



National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 84-21

April 3, 1984

TO: All NASD Members

RE: Adoption of a New Rule of Fair Practice and Other Amendments
Regulating Activities of Members Experiencing Financial or Operational
Difficulties

On February 17, 1984, the Securities and Exchange Commission ("Commission" or "SEC") approved ^{1/} new Article III, Section 38 of the Association's Rules of Fair Practice, an Explanation of the Board of Governors, and an amendment to the Code of Procedure for Handling Trade Practice Complaints ("Code of Procedure"). These rule changes are designed to regulate the activities of members experiencing financial or operational difficulties. The rule changes are being declared effective as of the date of this notice. A summary of the major provisions and text of the rule changes follow.

The rule changes were developed as a result of the recommendation of the Commission staff and related to the Commission's determination to lower certain minimum net capital requirements and to relax other provisions of the SEC net capital rule. ^{2/} The Commission apparently reasoned that lower net capital requirements should be offset by an increase in the ability of the Association to respond quickly in a situation involving a deteriorating financial or operational difficulty. Thereafter, the Association developed Section 38 and an Explanation thereunder and published them for comment in Notice to Member 82-45 (August 19, 1982) and for membership vote in Notice to Members 83-47 (August 18, 1983). Amendments to the Code of Procedure were also published.

MAJOR PROVISIONS

As approved by the Commission, Section 38 addresses two levels of possible financial or operational difficulties. First, it restricts a member from expanding its business whenever certain early warning criteria relating to minimum net capital, ratios or scheduled capital withdrawals are exceeded. Secondly, it covers a

^{1/} Sec. Exch. Act Rel. No. 20673 (Feb. 17, 1984); 49 Fed. Reg. 7170 (Feb. 27, 1984).

^{2/} Sec. Exch. Act Rel. No. 18737 (May 13, 1982).

deteriorating situation in which another set of warning criteria with lower tolerances are exceeded. In such situations, the rule requires a member to reduce or eliminate certain facets of its business.

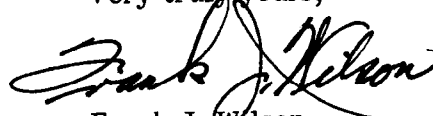
Following new Section 38 is an Explanation of the Board of Governors which includes examples of conditions which might cause the Association to determine that a member is in or approaching financial or operational difficulties and possible remedial actions. The examples in the Explanation are only intended to facilitate members' understanding of how the rule will be administered and should not be construed as all-inclusive.

In conjunction with the Section 38, the Commission also approved amendments to the Code of Procedure. ^{3/} These amendments provide for procedures to implement the provisions of Section 38 and include the creation of a Surveillance Committee of the Board and District Surveillance Committees to direct the implementation of the rule. The procedures also provide a member with an opportunity for an impartial hearing, an independent review by the Board of Governors, and appeal to the Securities and Exchange Commission.

* * * *

Questions concerning the Notice may be directed to Thomas Cassella, Director, Financial Responsibility, at telephone number (202) 728-8237, or Dennis C. Hensley, Vice President and Deputy General Counsel, at telephone number (202) 728-8245.

Very truly yours,



Frank J. Wilson
Executive Vice President
and General Counsel

Attachment

^{3/} It is expected that these amendments will also be incorporated into the new procedure code which is awaiting Commission approval. See SEC File No. SR-NASD-82-11.

Article III, Section 38 of the Rules of Fair Practice 1/

Section 38: Regulation of Activities of Members Experiencing Financial or Operational Difficulties

- (a) Application - For the purposes of this rule, the term "member" shall be limited to any member of the Association who is not designated to another self-regulatory organization by the Securities and Exchange Commission for financial responsibility pursuant to Section 17 of the Securities Exchange Act of 1934 and Rule 17d-1 thereunder. Further, the term shall not be applicable to any member who is subject to paragraphs (a)(2) and (a)(3) of SEC Rule 15c3-1, or is otherwise exempt from the provisions of said rule.
- (b) A member, when so directed by the Association, shall not expand its business during any period in which:
- (1) Any of the following conditions continue to exist, or have existed, for more than 15 consecutive business days:
- (A) A firm's net capital is less than 150 percent of its net capital minimum requirement or such greater percentage thereof as may from time to time be prescribed by the Association;
- (B) If subject to the aggregate indebtedness requirement under SEC Rule 15c3-1, a firm's aggregate indebtedness is more than 1,000 percent of its net capital;
- (C) If, in lieu of subparagraph (b)(1)(B) above, the specified percentage of the aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers under SEC Rule 15c3-3 (the alternative net capital requirement) is applicable, a firm's net capital is less than five percent of the aggregate debit items thereunder; or,
- (D) The deduction of capital withdrawals including maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in (A), (B) or (C) of this subparagraph (1);
- or
- (2) The Association restricts the member for any other financial or operational reason.

1/ All language is new.

- (c) A member, when so directed by the Association, shall forthwith reduce its business:
- (1) To a point enabling its available capital to comply with the standards set forth in subparagraphs (b)(1)(A), (B) or (C) of this rule if any of the following conditions continue to exist, or have existed, for more than 15 consecutive business days:
 - (A) A firm's net capital is less than 125 percent of its net capital minimum requirement or such greater percentage thereof as may from time to time be prescribed by the Association;
 - (B) If subject to the aggregate indebtedness requirement under SEC Rule 15c3-1, a firm's aggregate indebtedness is more than 1,200 percent of its net capital;
 - (C) If, in lieu of subparagraph (c)(1)(B) above, the specified percentage of the aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers, under SEC Rule 15c3-3 (the alternative net capital requirement) is applicable, a firm's net capital is less than four percent of the aggregate debit items thereunder; or,
 - (D) If the deduction of capital withdrawals including maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in subparagraph (c)(1)(A), (B) or (C) of this rule;

or

 - (2) As required by the Association when it restricts a member for any other financial or operational reason.

* * * * *

EXPLANATION OF THE BOARD OF GOVERNORS

Restrictions On A Member's Activity

This explanation outlines and discusses some of the financial and operational deficiencies which could initiate action under the rule. Subparagraphs (b)(2) and (c)(2) of the rule recognize that there are various unstated financial and operational reasons for which the Association may impose restrictions on a member so as to prohibit its expansion or require a reduction in overall level of business. These provisions are deemed necessary in order to provide for the variety of situations and practices which do arise and, which if allowed to persist, could result in increased exposure to customers and to broker-dealers.

In the opinion of the Board of Governors, it would be impractical and unwise to attempt to identify and list all of the situations and practices which

might lead to the imposition of restrictions or the types of remedial actions the Corporation may direct be taken because they are numerous and cannot be totally identified or specified with any degree of precision. The Board believes, however, that it would be helpful to members' understanding to list some of the other bases upon which the Corporation may conclude that a member is in or approaching financial difficulty.

Explanation

- (a) For purposes of subparagraphs (b)(2) and (c)(2) of the rule, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by the Corporation that any of the parameters specified therein are exceeded or one or more of the following conditions exist:
- (1) The member has experienced a reduction in excess net capital of 25 percent in the preceding two months or 30 percent or more in the three-month period immediately preceding such computation;
 - (2) The member has experienced a substantial change in the manner in which it processes its business which, in the view of the Corporation, increases the potential risk of loss to customers and members;
 - (3) The member's books and records are not maintained in accordance with the provisions of SEC Rules 17a-3 and 17a-4;
 - (4) The member is not in compliance, or is unable to demonstrate compliance, with applicable net capital requirements;
 - (5) The member is not in compliance, or is unable to demonstrate compliance, with SEC Rule 15c3-3 (Customer Protection — Reserves and Custody of Securities);
 - (6) The member is unable to clear and settle transactions promptly;
 - (7) The member's overall business operations are in such a condition, given the nature and kind of its business that, notwithstanding the absence of any of the conditions enumerated in subparagraphs (1) through (5), a determination of financial or operational difficulty should be made; or
 - (8) The member is registered as a Futures Commission Merchant and its net capital is less than seven percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder.
- (b) If the Corporation determines that any of the conditions specified in subparagraph (a) of this Explanation exist, it may require that the member take appropriate action by effecting one or more of the following actions until such time as the Corporation determines they are no longer required:
- (1) Promptly pay all free credit balances to customers;

- (2) Promptly effect delivery to customers of all fully paid securities in the member's possession or control;
- (3) Introduce all or a portion of its business to another member on a fully disclosed basis;
- (4) Reduce the size or modify the composition of its inventory;
- (5) Postpone the opening of new branch offices or require the closing of one or more existing branch offices;
- (6) Promptly cease making unsecured loans, advances or other similar receivables, and, as necessary, collect all such loans, advances or receivables where practicable;
- (7) Accept no new customer accounts;
- (8) Undertake an immediate audit by an independent public accountant at the member's expense;
- (9) Restrict the payment of salaries or other sums to partners, officers, directors, shareholders, or associated persons of the member;
- (10) Effect liquidating transactions only;
- (11) Accept unsolicited customer orders only;
- (12) File special financial and operating reports; or
- (13) Be subject to such other restrictions or take such other action as the Corporation deems appropriate under the circumstances in the public interest and for the protection of members.

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**AMENDMENT TO CODE OF PROCEDURE FOR HANDLING
TRADE PRACTICE COMPLAINTS ^{1/}**

**Section 29: Limitation Procedures Under Article III, Section 38
of the Rules of Fair Practice**

- (a) Board of Governors Surveillance Committee — The Board of Governors shall appoint a standing Committee of the Board to be known as the Board of Governors Surveillance Committee which is composed of such members as are from time to time determined by the Board.

^{1/} All language is new.

- (b) District Surveillance Committee — As required to implement the provisions of this rule, each District Committee shall create a District Surveillance Committee composed of two current or former District Business Conduct Committee members; two members of the Board of Governors Surveillance Committee, and one former member of the Board of Governors.
- (c) Written Notification — If the District Surveillance Committee has reason to believe that a member has not complied with any of the conditions contained in subsections (b) or (c) of Section 38, it may exercise the authority conferred by Section 38 by issuing a notice directing the member to limit its business. Such notice shall contain a statement of the specific grounds on which such action is being taken, specify in reasonable detail the nature of the limitations being imposed and inform the member that he has an opportunity to be heard, if such request is made within three business days of receipt of the notice. The District Surveillance Committee shall also provide a similar notice in writing to a member of any revision or modification of restrictions or limitations previously imposed.
- (d) Hearing — If an opportunity to be heard is requested, it shall be provided by the District Surveillance Committee within five business days of the receipt of the notice. A member requesting the opportunity to be heard shall present its reasons why the notice should be withdrawn or modified and shall be entitled to be represented by counsel. A record shall be kept of the proceeding before the District Surveillance Committee.
- (e)
 - (1) Decision and Effective Date — The District Surveillance Committee shall within five business days of a hearing issue a written decision approving or modifying the limitations specified in the notice. The decision shall also provide for an appropriate sanction to be immediately imposed for failure to comply with any limitations imposed.
 - (2) When an opportunity to be heard is not requested, the limitations contained in the notice shall become effective three days following receipt of the notice without any written decision unless the District Surveillance Committee decides upon a later effective date or unless the matter is reviewed by the Board of Governors, subject to the provisions of subsections (f), (g), and (h) hereof, and they shall remain in effect until such time as they are removed, revised or modified by the District Surveillance Committee.
- (f) Review by Board — The written decision issued pursuant to subsection (e) shall be subject to review by the Board of Governors upon application by the member aggrieved thereby filed within five business days of the date of the decision. The decision, or the notice where no opportunity to be heard was requested before the District Surveillance Committee, shall also be subject to review by the Board of Governors on its own motion within 30 calendar days of the decision or notice. Where two members of the District

Surveillance Committee disagree with the determination of the Committee, the matter will automatically be reviewed by the Board of Governors. In the case of an appeal, the member shall be given an opportunity to be heard before a subcommittee of the Board within 10 business days of the written decision. If called for review, the matter shall be heard within 30 days of such action. In any hearing before the Board, a member shall be entitled to be represented by counsel. The institution of review, whether by application or on the initiative of the Board, shall operate as a stay of the action by the District Surveillance Committee unless otherwise ordered by the Board.

- (g) Composition of Board of Governors Hearing Subcommittee — The Board of Governors' hearing subcommittee shall be composed of two members of the Board of Governors' Surveillance Committee and one current member of the Board.
- (h) Decision — Upon consideration of the record, the Board of Governors shall in writing affirm, modify, reverse or dismiss the decision of the District Surveillance Committee or remand the matter for further proceedings consistent with its instructions. The Board shall set forth specific grounds upon which its determination is based and shall provide for an appropriate sanction to be immediately imposed for failure to comply with any limitations imposed. If a hearing is held, a decision shall issue within five business days of the hearing and the decision shall be the final action of the Board. If no hearing is requested, the matter shall be considered on the record and a decision shall be issued promptly. Any limitation imposed as a result of Board action shall become effective immediately upon issuance of its decision and shall remain in effect until such time as removed or modified by the District Surveillance Committee.
- (i) Application to Commission for Review — In any case where a member feels aggrieved by any action taken or approved by the Board of Governors, such member may make application for review to the Securities and Exchange Commission in accordance with Section 19 of the Securities Exchange Act of 1934, as amended. There shall be no stay of the Board's action upon appeal to the Commission unless the Commission determines otherwise.
- (j) Successive Notes — If it appears at any time to the District Surveillance Committee that, notwithstanding an effective notice or decision under subsections (c), (e) and (h) hereof, the member is still approaching financial or operational difficulty, the District Surveillance Committee may prescribe additional limitations of a member's business in which case all of the procedures specified above shall be followed prior to the implementation thereof.
- (k) Complaint by District Committee — Action by the Corporation under this Article is not intended to foreclose complaint action by the District Business Conduct Committee under the Code of Procedure for Handling Trade Practice Complaints where a violation of the Rules of Fair Practice may be involved.



National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 84-22

April 12, 1984

TO: All NASD Members and Level 2 and Level 3 Subscribers

RE: 10 Securities Mandated to Join NMS on May 8, 1984

An additional 10 securities will join the 880 already trading in the NASDAQ National Market System on Tuesday, May 8, 1983. (The 880 include the 50 issues scheduled to join NMS on April 17.) These securities have met the NMS mandatory designation requirements, which include an average trading volume of 600,000 shares a month for six months and a bid price of \$10 on the last five business days in March. As required by SEC Rule 11Aa2-1, all issues meeting the mandatory designation criteria at the end of each quarter automatically are added to the National Market System within 45 days of the quarter ending date.

The 10 securities joining NMS on Tuesday, May 8 are:

<u>SYMBOL</u>	<u>COMPANY</u>	<u>LOCATION</u>
AMKG	Amosking Bank Shares, Inc.	Manchester, NH
ASAL	Atlantic Federal Savings and Loan Association of Fort Lauderdale	Fort Lauderdale, FL
CFSF	Coast Federal Savings and Loan Association	Sarasota, FL
GFED	Georgia Federal Bank	Atlanta, GA
MENT	Mentor Graphics Corporation	Beaverton, OR
MRGC	Mr. Gasket Company	Brooklyn Heights, OH
PROV	Provident Institution for Savings in the Town of Boston (The)	Boston, MA
SOCS	Society for Savings (The)	Hartford, CT
SFIN	Southland Financial Corporation	Irving, TX
VLID	Valid Logic Systems Incorporated	Mountain View, CA

Any questions regarding this notice should be directed to Donald Bosie, Assistant Director, NASDAQ Operations, at (202) 728-8043. Questions pertaining to trade reporting rules should be directed to Steve Hickman at (202) 728-8202.

Sincerely,

A handwritten signature in black ink, appearing to read "Gordon S. Macklin". The signature is fluid and cursive, with a large initial "G" and "M".

Gordon S. Macklin
President



National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 84-23

April 27, 1984

TO: All NASD Members and Level 2 and Level 3 Subscribers

RE: National Market System Grows to 935 Securities With 50 Additions on May 15

On Tuesday, May 15, the National Market System will include 935 securities as 50 more NASDAQ securities are phased into the System. These 50 securities meet the SEC's voluntary designation criteria, which include six month average trading volume of 100,000 shares a month and a minimum bid price of \$5.


The 50 securities scheduled to join NMS on May 15 are:

Symbol	Company	Location
ABPC	Alaska Pacific Bancorporation	Anchorage, AK
ALMI	Alpha Microsystems	Irvine, CA
BBDO	BBDO International, Inc.	New York, NY
BIWC	BIW Cable Systems, Inc.	Boston, MA
BOKC	BANCOKLAHOMA Corp.	Tulsa, OK
BKVT	BANKVERMONT Corporation	Burlington, VT
BESI	Besicorp Group, Inc.	Ellenville, NY
BIND	Bindley Western Industries, Inc.	Indianapolis, IN
CBAN	Central Bancorporation, Inc. (The)	Cincinnati, OH
CMPC	Compucare, Inc.	McLean, VA
BUGS	CooperBiomedical, Inc.	Palo Alto, CA
COPY	CopyTele, Inc.	Huntington Station, NY
DVON	Devon Stores Corp.	Carle Place, NY
DICN	Diceon Electronics, Inc.	Irvine, CA
EAIR	Empire Airlines, Inc.	Oriskany, NY
EMTH	Energy Methods Corporation	Denver, CO
FTEC	FilmTec Corporation	Minneapolis, MN
GAMA	Gamma Biologicals, Inc.	Houston, TX
GRAC	GRACO Inc.	Golden Valley, MN

Symbol	Company	Location
HISI	Health Information Systems, Inc.	Brooklyn, NY
HOOK	Hook Drugs, Inc.	Indianapolis, IN
HRZN	Horizon Industries, Inc.	Calhoun, GA
ILCT	ILC Technology, Inc.	Sunnyvale, CA
IGEN	ImmunoGenetics, Inc.	Vineland, NJ
IDYN	Interdyne Company	Milpitas, CA
INTF	Interface Systems, Inc.	Ann Arbor, MI
MTSC	MTS Systems Corporation	Eden Prairie, MN
MDSN	Madison Gas and Electric Company	Madison, WI
MALR	Malrite Communications Group, Inc.	Cleveland, OH
MRC5	Marcus Corporation (The)	Milwaukee, WI
MYLN	Mylan Laboratories, Inc.	Pittsburgh, PA
NHCC	National Health Corporation	Murfreesboro, TN
NESA	Northeast Savings, F.A.	Schenectady, NY
ORSI	Object Recognition Systems, Inc.	Princeton, NJ
PREW	Preway, Inc.	Wisconsin Rapids, WI
QUIX	Quixote Corporation	Chicago, IL
RAXR	Rax Restaurants, Inc.	Columbus, OH
RENL	Renal Systems, Inc.	Minneapolis, MN
RHDS	Rhodes, Inc.	Atlanta, GA
RBSN	Robeson Industries Corporation	Mineola, NY
SPDC	S-P Drug Co., Inc.	Brooklyn, NY
SRVI	SERVICO, Inc.	West Palm Beach, FL
SOTR	SOUTHTRUST Corporation	Birmingham, AL
SONO	Sonoco Products Company	Hartsville, SC
STAK	Steak N Shake, Inc.	Indianapolis, IN
SUNI	Sun Coast Plastics, Inc.	Sarasota, FL
USDC	U.S. Design Corporation	Lanham, MD
USTR	United Stationers Inc.	Maywood, IL
WMIC	Western Microwave, Inc.	Sunnyvale, CA
ZEGL	Ziegler Company, Inc. (The)	West Bend, WI

Any questions regarding this notice should be directed to Donald Botic, Assistant Director, NASDAQ Operations, at (202) 728-8043. Questions pertaining to trade reporting rules should be directed to Steve Hickman at (202) 728-8202.

Sincerely,


Gordon S. Macklin
President