee no later than five (5) business days before the hearing.

(c) [If a hearing is held, both the complainant and respondent shall be entitled to be heard in person and by counsel.] Formal rules of evidence shall not be applicable. [Notwithstanding paragraphs (a) or (b), the parties may submit any additional documentary evidence at the hearing as the hearing panel, in its discretion, determines may be relevant and necessary for a complete record. A record of the hearing shall be kept in all cases.]

Sec. 4 - Sec. 7 No change.

Notice To Members

National Association of Securities Dealers, Inc.

July 1990

Number 90 - 46**Suggested Routing:***

<input type="checkbox"/> Senior Management	<input type="checkbox"/> Internal Audit	<input type="checkbox"/> Operations	<input type="checkbox"/> Syndicate
<input 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 checked="" 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.

Subject: Reporting Disciplinary Information on Form BD**EXECUTIVE SUMMARY**

The Central Registration Depository (CRD) was expanded in 1989 to enable firms to file one Form BD for both NASD membership and state licensing requirements. In the operation of this CRD system, it has become evident that states and the Securities and Exchange Commission (SEC) differ in their disclosure requirements related to pending disciplinary matters reportable on Form BD. This notice outlines these differences and provides an update as to the steps being taken to reconcile the differences.

ISSUE

There are two basic interpretations regarding the disclosure of pending matters classified under the term "proceeding" found on Form BD in Item 7G. The SEC interpretation of these matters as outlined in release number 12078 (February 6, 1976), and as restated in 1985, includes finally adjudicated criminal proceedings and finally adjudicated proceedings brought by the SEC, regulators, and self-regulators. The SEC does not require disclosure of investigations, arrests without convictions, or civil litigation not conducted by a

regulatory or self-regulatory body.

Many states interpret the term "proceeding" in a much different way. In an effort to formalize the state interpretation, the North American Securities Administrators Association (NASAA) adopted a resolution that outlines a different interpretation of disclosure requirements. This 1989 resolution states that the term "proceeding" includes pending administrative and civil proceedings initiated by self-regulatory, regulatory, and governmental agencies as well as pending criminal charges and civil litigation.

The SEC is the oversight body of the NASD and, since the Form BD is an SEC form, its disclosure requirements are considered appropriate for NASD filing purposes. The NASD also operates the CRD system pursuant to a joint contract with the NASAA. Under the terms of the contract, the CRD captures and maintains all information submitted by members on Form BD. Hence, if states require disclosure of information and it is contained in a filing, it is captured and maintained on the CRD system.

The nature of the information found in the CRD system differs from member to member as a result of inconsistent disclosure causes by these differing interpretations. Because public inspection of this information is available through the states, the lack of standardized disclosure can result in com-

parisons of members that are misleading. Such a situation happened several months ago when *The New York Times* published an article attempting this kind of a comparison.

STATUS

To resolve these differences and to establish uniform disclosure of information, the NASD is participating in ongoing discussions with the SEC and the NASAA. Indications are that these discus-

sions could result in a requirement that more information would need to be disclosed. Pending the resolution of this matter, members are advised that information provided on Form BD in Item 7G should continue to be filed as instructed by the state(s) with which a registration is maintained.

Questions regarding this notice should be directed to Jay Cummings, Director, Membership Department, at (301) 590-6733.

Notice To Members

National Association of Securities Dealers, Inc.

July 1990

Number 90 - 47**Suggested Routing:***

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| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit | <input type="checkbox"/> Operations | <input type="checkbox"/> Syndicate |
| <input 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.

Subject: Amendments to Code of Arbitration Procedure**EXECUTIVE SUMMARY**

The Securities and Exchange Commission (SEC) has approved amendments to Part III, Sections 13, 30, 43, and 44 of the NASD Code of Arbitration Procedure that are intended to discourage successive adjournments of arbitration hearings and that modify the procedures and schedules under which fees are assessed for the use of NASD arbitration facilities. The new fee and deposit schedules will be applied in all cases filed on or after June 18, 1990, as well as in all cases where a notice of prehearing conference or notice of hearing is issued on or after June 18,

1990. The new fee and deposit schedules will not be applied to cases currently in process where a notice of prehearing conference or a notice of hearing dated prior to June 18, 1990, has been issued. In order to encourage settlement discussions well in advance of hearings or prehearing conferences, the NASD intends to apply the provisions of new sections 43(f) and 44(f) to all applicable cases whether currently pending or newly filed.

The text of the amendments follows this notice.

BACKGROUND AND EXPLANATION

On September 19, 1989, following favorable recommendation by the NASD's National Arbitration Committee, the Association's Board of Governors authorized the filing of amendments to the Association's Code of Arbitration Procedure ("Code") that would have increased arbitration fees under the pre-existing administrative framework set forth in the Code. While the Association filed these amendments with the SEC on October 12, 1989, the NASD withdrew the amendments at the request of the SEC staff on October 17, 1989, and began considering an alternative administrative

framework for the assessment of fees in NASD arbitration proceedings.

The NASD received SEC staff comment dated March 8, 1990, and there was also substantial progress toward the development of a proposed uniform rule increasing fees and incorporating the alternative administrative framework for the assessment of fees in arbitration proceedings involving customers by a Drafting Subcommittee of the Securities Industry Conference on Arbitration. Following that, the NASD filed with the SEC amendments to Sections 13, 30, 43, and 44 of the NASD Code of Arbitration Procedure. Following the

solicitation of public comment (55 Federal Register 15048, April 20, 1990), the SEC approved the Association's amendments on June 1, 1990 (55 Federal Register 23493, June 8, 1990). In general, the proposed rule changes are intended to discourage successive adjournments of arbitration hearings and to implement revised procedures and schedules for the assessment of fees in arbitrations brought by or against customers as well as in in-traindustry arbitrations.

An amendment to Section 30 of the Code is expected to reduce delays by discouraging frivolous requests for adjournments in the arbitration process. The amendment raises the adjournment fee assessed following the grant of a first request for adjournment from \$100 to an amount equal to the initial hearing session deposit required pursuant to the new fee schedules set forth in Sections 43 and 44 of the Code. The adjournment fee for second and subsequent adjournments requested by the same party will be twice the initial hearing session deposit, but such fee may not exceed \$1,000. In the event that a third request for adjournment is received to which all parties have consented, the arbitrators will be empowered to dismiss the arbitration without prejudice to the claimant's filing of a new arbitration action.

In amending Sections 13, 43, and 44 of the Code, the NASD has adopted a revised administrative framework for the assessment of fees based on the establishment of a nonrefundable filing fee plus forum fees assessable based on the number of hearing sessions held, in amounts varying in accordance with the amount in dispute. The non-refundable filing fee, which is intended to recoup certain fixed administrative costs related to each filing, is distinguishable from the hearing session deposit, which is intended to relate to hearing costs, not the administrative costs connected with the processing of filings. These filing fees, which are analogous to court filing fees, are intended to offset some of the NASD's costs of administration, at least to a limited degree, even when cases settle prior to hearing.

Revised Sections 43(f) and 44(f) of the Code provide for, in addition to retention of all nonrefundable fees, the retention of the total initial amount deposited as hearing session deposits by all of the parties if a case, including a case filed under customer-simplified procedures, is settled or withdrawn within eight business days of the first

scheduled hearing session. A prehearing conference with an arbitrator is not considered a scheduled hearing session under these sections.

The new fee and deposit schedules will be applied in all cases filed on or after June 18, 1990, as well as in all cases where a notice of prehearing conference or notice of hearing dated prior to June 18, 1990, has been issued. The new fee and deposit schedules will not be applied to cases currently in process where a notice of prehearing conference or a notice of hearing has been or will have been sent to the parties prior to June 18, 1990. In order to encourage settlement discussions well in advance of hearings or prehearing conferences, the NASD intends to apply the provisions of new sections 43(f) and 44(f) to all applicable cases, whether currently pending or newly filed. The text of the amendments follows this notice.

Questions can be directed to Kenneth A. Andrichik, Deputy Director, Arbitration, at (212) 858-3915, or Norman Sue, Jr., Assistant General Counsel, NASD Office of General Counsel, at (202) 728-8117.

AMENDMENTS TO THE NASD CODE OF ARBITRATION PROCEDURE

(Note: New language is underlined; deleted language is in brackets.]

CODE OF ARBITRATION PROCEDURE

* * * * *

PART III. UNIFORM CODE OF ARBITRATION

* * * * *

SIMPLIFIED ARBITRATION

* * * * *

Section 13.

- (a) No change.
- (b) No change.

(c) The Claimant shall pay a non-refundable filing fee and shall remit a hearing session deposit [\$15.00 if the amount in controversy is \$1,000 or less, \$25.00 if the amount is more than \$1,000 but does not exceed \$2,500, \$100 if the amount in controversy is more than \$2,500 but does not exceed \$5,000, or \$200 if the amount in controversy is

more than \$5,000 but does not exceed \$10,000] as specified in Section 43 of this Code upon filing of the Submission Agreement. The final disposition of [this] the fee or deposit shall be determined by the arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Subcommission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees for customer disputes. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third Party Claim, the Respondent(s) shall serve the Third Party Respondent with an executed Submission Agreement, a copy of Respondent's Answer containing the Third Party Claim, and a copy of the original Claim filed by the Claimant. The Third Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding \$10,000, the arbitrator may refer the Claim, Counterclaim and/or Third Party Claim, if any, to a panel of three (3) or five (5) arbitrators in accordance with Section 19 of this Code or, he may dismiss the Counterclaim and/or Third Party Claim without prejudice to the Counterclaimant(s) and/or Third Party Claimant(s) pursuing the Counterclaim and/or Third Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed [\$200.00.] the total amount specified in Section 43.

* * * * *

Adjournments

Section 30. (a) The arbitrator(s) may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.

(b) A party requesting an adjournment after arbitrators have been appointed[,] shall, if an [said]

adjournment is granted, [shall pay] deposit a fee, equal to the initial deposit [of costs but not more than \$100.] of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed \$1,000, for a second or subsequent adjournment requested by that party. The arbitrator(s) may waive the deposit of this fee or in their award may direct the return of the adjournment fee. [This provision shall not apply to matters filed under Section 13 of the Code.]

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrator(s) may dismiss the arbitration without prejudice to the Claimant filing a new arbitration.

* * * * *

Schedule of Fees for Customer Disputes

* * * * *

Section 43. (a) At the time of filing a Claim, Counterclaim, Third Party Claim or Cross-Claim, a party shall [deposit with] pay a non-refundable filing fee and shall remit a hearing session deposit to the Association in the amounts indicated in the schedules below unless such fee or deposit is specifically waived by the Director of Arbitration.

[Amount in Dispute	Deposit
(Exclusive of interest and expenses)	
\$1,000 or less	\$15
Above \$1,000 but not exceeding \$2,500.....	\$25
Above \$2,500 but not exceeding \$5,000.....	\$100
Above \$5,000 but not exceeding \$10,000	\$200
Above \$10,000 but not exceeding \$50,000	\$400
Above \$50,000 but not exceeding \$100,000 ...	\$500
Above \$100,000 but not exceeding \$500,000 .	\$750
Above \$500,000	\$1,000]

Where [the amount in dispute is \$10,000 or less, no additional deposits shall be required despite the number of hearing sessions. Where the amount in dispute is above \$10,000 and] multiple hearing sessions are required, the arbitrators may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the [aggregate] amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit[(s)] made by any party under [as set forth in] the [above] schedules below.

(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules below as a hearing session deposit for a hearing with a single arbitrator.

(c) The arbitrators, in their awards, [may] shall determine the amount chargeable to the parties as forum fees [(fees)] and shall determine [by whom such fees shall be borne] who shall pay such forum fees. [Where the amount in dispute is \$10,000 or less, total fees chargeable to the parties shall not exceed the amount of the total initial deposit deposited by the parties, regardless of the number of hearing sessions conducted. Where the amount in dispute is above \$10,000, total] Forum fees chargeable to the parties shall be assessed on a per hearing session basis, and the aggregate for each hearing session [to the parties] may equal but shall not exceed the amount of the [total] largest initial hearing deposit[(s)] deposited by [the parties.] any party, except in a case where claims have been joined subsequent to filing in which case hearing session fees shall be computed as provided in paragraph (d). The arbitrator(s) may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid. If a customer is assessed forum fees in connection with an industry claim, forum fees assessed against the customer shall be based on the hearing deposit required under the industry claims schedule for the amount awarded to industry parties to be paid by the customer and not based on the size of the industry claim. No fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above. Amounts deposited by a party shall be applied against forum fees, if any. [If the fees are not assessed against a party who had made a deposit, the deposit will be refunded.] In addition to forum fees, the arbitrator(s) may determine in the[ir] award[s] the amount of costs incurred pursuant to Sections 30, 32, 33, and 37 and, unless applicable law directs otherwise, other costs and expenses of the parties and arbitrator(s) which [that] are within the scope of the agreement of the parties. [or otherwise as permitted by law.] The ar-

bitrator(s) shall determine by whom such costs shall be borne. If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine otherwise.

(d) For claims filed separately which are subsequently joined or consolidated under Section 25(d) of this Code, the hearing deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such fees shall be borne.

[(d)](e) If the dispute, claim, or controversy does not involve, [or] disclose, or specify a money claim, the non-refundable filing fee [amount to be deposited by the Claimant shall] shall be [\$200,] \$250 and the hearing session deposit to be remitted by a party shall be \$600 or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed \$1,000.

[(e)](f) [If a matter has been submitted and thereafter is settled or withdrawn prior to the commencement of the first hearing session, the parties shall be entitled to a refund of all but \$100 of the amount deposited with the Association. This section shall not apply to claims filed under Section 13 of this Code.] The Association shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or withdrawn within eight business days of the first scheduled hearing session other than a pre-hearing conference.

[(f)](g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall [may] be subject to [such refund of assessed deposits, if any, as the panel of arbitrators presiding may determine.] an assessment of forum fees and costs incurred pursuant to Sections 30, 32, 33, and 37 based on hearing sessions held and scheduled within eight business days after the Association receives notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.

[(g)] The arbitrators may assess forum fees and costs incurred pursuant to Section 30, 31, 33, and 37 in any matter settled or withdrawn subsequent to the commencement of the first hearing session.]

Schedule of Fees

For purposes of the schedule of fees, the term "claim" includes Claims, Counterclaims, Third Party Claims, and Cross-Claims. Any such claim made by a customer is a customer claim. Any such claim made by a member or associated person of a member is an industry claim.

Customer Claimant

(Note: See chart on page 266 of this notice.)

Industry Claimant

(Note: See chart on page 267 of this notice.)

* * * * *

Filing Fee for Members

Section 44. A member firm shall, when filing a Submission Agreement against a non-member, pay a non-refundable filing fee of \$500.00. This fee shall be in addition to all other fees, deposits, or costs which may be required.]

* * * * *

Schedule of Fees for Industry and Clearing Controversies

Section [45.] 44. (a) At the time of filing a [Submission Agreement, a Claimant] Claim, Counterclaim, Third-Party Claim or Cross-Claim in an industry or clearing controversy which is required to be submitted to arbitration before the Association as set forth in Section 8, above, a party shall [deposit with] pay a non-refundable filing fee and shall remit a hearing session deposit to the Association in the amounts indicated in the schedule below unless such fee or deposit is specifically waived by the Director of Arbitration.

[Amount in Dispute	Deposit
(Exclusive of interest and expenses)	
\$10,000 or less	\$200
Above \$10,000 but less than \$100,000...	\$750
Above \$100,000	\$1,000]

Where [the amount in dispute is \$10,000 or less, no additional deposits shall be required despite the number of hearing sessions. Where the amount in dispute is above \$10,000 and] multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the [aggregate] amount deposited by all parties per hearing session exceed the amount of

the largest initial hearing deposit[(s)] made by any party [as set forth in the above] under the schedule below.

(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedule below as a hearing session deposit for a hearing with a single arbitrator.

(c) The arbitrators, in their award[s], [may] shall determine the amount chargeable to the parties as forum fees [(fees)] and shall determine [by whom such fees shall be borne] who shall pay such forum fees. [Where the amount in dispute is \$10,000 or less, total fees chargeable to the parties shall not exceed the amount of the total initial deposit deposited by the parties regardless of the number of hearing sessions conducted. Where the amount in dispute is above \$10,000,] Forum [total] fees chargeable to the parties shall be assessed on a per hearing session basis and the aggregate for each hearing session may equal but shall not exceed the amount of the largest [total] initial hearing deposit[(s)] deposited by [the parties.] any party, except in a case where claims have been joined subsequent to filing in which case hearing session fees shall be computed as provided in paragraph (d). The arbitrator(s) may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid. Amounts deposited by a party shall be applied against forum fees, if any. [If the fees are not assessed against a party who had made a deposit, the deposit will be refunded.] In addition to forum fees, the arbitrator(s) may determine in the[ir] award the amount of costs incurred pursuant to Sections 30, 32, 33, [or] and 37 and, unless applicable law directs otherwise, other costs and expenses of the parties and arbitrator(s) which are within the scope of the agreement of the parties. The arbitrator(s) shall determine by whom such costs shall be borne. If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine otherwise.

(d) For claims filed separately which are subsequently joined or consolidated under Section 25(d) of this Code, the hearing deposit and forum fees assessable per hearing session after joinder or con-

solidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such fees shall be borne.

[(d)] (e) If the dispute, claim, or controversy does not involve, [or] disclose or specify a money claim[,] the non-refundable filing fee will be \$250 and the hearing session deposit [the amount] to be deposited by [the Claimant] a party shall be [\$200] \$600, or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed \$1,000.

[(e)] (f) [If a matter has been submitted and thereafter is settled or withdrawn prior to the commencement of the first hearing session, the parties shall be entitled to a refund of all but \$125 of the amount deposited with the Association.] The Association shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or withdrawn within eight business days of the first scheduled hearing session other than a pre-hearing conference.

[(f)] (g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the the first hearing session, including a

pre-hearing conference with an arbitrator, shall [may] be subject to [such refund of assessed deposits, if any, as the panel or arbitrators presiding may determine.] an assessment of forum fees and costs incurred pursuant to Sections 30, 32, 33, and 37 based on hearing sessions held and scheduled within eight business days after the Association receives notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such fees and costs shall be borne.

[(g)] (g) The arbitrator(s) may assess forum fees and costs incurred pursuant to Section 30, 32, 33, and 37 in any matter settled or withdrawn subsequent to the commencement of the first hearing session.]

(h) In each industry or clearing controversy [that] which is required to be submitted to arbitration before the Association as set forth in Section 8, above, requiring expedited hearings, a non-refundable surcharge of \$2,500 shall be paid by all Claimants, collectively, and a non-refundable surcharge of \$2,500 shall be paid by all Respondents, collectively. These surcharge fees shall be in addition to all other non-refundable filing fees, hearing deposits, or costs which may be required.

(Note: See chart on page 267 of this notice.)

(Note: Taken from Section 43 on page 265 of this notice.)

Amount in Dispute (Exclusive of Interest and Expenses)	Claim Filing Fee	Customer Claimant Hearing Session Deposit		
		Simplified ¹	One Arbitrator ²	Three+ Arbitrators ³
\$.01-\$1,000	\$15	\$15	\$15	NA
\$1000.01-\$2,500	\$25	\$25	\$25	NA
\$2,500.01-\$5,000	\$50	\$75	\$100	NA
\$5,000.01-\$10,000	\$75	\$75	\$200	NA
\$10,000.01-\$30,000	\$100	NA	\$300	\$400
\$30,000.01-\$50,000	\$120	NA	\$300 ⁴	\$400
\$50,000.01-\$100,000	\$150	NA	\$300 ⁴	\$500
\$100,000.01-\$500,000	\$200	NA	\$300 ⁴	\$750
\$500,000.01-\$5,000,000	\$250	NA	\$300 ⁴	\$1,000
Over \$5,000,000	\$300	NA	\$300 ⁴	\$1,500

¹ Simplified Arbitration (Without Hearing)

² One Arbitrator (Per Hearing Session)

³ Three or More Arbitrators (Per Hearing Session)

⁴ Prehearing Conferences Only

(Note: Taken from Section 43 on page 265 of this notice.)

Industry Claimant

<u>Amount in Dispute (Exclusive of Interest and Expenses)</u>	<u>Claim Filing Fee</u>	<u>Hearing Session Deposit</u>		
		<u>Simplified¹</u>	<u>One Arbitrator²</u>	<u>Three+ Arbitrators³</u>
\$01-\$1,000	\$500	\$75	\$300	NA
\$1000.01-\$2,500	\$500	\$75	\$300	NA
\$2,500.01-\$5,000	\$500	\$75	\$300	NA
\$5,000.01-\$10,000	\$500	\$75	\$300	NA
\$10,000.01-\$30,000	\$500	NA	\$300	\$600
\$30,000.01-\$50,000	\$500	NA	\$300 ⁴	\$600
\$50,000.01-\$100,000	\$500	NA	\$300 ⁴	\$600
\$100,000.01-\$500,000	\$500	NA	\$300 ⁴	\$750
\$500,000.01-\$5,000,000	\$500	NA	\$300 ⁴	\$1,000
Over \$5,000,000	\$500	NA	\$300 ⁴	\$1,500

- ¹ Simplified Arbitration (Without Hearing)
- ² One Arbitrator (Per Hearing Session)
- ³ Three or More Arbitrators (Per Hearing Session)
- ⁴ Prehearing Conferences Only

(Note: Taken from Section 44 on page 266 of this notice.)

Schedule of Fees

<u>Amount in Dispute (Exclusive of Interest and Expenses)</u>	<u>Claim Filing Fee</u>	<u>Hearing Session Deposit</u>		
		<u>Simplified¹</u>	<u>One Arbitrator²</u>	<u>Three+ Arbitrators³</u>
\$01-\$1,000	\$500	\$75	\$300	NA
\$1000.01-\$2,500	\$500	\$75	\$300	NA
\$2,500.01-\$5,000	\$500	\$75	\$300	NA
\$5,000.01-\$10,000	\$500	\$75	\$300	NA
\$10,000.01-\$30,000	\$500	NA	\$300	\$600
\$30,000.01-\$50,000	\$500	NA	\$300 ⁴	\$600
\$50,000.01-\$100,000	\$500	NA	\$300 ⁴	\$600
\$100,000.01-\$500,000	\$500	NA	\$300 ⁴	\$750
\$500,000.01-\$5,000,000	\$500	NA	\$300 ⁴	\$1,000
Over \$5,000,000	\$500	NA	\$300 ⁴	\$1,500

- ¹ Simplified Arbitration (Without Hearing)
- ² One Arbitrator (Per Hearing Session)
- ³ Three or More Arbitrators (Per Hearing Session)
- ⁴ Prehearing Conferences Only