

Notice To Members

National Association of Securities Dealers, Inc.

October 1991

Number 91-60**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.

MAIL VOTE

Subject: Proposed Amendments to Article III, Section 5 and Article IV, Sections 3 and 4 of The NASD By-Laws Regarding Retention of Jurisdiction; Last Voting Date: November 19, 1991

EXECUTIVE SUMMARY

The NASD invites members to vote on proposed amendments to Article III, Sections 5 and 6 and Article IV, Sections 3 and 4 of the NASD By-Laws relating to retaining jurisdiction over member firms that resign their memberships and associated persons who terminate their registrations, or whose memberships or registrations have been canceled or revoked. The proposed amendments would extend the NASD's jurisdiction over such members and associated persons to two years following the resignation, termination, cancellation, or revocation of their memberships or registrations.

The text of the proposed amendments follows this notice.

BACKGROUND

In October 1990, after approval by the Board of Governors and the membership, the NASD submitted rule filing SR-NASD-90-53 to the Securities and Exchange Commission (SEC) proposing amendments to the NASD By-Laws and Rules of Fair Practice. The filing proposed, among other

things, codifying procedures currently employed by the NASD in processing terminations of associated persons and cancellations and revocations of member firms. The most significant aspect of current NASD procedures is the practice of "holding" the effectiveness of the member's resignation or the associated person's termination if the NASD is aware of or is investigating potential violations of the NASD's rules or the federal securities laws by the firm or person. The NASD also retroactively holds member resignations or registration terminations if it becomes aware of matters that would have resulted in a hold after the termination had been allowed to take effect.

The rule filing also proposed amending the By-Laws to provide that the NASD would continue to retain jurisdiction over firms whose memberships were canceled or revoked and associated persons whose registrations were revoked. This amendment would correct the situation under the current provisions where the NASD retains jurisdiction over a member who resigned or an associated person who terminated his or her registration, but loses jurisdiction over firms that had their membership canceled or revoked and associated persons whose registrations were revoked.

The SEC expressed concern that the proposal

permits the NASD to hold indefinitely a member resignation or registration termination pending the outcome of an investigation. In response to the SEC concerns, the Board has reconsidered the proposed amendments to the By-Laws relating to retention of jurisdiction.

SUMMARY OF PROPOSED AMENDMENTS

Under the current provisions of the By-Laws, the NASD has one year from the effective date of the filing of a resignation of membership¹ or a termination of registration² to file a complaint for any actionable misconduct that occurred before the member's resignation or the associated person's termination. If the NASD is not aware of misconduct by an associated person when a termination takes effect, the time period for filing a complaint could expire before action is taken. This is the reason for the use of the hold and retroactive hold procedure.

The Board believes that to maintain the fairness and effectiveness of the NASD's disciplinary system, the NASD should extend its current one-year time period for retaining jurisdiction to file a complaint to a fixed two years from the date a resignation or termination is filed or from the date the NASD revokes or cancels a member or associated person. This proposed amendment will eliminate the need for the NASD to hold the effectiveness of resignations and terminations and to issue letter notices. The Board believes a fixed two-year time limit will be less intrusive than the current indefinite and potentially unlimited "hold" process and will allow sufficient time to bring virtually all disciplinary actions.

For associated persons, the Board is proposing that the two-year period recommence on the filing date of the last amendment to a Form U-5 filed within the original two-year period. This would provide for the situation in which a routine Form U-5 is filed at the time of termination but a subsequent amendment discloses potential violations requiring an investigation. Running the two-year period from the date of the last Form U-5 amendment would prevent persons from avoiding disciplinary action through their own active concealment or the dilatory conduct of others. Moreover, because members have to send any amended Form U-5s to the terminated person, he or she would know when the two-year period recommences. The Board also notes that the two-year limit would be

consistent with current rules that permit a person to become associated with another member without requalifying by examination up to two years from the date of termination.

The Board believes that these amendments to the NASD By-Laws are necessary and appropriate and recommends that members vote their approval.

Please mark the attached ballot according to your convictions and return it in the enclosed, stamped envelope to the Corporation Trust Company. Ballots must be postmarked **no later than November 19, 1991.**

Because the rule language mirrors the rule change pending at the SEC, the text is written as if the amendments had been adopted. Prior to becoming effective, the proposed amendments also must be approved by the SEC.

Questions concerning this notice may be directed to the Office of General Counsel at (202) 728-8294.

**TEXT OF PROPOSED AMENDMENTS
TO NASD BY-LAWS³**

ARTICLE III

Membership

* * * * *

Resignation of Members

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

Sec. 5 Membership in the Association may be voluntarily terminated only by formal resignation. Resignations of members must be in writing and addressed to the Corporation which shall immediately notify the appropriate District Committee. Any member may resign from the Corporation at any time. Such resignation shall not take effect until thirty (30) days after receipt thereof by the Corporation and until all indebtedness due the Corporation from such member shall have been paid in full and so long as any complaint or action is pending against the member [and so long as any exami-

¹A member must advise the NASD of its resignation of membership on a Form BDW.

²A member must advise the NASD of a termination of or resignation by an associated person on Form U-5.

³The rule language is the text of the rule change pending at the SEC as if the amendments proposed in that rule change had been adopted. Additions proposed herein to the amended version are underlined, deletions are in brackets.

nation of such member is in process] under the Code of Procedure. The Corporation, however, may in its discretion declare a resignation effective at any time.

Retention of Jurisdiction

Sec. 6 A resigned member or a member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the Code of Procedure based upon conduct which commenced prior to the effective date of the member's resignation from the Corporation or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within [one] two (2) years after the effective date of the resignation, cancellation or revocation.

ARTICLE IV

Registered Representatives and Associated Person

* * * * *

Notification by Member to Corporation and Associated Person of Termination; Amendments to Notification

Sec. 3(a). Following the termination of the association with a member of a person who is registered with it, such member shall promptly, but in no event later than thirty (30) calendar days after such termination, give written notice to the Association on a form designated by the Board of Governors of the termination of such association, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the Association. A member [who] which does not submit such notification in writing, and provide a copy thereof to the person whose association has been terminated, within the time period prescribed shall be assessed a late filing fee as specified by the Board of Governors. Termination of registration of such person associated with a member shall not take effect so long as any complaint or action is pending against a member and to which complaint or action such person associated with a member is also a respondent, or so long as any complaint or action is pending against such person individually under the Code of Procedure. [or so long as any examination of the member or person associated with such member is in process. The Corporation may in its discretion determine that termination of registration of such person asso-

ciated with a member shall not take effect where the written notice thereof discloses that such person engaged or may have engaged in conduct that may constitute a violation of any statute, rule or regulation governing such person's activities while associated with a member. The Corporation, however, may in its discretion declare the termination effective at any time. The Corporation may also in its discretion declare the termination ineffective as of the date the Corporation first received notice of the termination if, during the period that such person remains subject to the Corporation's jurisdiction to file a complaint under the Code of Procedure as provided in Section 4 of this Article IV, the Corporation shall receive notice from any source that such person engaged or may have engaged in conduct that may constitute a violation of any statute, rule or regulation governing such person's activities while associated with a member.]

(b) The member shall notify the Association in writing by means of an amendment to the notice filed pursuant to paragraph (a) above in the event that the member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with the Association and provided to the person whose association with the member has been terminated not later than thirty (30) calendar days after the member learns of the fact or circumstances giving rise to the amendment.

Retention of Jurisdiction

Sec. 4. A person whose association with a member has been terminated and is no longer associated with any member of the Corporation or a person whose registration has been revoked shall continue to be subject to the filing of a complaint under the Code of Procedure based upon conduct which commenced prior to the termination or revocation or upon such person's failure, while subject to the Corporation's jurisdiction as provided herein, to provide information requested by the Corporation pursuant to Article IV, Section 5 of the NASD Rules of Fair Practice, but any such complaint shall be filed within: [one (1) year after the effective date of termination of registration pursuant to Section 3 above, within one (1) year after the effective date of revocation of registration pursuant to Article V, Section 2 of the Association's Rules of Fair Practice or, in the case of an unregis-

tered person, within one (1) year after the date upon which such person ceased to be associated with the member. In the event that the Corporation shall determine pursuant to Section 3 above that the termination of a person's association with a member shall not take effect, such person shall continue to be subject to the filing of a complaint as provided herein until, and for one (1) year following, the Corporation's determination to permit the termination to take effect.]

(a) two (2) years after the effective date of termination of registration pursuant to Section 3 above, provided, however, that any amendment to a notice of termination filed pursuant to Section 3(b) that is filed

within two years of the original notice which discloses that such person may have engaged in conduct actionable under any applicable statute, rule or regulation shall operate to recommence the running of the two-year period under this paragraph;

(b) two (2) years after the effective date of revocation of registration pursuant to Article V, Section 2 of the Association's Rules of Fair Practice; or,

(c) in the case of an unregistered person, within two (2) years after the date upon which such person ceased to be associated with the member.

Notice To Members

National Association of Securities Dealers, Inc.

October 1991

Number 91-61

Suggested Routing:*

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|------------------------------------------------|--------------------------------------------------------|--------------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> Senior Management | <input checked="" 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 |
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| <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 Article VI, Sections 3 and 4 of NASD By-Laws
Re: Suspension or Cancellation of Registration for Failure to Pay Fees, Dues, or Other Assessments**

EXECUTIVE SUMMARY

The Securities and Exchange Commission has approved an amendment to Article VI, Sections 3 and 4 of the NASD By-Laws to provide for the suspension or cancellation of the registration of an associated person in the event of nonpayment of fees, dues, or assessments. The text of the amendment, which took effect August 29, 1991, follows this notice.

BACKGROUND

Article VI of the NASD By-Laws generally provides the Board of Governors with the authority to charge fees, dues, and assessments to members, issuers, and persons using facilities and systems operated or controlled by the NASD. Prior to the adoption of these rule changes, Section 3 of that Article authorized the NASD, after providing written notice, to suspend or cancel the membership of any member that fails to pay any fees, dues, assessments, or other charges. Section 3, however, did not apply to associated persons who fail to pay fees, dues, or assessments. Failure to pay forum fees associated with the arbitration process oper-

ated by the NASD could result in the suspension or cancellation of a firm's membership, but no similar remedy was available for associated persons.

EXPLANATION

The amendment to Sections 3 and 4 of Article VI of the By-Laws allows the NASD to suspend or cancel after 15 days notice, in writing, the registration of any associated person who has failed to pay fees, including arbitration forum fees, dues, assessments, or other charges owed for the use of facilities or systems operated or controlled by the NASD.

The NASD Board believes that this rule change will protect the integrity of the arbitration process and the marketplace and provide uniformity in the treatment of members and associated persons failing to pay fees.

Questions regarding the applicability of this rule change to arbitration forum fees may be directed to Kenneth L. Andrichik, Arbitration Department, at (212) 858-3915.

ARTICLE VI, NASD BY-LAWS

(Note: Proposed new language is underlined.)

Dues, Assessments and Other Charges

* * * * *

Suspension or Cancellation of Membership or Registration for Nonpayment of Dues

Sec. 3. The Corporation after fifteen (15) days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments or other charges or for failure to furnish any information or reports requested pursuant to Section 2 of this Article.

Reinstatement of Membership or Registration

Sec. 4. Any membership or registration suspended or canceled under this Article may be reinstated by the Corporation upon such terms and conditions as it shall deem just; provided, however, that any applicant for reinstatement of membership or, registration shall possess the qualifications required for membership or registration in the Corporation.

Notice To Members

National Association of Securities Dealers, Inc.

October 1991

Number 91-62

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 checked="" 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 of Amendments to the NASD Rules of Fair Practice Relating to Options Communications

EXECUTIVE SUMMARY

On September 13, 1991, the Securities and Exchange Commission (SEC) approved amendments to the NASD's Rules of Fair Practice creating a separate section relating to options communications with the public. The amendments delete all existing subsections of Article III, Section 35 relating to options communications and establishes a new Section 35A¹ related exclusively to options communications. Members will be required to comply with new section 35A beginning November 1, 1991. The text of the amendments follows the discussion below.

BACKGROUND

Last year, the SEC examined various self-regulatory organizations' (SROs) regulatory programs relating to the review of member firm communications with the public. Specifically with respect to options communications, the SEC expressed to the NASD its concern that the NASD's options communications rules were not sufficiently consistent with those of other SROs. Since a majority of NASD members conducting options business are also members of other SROs, the SEC believes

that the options regulations of the various SROs applicable to such members should be consistent.

Representatives from several SROs — the NASD, New York Stock Exchange (NYSE), American Stock Exchange (Amex), Chicago Board Options Exchange (CBOE), Midwest Stock Exchange (MSE), Philadelphia Stock Exchange (PHLX) and Pacific Stock Exchange (PSE) — worked together in the Options Self-Regulatory Council ("Council") to develop options communications rules for each SRO that are consistent with one another. The Council's efforts resulted in a substantial revision of the Guidelines for Options Communications ("Guidelines"). The Guidelines, first published several years ago, are designed to provide a coordinated explanation of SRO rules and, along with the SEC's examination comments, form the basis for the NASD's proposed options communications rule.

Accordingly, the SEC has now approved the NASD's proposed amendments to Article III of the Association's Rules of Fair Practice, submitted for member vote in *Notice to Members 91-1* (January 1991), establishing new Section 35A relating exclusively to options communications, and amending

¹In NASD *Notice to Members 89-20* (Feb. 17, 1989), the membership approved new rules and amendments to the Rules of Fair Practice. When the new rules and amendments have been approved by the SEC, this section will be renumbered to conform to the new numbering of the Rules of Fair Practice.

Section 35 of the Rules of Fair Practice, the NASD's general communications rule, to delete all provisions related to options.² New Section 35A addresses the concerns expressed by the SEC relating to the approval of options communications prior to use, suitability disclosure, educational communications, and communications containing comparisons and recommendations. The new rule also serves to make the NASD's options communications regulations consistent with those of other SROs.

SUMMARY OF AMENDMENTS

New Article III, Section 35A of the Rules of Fair Practice contains four subsections: subsection (a), which defines the terms "advertisement," "educational material," and "sales literature"; subsection (b), which requires advance approval of all options communications by a Compliance Registered Options Principal; subsection (c), which requires advance approval of options advertising and educational material by the Association's Advertising Department, as well as spot-check procedures and special review procedures for members that fail to adhere to the standards for options communications; and subsection (d), which sets forth the Association's standards for options communications with the public. The amendments delete comparable provisions relating to options communications, as well as all references to options communications, from Article III, Section 35 of the Rules of Fair Practice.

Section 35A(a) — Definitions

The new Section 35A(a) defines "advertisements," "educational material," and "sales literature." The definitions of advertising and sales literature in Section 35A(a) are similar to the existing definitions in Section 35; however, they are designed to more clearly reflect the NASD's intent to distinguish between material directed to customers through media of mass communication (advertisements) and material targeted to specific existing or potential customers (sales literature).

Section 35A(a) also includes a definition of educational material not previously included in Section 35. This definition is designed to complement SEC Rule 134A (which defines options material not deemed to be a prospectus) and to capture advertisements and sales literature within its scope, along with other material that does not meet the definitions of advertisements or sales literature.

Section 35A(b) — Approval by Compliance Registered Options Principal and Recordkeeping

The new Section 35A(b) incorporates the requirements currently in Section 35(b) that a Compliance Registered Options Principal approve each item of advertising or sales literature related to options in advance. In addition, the new provision requires that the member retain copies of the material, along with records reflecting the persons who prepared and approved the material and the source of any recommendations contained in the material.

Section 35A(c) — Association Approval Requirements and Review Procedures

The new Section 35A(c) combines current Subsections 35(c)(2), 35(c)(5), 35(c)(6), and 35(c)(8) into a new section on approval and review of options communications. Subsection 35(c)(2) is deleted, and the remaining subsections of Section 35(c) are renumbered.

Subsection 35A(c)(1) requires all options advertising and educational material to be submitted to the Association's Advertising Department for approval at least 10 days prior to use. The section applies only to advertising and educational material permitted to be used prior to the delivery of an options disclosure document (ODD). The section also prohibits the use of any material that has been disapproved or for which changes have been recommended by the NASD's Advertising Department until the material is resubmitted and approved, or changed, as required. The provisions of Subsection 35A(c)(1) represent a change from the requirements of Section 35 in that the NASD may disapprove the use of material submitted or may recommend changes, rather than comment on a filing as in Section 35.

Subsection 35A(c)(2) permits any District Business Conduct Committee (DBCC) to require a member to submit options advertising, educational material, and sales literature to the Advertising Department and/or the DBCC for review at least 10 days prior to use if the DBCC, after reviewing the member's advertising, determines that the mem-

²NASD Notice to Members 91-26 (May 1991) announced the SEC's approval of amendments to Article III, Section 35 relating to the use and disclosure of member names. Those amendments, among other things, created a new subsection (g) in Section 35. The approval of the amendments set forth in this notice require that the new subsection (g) be renumbered subsection (f). Other nonsubstantive conforming amendments and renumbering to Section 35 are also being announced herein.

ber may again depart from the standards of Section 35A. The review requirements in Subsection 35A(c)(2) are not limited to material used prior to the delivery of an ODD, but may include all material coming within the definitions, notwithstanding the timing of their use. Any prior submission requirement imposed under Subsection 35A(c)(2) cannot last more than one year, and a member has the right to ask for a hearing before the DBCC relating to the imposition of any prior submission requirement.

Section 35A(d) — Standards Applicable to Communications With the Public

The new Section 35A(d) replaces Section 35(f), which is deleted. Section 35A(d) sets forth both general and specific standards with respect to options communications, including, but not limited to, specific standards for advertisements, educational materials and sales literature.

The general standards for options communications specified under Subsection 35A(d)(1) prohibit false or misleading statements; promises, claims, opinions, or forecasts that are unwarranted, exaggerated, or for which there is no reasonable basis; hedge clauses that are illegible or inconsistent with the communication, or that attempt to disclaim responsibility for the contents of the communication; or material that would constitute a prospectus unless it meets the requirements of a prospectus under the federal securities laws.

The specific standards for options communications set forth in Subsection 35A(d)(2) comprise a detailed set of requirements and guidelines concerning risk disclosure, the use and content of advertisements, the use and content of educational material, the use and content of sales literature, availability of supporting documents for sales literature, and performance projections and statistics contained in sales literature.

Subsection 35A(d)(2)(A) requires the special risks attendant to options transactions and investment strategies to be disclosed in options communications that discuss the uses or advantages of options. Any disclosure must present a balanced portrayal of opportunities and risks. In addition, statements suggesting that options are suitable for all investors or suggesting the certain availability of a secondary market for options are prohibited.

Subsection 35A(d)(2)(B) requires options advertising to meet the requirements of SEC Rule

134 in that the advertisement must be limited to a general description of the security being offered and the name and address of the person from whom a current ODD can be obtained. In addition, an advertisement may briefly describe the options offered, the operation of any exchanges where the options are traded, and how options prices are determined. Statements required by state law or administrative agencies may be included in an advertisement, as well as designs and devices, provided they are not misleading. Recommendations and past or projected performance figures are not permitted in options advertisements, however.

Subsection 35A(d)(2)(C) requires that options educational material must meet the requirements of SEC Rule 134A. As set forth in Subsection 35A(d)(2)(C), with respect to educational material, Rule 134A (1) requires an explanation of risks; (2) prohibits the use of performance figures, including annualized rates of return; (3) prohibits recommendations; (4) prohibits identifying specific securities, other than a security exempt from registration, an index option, or a foreign currency option; and (5) requires the name and address of the person from whom an ODD can be obtained.

Subsection 35A(d)(2)(D) includes the following specific requirements for options sales literature.

- Sales literature must state that supporting documentation for claims, comparisons, recommendations, statistics, or other technical data will be supplied upon request.

- Projected performance figures, if included, cannot include a suggestion of certainty in future performance and must clearly establish parameters for performance figures, disclose costs, must be plausible, clearly identify all material assumptions, and disclose risks. They also must, for annualized rates of return, not be based on less than 60 days of experience, display any formulas used, and include a statement that returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

- Portrayals of performance or actual transactions must be balanced, and records and statistics must be isolated to a specific period covering at least the most recent 12 months, include detailed information about initial recommendations or transactions, disclose all relevant costs and material assumptions, describe general market conditions and

use valid comparisons, state that results cannot be viewed as an indicator of future performance, and be reviewed and initialed by a Registered Options Principal for fair presentation of statistics or recommendations.

■ An options program must disclose the cumulative history or unproven nature of the program and its underlying assumptions.

■ Standard forms of options worksheets, if adopted, must be uniform within a member organization.

■ Communications portraying past performance must be easily accessible to the sales office for the accounts of the customers involved.

While many of the specific provisions of Section 35A(d) are drawn from the current provisions of Section 35(f), the provisions described above will reorganize and clarify the applicable standards. The new provisions will also serve to eliminate any inconsistencies between the NASD's rules and the rules of other SROs, while at the same time respond to the specific concerns and recommendations of the SEC as expressed to the Options Self-Regulatory Council.

Questions concerning this notice may be directed to R. Clark Hooper, Director, NASD Advertising Department, at (202) 728-8330.

**ARTICLE III³ OF THE NASD
RULES OF FAIR PRACTICE**

* * * * *

Communications With the Public

Sec. 35.

(a) Definitions

* * * * *

(2) Sales Literature — For purposes of this section and any interpretation thereof, "sales literature" means any written communication distributed or made generally available to customers or the public, which communication does not meet the foregoing definition of "advertisement." Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, [standard forms of options worksheets,] seminar texts, and reprints or excerpts of any other advertisement, sales literature or published article.

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to

use, by a principal (or his designee) or the member. [In the case of advertising or sales literature pertaining to options, the approval must be by the Compliance Registered Options Principal or his designee.]

* * * * *

(c) Filing Requirements and Review Procedures

* * * * *

[(2) Advertisements pertaining to options, and other options-related communications to persons who have not received the appropriate current disclosure document(s), shall be submitted to the Association's Advertising Department for review at least ten days prior to use (or shorter period as the Department may allow in exceptional circumstances), unless such advertisement or communication is submitted to and approved by a registered securities exchange or other regulatory body having substantially the same standards with respect to options advertising as set forth in this Section. The Association shall, within the ten-day review period specified herein, in the absence of highly unusual circumstances, either notify the member of its views with respect to the material filed or indicate that its comments are being withheld pending further analysis or the receipt of additional information.]

* * * * *

Subsections (c)(3), (c)(4), (c)(5) and (c)(6) are renumbered (c)(2), (c)(3), (c)(4) and (c)(5), respectively.

* * * * *

[[7]6] The following types of material are excluded from the foregoing filing requirements and spot-check procedures:

* * * * *

(F) Advertisements prepared in accordance with Section 2(10)(b) of the Securities Act of 1933, as amended, or any rule thereunder, such as Rule 134, unless such advertisements are related to [options,] direct participation programs or securities issued by registered investment companies.

[[8]7] Material which refers to investment company securities[, options] or direct participation programs solely as part of a listing of products and/or services offered by the member, is excluded from the requirements of paragraphs (c)(1) [,] and

³New text is underlined. Deleted text is in brackets. The current text of Section 35 set forth herein reflects amendments announced in *Notice to Members 91-26* (May 1991). See note 2, *supra*.

(c)(2) [and (c)(3)] of this section.

(d) Standards Applicable to Communications with the Public

(1) General Standards

* * * * *

(C) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of subsections (d) and [(g)] (f) of this Section.

(2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply:

(A) Necessary Data: Advertisements and sales literature shall contain the name of the member, unless such advertisements and sales literature comply with subsection [(g)] (f) of this Section. Sales literature shall contain the name of the person or firm preparing the material, if other than the member, and the date on which it is first published, circulated or distributed. If the information in the material is not current, this fact should be stated.

* * * * *

[(f) Standards Applicable to Options-Related Communications]

[In addition to the provisions of subsection (d) of this Section, members' public communications concerning options shall conform to the following provisions:]

[(1) As there may be special risks attendant to some options transactions and certain options transactions involve complex investment strategies, these factors should be reflected in any communication which includes any discussion of the uses or advantages of options. Therefore, any statement referring to the opportunities or advantages presented by options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as, "by purchasing options, an investor has an opportunity to earn profits while limiting his risk of loss," should be balanced by a statement such as, "Of course, an options investor may lose the entire amount committed to options in a relatively short period of time."]

[(2) It should not be suggested that speculative

option strategies are suitable for most investors, or for small investors and statements suggesting the certain availability of a secondary market for options should not be made.]

[(3)(A) Except as provided in subparagraph (B) below, no written material with respect to options issued by The Options Clearing Corporation ("OCC") may be sent to any person unless prior to or at the same time with the written material the appropriate current options disclosure document(s) is (are) sent to such person.]

[(B) Advertisements and other options-related communications may only be used (and copies of the advertisements may only be sent to persons who have not received the appropriate disclosure document) if the material meets the requirements of Rules 134 or 134a under the Securities Act of 1933, as these Rules have been interpreted as applying to OCC options. Under rules 134 and 134a advertisements are limited to general descriptions of the security being offered and of its issuer and to descriptions regarding the general nature of standardized options markets or options strategies. Advertisements under this Rule shall state the name and address of the person from whom (a) current disclosure document(s) may be obtained (this would usually be the member sponsoring the advertisement). Such advertisements might have the following characteristics: (i) The text of the advertisement may contain a brief description of OCC options, including a statement that the issuer of every OCC option is The Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of The Options Clearing Corporation and/or a description of any of the options traded in different markets, including a discussion of how the price of an option is determined; (ii) The advertisement may include any statement or legend required by any state law or administrative authority; (iii) Advertising designs and devices including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.]

[(C) Advertisements and other written communications used prior to delivery of the appropriate disclosure document(s) shall not contain recommendations, or past or projected performance figures, including annualized rates of return.]

[(4) Communications which contain comparisons, recommendations, statistics or other technical data, or claims made on behalf of options programs or the options expertise of sales persons, shall include, or offer to provide upon request, supporting documentation and shall refer to the current disclosure document(s) available upon request.]

[(5) Communications concerning an options program (i.e., an investment plan employing the systematic use of one or more options strategies) shall disclose the cumulative history of the program or its unproven nature, and its underlying assumptions.]

[(6) Standard forms of options worksheets, if adopted by a member for any particular options strategy, must, in addition to compliance with the other applicable provisions of this Section, be uniformly used by such member for that strategy.]

[(7) Communications which contain projected performance figures or records of the performance of past recommendations or of actual transactions shall disclose all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) and copies of such communications shall be kept at a place easily accessible to the sales office for the accounts or customers involved.]

[(8) Communications containing projected performance figures must also:]

[(A) be plausible and intended as a source of reference or a comparative device to be used in the development of a recommendation;]

[(B) discuss the risks involved in the proposed transactions and not suggest certainty of future performance;]

[(C) identify all material assumptions made in such calculations (e.g., "assume options exercised", etc.);]

[(D) clearly establish parameters relating to such performance figures (e.g., to indicate exercise price of option, purchase price of the underlying security and its market price, option premium, anticipated dividends, etc.);]

[(E) if related to annualized rates of return, be based upon not less than a sixty-day experience, clearly display any formulas used in making the calculations, and include a statement to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and there is no certainty of doing so.]

[(9) Communications containing records or statistics relating to the performance of past recommendations or of actual transactions shall, in addition to complying with other applicable provisions of this section, state that the results presented should not and cannot be viewed as an indicator of future performance, and shall disclose all material assumptions used in the process of annualization if annualized rates of return are used. A Registered Options Principal shall determine that the record or statistics fairly present the status of the recommendations or transactions reported upon and shall initial the report.]

* * * * *

[(g)](f) Standards Applicable to the Use and Disclosure of the NASD Member's Name

(1) In addition to the provisions of subsection (d) of this Section, members' public communications shall conform to the following provisions concerning the use and disclosure of member names. The term "communication" as used herein shall include any item defined as either "advertising" or "sales literature" in subsection (a) of this Section. The term "communication" shall also include, among other things, business cards and letterhead.

(2) General Standards

(A) Any communication used in the promotion of a member's securities business must clearly and prominently set forth the name of the NASD member. This requirement shall not apply to so-called "blind" advertisements used for recruiting personnel or to those communications meeting the provisions of subsection [(g)](f)(3) of this Section.

(B) If a nonmember entity is named in a communication in addition to the member, the relationship, or lack of relationship, between the member and the entity shall be clear.

(C) If a nonmember entity is named in a communication in addition to the member, and products or services are identified, no confusion shall be created as to which entity is offering which products and services. Securities products and services shall be clearly identified as being offered by the member.

(D) If an individual is named in a communication containing the names of the member and a nonmember entity, the nature of the affiliation or relationship of the individual with the member shall be clear.

(E) Communications that refer to individuals may not include, with respect to such individuals,

references to nonexistent or self-conferred degrees or designations, nor may such communications make reference to bona fide degrees or designations in a misleading manner.

(F) If a communication identifies a single company, the communication shall not be used in a manner which implies the offering of a product or service not available from the company named.

(G) The positioning of disclosure can create confusion even if the disclosures or references are entirely accurate. To avoid confusion, a reference to an affiliation (e.g., registered representative) shall not be placed in proximity to the wrong entity.

(H) Any reference to memberships (e.g., NASD, SIPC, etc.) shall be clearly identified as belonging to the entity that is the actual member of the organization.

(3) Specific Standards

The foregoing standards set forth in subsections [(g)](f)(1) and [(g)](f)(2) shall apply to all communications unless at least one of the following special circumstances exists, in which case the standards set forth herein would supersede the standards in subsections [(g)](f)(1) and [(g)](f)(2).

* * * * *

Options Communications with the Public

Sec. 35A.

(a) Definitions — For purposes of this section and any interpretation thereof,

(1) "Advertisement" shall include any material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video device, telecommunications device, billboards, signs or through written sales communications to customers or the public that are not required to be accompanied or preceded by one or more current options disclosure documents.

(2) "Educational material" shall include any explanatory material distributed or made generally available to customers or the public that is limited to information describing the general nature of the standardized options markets or one or more strategies.

(3) "Sales literature" shall include any written communication (not defined as an "advertisement" or as "educational material") distributed or made generally available to customers or the public that contains any analysis, performance report, projec-

tion or recommendation with respect to options, underlying securities or market conditions, any standard forms of worksheets, or any seminar text which pertains to options and which is communicated to customers or the public at seminars, lectures or similar such events.

(b) Approval by Compliance Registered Options Principal and Recordkeeping

All advertisements, sales literature (except completed worksheets), and educational material issued by a member or member organization pertaining to options shall be approved in advance by the Compliance Registered Options Principal or designee. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the member or member organization and be kept at an easily accessible place for examination by the Association for a period of three years.

(c) Association Approval Requirements and Review Procedures

(1) In addition to the approval required by paragraph (b) of this Rule, every advertisement and all educational material of a member or member organization pertaining to options shall be submitted to the Advertising Department of the Association at least ten days prior to use (or such shorter period as the Department may allow in particular instances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement or educational material has been resubmitted for, and has received, Association approval.

(2) Notwithstanding the foregoing provision, any District Business Conduct Committee of the Association, upon review of a member's options advertisements, educational material and/or sales literature, and after determining that the member will again depart from the standards of this section, may require that such member file all options advertisements, educational material and/or sales literature, or the portions of such member's material that is related to any specific types or classes of securities or services, with the Association's Advertis-

ing Department and/or the District Committee, at least ten days prior to use.

The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearing shall be in reasonable conformity with the hearing and appeal procedures of the Code of Procedure.

(3) In addition to the foregoing requirements, every member's options advertising and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Association's Advertising Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure that has been previously submitted pursuant to one of the foregoing requirements.

(4) The requirements of this subsection shall not be applicable to:

(A) advertisements or educational material submitted to another self-regulatory organization having comparable standards pertaining to such advertisements or educational material and

(B) advertisements in which the only reference to options is contained in a listing of the services of a member organization.

(5) Except as otherwise provided in Subsections (d)(2)(B) and (d)(2)(C), no written material respecting options may be disseminated to any person who has not previously or contemporaneously received one or more current options disclosure documents.

(d) Standards Applicable to Communications with the Public

(1) General Standards — No member or member organization or person associated with a member shall utilize any advertisement, educational material, sales literature or other communications to any customer or member of the public concerning options which:

(A) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(B) contains promises of specific results, exaggerated or unwarranted claims, opinions for

which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

(C) contains hedge clauses or disclaimers which are not legible, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such communication; or

(D) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.

(2) Specific Standards

(A) The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any advertisement, educational material or sales literature which discusses the uses or advantages of options. Such communications shall include a warning to the effect that options are not suitable for all investors. In the preparation of written communications respecting options, the following guidelines shall be observed:

(i) Any statement referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as "with options, an investor has an opportunity to earn profits while limiting his risk of loss", should be balanced by a statement such as "of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

(ii) It shall not be suggested that options are suitable for all investors.

(iii) Statements suggesting the certain availability of a secondary market for options shall not be made.

(B) Advertisements pertaining to options shall conform to the following standards:

(i) Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received one or more options disclosure documents) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as

that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current options disclosure document(s) may be obtained. Such advertisements may have the following characteristics:

(a) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is the Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of the Options Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);

(b) The advertisement may include any statement required by any state law or administrative authority;

(c) Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

(ii) The use of recommendations or of past or projected performance figures, including annualized rates of return, is not permitted in any advertisement pertaining to options.

(C) Educational material, including advertisements, pertaining to options may be used if the material meets the requirements of Rule 134A under the Securities Act of 1933. Those requirements are as follows:

(i) The potential risks related to options trading generally and to each strategy addressed are explained;

(ii) No past or projected performance figures, including annualized rates of return are used;

(iii) No recommendation to purchase or

sell any option contract is made;

(iv) No specific security is identified other than

(a) a security which is exempt from registration under the Act, or an option on such exempt security, or

(b) an index option, including the component securities of the index; or

(c) a foreign currency option; and

(v) The material contains the name and address of a person or persons from whom the appropriate current Options Disclosure Document(s), as defined in Rule 9b-1 of the Securities Exchange Act of 1934, may be obtained.

(D) Sales literature pertaining to options shall conform to the following standards:

(i) Sales literature shall state that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.

(ii) Such communications may contain projected performance figures (including projected annualized rates of return), provided that:

(a) no suggestion of certainty of future performance is made;

(b) parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(c) all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) are disclosed;

(d) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(e) all material assumptions made in such calculations are clearly identified (e.g., "assume option expires", "assume option unexercised", "assume option exercised," etc.);

(f) the risks involved in the proposed transactions are also discussed; and

(g) in communications relating to annualized rates of return, that such returns are not based upon any less than a sixty-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

(iii) Such communications may feature records and statistics which portray the performance of past recommendations or of actual transactions, provided that:

(a) any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

(b) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

(c) such communications disclose all relevant costs, including commissions

and interest charges (if applicable with regard to margin transactions) and, whenever annualized rates of return are used, all material assumptions used in the process of annualization;

(d) an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

(e) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(f) a Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

(iv) In the case of an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

(v) Standard forms of options worksheets utilized by member organizations, in addition to complying with the requirements applicable to sales literature, must be uniform within a member organization.

(vi) If a member organization has adopted a standard form of worksheet for a particular options strategy, nonstandard worksheets for that strategy may not be used.

(vii) Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.

Notice To Members

National Association of Securities Dealers, Inc.

October 1991

Number 91-63

Suggested Routing:*

- | | | | |
|------------------------------------------------|---------------------------------------------|------------------------------------------------|---------------------------------------------|
| <input type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit | <input checked="" type="checkbox"/> Operations | <input type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance | <input 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 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: SEC Approval of Amendments to the NASD Uniform Practice Code

EXECUTIVE SUMMARY

On September 13, 1991, the Securities and Exchange Commission (SEC) approved amendments to the NASD's Uniform Practice Code (Code or UPC) to update and amend, where necessary, provisions that were obsolete or that did not conform to current industry standards and procedures. The amendments to the Code, among other things, consolidate redundant provisions, clarify certain provisions, and provide for the ultimate delivery of aged fails, such as non-transferable, bankrupt, worthless, and expired securities. The amendments will take effect on November 1, 1991. The text of the amendments follows this notice.

SUMMARY OF PROPOSED AMENDMENTS

Section 3 — Definitions

Section 3 is amended by adding definitions of the terms "ex-date," "trade date," and "immediate return receipt." In addition, the amendments clarify the definitions of "written notices," "Committee," and "record date."

The definition of the term "ex-date" is the date on which a security is traded without a specific dividend. The definition of the term "trade

date" is the date on which the dealer in a later time zone accepts the trade, provided that dealer is accepting a bid or offer. The definition of "immediate return receipt" is being added to clarify the process for the transmittal of written notices and means the acknowledgement by the receiving member of a written notice. The return receipt must be made via the same media as the notice.

The amendments to the definitions permit a written notice to be delivered by fax, in addition to the methods currently specified. The definition of "record date" will now include equity securities among the types of securities, and dividends or any other distribution among the types of distributions, for which a record date is fixed for a distribution.

Section 4 — Delivery Dates

Subsections (a) through (d), relating to "cash," "regular way," "seller's option," and "buyer's option" delivery dates, respectively, are being deleted from Section 4 and added to Section 12. Subsections (e) and (f), relating to "when, as, and if issued/distributed" delivery dates, will be retained in Section 4 and renumbered as subsections (c) and (d).

New subsections 4(a) and 4(b), relocated from Section 11, set forth the requirements for the contents of confirmations related to "when, as, and if issued/distributed" contracts. New Section 4,

when published in the *NASD Manual*, will also include the sample form confirmations now located after Section 11.

Section 5 — Transactions in Securities "Ex-Dividend," "Ex-Rights," or "Ex-Warrants"

The NASD is adding language in subsection 5(b) to codify the current treatment of cash dividends or distributions, to reorganize subsection 5(b), and to eliminate current subsections 5(d)(1) and 5(d)(2) as redundant with language contained in renumbered subsections (b) and (c).

Section 6 — Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"

The NASD is amending Section 6 to conform it to amended Section 5 and to renumber certain subsections.

Section 7 — "Ex" Liquidating Payments

The NASD is amending Section 7 to add a reference to Section 6 to the current reference to Section 5 to reflect that liquidating payments may be applied to both equity and debt.

Section 11 — Reserved

Section 11 currently addresses confirmations on "when, as, and if issued/distributed" contracts. The changes move the language of Section 11 to Section 4 and reserve Section 11 for future amendments to the Code.

Section 12 — Dates of Delivery

The NASD is moving language from Section 4 relating to the time, place, and date of delivery for all types of transactions to Section 12. New subsections 12(e) through 12(g) relate to contracts due on holidays or Saturdays, delayed delivery, and prior to delivery date. The existing language of Section 12 relating to time and place of delivery is retained and renumbered as subsection 12(h).

Under new subsection 12(e), contracts due on a nonbusiness day mature on the next business day. New subsection 12(f) provides that delayed delivery shall be at the office of the purchaser on the date agreed to at the time of the transaction. Finally, new subsection 12(g) provides that if a seller tenders delivery before the stated time, acceptance shall be at the buyer's election, and rejection of delivery will not prejudice the buyer's rights.

Section 27 — Delivery of Securities Called for Redemption or Which Are Deemed Worthless

The NASD is adding a new subsection 27(b) to provide an alternative method of resolving a fail-to-deliver where the security is deemed worthless. The new subsection 27(b) provides that where securities have no market value and there has been a public announcement to that effect, delivery may consist of the worthless securities or a Letter of Indemnity securing any rights and privileges that may accrue to the holders of the physical security. Such delivery will close out the contract and must be accompanied by documentation evidencing the worthlessness of the security.

Section 29 — Assignments and Powers of Substitution; Delivery of Registered Securities

The NASD is consolidating the provisions of Section 38 into new subsection 29(e) and renumbering, as necessary, the remaining subsections of Section 29.

Sections 31, 32, 35, 36, 37, and 38 — Elimination of Notorials and Miscellaneous Amendments

The NASD is amending Section 31 to eliminate the requirement that notorials be attached to securities if the transfer books are closed indefinitely. A transfer indemnification may be used in lieu of a notorial. The NASD believes that the amendment will eliminate the need to attach large quantities of paper to securities and will allow the removal of such notorials where they are currently used. Under the amendments, the member will then assume liability for the correctness of the certificate. The NASD does not believe the member will be exposed to any significant liability, and that any additional exposure will be offset by the availability of timely settlement.

Amendments to Section 32 eliminate reference to notorials and reference the transfer indemnification provision set forth in Section 31. The changes to Section 36 reflect the renumbering of Section 29.

The provisions of Section 35, relating to certificates in the name of married women, are being deleted as obsolete, and the section reserved for use in later amendments. And finally, the provisions of Section 37 relating to certificates in joint tenancy are being eliminated as redundant of the provisions in Section 29, and the section reserved for use in later amendments.

The provisions of Section 38 are being consolidated into Section 29 and the section reserved for later amendments.

Section 56 — Irregular Delivery — Transfer Refused — Lost or Stolen or Confiscated Securities

The NASD is adding the term "confiscated" to the category of irregular deliveries to accommodate situations in which government officials seize securities.

Section 60 — "Selling Out"

The NASD is properly identifying the Uniform Reclamation Form (Form) and providing for equivalent depository-generated advice in the absence of the Form. Subsection 60(b) relating to the proper notice of sell-out is being amended to conform to the recent amendments to Section 59 on buy-ins. Section 59 was amended pursuant to NASD rule filing SR-NASD-90-1, approved by the SEC on December 18, 1990.

Section 61 — Rights and Warrants

The NASD is providing for alternative methods of settling contracts when the securities have expired by their terms. The method may only be used more than 30 days after expiration. Deliveries under this method shall consist of the expired securities or a Letter of Indemnity, and, in the case of units in which some of the components have expired, the unexpired components.

EFFECTIVENESS OF AMENDMENTS

These amendments, which were approved by the SEC on September 13, 1991, will become effective on November 1, 1991.

Questions regarding this rule filing may be directed to Elliott R. Curzon, General Counsel's Office, at (202) 728-8451, or to Dorothy Kennedy, Uniform Practice Department, at (212) 858-4340.

TEXT OF AMENDMENTS TO THE UNIFORM PRACTICE CODE

(Note: New language is underlined; deleted language is deleted.)

* * * * *

Definitions

Sec. 3.

* * * * *

Written notices

(b) The term "written notice," as used in this

Code, shall include a notice delivered by hand, by letter, teletype, telegraph, TWX, FAX or other comparable media.

Record date

(d) As used in this Code the term "record date" means the date fixed by the trustee, registrar, paying agent or issuer for the purpose of determining the holders of equity securities, bonds, similar evidences of indebtedness or unit investment trust securities entitled to receive dividend, interest or principal payments or any other distributions.

Ex-date

(e) The term "ex-date" as used in this Code shall mean the date on and after which the security is traded without a specific dividend or distribution.

Trade date

(f) In a transaction between time zones where the bid or offer is accepted in a later time zone than that of the originator, the correct trade date shall be the day on which the dealer in the later time zone accepts the trade.

Immediate return receipt

(g) The term "immediate return receipt" as used in this Code, shall mean the acknowledgment by the receiving member of a written notice and which shall be issued, upon receipt, via the media in which such notice is received.

Delivery Dates

Sec. 4.

[For "cash"

(a) In connection with a transaction for "cash," delivery shall be made at the office of the purchaser on the day of the transaction.]

["Regular way"

(b) In connection with a transaction "regular way," delivery shall be made at the office of the purchaser on, but not before, the fifth business day following the date of the transaction; except that if the seller tenders delivery before the fifth business day, acceptance shall be at the option of the purchaser, and rejection of such delivery by the purchaser shall be without prejudice to his rights.]

["Seller's option"

(c) In connection with a transaction "seller's

option," delivery shall be made at the office of the purchaser on the date on which the option expires; except that delivery may be made by the seller on any business day after the fifth business day following the date of transaction and prior to the expiration of the option, provided the seller delivers at the office of the purchaser, on a business day preceding the day of delivery, written notice of intention to deliver. Contracts maturing on a Saturday, half-holiday, or holiday shall carry over to the next business day.]

[" Buyer's option "

(d) In connection with a transaction "buyer's option," delivery shall be made at the office of the purchaser on the date on which the option expires; except that if the seller tenders delivery before that time, acceptance shall be at the election of the purchaser, and rejection of such delivery by the purchaser shall be without prejudice to his rights. Contracts maturing on a Saturday, half-holiday, or holiday shall carry over to the next business day.]

Confirmations or comparisons

(a) A confirmation covering a transaction in a security "when, as and if issued" shall adequately identify the security and the plan, if any, under which the security is proposed to be issued.

(b) A confirmation covering a transaction in a security "when, as and if distributed" shall adequately identify the security and the plan, if any, under which the security is proposed to be distributed.

" When, as and if issued "

(c)[e] In connection with a transaction in a security "when, as and if issued," delivery shall be made at the office of the purchaser on the date declared by the Committee: except that if no delivery date shall be declared by the Committee, [(a)](1) delivery may be made by the seller on the business day following the day upon which the seller has delivered at the office of the purchaser written notice of intention to deliver, and [(b)](2) open market "when, as and if issued" contracts in securities currently being publicly offered through a syndicate or selling group shall be settled on the date such syndicate or selling group contracts are settled: provided, however, delivery of securities in accor-

dance with this subsection shall be made during the normal delivery hours in the community where the buyer is located.

" When, as and if distributed "

(d)[f] In connection with a transaction in a security "when, as and if distributed," delivery shall be made at the office of the purchaser on the date declared by the Committee: except that if no delivery date shall be declared by the Committee, delivery may be made by the seller on the business day following the day upon which the seller has delivered at the office of the purchaser written notice of intention to deliver.

Standard Form of " When, As and If Issued " or " When, As and If Distributed " Contract

No change.

Standard Form of " When, As and If Issued " or " When, As and If Distributed " Contract

No change.

Transactions in Securities " Ex-Dividend, " " Ex-Rights " or " Ex-Warrants "

Sec 5.

* * * * *

Normal ex-dividend, ex-warrants dates

(b)(1) In respect to cash dividends or distributions, or stock dividends, and the issuance or distribution of warrants, which are less than 25% of the value of the subject security, [except as noted below,] if definitive information is received sufficiently in advance of the record date, the date designated as the "ex-dividend date" shall be the fourth business day preceding the record date if the record date falls on a business day, or the fifth business day preceding the record date if the record date falls on a day designated by the Committee as a non-delivery date.

(2) In respect to cash dividends or distributions, stock dividends and/or splits, and the distribution of warrants, which are 25% or greater of the value of the subject security, the ex-dividend date shall be the first business day following the payable date.

(3) In respect to stock dividends and/or splits relating to American Depository Receipts (ADR's) and foreign securities, the ex-dividend or ex-warrants date shall be designated by the Committee.

**Late information re ex-dividend,
ex-warrants dates**

(c)[(2)] If definitive information is not received sufficiently in advance of the record date to permit designation of an ex-dividend or ex-warrants date in accordance with paragraph (b)(1) hereof, the date designated shall be the first business day which, in the opinion of the Committee, shall be practical having regard to the circumstances pertaining.

Normal ex-rights dates

(d)[(c)](1) In respect to transferable rights subscription offerings, if definitive information is received sufficiently in advance of the effective date of the registration statement, the date designated as the ex-rights date shall be the first business day after the effective date of the registration statement.

Late information re ex-rights dates

(2) If definitive information is not received sufficiently in advance of the effective date of the registration statement to permit designation of an ex-rights date in accordance with the paragraph (d)[(c)](1) hereof, the date designated shall be the first business day which in the opinion of the Committee shall be practical having regard to the circumstances pertaining.

[Normal ex-warrants dates

(d)(1) In respect to the issuance or distribution of warrants, if definitive information is received sufficiently in advance of the record date, the date designated as the ex-warrants date shall be the fourth business day preceding the record date if the record date falls on a business day, or the fifth business day preceding the record date if the record date falls on a day designated by the Committee as a non-delivery date.]

[Late information re ex-warrants dates

(2) If definitive information is not received sufficiently in advance of the record date to permit designation of an ex-warrants date in accordance with paragraph (d)(1) hereof, the date designated shall be the first business day which, in the opinion of the Committee, shall be practical having regard to the circumstances pertaining.]

**Transactions "Ex-Interest" in Bonds
Which Are Dealt in "Flat"**

Sec. 6

**[Transactions except for cash] Normal
ex-interest dates**

(a) All transactions, except "cash" transactions, in bonds or similar evidences of indebtedness which are traded "flat" shall be "ex-interest" as prescribed by the following provisions:

(1) On the fourth business day preceding the record date if the record date falls on a business day.

(2) On the fifth business day preceding the record date if the record date falls on a day other than a business day.

(3) On the fifth business day preceding the date on which an interest payment is to be made if no record date has been fixed.

Late information re ex-interest dates

(b)[(4)] If notice of payment of interest is not made public sufficiently in advance of the record date or the payment date, as the case may be, to permit the security to be dealt in "ex-interest" in accordance with [the foregoing provisions,] paragraph (a) hereof, such security shall be dealt in "ex-interest" on the first business day [following public notice of the record date or the payment date, as the case may be] which, in the opinion of the Committee, shall be practical having regard to the circumstances pertaining.

"Ex" Liquidating Payments

Sec. 7.

All transactions except "cash" transactions in stocks, bonds or similar evidences of indebtedness shall be "ex" liquidating payments or payments on account of principal in accordance with the formula set forth in Sections 5 and 6 of this Code.

* * * * *

**[Confirmations On "When, As And
If Issued" and "When, As And
If Distributed" Contracts]**

Sec. 11. RESERVED

(The provisions in this section, including sample confirmations, have been moved to Section 4.)

**Delivery of Securities
[Time and Place] Dates of Delivery**

Sec. 12.¹

For "cash"

(a) In connection with a transaction for "cash," delivery shall be made at the office of the purchaser on the day of the transaction.

"Regular way"

(b) In connection with a transaction "regular way," delivery shall be made at the office of the purchaser on, but not before, the fifth business day following the date of the transaction.

"Seller's option"

(c) In connection with a transaction "seller's option," delivery shall be made at the office of the purchaser on the date on which the option expires; except that delivery may be made by the seller on any business day after the fifth business day following the date of transaction and prior to the expiration of the option, provided the seller delivers at the office of the purchaser, on a business day preceding the day of delivery, written notice of intention to deliver.

"Buyer's option"

(d) In connection with a transaction "buyer's option," delivery shall be made at the office of the purchaser on the date on which the option expires.

Contracts due on holidays or Saturdays

(e) Contracts due on a day other than a business day shall mature on the next business day.

"Delayed-delivery"

(f) In connection with a transaction made for "delayed-delivery" delivery shall be at the office of the purchaser on the date agreed upon at the time of the transaction.

Prior to delivery date

(g) If in contracts executed pursuant to subsections (b), (d) and (h) of this rule, the seller tenders delivery before the stated time, acceptance shall be at the election of the purchaser, and rejection of such delivery by the purchaser shall be without prejudice to his rights.

Time and place of delivery

(h)[(a)] Delivery shall be made at the office of the purchaser between the hours established by rule or practice in the community where such of-

office is located. If the purchaser maintains more than one office, delivery shall be made at the office with which the transaction was effected, unless delivery instructions are provided at the time of the transaction.

* * * * *

Delivery of Securities Called for Redemption or Which are Deemed Worthless

Sec. 27.

Securities called for redemption

(a) A certificate of stock or a bond shall cease to be a good delivery upon publication of notice of call for redemption, except when an entire issue is called for redemption and except against transactions in "called stock" or "called bonds" dealt in specifically as such.

Securities deemed worthless

(b)(1) In contracts for securities where a public announcement or publication of general circulation discloses that the securities have been deemed worthless, deliveries shall consist of (i) the worthless securities; or (ii) a Letter of Indemnity which shall grant the purchaser any rights and privileges which might accrue to the holders of the physical securities.

(2) Deliveries effected pursuant to subsection (b)(1) shall operate to close-out the contract and must be accompanied by documentation evidencing that the security was deemed worthless after the original execution date of the contracts. Such contracts shall be settled at the existing contract price.

(3) For purposes of this section, securities deemed worthless shall be those instruments which have no known market value.

* * * * *

Assignments and Powers of Substitution; Delivery of Registered Securities

Sec. 29.

(a)-(d) No change.

* * * * *

¹Subsections (a) through (d) have been relocated from Section 4. Subsections (e) through (g) are new provisions which incorporate portions of old Sections 4(b)-4(d).

Two or more names

(e) A certificate registered in the names of two or more individuals or firms shall be a good delivery only if signed by all the registered owners.

(Subsections (e) through (i) are renumbered (f) through (j), respectively.)

* * * * *

**[Acknowledgements and Sample Forms]
Certificate of Company Whose
Transfer Books Are Closed²**

Sec. 31.

General requirements

[(a) The assignment and each power of substitution pertaining to a certificate of a company whose transfer books are closed indefinitely for any reason shall be properly acknowledged before an officer having authority to take acknowledgements under the laws of the State in which such instruments are executed and shall bear the seal of the signing officer if required by statute. Any alteration or correction in an acknowledgement shall be properly noted by the signing officer.]

(a) A certificate of a company whose transfer books are closed indefinitely for any reason shall be a good delivery only if the required ownership transfer indemnification is affixed to or recorded upon the certificate. The indemnification acknowledges the assignor(s)' ultimate responsibility for the ownership of the certificate as of the date of the indemnification and shall be affixed or recorded only once during the lifetime of the certificate. Certificates delivered pursuant to this section must conform with all the applicable delivery requirements set forth in Section 29 of this Code.

[Executed by an individual

(b) In an acknowledgement of an assignment or power of substitution executed by an individual, the officer before whom the acknowledgement is executed shall certify that he knows the person signing to be the person named in the certificate or in the power of substitution, and that the signer acknowledged his signature.

Executed in name of firm

(c) In an acknowledgement of an assignment or a power of substitution executed in the name of a firm, the officer before whom the acknowledgement is executed shall certify that he knows the

person executing the acknowledgement and knows him to be, or to have been on the date of execution of the assignment or power of substitution, a member of the firm, or authorized to sign for the firm under a power of attorney, and that he acknowledged that he executed the assignment or power of substitution as the act or deed of the firm.]

Sample Ownership Transfer
Indemnification Stamp.

Date:

The undersigned owner of this certificate (number) representing shares of hereby certifies the transfer of all ownership therewith to the bearer hereby. We acknowledge that the transfer books of the herein named corporation are closed and agree to accept responsibility in accordance with the provisions of Section 31 of the NASD's Uniform Practice Code.

NAME OF MEMBER

AUTHORIZED SIGNATURE

Certificate in Name of Corporation, etc.³

Sec. 32.

Transfer books open.

(a) No change.

* * * * *

Transfer books closed

(b) Where a certificate, an assignment or a power of attorney is in the name of a corporation and the transfer books of the issuing company are closed indefinitely for any reason, the certificate shall [not] be a good delivery if [unless] the assignment or other instrument effecting transfer on the corporation's behalf is executed by an officer of such corporation, other than the secretary, and is accompanied by (1) a guarantee of such officer's

²The Sample Ownership Transfer Indemnification Stamp following this section replaces all of the Sample Notarial Acknowledgements in the *NASD Manual* following Sections 31, 32, 35, 36, and 37.

³The Sample Notarial Acknowledgements, the Sample Certificate and Authorizing Resolution, and the Sample Certificate of Incumbency in the *NASD Manual* following Section 32 have been replaced with the Sample Ownership Transfer Indemnification Stamp following Section 31 and the Sample Certificate and Authorizing Resolution Certificate of Incumbency following this section.

signature executed by a person with the authority to make such a guarantee; [by a bank which is a member of the Federal Deposit Insurance Corporation, (2) an acknowledgement in proper form of such execution by such officer, (3)] (2) a copy of a corporate resolution and [in proper form authorizing such execution by such officer, certified by the secretary or other appropriate corporate officer to be in effect on the date of such execution, (4)] a completed and executed certificate of incumbency; [executed by the secretary or other appropriate corporate officer, certifying as to the office and signature of the executing officer as of the date of such execution, and (5) an acknowledgement in proper form of the certification of the resolution and the certificate of incumbency.] and (3) the ownership transfer indemnification, as provided in Section 31, affixed to or recorded on the certificate.

SAMPLE CERTIFICATE AND AUTHORIZING RESOLUTION/CERTIFICATE OF INCUMBENCY

I hereby certify that at a meeting of the Board of Directors of....., a corporation organized under the laws of the State of, held the day of, 19....., at which a quorum was present and acting throughout, the following resolution was duly adopted and is now in full force and effect:

RESOLVED, that any one of the following officers of this Corporation, viz: the President, Vice President, Treasurer or Secretary, be and is hereby fully authorized and empowered to sell, assign, transfer and deliver any and all shares of stock, bonds, debentures, notes, evidences of indebtedness, or other securities now or hereafter standing in the name of or owned by this Corporation, and to make, execute, and deliver, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

I further certify that the authority thereby conferred is not inconsistent with the Charter or By-Laws of this Corporation, and that the following is a true and correct list of the officers of this Corporation authorized to act.

Signing Officers:

In witness, whereof, I have hereunto set my hand and the seal of said Corporation this..... day of....., 19.....

(Affix Corporate Seal)

.....
Secretary

The foregoing certification and the assignment of the securities should be executed by different officers.

* * * * *

[Certificate in Name of Married Woman]

Sec. 35. - RESERVED
(Entire section deleted)

Certificate in Name of Deceased Person, Trustee, etc.⁴

Sec. 36.

* * * * *

(a) No change.

(b) A certificate shall be a good delivery with an assignment or a power of substitution executed by a: (1) domestic individual executor(s) or administrator(s); (2) domestic individual trustee(s) under an inter vivos or testamentary trust; or (3) domestic guardian(s) including committees, conservators and curators. These exceptions to paragraph (a) above are to cover transfer that will be effected by transfer agents without additional documentation. This paragraph (b) shall apply only to securities of a domestic issuer (organized under the laws of any state in the United States or District of Columbia) which are registered in the names(s) of (1), (2) or (3) of this paragraph (b). Certificates delivered pursuant to this paragraph (b) must be properly assigned, and the signature(s) to the assignment must be guaranteed pursuant to section 29[(g)](h).

* * * * *

[Joint Tenants, etc.]

Sec. 37. - RESERVED
(Entire section deleted)

⁴The Sample Notarial Acknowledgements in the *NASD Manual* following Section 36 have been replaced by the Sample Ownership Transfer Indemnification Stamp following Section 31.

[Two or More Names]

Sec. 38. - RESERVED

(Entire section deleted)

* * * * *

Irregular Delivery - Transfer Refused - Lost or Stolen or Confiscated Securities

Sec. 56.

* * * * *

Lost or stolen or confiscated securities

(c) Reclamation, by reason of the fact that a security is lost or stolen or confiscated shall be within 30 months after the settlement date of the contract.

(d) The running of the 30-month period described in Section 56 shall not be deemed to foreclose a member's rights to pursue its claim via other open avenues, including but not limited to the Association's arbitration procedure.

* * * * *

"Selling Out"

Sec. 60.

Conditions permitting "sell-out"

(a) Upon failure of the buyer to accept delivery in accordance with the terms of the contract, and lacking a properly executed Uniform Reclamation [or Rejection] Form or the equivalent depository generated advice for depository eligible securities [(Form #801)] meeting the requirements prescribed in Section 52 [¶ 3552] of this Code, the seller may, without notice, "sell-out" in the best available market and for the account and liability of the party in default all of any part of the securities due or deliverable under the contract.

Notice of "sell-out"

(b) The party executing a "sell-out" as prescribed above shall, as promptly as possible on the day of execution, but no later than the close of business, local time, where the buyer maintains his office, [via hand delivery, telegram, TWX, or other comparable written media,] notify the broker/dealer for whose account and risk such securities were sold of the quantity sold and the price received[, and shall promptly mail or deliver] Such notification should be in written or electronic form having immediate receipt capabilities. A[a] formal confirmation of such sale[.] should be forwarded as promptly as possible after

the execution of the "sell-out".

Rights and Warrants

Sec. 61.

* * * * *

Securities which have expired by their terms

(e)(1) In contracts for warrants, rights or other securities which have expired by their terms, deliveries effected more than thirty (30) days after expiration shall consist of (i) the expired securities; or (ii) a Letter of Indemnity in lieu of the expired instrument.

(2) In the case of units or other securities of which one or more of the integral parts of the instrument has expired by its terms, after expiration, the instrument shall cease to be a unit as originally contemplated in the contract. Deliveries effected after expiration shall consist of the unexpired security and (i) the expired instrument; or (ii) a Letter of Indemnity in lieu of the expired instrument.

(3) Deliveries effected pursuant to subsections (e)(1) and (2) of this section shall be settled at the existing contract price.

* * * * *

SAMPLE LETTER OF INDEMNITY

DATE _____

TO: _____

RE: (Quantity and Description) _____

CUSIP #: _____

For value received the undersigned hereby assigns, transfers and sets over to you all rights and privileges which may accrue on the above contract made on (Date of Contract) at (Contract Price) for settlement (Settlement Date).

Upon acceptance of this delivery in lieu of physical certificates, we agree, for ourselves, our successors, assigns, heirs, executors and administrators, to at all times indemnify and hold harmless _____ from and against any and all claims, liabilities, damages, taxes, charges and expense sustained or incurred by reason of this action. Acceptance of this delivery shall operate to close-out the above stated contract in accordance with the provisions of the NASD's Uniform Practice Code.

.....(Member Firm)

.....(Official Signature)

If any questions, please contact _____ at (Telephone Number) _____.