

# NASD NOTICE TO MEMBERS 94-6

## Solicitation Of Member Comment On Proposed Amendments To The Foreign Associate Provisions Of Schedule C To The NASD By-Laws; Comment Period Expires March 31, 1994

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

At its January 1994 meeting, the NASD Board of Governors approved the issuance of a *Notice to Members* soliciting comment on amendments to the foreign associate provisions in Part X of Schedule C to the NASD By-Laws. These amendments would substantially conform NASD requirements for foreign associates to certain interpretations under NYSE Rule 345 recently approved by the Securities and Exchange Commission (SEC). In addition, the proposals would require all foreign associates, including "foreign finders," to file full Form U-4 registration documents with the NASD, thereby standardizing the registration process for foreign associates in keeping with those in effect for all other registration categories. Comments received **on or before March 31, 1994**, will be considered before final action by the Board on the proposed amendments. If approved by the Board, the amendments will be filed with the SEC. It is anticipated that the SEC will also publish the proposed amendments before acting on them. SEC approval of the amendments is required before they can become effective.

### Background

The NASD and the NYSE have consistently limited the payment of finders fees by members. Permission to do so has only been granted in isolated circumstances, where the amount paid was nominal in relation to the referral, and the recipient did not routinely engage in making referrals to brokerage firms. The SEC recently approved an NYSE interpretation to Rule 345 that permits NYSE members to pay transaction-related compensation to non-registered foreign finders who are not subject to the jurisdiction of

the United States securities laws. In approving the interpretation, the SEC said an NYSE member paying such referral fees must:

- Assure itself that the foreign person who will receive the compensation (the finder) is not required to register in the U.S. as a broker/dealer and that the compensation arrangement does not violate applicable foreign law.
- Provide the customer with a descriptive document that discloses what compensation is being paid to the finder.
- Retain the customer's written acknowledgements of the compensation.
- Maintain records reflecting payments to foreign finders.
- Keep available for NYSE inspection the agreements between members and persons receiving the compensation.
- Maintain transaction confirmations indicating that a referral or finders fee is being paid.

The NASD generally prohibits the payment of compensation to non-registered persons. However, the foreign associate classification in Part X of Schedule C to the By-Laws includes a mechanism that permits members to pay compensation to non-registered foreign finders. Under this provision, foreign associates:

- Do not have to be registered in the standard manner requiring a Form U-4 filing.
- Are exempt from the requirement that they pass a qualification examination.
- Cannot be citizens, nationals, or

residents of the United States or any of its territories or possessions.

- Must conduct all of their securities activities outside the jurisdiction of the United States.
- Must not engage in any securities activities with or for a United States citizen, national, or resident.
- Must not be subject to a statutory disqualification.
- Must consent to service of process for any proceeding instituted by the NASD.

Foreign associates are not registered in the Central Registration Depository as part of the normal registration process. Members are required, however, to file an application for classification as a foreign associate, a simplified form that the NASD maintains in a separate file.

There are two distinctions between the NASD and NYSE approaches. First, the NASD requires an actual filing by the member to activate foreign associate status. The NASD's surveillance ability is further enhanced by the requirement that members notify us through a separate filing, in the event they terminate the employment of a foreign associate. Second, the NYSE has incorporated a series of procedures in its interpretation to deter abusive practices. The NASD does not have comparable procedures in Schedule C to the By-Laws.

### **NASD Proposal**

The NASD believes it is important that NASD and NYSE rules in this area be consistent and recommends that certain amendments be approved in Schedule C to the NASD By-Laws to accomplish this. The NASD also believes there is

great value in the requirement for an application filing as a means to screen out statutorily disqualified persons and to set the stage for closer cooperation among international regulators in the registration process. The NASD recommends, therefore, that the filing requirement for foreign associates be stepped-up to a full Form U-4 registration filing consistent with every other registration category used by the NASD. The NASD also proposes to expand the foreign associate provisions in the case of foreign finders to include the procedural protections in the new interpretation to NYSE Rule 345.

### **Request For Comments**

The Board is soliciting comments from members and interested parties so that the ramifications of the Board action may be thoroughly reviewed. Comments must be received **no later than March 31, 1994**, and addressed to Grant Callery, General Counsel, NASD, 1735 K Street, NW, Washington, DC, 20006-1500. Questions regarding this Notice should be directed to Frank J. McAuliffe, Vice President, Membership & Qualifications at (301) 590-6694.

### **Text Of Proposed Amendments To Part X Of Schedule C To The NASD By-Laws**

#### **PART X**

#### **FOREIGN ASSOCIATES**

(Note: New language is underlined; deletions are in brackets.)

All persons associated with a member who are designated as Foreign Associates shall [not] be required to be registered [and] but shall be exempt from the requirement to

pass a Qualification Examination. Persons associated with a member, including persons who receive referral fees or transaction-related compensation based upon the business of customers they direct to a member(s) (a "finder"), may [shall] be designated as Foreign Associates if they meet the following criteria:

- (1) They are not citizens, nationals, or residents of the United States or any of its territories or possessions;
- (2) They will conduct all of their securities activities in areas outside the jurisdiction of the United States and they will not engage in any securities activities with or for any citizen, national or resident of the United States[.];

[Prior to the time the exemption provided for in this paragraph may become effective, the member desiring to employ any such person must file with the Corporation, a form designated "Application for Classification as a Foreign Associate" for each such person and must certify that such person meets the above two criteria, as well as that:]

- (3) Such person is not subject to any of the prohibitions to registration with the Corporation contained in Article II, Section 4 of the By-Laws of the Corporation;
- (4) Service of process for any proceeding instituted by the Corporation in respect to such person may be sent to an address designated by the member[.];

(5) In the event that a Foreign Associate is a finder, as described above, the member must also ensure that the following conditions are met:

- (a) The member has assured itself that the foreign person who will

receive the compensation (the "finder") is not required to register in the U.S. as a broker-dealer and has further assured itself that the compensation arrangement does not violate applicable foreign law;

(b) Customers referred by such Foreign Associate must receive a descriptive document, similar to that required by Rule 206(4)-3(b) of the Investment Advisers Act of 1940, that discloses what compensation is being paid to the Foreign Associate;

(c) Customers must provide written acknowledgement to the member of the existence of the compensation arrangement and such acknowledgement is retained and made available for inspection by the NASD;

(d) Records reflecting payments to Foreign Associates are maintained on the member's books and actual agreements between the member and Foreign Associates are available for inspection by the NASD; and

(e) The confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

Further, in the event of the termination of the employment of a Foreign Associate, the member must notify the Corporation immediately by filing a notice of termination as required by Article IV, Section 3 of the By-Laws.

# NASD NOTICE TO MEMBERS 94-7

## SEC Approves New NASD Rule Relating To The Obligations And Responsibilities Of Introducing And Clearing Firms

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

On January 24, 1994, the Securities and Exchange Commission (SEC) approved new Section 47, Article III, of the Rules of Fair Practice that requires members entering into clearing or carrying agreements to specify the obligations and supervisory responsibilities of both the introducing and clearing firm. The text of the amendment, which takes effect April 15, 1994, follows the discussion below.

### Background And Description Of The Amendment

On January 24, 1994, the SEC approved an amendment adding a new section to Article III of the Rules of Fair Practice that requires members entering into clearing or carrying agreements to specify the obligations and supervisory responsibilities of both the introducing and clearing firm.

The NASD does not currently require its members who enter into clearing or carrying agreements to specify the respective functions and responsibilities of each party. New York Stock Exchange (NYSE) Rule 382 and American Stock Exchange (Amex) Rule 400, which are identical, require respective exchange members to submit carrying agreements to the exchange for approval before becoming effective and to identify the party responsible for certain enumerated functions.

At the time of SEC consideration of the NYSE proposed rule relating to the respective obligations of introducing and clearing firms, the NASD commented to the SEC that permitting certain functions to be allocated to the introducing firm may result in compliance failures and violations resulting from the inability of the introducing member

to adequately perform such functions. The NASD urged, and the SEC noted in its approval of NYSE Rule 382, that firms should not be permitted to avoid obligations or responsibilities that would otherwise be theirs under the securities laws. The NASD believes that the new rule reflects those principles.

### Allocation Of Functions

The first seven provisions of new Subsection (a) of new Section 47, Article III, of the Rules of Fair Practice mirror the provisions of NYSE Rule 382(b) and require that all clearing or carrying agreements entered into by any member specify, at a minimum, the respective functions and responsibilities of the parties to the agreement with regard to: opening and approving customer accounts, extending credit, keeping books and records, receiving and delivering funds and securities, safeguarding funds and securities, preparing confirmations and statements, and accepting orders and executing transactions.

Subsection (a)(8) requires the agreement to address whether, for purposes of the Securities Investor Protection Act and the financial responsibility rules adopted under the Securities Exchange Act of 1934, customers are customers of the clearing member. If an introducing member intends to qualify for lower net capital, the clearing or carrying agreement must clearly state that the customers are customers of the clearing member. Absent such a provision, the SEC net capital rule classifies the introducing member as a firm in possession of customer funds or securities subject to higher net capital requirements. Subsection (a)(9) requires designation of who notifies the customer of the agreement as required under Subsection (d) of the

rule, discussed below. Finally, Subsection (a) provides that its requirements do not apply to clearing or carrying agreements if either party to the agreement is also subject to a comparable rule of a national securities exchange.

Regardless of the procedural requirements concerning submission of the clearing agreement to the NASD (discussed below), as of the effective date of the new rule, all clearing agreements to which an NASD member is a party must comply with the substantive provisions of Subsection (a). Thus, any agreement not currently in compliance with Subsection (a) must either be amended or terminated on or before the effective date of the new rule.

### Filing Requirements

Subsections (b) and (c) impose *filing* requirements for new agreements and amendments to agreements. Subsection (b) requires any clearing member designated to the NASD for compliance oversight to file with the NASD Compliance Department, 1735 K Street, NW, Washington, DC 20006-1500 for *review and approval* (1) any new clearing or carrying agreement entered into with an introducing member, and (2) any amended clearing or carrying agreement where any item enumerated in Subsections (a)(1) through (a)(9) has been revised.

Subsection (c) requires any introducing member designated to the NASD for compliance oversight to file with the introducing member's local NASD district office for *review only* (1) any new clearing or carrying agreement entered into with a clearing member, and (2) any amended clearing or carrying agreement entered into with a clear-

ing member designated to another self-regulatory organization for oversight where any item enumerated in Subsections (a)(1) through (a)(9) has been revised. The submission by the introducing firm to its NASD district office either a new or amended agreement for review presumes that such agreement has already been submitted to the NASD or a national securities exchange by the clearing firm and approved.

### Customer Notification

Subsection (d) requires each customer whose account is introduced on a fully disclosed basis to be notified of the existence of the clearing agreement at the time the account is opened. As set forth above, Subsection (d)(9) requires that the agreement specify whether the clearing or introducing member will be responsible for compliance with this provision.

\* \* \* \* \*

The amendment takes effect April 15, 1994. Questions regarding this Notice should be directed to Elliott R. Curzon, Senior Attorney, (202) 728-8451, and Robert J. Smith, Attorney, (202) 728-8176, at the Office of General Counsel.

### Text Of New Section 47, Article III, Of The Rules Of Fair Practice Regarding Obligations And Responsibilities Of Clearing And Introducing Firms

\* \* \* \* \*

(Note: New language is underlined.)

#### Clearing Agreements

Sec. 47.

(a) All clearing or carrying agreements entered into by a member, except where any party to the agreement is also subject to a comparable rule of a national securities exchange, shall specify the respective functions and responsibilities of each party to the agreement and shall, at a minimum, specify the responsibility of each party with respect to each of the following matters:

(1) opening, approving and monitoring customer accounts;

(2) extension of credit;

(3) maintenance of books and records;

(4) receipt and delivery of funds and securities;

(5) safeguarding of funds and securities;

(6) confirmations and statements;

(7) acceptance of orders and execution of transactions;

(8) whether, for purposes of the Securities and Exchange Commission's financial responsibility rules adopted under the Securities Exchange Act of 1934, as amended, and the Securities Investor Protection Act, as amended, and regulations adopted thereunder, customers are customers of the clearing member; and

(9) the requirement to provide customer notification under Subsection (d) of this Section.

(b) Whenever a clearing member designated to the NASD for oversight pursuant to Section 17 of the Securities Exchange Act of 1934, as amended, or a rule of the Securities and Exchange Commission adopted thereunder, amends

any of its clearing or carrying agreements with respect to any item enumerated in Subsections (a)(1) through (a)(9) of this Section or enters into a new clearing or carrying agreement with an introducing member, the clearing member shall submit the agreement to the NASD for review and approval.

(c) Whenever an introducing member designated to the NASD for

oversight pursuant to Section 17 of the Securities Exchange Act of 1934, as amended, or a rule of the Securities and Exchange Commission adopted thereunder, amends its clearing or carrying agreement with a clearing member designated to another self-regulatory organization for oversight with respect to any item enumerated in Subsections (a)(1) through (a)(9) of this Section or enters into a new

clearing agreement with another clearing member, the introducing member shall submit the agreement to its local NASD district office for review.

(d) Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of his account of the existence of the clearing or carrying agreement.

# NASD NOTICE TO MEMBERS 94-8

## SEC Approves NASD Rules Governing Access To And Use Of The OTC Bulletin Board Service

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

On January 5, 1994, the Securities and Exchange Commission (SEC) approved a NASD rule change codifying existing requirements for access to and use of the OTC Bulletin Board® service (OTCBB).<sup>1</sup> This codification will provide a ready reference to OTCBB rules and operational requirements in a discrete section of the *NASD Manual*. Among the items covered in the codification are: definitions of OTCBB eligible securities, procedures for initiating quotation entries, and limited exemptions from Securities Exchange Act Rule 15c2-11. The rules are effective immediately because they simply restate various NASD rule changes approved earlier by the SEC. The text of the codified rules follows the discussion.

### Background And Description Of Rule Change

The SEC recently approved a NASD rule change (File No. SR-NASD-93-56) codifying all existing requirements governing access to and use of the OTCBB. Since the OTCBB was launched as a pilot program on June 1, 1990, the NASD has adopted several operational and regulatory requirements affecting OTCBB users. Until now, these requirements had never been compiled and published in a discrete segment of the *NASD Manual*. However, these requirements were contained in the following NASD rule filings that the SEC had approved: (1) File No. SR-NASD-88-19 approved in Release No. 34-27975 (May 30, 1990) and containing the basic operational requirements for the OTCBB pilot; (2) File No. SR-NASD-90-37, approved in Release No. 34-28404 (August 31, 1990) and expanding by 30 minutes the quotation-update

period applicable to market makers in foreign/ADR issues; (3) File No. SR-NASD-91-12, approved in Release No. 34-29261 (May 31, 1991) and establishing a firmness requirement for all priced bids/offers in domestic over-the-counter (OTC) equity securities; (4) File No. SR-NASD-91-38, approved in Release No. 34-29616 (August 27, 1991) and establishing the parameters for an inside bid/ask calculation<sup>2</sup>; (5) File No. SR-NASD-92-48, approved in Release No. 34-32647 (July 16, 1993) and establishing real-time trade-reporting requirements for OTC equity securities; and (6) File No. SR-NASD-93-17 approved in Release No. 34-32570 (July 1, 1993) and revising minimum quotation size requirements applicable to OTCBB market makers.

This codification restates the requirements contained in the foregoing rule filings and will be published in the *NASD Manual* beginning at paragraph 2571. Because they are substantially the same as the earlier SEC-approved NASD rule changes, the codified OTCBB rules are deemed to be immediately effective. Generally, this codification should facilitate

<sup>1</sup> SEC Release No. 34-33433 (January 5, 1994) 59 FR 1772 (January 12, 1994).

<sup>2</sup> For any equity security quoted in the OTCBB, an inside bid/ask calculation (i.e., the highest bid and lowest offer being displayed by market makers registered in a particular security) is available only if the security has at least two registered market makers, each displaying a priced bid and offer. If additional market makers are displaying either one- or two-sided quotations, those entries are also factored into the inside calculation. On the other hand, if the basic requirement of two market makers is not satisfied, an indication is generated denoting that no inside calculation is available.

NASD administration of, and member firm compliance with, the operational requirements that are unique to the OTCBB.

Following the text of the codified OTCBB rules is a supplemental item reflecting the SEC's recent grant of limited exemption from Rule 15c2-11 under the Securities Exchange Act of 1934. Although the SEC granted this exemption on December 20, 1993, the procedures for its implementation could not be finalized until February 1994. (A separate mailing has been sent to NASD member firms on those procedures.) This exemption is intended to facilitate expanded usage of the OTCBB by market makers desiring to reflect market making positions in a real-time quotation medium. In part, the SEC's grant of the exemption was premised on the initiation of real-time trade reporting for OTC equities last December 20th. The SEC has attached certain conditions that must be satisfied to rely on the new exemption. These conditions are highlighted in the supplement to the codified OTCBB rules reprinted below.

Questions regarding this Notice may be directed to Michael J. Kulczak, Associate General Counsel, at (202) 728-8811 or Market Operations at (203) 375-9609.

(Note: New language is underlined.)

## **OTC Bulletin Board® Service Rules**

### **Applicability**

Section 1. These rules shall be known as the "OTC Bulletin Board Rules" and govern the operation and use of the OTC Bulletin Board® service ("OTCBB" or "Service") by broker-dealers admitted to membership in the National Association of

Securities Dealers, Inc. ("NASD") and their associated persons. Unless otherwise indicated, the requirements of the OTC Bulletin Board Rules are in addition to the requirements contained in the NASD's Rules of Fair Practice, By-Laws, Schedules to the By-Laws, and Rules of Practice and Procedure for the Automated Confirmation Transaction Service.

### **Operation of the Service**

Section 2. The OTCBB provides an electronic quotation medium for subscribing members to reflect market making interest in OTCBB-eligible securities. Subscribing market makers can utilize the Service to enter, update, and display their proprietary quotations in individual securities on a real-time basis. Such quotation entries may consist of a priced bid and/or offer; an unpriced indication of interest (including "bid wanted" or "offer wanted" indications); or a bid/offer accompanied by a modifier to reflect unsolicited customer interest. A subscribing market maker can also access the proprietary quotations that other firms have entered into the Service along with highest bid and lowest offer (i.e., an inside bid-ask calculation) in any OTCBB-eligible security with at least two market makers displaying two-sided markets.

### **OTCBB-Eligible Securities**

Section 3. The following categories of securities shall be eligible for quotation in the Service:

- (a) any domestic equity security that is not listed on The Nasdaq Stock Market<sup>SM</sup> or a registered national securities exchange in the U.S.; and
- (b) any foreign equity security or American Depositary Receipt

("ADR") that is not listed on The Nasdaq Stock Market or a registered national securities exchange in the U.S.

### **Requirements Applicable to Market Makers**

Section 4. Market-maker participation in the OTCBB is voluntary and open to any NASD member firm that: satisfies the financial/operational requirements applicable to member firms engaged in over-the-counter market making; subscribes to Level 3 Nasdaq Workstation service; and demonstrates compliance with (or qualifies for an exception from) Rule 15c2-11 [17CFR240.15c2-11] under the Securities Exchange Act of 1934 at the time of initiating (or resuming) the quotation of any OTCBB-eligible security in the Service. Section 4 of Schedule H to the NASD By-Laws sets forth the procedure for demonstrating compliance with Rule 15c2-11.

OTCBB-eligible securities that meet the frequency-of-quotation requirement for the so-called "piggyback" exception in paragraph (f)(3)(i) of Rule 15c2-11 are identified in the Service as "active" securities. A member can commence market making in any active security by registering as a market maker through a Nasdaq Workstation at the firm. In all other instances, a member must follow the procedure contained in Section 4 of Schedule H to become qualified as a market maker in a particular OTCBB-eligible security.<sup>3</sup>

#### (a) Permissible Quotation Entries

1. A member firm that has qualified as a market maker in a particular

<sup>3</sup> On February 28, 1992, the Securities and Exchange Commission granted the NASD's request to create a limited exemp-

OTCBB-eligible security may enter into the Service a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" indications) or a bid or offer accompanied by a modifier to reflect unsolicited customer interest. Every quotation entry must include the appropriate telephone number for the firm's trading desk.

2. A priced bid and/or offer entered into the Service for a domestic equity security must be firm up to the minimum quotation size specified in Section 5 of Schedule H to the NASD By-Laws. This firmness requirement applies only during normal business hours, i.e., 9:30 a.m. to 4:00 p.m. E.T.

3. A priced bid and/or offer entered into the Service for a foreign equity security or an ADR shall be non-firm.<sup>4</sup> Moreover, a market maker is only permitted to update quotation entries in such securities twice daily, i.e., once between 8:30 a.m. and 9:30 a.m. E.T., and once between noon and 12:30 p.m. E.T.<sup>5</sup>

#### (b) Voluntary Termination of Registration.

A market maker can voluntarily terminate its registration in an OTCBB-eligible security by withdrawing its quotations in that security from the Service. The firm may re-register to quote the security by satisfying the requirements specified above in this Section.

### **Transaction Reporting**

Section 5. Member firms that effect transactions in OTCBB-eligible securities shall report them pursuant to the requirements of Part XII of Schedule D to the NASD By-Laws.

### **Addendum**

By letter dated December 20, 1993, the Securities and Exchange Commission granted the NASD's request for a limited exemption from Rule 15c2-11 under the Securities Exchange Act of 1934 ("Exchange Act") for broker-dealers that publish or submit quotations for publication in the OTC Bulletin Board ("OTCBB") Service for certain over-the-counter ("OTC") OTC equity securities. This exemption is not available for American Depositary Receipts or OTC equities issued by a foreign private issuer, within the meaning of Exchange Act Rule 3b-4. Regarding domestic OTC equities, the exemption is available to a broker-dealer, subject to the following conditions at the time such broker-dealer submits or initiates quotations in the OTCBB:

1) The security is eligible for piggybacking pursuant to paragraph (f)(3) of Rule 15c2-11 in another interdealer quotation system;

2) A broker-dealer relying upon this exemption must itself have published quotations in the security in that interdealer quotation system on at least 12 business days during the preceding 30 calendar days, with no more than four consecutive business days without quotations;

3) The issuer of the security is not the subject of bankruptcy proceedings;

4) The issuer of the security is not delinquent in any of its reporting obligations under the Exchange Act or rules thereunder, if subject to Section 13(a) or 15(d) of the Exchange Act; and

5) If at any time the Commission subsequently suspends trading in the domestic OTC equity security pursuant to Section 12(k) under the Exchange Act, no broker or dealer

will initiate or resume quotations in that security in the OTCBB unless the broker/dealer complies with

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tion from Rule 15c2-11 that permits a broker-dealer to publish in or submit to a quotation medium quotations for a security immediately after such security is no longer authorized for quotation in The Nasdaq Stock Market, without having information specified by the Rule. This exemption is only available if all the following conditions are satisfied:

(1) the security's removal was attributable solely to the issuer's failure to satisfy the revised maintenance standards approved in Release No. 34-29638 (August 30, 1991), 56 FR 44108 (September 6, 1991);

(2) the security must have been quoted continuously in The Nasdaq Stock Market during the thirty calendar days preceding its delisting, exclusive of any trading halt not exceeding one day to permit the dissemination of material news concerning the security's issuer;

(3) the issuer must not be the subject of bankruptcy proceedings;

(4) the issuer must be current in its reporting pursuant to Section 13(a) or 15(d) of the Exchange Act; and

(5) a broker-dealer relying upon this exemption must have been a market maker registered with the NASD in the security during the thirty day period preceding its removal from The Nasdaq Stock Market.

<sup>4</sup> The non-firm or indicative nature of a priced entry in a foreign or ADR issue is specifically identified on the montage of market maker quotations accessible through the Nasdaq Workstation service for this subset of OTCBB-eligible securities.

<sup>5</sup> Examples of entries that would be considered an update include a market maker inserting a new, non-firm priced quotation, substituting an unpriced indication for a non-firm priced entry, or an initial registration without a price.

# NASD NOTICE TO MEMBERS 94-9

## SEC Approves New NASD Rule Governing The Pricing Of Open Orders

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

On January 6, 1994, the Securities and Exchange Commission (SEC) approved an amendment adding a new Section 46 to the NASD Rules of Fair Practice that requires members holding open orders to adjust the price and the size, if necessary, of the order by the amount of any dividend, payment, or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution, or ex-interest. The text of the amendment, which takes effect May 16, 1994, follows the discussion below.

### Background And Description Of The Amendment

On January 6, 1994, the SEC approved an amendment to the Rules of Fair Practice to require members holding open orders of securities to adjust the price and the size, if necessary, of the order by the amount of any dividend, payment or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution, or ex-interest. Open orders, also known as "good 'til cancelled," "limit," or "stop limit" orders, are orders to buy or sell that remain in effect until they are executed or canceled, or that expire.

The NASD believes it is important to adopt a standard for business practices and ethics in dealing with customer open orders. In the absence of an NASD rule governing open orders, members adjust open orders according to their own procedures, unless the rules of another self-regulatory organization apply. These procedures can vary from automatic adjustment, automatic withdrawal, reconfirmation of the order with the customer, or no action. Further, the procedures may vary among orders entered at the

same firm because the orders are routed to different firms for execution. As a result, investors may find that their open orders are executed without adjustment on or after the ex-date at a higher cost per share than they intended based on their valuation of the security.

Additionally, the fact that some members might, and others might not, adjust open orders on ex-dates creates confusion for customers, which is inconsistent with the high quality and confidence the NASD has sought to promote in The Nasdaq Stock Market<sup>SM</sup> and the over-the-counter market. The NASD believes that the rule sets forth a unitary and predictable method of handling the adjustment of open orders, eliminates the potential unfairness associated with the failure to adjust such orders, and provides consistency in the adjustment of open orders for NASD members that are also members of the stock exchanges.

*It is important that members advise their customers in advance how open orders will be treated as of the effective date of the rule so that customers have sufficient notice to make a decision on their part to maintain or cancel existing open orders or to enter new open orders.*

Subsection (a) of the new Rule of Fair Practice requires a member holding an open order from a customer or broker/dealer to adjust the price of the order by the amount of any dividend, payment, or other distribution on the ex-date, prior to executing, or permitting the execution of, the order. Subsections (a)(i) through (a)(iii) specify the adjustment procedures for certain situations.

Subsection (a)(i) provides that in the case of a cash dividend or distribution, the price of the order shall

be reduced by subtracting the dollar amount of the cash dividend or distribution from the price of the order and rounding the result to the next lower 1/8 of a dollar. For example, if an issuer declares a \$.30 per share dividend, the price of an investor's open order to purchase 100 shares of that security at \$10 per share would be reduced by \$.30 on the ex-dividend date, which, when rounded down to the nearest variation in trading units, results in a price of \$9-5/8 per share. Thus, the investor's initial valuation at \$10 per share before the ex-date is proportionately maintained by revising the order to \$9-5/8 per share after the ex-date, reflecting the diminished post-dividend value of the security.

Subsection (a)(ii) provides that for stock dividends or splits the price of the order shall be reduced by rounding the dollar value of the dividend distribution or split to the next higher 1/8 of a dollar and subtracting that amount from the price of the order. To determine the dollar value per share of the distribution or split, multiply the adjusted value per share after the dividend by the percentage increase in shares. For example, for an open order @ \$10 per share and a 3 for 2 distribution, the dollar value per share of the dividend is determined by:  $(\$10 \times 2) \div 3 \times (\% \text{ increase in shares}) = \$20 \div 3 \times 1/2 = \$6.67 \times .50 = \$3.33$ .

When rounded to the next higher 1/8 of a share, \$3.33 is \$3-3/8 per share. Then, subtracting \$3-3/8 from \$10 per share, the resulting price is \$6-5/8 per share. Using another example, for an open order @ \$10 per share and a 5 for 3 distribution, the dollar value per share of the distribution is first determined by:  $(\$10 \times 3) \div 5 \times (\% \text{ increase in shares}) = \$30 \div 5 \times 2/3 = \$6 \times .667 = \$4$  which, not requir-

ing rounding, is \$4 per share. Then, subtracting \$4 from \$10 per share, the resulting price is \$6 per share.<sup>1</sup>

Subsection (a)(ii) also provides for increasing the size of the order to maintain its proportionality with the dollar amount of the original order taking into account the price reduction. This is accomplished by multiplying the number of shares of the original order by the number of shares to be distributed for each share. The result is then divided by the number of shares to be exchanged for new shares in the distribution and rounded to the next lower round lot. For example, for a 100 share open order and a 3 for 2 distribution, the resulting number of shares is:  $(100 \times 3) \div 2 = 150$  shares, which when rounded down to the next lower round lot equals 100 shares, the size of the original order. For a 1,000-share open order and a 3 for 2 distribution the resulting number of shares is:  $(1,000 \times 3) \div 2 = 1,500$  shares, which is equal to a round lot and therefore does not require rounding. Finally, for a 1,000-share open order and a 5 for 3 distribution the resulting number of shares is:  $(1,000 \times 5) \div 3 = 1,666$  shares, which when rounded down to the next lower round lot equals 1,600 shares.

Subsection (a)(iii) provides that when a dividend is payable at the option of the stockholder in either cash or securities, the order shall be reduced by the dollar value of the cash or securities, whichever is greater, according to the formulas in Subsections (a)(i) and (a)(ii) of the rule. However, if the stockholder opts for securities, the size of the order shall be increased according to the formula in Subsection (a)(ii).

Subsection (b) requires the member to reconfirm an open order before execution if the value of the distribution cannot be determined.

Subsection (c) requires cancellation of open orders where the security is the subject of a reverse split.

Subsection (d) defines the term "open order" as an order to buy that remains in effect for any period of time until it is executed or canceled or it expires, including, but not limited to, orders marked "good 'til canceled," "limit," or "stop limit."

Finally, Subsection (e) exempts: open orders subject to the rules of a registered national securities exchange; open stop orders to buy; and open sell orders as well as orders marked "do not reduce" or "do not increase." Open stop orders to buy and open sell orders are exempted because the assumptions underlying such orders may not include the value of an upcoming dividend and the combination of stop and limit prices in such an order makes the effect of repricing unpredictable. Orders marked "do not reduce" or "do not increase" are methods for customers to state their awareness of the implications of not adjusting the order on the ex-date.

The amendment takes effect May 16, 1994. Questions regarding this Notice should be directed to Elliott R. Curzon, Senior Attorney, (202) 728-8451, and Robert J. Smith, Attorney, (202) 728-8176, at the Office of General Counsel.

### **Text Of New Section To Article III To The Rules Of Fair Practice Regarding Adjustment Of Open Orders**

(Note: New text is underlined.)

\* \* \* \* \*

<sup>1</sup> Notice to Members 93-61 (September 1993), publishing the proposed rule change for vote, included a suggested alternative for calculating the price adjustment.

## Adjustment of Open Orders

Sec. 46.

(a) A member holding an open order from a customer or another broker/dealer shall, prior to executing or permitting the order to be executed, reduce, increase or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest, as follows:

(i) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower 1/8 of a dollar;

(ii) In the case of a stock dividend or split, the price of the order shall

be reduced by rounding the dollar value of the stock dividend or split to the next higher 1/8 of a dollar and subtracting that amount from the price of the order; provided, further, that the size of the order shall be increased by (1) multiplying the size of the original order by the numerator of the ratio of the dividend or split, (2) dividing the result by the denominator of the ratio of the dividend or split, and (3) rounding the result to the next lower round lot; and

(iii) In the case of a dividend payable in either cash or securities at the option of the stockholder, the price of the order shall be reduced by the dollar value of the cash or securities, whichever is greater, according to the formulas in (a)(i) or (a)(ii), above; provided, that if the stockholder opts for securities, the size of the order shall be increased pursuant to the formula in (a)(ii), above.

(b) If the value of the distribution cannot be determined, the member shall not execute or permit such order to be executed without reconfirming the order with the customer.

(c) If a security is the subject of a reverse split, all open orders shall be cancelled.

(d) The term "open order" means an order to buy or an open stop order to sell, including but not limited to "good 'til cancelled", "limit" or "stop limit" orders which remain in effect for a definite or indefinite period until executed, cancelled or expired.

(e) The provisions of this rule shall not apply to orders: 1) governed by the rules of a registered national securities exchange; 2) marked "do not reduce"; 3) marked "do not increase;" (4) open stop orders to buy; or (5) open sell orders.

# NASD NOTICE TO MEMBERS 94-10

## Members Urged To Ensure Timely, Accurate, And Complete Trading Data Submissions

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

Schedule D and Schedule H of the NASD By-Laws require members to respond to regulatory requests for trading data by using a standardized automated format. In *Notice to Members 93-26* (April 1993), members were urged to take immediate action to ensure the timeliness, accuracy, and completeness of trading data submitted through the NASD electronic blue-sheet system in response to regulatory requests. This Notice seeks to clarify and reinforce members' responsibilities for the timely, accurate, and complete electronic submission of trading data, and to advise members that continued failure to do so could result in disciplinary action. This reporting obligation extends to all requests for trading data, including those initiated by the NASD district offices, and its Market Surveillance and Enforcement Departments.

### Background

Since February 12, 1989, Part V, Section 4 of Schedule D and Section 3 of Schedule H to the NASD By-Laws have required members to submit trading data to the NASD in a standardized, automated format when responding to NASD regulatory requests. The NASD employs the same automated format developed jointly with the New York Stock Exchange (NYSE), the Securities Industry Association (SIA), and the Securities and Exchange Commission (SEC).

### Member Responsibilities

As previously stated in NASD *Notices to Members 88-104, 89-17, 89-70, and 93-26*, it is the responsibility of both the submitting firm

and the introducing firm to ensure that timely, accurate, and complete trading data are submitted to the NASD, including those required by the district offices, Market Surveillance Department, and Enforcement Department. Although a clearing firm may submit blue-sheet data for an introducing firm, there is a shared responsibility for the complete and accurate submission of trading data that lies with both the introducing firm and the clearing firm.<sup>1</sup> Likewise, member firms using service bureaus are responsible for submissions made for them by the service bureau with regard to timely, accurate, and complete automated trading data. Simply stated, members cannot avoid their regulatory and compliance obligations because another entity is making the data transmission for them.

Complete, accurate, and timely trading data properly formatted are crucial to the NASD investigative process. Continued failure to meet these requirements may result in disciplinary action by the District Business Conduct or Market Surveillance Committees.

### Exemptions

While it is possible for a member to petition the NASD for an exemption from filing in the standardized,

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<sup>1</sup>Notwithstanding the fact that an introducing firm is not always notified of a blue-sheet request to its clearing firm for the trading records of the introducing firm, the introducing firm has the ultimate responsibility for the timely, accurate, and complete submission of the response. Accordingly, the NASD will notify the introducing firm of any problems it has in receiving data from the clearing firm and expects that the introducing firm will take the necessary steps to ensure that the data are submitted in the proper manner.

automated format, approvals are given on a very limited case-by-case basis. In considering such exemptions, the NASD reviews the nature of the firm requesting the exemption, including but not limited to, its back-office capabilities, the scope, complexity, and nature of the information requested and the

number of requests for information the firm routinely receives. The submission of manually executed trading data without prior written exemption is contrary to NASD rules and therefore will not be accepted and may lead to the initiation of disciplinary action.

Questions regarding NASD procedures and requirements for submitting automated trading data including requests for exemptions should be directed to Cindy Foster, Systems Administrator, NASD Market Surveillance, 9513 Key West Avenue, Rockville, Maryland 20850, (301) 590-6544.

# NASD NOTICE TO MEMBERS 94-11

## Special Registration Review Surcharge Takes Effect March 1, 1994

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

Beginning March 1, 1994, the NASD will assess an \$85 surcharge on all initial and transfer Form U-4 filings that require a Special Registration Review (SRR) of information reportable on Page 3 of this Form.

### Background

During 1993, the NASD Finance Committee formed the Rate Review Subcommittee to review its fee and assessment structure and align, wherever possible, revenues with the cost of providing services to members. This Subcommittee recommended to the Finance Committee, and the NASD Board approved, an \$85 surcharge on all initial and transfer Form U-4 filings that require a special review of information reportable on Page 3 of Form U-4.

This surcharge is to offset the cost of performing detailed reviews of disclosure information as part of Central Registration Depository (CRD) processing as well as to maintain the CRD disciplinary data

base. This review and maintenance includes processing Forms U-4 and U-5, as well as amendments thereto, processing criminal actions received under the fingerprint program, and processing disciplinary actions taken by states, self-regulatory organizations, and the Securities and Exchange Commission. In addition, CRD provides information regarding disclosure to regulatory participants, including documentation and analytical reports used in their registration and enforcement functions.

The \$85 surcharge will take effect on March 1, 1994, for all initial and transfer filings that either have a "Yes" answer to Item 22 of Form U-4, or for which information exists in the CRD data base that would require a "Yes" answer to Item 22 regardless of how it is answered. Form U-4 amendments and all Form U-5 filings will continue to be processed without an additional charge for an SRR.

Questions regarding this Notice may be directed to the NASD Member Services Phone Center at (301) 590-6500.

# NASD NOTICE TO MEMBERS 94-12

Nasdaq National Market  
Additions, Changes,  
And Deletions As Of  
January 27, 1994

## Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

As of January 27, 1994, the following 43 issues joined the Nasdaq National Market<sup>®</sup>, bringing the total number of issues to 3,499:

Symbol	Company	Entry Date	SOES <sup>SM</sup> Execution Level
ALMIW	Alpha Microsystems (Wts Exp 9/1/98)	1/3/94	500
HALL	Hallmark Capital Corp.	1/3/94	200
SECP	Security Capital Corporation	1/3/94	1000
FFLC	FFLC Bancorp, Inc.	1/4/94	1000
OETA	Odetics, Inc. (CI A)	1/4/94	200
OETB	Odetics, Inc. (CI B)	1/4/94	200
TFCE	TFC Enterprises, Inc.	1/4/94	500
ROBV	Robotic Vision Systems, Inc.	1/5/94	1000
SOPN	First Savings Bank of Moore County, Inc. SSB	1/6/94	200
HARB	Harbor Federal Savings Bank	1/6/94	500
SPKL	Spreckels Industries, Inc. (CI A)	1/6/94	500
FFFL	Fidelity Federal Savings Bank of Florida	1/7/94	500
CRAR	Crescent Airways Corp.	1/10/94	500
CRARW	Crescent Airways Corp. (Wts Exp 1/9/98)	1/10/94	500
NOBH	Nobility Homes, Inc.	1/10/94	200
WSTR	Westerfed Financial Corporation	1/10/94	500
UTCIW	Uniroyal Technology Corporation (Wts Exp 6/1/2003)	1/14/94	200
AIPNR	American International Petroleum Corporation (Rgts)	1/17/94	1000
AIPWV	American International Petroleum Corporation (Wts CI A WI Exp 3/1/95)	1/17/94	1000
CHFD	Charter Federal Savings Bank	1/18/94	500
MFIC	Microfluidics International Corp.	1/18/94	500
PPLS	Peoples Bank Corporation of Indianapolis (Non-voting Com)	1/18/94	500
ULTK	Ultrak, Inc.	1/18/94	500
VENGF	Venezuelan Goldfields Ltd.	1/18/94	200
ZOLT	Zoltek Companies, Inc.	1/18/94	500
GLUX	Great Lakes Aviation, Ltd.	1/20/94	500
SHFLW	Shuffle Master, Inc. (Wts Exp 1/20/98)	1/20/94	500
CLDN	Celadon Group, Inc.	1/21/94	200
TRUX	Deflecta-Shield Corporation	1/21/94	500
TFCO	Tufco Technologies, Inc.	1/21/94	500
CMSB	Commonwealth Federal Savings Bank	1/24/94	500
SHFL	Shuffle Master, Inc.	1/24/94	1000
CMGI	CMG Information Services, Inc.	1/25/94	500
GAME	Gametek, Inc.	1/25/94	1000
GPPV	Graff Pay-Per-View, Inc.	1/25/94	500
HARS	Harris Savings Bank	1/25/94	1000

Symbol	Company	Entry Date	SOES Execution Level
HILI	Hilite Industries, Inc.	1/25/94	200
JTAX	Jackson Hewitt Inc.	1/25/94	500
LATS	L.A. T Sportswear, Inc.	1/25/94	1000
TEAM	National TechTeam, Inc.	1/25/94	500
BTIOF	Battery Technologies, Inc.	1/26/94	200
HUGO	Hugoton Energy Corporation	1/26/94	200
TPMI	Personnel Management, Inc.	1/26/94	200

### Nasdaq National Market Symbol And/Or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since December 28, 1993:

New/Old Symbol	New/Old Security	Date of Change
VCTR/PACN	VECTRA Technologies, Inc./Pacific Nuclear Systems, Inc.	1/7/94
ZOOM/ZOOMF	Zoom Telephonics, Inc./Zoom Telephonics, Inc.	1/10/94
EPURW/EPURW	Enviropur Waste Refining & Technology, Inc. (Wts Exp 12/31/94)/Enviropur Waste Refining & Technology, Inc. (Wts Exp 12/31/93)	1/18/94
VFFC/VFSB	Virginia First Financial Corp./Virginia First Savings Bank, FSB	1/18/94
FTTR/FTTRV	Fretter, Inc./Fretter, Inc. (New WI)	1/19/94
USLM/SHER	United States Lime & Minerals, Inc./Scottish Heritable	1/27/94

### Nasdaq National Market Deletions

Symbol	Security	Date
KEND	Kendall International, Inc.	1/5/94
SISC	Stewart Information Services	1/5/94
AFTIQ	American Film Technologies, Inc.	1/6/94
SCOM	SCS/Compute, Inc.	1/6/94
STRSQ	Sprouse-Reltz Stores, Inc.	1/10/94
OSMO	Osmonics, Inc.	1/11/94
EFSB	Elmwood Bancorp, Inc.	1/12/94
WLPI	Wellington Leisure Products, Inc.	1/13/94
BOSP	Bank of San Pedro	1/17/94
BNKS	First United Bank Group, Inc.	1/17/94
QPON	Seven Oaks International, Inc.	1/17/94
VCRTQ	VideOcart, Inc.	1/18/94
ADLI	American Dental Technologies, Inc.	1/19/94
CANDW	Candies, Inc. (Wts Exp 1/18/94)	1/19/94
QRST	Quantum Restaurant Group, Inc.	1/21/94
SBLIW	Staff Builders, Inc. (Wts)	1/21/94
UFBK	United Federal Bancorp, Inc.	1/24/94

Questions regarding this Notice should be directed to Mark A. Esposito, Supervisor, Market Listing Qualifications, at (202) 728-8002. Questions pertaining to trade reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

# BOARD BRIEFS

## Actions Taken By The NASD Board Of Governors In January

• **President's Report**—The year 1993 was outstanding by any measure for the NASD and The Nasdaq Stock Market<sup>SM</sup>. During the year, The Nasdaq Stock Market set records in its Composite Index, dollar and share trading volume, foreign-based companies' share activity, initial and secondary public offerings, and the number of new listings of non-U.S.-based companies. The Nasdaq Composite<sup>SM</sup> reached its all-time high of 787.42 on October 15, up 110.47 points, or 16.3 from year-end 1992. At year-end, the Composite stood at 776.80, up 99.85 points, or 14.75 percent for the year. Since then, the Composite has established several new highs in January.

Share volume in 1993 reached 66.5 billion, 37 percent above last year's total, the previous record. Average daily share volume was 263.0 million versus 190.8 million last year—a 37.9 percent gain or 72.2 million shares per day. On October 13, Nasdaq hit an all-time high in share volume of 415.4 million shares.

Dollar volume broke the \$1 trillion mark in October and reached \$1.35 trillion by year-end, nearly 51.6 percent above the 1992 total and the previous record. Average daily dollar volume reached an all-time high in 1993: \$5.3 billion daily, compared to \$3.5 billion daily last year. Perhaps more significantly, Nasdaq market capitalization reached \$791.2 billion this year, \$176 billion above year-end 1992.

Through the end of the year, initial public offerings (IPOs) set a new record with the 520 offerings in 1993, reaching \$16.38 billion in dollar value, 46.1 percent above the 1992 record of \$11.21 billion. Secondary public offerings (SPOs) also set records, with 398 SPOs raising \$16 billion.

This performance was shared by most industry participants, with the Securities Industry Association estimating the securities industry generated revenues in 1993 of \$72 billion and pre-tax profits in the \$8.5 to \$9 billion range, up from \$6.5 billion in 1992. Although always welcome, financial success and positive quantitative results can lead to a false sense of security. In fact, a number of qualitative issues will drive a good part of the NASD agenda in 1994. These issues include investor confidence, quality of markets, recidivist rule violators, arbitration, and litigation reform.

Despite the market's overall performance in recent years, public investors remain skeptical as to the ethics and business practices of sales professionals in the securities business. Contributing to this investor concern are the diversity of sales-practices from firm to firm, product complexity, market volatility, the well-publicized excesses of the '80s and subsequent well-publicized enforcement actions, more effective and timely regulatory actions when problems arise, and the generally litigious nature of American society.

In response, the NASD is working with other self-regulatory organizations (SROs) to address investor skepticism by vigorously enforcing the rules and regulations against the relatively small number of registered representatives who violate the public's trust. The NASD will also expand its efforts directed at member education with emphasis on the continuing education initiative endorsed by the Board and now under development by a securities industry council. These educational efforts will also extend to investor understanding of market operation and regulation, including possible use of The Nasdaq Stock Market advertising

program to accomplish this goal.

Improving market quality for the benefit of investors is a continuous process that requires the total commitment of all participants. The emphasis in the near future will be on those issues that primarily affect investors, such as, limit-order protection, market-maker standards, narrowing spreads, and excessive sales charges. In a related area, the NASD will seek to expand the automation of the other markets it is charged with regulating, including the debt markets, over-the-counter equity market, private placement market, and direct participation market.

The NASD will also step up efforts to target individuals with disciplinary histories who continue to place customers, employer members, and the securities industry generally in jeopardy as a result of their flagrant disregard for securities laws and NASD rules and regulations. In this regard, the NASD will enhance its automated tracking of these persons, members will be encouraged to better understand their supervisory responsibilities relative to such employees, and the NASD will work to support legislation that would give broker/dealers qualified immunity from civil liability for providing factual Form U-5 disclosures when terminating individuals believed to have engaged in misconduct or other egregious activity.

Finally, the NASD will continue to be actively involved in issues relating to dispute resolution, including arbitration and the more general area of litigation reform.

• **Regulation**—Article III, Section 40 of the Rules of Fair Practice, which covers private securities transactions, will apply to certain activities of registered representa-

tives/registered investment advisers (RR/RIA) under an interpretation of Section 40 adopted by the Board. Basically, the proposal would apply to any transactions in which the RR/RIA participates in the execution of the trade and for which compensation is received. More specifically, these transactions include:

—Those executed with RR/RIA participation for the customer would be subject to the full “for compensation” provisions of Section 40 and would require the member to book and supervise the transactions. This would apply whether the RR/RIA received transactionally related commission-type compensation, asset-based management fees, wrap fees, hourly fees, yearly fees, or per-plan fees.

—All other investment advisory activity, not involving transactions where the RR/RIA participates in the execution, would be subject to the notification provisions of Article III, Section 43. These activities would include specific recommendations for securities transactions that are executed by the customer through another broker/dealer or directly with a fund or any other entity.

The Board also approved changes to the Pre-Membership Interview (PMI) process to expedite the process by eliminating the need for full district committee participation while preserving the appropriate rights of appeal from an initial PMI subcommittee determination that is adverse, either in whole or part, to the applicant. The Board-approved modifications that must now be submitted to the membership for vote and to the SEC for approval would operate in the following manner:

—By eliminating the requirement

for a majority vote from the By-Law provisions, the district committees could delegate, by resolution, initial authority to a PMI subcommittee.

—By modifying Schedule C to provide that a subcommittee of the district committee, in consultation with the staff and without action by the full committee, could make the initial determination to admit a firm to full or restricted membership.

—If the PMI subcommittee denies membership or the firm disagrees with any restrictions imposed, the firm could appeal the matter to the full committee with the PMI subcommittee members abstaining from the consideration of the application.

• **Corporate Financing**—Changes to Article III, Section 44 of the Rules of Fair Practice, the corporate financing rule, received Board approval for filing with the SEC. The change to the corporate financing rule would affect filing requirements and underwriting compensation and arrangements. Currently, when calculating an appropriate filing fee for an offering, the NASD charges a fee equal to \$500 plus .01 percent of the gross dollar amount of the offering, not to exceed \$30,500. In a case where the number of securities being offered is increased by an amendment, the NASD requires an additional amount of filing fee of .01 percent of the amended gross dollar amount of the offering. However, the current rule is unclear as to the calculation of the filing fee for an amendment that increases the number of securities and decreases the public offering price without changing the gross dollar amount. To clarify the rule's application, the proposal provides that the fee calculation would be based on the .01 percent of the per share offering

price of the new or additional securities, multiplied by the number of new or additional securities being offered.

To ensure that underwriting compensation and arrangements remain fair and reasonable if modified subsequent to the effectiveness of the offering, the rule proposal would also specifically require the filing of a detailed explanation along with any documents related to the modification of any item of underwriting compensation that the NASD has reviewed and approved.

• **Member Services**—The Board approved for member comment changes to Schedule C of the NASD By-Laws to modify the treatment of foreign associates. Under the proposal, persons designated as foreign associates would have to register with the NASD but would continue to be exempt from passing a qualification examination. In addition, special requirements would apply to foreign associates who act as “finders,” (i.e., receive referral fees or transaction-related compensation based on the business of customers they direct to a member). Whenever using the service of such foreign associate “finders,” members would have to ensure that the following conditions are met:

—The member would have to assure itself that the finder need not register in the U.S. as a broker/dealer and that the compensation arrangement does not violate foreign law.

—Customers referred by the finder would have to receive a descriptive document disclosing the finder’s compensation.

—Customers would have to acknowledge to the member in writing the existence of the compensation arrangement and the

member would have to keep the acknowledgment for inspection by the NASD.

—The member would have to record payments to foreign associates and make agreements between the member and foreign associates available for inspection by the NASD.

—The confirmation of each transaction would have to indicate that a referral or finder’s fee is being paid pursuant to an agreement.

The concept of total electronic filings in the new Central Registration Depository (CRD) received Board endorsement with the Board to review and approve any final electronic access requirements for members. Electronic filing will significantly improve turnaround time. The filing software will also perform edits on the information entered by firms, precluding many common filing errors that delay registration. When effecting registration transfers, firms will access existing CRD data on a representative and only make entries for data that change or are new. Because it improves accuracy, the electronic filing process will significantly reduce data entry, rework, and telephone calls to the NASD.

• **Market Services**—The Board approved a change to the Nasdaq shareholder voting-rights standard to conform it to a proposal developed by the SEC and to apply it to the Nasdaq SmallCap Market<sup>SM</sup>. Since July 1987, The Nasdaq Stock Market has had in place for its Nasdaq National Market<sup>®</sup> issuers a shareholder voting rights rule that prohibits those companies from issuing any class of securities or taking any corporate action that would have the effect of nullifying, restricting, or disparately reducing the per share voting rights of hold-

ers of an outstanding class of common stock. While other markets take different approaches to issuer voting rights, the SEC has encouraged all markets to adopt uniform minimum voting rights requirements along the lines of the Nasdaq National Market with two primary exceptions.

The first of these would be that a company with a disparate voting-right structure that was either grandfathered as being in effect before the adoption of the new standard or created pursuant to an initial public offering would be able to issue additional shares of its “high voting” stock without violating the rule. Second, issuance of voting preferred stock would be permitted as long as it appeared that there was a reasonable business purpose for the issue and that the intent was not primarily to disenfranchise existing shareholders.

Board-approved modifications to SelectNet<sup>SM</sup> operations would permit immediate “view only” access by nonmembers to broadcast orders entered into the SelectNet service if the SEC approves. Specifically, the changes would:

—Permit nonmember viewing access to all SelectNet broadcast orders as the orders enter the system.

—Require all broadcast orders to be anonymous.

—Retain all of the current negotiation and execution functionality of SelectNet, thus only market makers may interact with orders from firms that are not market makers, and nonmembers may not negotiate with or directly execute any SelectNet order.

—Retain all of the current confidentiality and execution functional-

ity for preferred orders in SelectNet.

• **Advisory Council Recommendations**—The Advisory Council, composed of the chairmen of the District Business Conduct Committees and the Market Surveillance Committee, recently met and provided the Board following items for consideration:

—Review the NASD procedures for hearings involving large and complex formal disciplinary actions and develop proposals for alternative methods of resolving such cases.

—Issue a *Notice to Members* reiterating the responsibilities of financial and operational principals who function part time for one firm or are registered with multiple members.

—Devote resources to establish interim automated systems to analyze CRD and other regulatory data to more effectively identify registered representatives with extensive disciplinary history.

—Work closely with the SEC, Congress, and others to establish qualified immunity from civil liability for full and accurate

Form U-5 reporting.

—Develop a program to refer all matters resulting in bars and expulsions that result from NASD disciplinary proceedings involving insurance-related activities of registered persons/insurance agents to the state insurance or securities commissions.

—Increase the emphasis on the sales practices and level of supervision by members over their employees operating out of bank branch offices.

# NASD DISCIPLINARY ACTIONS

## Disciplinary Actions Reported For February

The NASD® has taken disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice; securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions will begin with the opening of business on Tuesday, February 22, 1993. The information relating to matters contained in this Notice is current as of the fifth of this month. Information received subsequent to the fifth is not reflected in this edition.

### **Firms Expelled, Individuals Sanctioned**

**Powell & Satterfield, Inc. (Little Rock, Arkansas)** and **Scott A. Welch (Registered Principal, Little Rock, Arkansas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was expelled from NASD membership and Welch was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Welch, engaged in a securities business when its net capital was below the required minimum. The findings also stated that the firm, acting through Welch, failed to prepare an accurate general ledger and an accurate computation of its net capital, and failed to maintain its general ledger, trial balances, or net capital computations. In addition, the NASD found that the firm, acting through Welch, failed to prepare accurate FOCUS Part I and II reports.

### **Firms Suspended, Individuals Sanctioned**

**Chatfield Dean & Co., Inc. (Greenwood Village, Colorado)** and **Kevin C. Grom (Registered Principal, Littleton, Colorado)** submitted an Offer of Settlement pursuant to which the firm and Grom were fined \$50,000, jointly and severally. Grom was also suspended for 90 days from association with any NASD member in any capacity and suspended for an additional 270 days immediately thereafter from association with any NASD member in a principal capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Grom, failed to execute 175 customer orders for shares of stock promptly and failed to reflect on order tickets for two public customers at the time when the firm received the orders.

The findings also stated that the firm, acting through Grom, permitted an unregistered person associated with the firm to effect at least one securities transaction for the account of a public customer before the individual's effective registration with the NASD. In addition, the NASD found that the firm, acting through Grom, failed to establish, maintain, or enforce written supervisory procedures or to otherwise supervise certain individuals to prevent unauthorized securities transactions.

Grom's suspension in any capacity commenced January 24, 1994, and will conclude April 23, 1994. His suspension as a principal will commence April 24, 1994, and will conclude January 19, 1995.

**Princeton American Equities Corporation (Phoenix, Arizona), Robert E. Holbert (Registered Principal, Phoenix, Arizona), and Cary W. DePriest (Registered Principal, Phoenix, Arizona).** The firm and Holbert were fined \$22,500, jointly and severally and the firm and DePriest were fined \$7,500, jointly and severally. In addition, the firm was suspended from NASD membership in any capacity for 20 days. Holbert was also suspended from association with any NASD member in any capacity for 15 business days and must requalify by examination as a financial and operations principal. Furthermore, DePriest was suspended from association with any NASD member in any capacity for 15 business days and must requalify by examination as a general securities principal.

The National Business Conduct Committee (NBCC) modified the sanctions following appeal of a Denver District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Holbert, conducted a securities business while failing to maintain its minimum required net capital, failed to maintain accurate books and records, and filed inaccurate FOCUS Parts I and II reports. In addition, the firm, acting through DePriest, sold shares of securities on a principal basis without a current registration statement in effect for these securities and without an available exemption from registration.

#### **Firms Fined, Individuals Sanctioned**

**AAM Securities, Inc. (St. Louis Park, Minnesota) and Michael Gerardy Awes (Registered Principal, St. Louis Park,**

**Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$13,000, jointly and severally. Awes was also suspended from association with any NASD member in a principal capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Awes, recommended and consummated the purchases of securities for the accounts of public customers without having reasonable grounds for believing that the recommendations were suitable for the customers on the basis of the facts disclosed by the customers as to their other security holdings, financial situations, and needs.

**Colonial Securities, Inc. (New York, New York) and Yee Yee Wong (Registered Principal, Flushing, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. Wong was also suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Wong, allowed an individual to act as a registered representative without being properly qualified. In addition, the NASD found that the firm, acting through Wong, paid commissions derived from securities transactions to this unregistered individual.

**Consolidated Investment Services, Inc. (Littleton, Colorado), James Fainter (Registered Principal, Bellevue, Washington), and Norman Rounds (Registered Principal, Littleton, Colorado)** were fined

\$15,000, jointly and severally. The NBCC affirmed the sanction after review of a Denver DBCC decision. The sanction was based on findings that the firm, acting through Fainter and Rounds, failed to supervise the activities of a registered representative adequately in the sale of stock.

**Masters Financial Group, Inc. (Little Rock, Arkansas) and Hale Ray Spiegelberg (Registered Principal, Atlanta, Georgia)** submitted an Offer of Settlement pursuant to which they were fined \$35,000, jointly and severally. The firm was also required to pay \$12,131 in restitution to public customers. Spiegelberg was suspended from association with any NASD member in any principal capacity for five years and required to pay \$129,166 in restitution to public customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Spiegelberg, effected transactions as principal with public customers in common stocks at prices that were not fair. The findings also stated that the firm, acting through Spiegelberg, acted as an underwriter for the unregistered distribution of shares of a common stock, in violation of Section 5 of the Securities Act of 1933 and violated its restriction agreement with the NASD.

Furthermore, the NASD found that the firm, acting through Spiegelberg, failed to have a qualified registered financial and operations principal (FINOP), permitted an individual to perform the functions of a FINOP without proper registration, and effected options transactions for public customers without having a qualified registered options principal. In addition, the NASD determined that the firm,

acting through Spiegelberg, failed to notify the NASD of the resignation of its sole registered options principal and permitted individuals to perform functions requiring registration in various capacities without being registered with the NASD in those capacities. The NASD also found that the firm, acting through Spiegelberg, conducted a securities business while failing to maintain its required minimum net capital and filed inaccurate FOCUS Parts I and II reports.

Also, the findings stated that the firm, acting through Spiegelberg, failed to maintain complete, accurate, and current books and records and failed to file monthly financial reports with the NASD concerning its net capital deficiency. In addition, the firm, acting through Spiegelberg, failed to give telegraphic notice of its failure to make and keep current books and records.

### **Firms And Individuals Fined**

**Bey Securities Corporation (Atlanta, Georgia) and George Beylouni, Jr. (Registered Principal, Atlanta, Georgia)** were fined \$10,000, jointly and severally. The sanctions were based on findings that the firm, acting through Beylouni, conducted a securities business while failing to maintain its required minimum net capital. In addition, the firm, acting through Beylouni, failed to file telegraphic notices of its net capital deficiencies promptly.

**Masters Financial Group, Inc. (Little Rock, Arkansas), Richard E. Torres (Registered Principal, N. Little Rock, Arkansas), Gandy L. Baugh (Registered Principal, Maumelle, Arkansas), and Hale Spiegelberg (Associated Person, Duluth, Georgia)** submitted a

Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Torres and Baugh, conducted a securities business while failing to maintain its required minimum net capital and failed to file prompt telegraphic notice of its net capital deficiency. The findings also stated that the firm, acting through Baugh, failed to prepare an accurate general ledger, trial balance, and net capital computations and filed inaccurate FOCUS Part I reports.

Furthermore, the NASD found that Spiegelberg functioned as a controlling person of the firm without registering properly as a general securities principal. In addition, the NASD determined that the firm, acting through Torres, failed to supervise properly the registration status of Spiegelberg.

### **Individuals Barred Or Suspended**

**Donald C. Alaimo (Registered Representative, Mt. Laurel, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Alaimo consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning allegations that he falsified insurance policies and related documents.

**Matthew R. Arnott, II (Registered Representative, Mobile, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which Arnott was fined

\$6,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Arnott consented to the described sanctions and to the entry of findings that he recommended and engaged in a stock purchase in the account of a public customer without having reasonable grounds for believing that the recommendation and resulting transaction were suitable for the customer based on the customer's financial situation, investment objectives, and needs.

**Joseph S. Baba (Registered Representative, Cary, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$20,000, suspended from association with any NASD member in any capacity for 45 days, and suspended from association with any NASD member in any principal capacity for two years. In addition, Baba was required to requalify by examination as a general securities representative. Baba was also prohibited from participation in any manner in any sales of securities not registered under the Securities Act of 1933 (except exempted securities as defined in Section 3(a) of the Securities Exchange Act of 1934) for two years. Without admitting or denying the allegations, Baba consented to the described sanctions and to the entry of findings that he participated in the sales of stock in private transactions while failing to provide prior written notice of his activities to his member firm. The NASD also determined that in connection with such sales, Baba made misrepresentations of material facts or omitted to state material facts to public customers.

**Joseph K. Barbara (Registered Representative, Yardley, Pennsylvania)** was fined \$20,000 and barred from association with

any NASD member in any capacity. The sanctions were based on findings that Barbara failed to respond to NASD requests for information regarding the alleged misappropriation of customer funds.

**Alan G. Bingaman (Registered Representative, Seabrook, Maryland)** submitted an Offer of Settlement pursuant to which he was fined \$70,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to customers of the funds converted. Without admitting or denying the allegations, Bingaman consented to the described sanctions and to the entry of findings that he forged the signatures of insurance customers on disbursement request forms, on two proceeds checks totaling \$7,624.12, and on a \$2,000 loan proceeds check. According to the findings, Bingaman negotiated all the checks and converted the proceeds totaling \$9,624.12 to his personal use and benefit.

The findings also stated that Bingaman failed to respond to NASD requests for information.

**William Jackson Blalock (Registered Representative, Atlanta, Georgia), Charles Lee Bradley (Registered Principal, Duluth, Georgia), and John Wilson Ringo (Registered Principal, Marietta, Georgia).** Blalock was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay, jointly and severally with a member firm, \$118,300 in restitution to public customers. Bradley and Ringo were each fined \$10,000 and required to requalify by examination in any principal capacity. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that a

member firm, acting through Ringo, conducted a securities business while failing to maintain sufficient net capital and failed to make a record of customer funds received and forwarded. The firm, acting through Blalock and Bradley, also sold shares of common stocks, as principal, to its public customers at unfair prices with markups exceeding 128 percent. Blalock also recommended and promoted the purchase of a common stock without disclosing that this member firm was filling its customers' orders with stock from his personal account.

Furthermore, the firm, acting through Blalock, Bradley, and Ringo, permitted Blalock to function as president and sales representative of the firm without proper registration with the NASD as a general securities principal or registered representative. Also, Blalock acted in violation of Securities and Exchange Commission (SEC) Rule 10b-9. Moreover, Bradley and Ringo failed to establish, maintain, and enforce their firm's written supervisory procedures.

Blalock, Bradley, and Ringo have appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Robert L. Bootes (Registered Principal, Louisville, Kentucky)** submitted an Offer of Settlement pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bootes consented to the described sanctions and to the entry of findings that he made recommendations to public customers concerning public limited partnership programs which were unsuitable based on the investors' age and financial ability

to sustain the risks involved in the programs. The findings also stated that Bootes recommended and sold to a public customer five different public limited partnership programs for which the customer did not meet the suitability standards disclosed in the offering documents of each program. The NASD also determined that Bootes made representations to public customers regarding the current rates of return and tax consequences of the investments in public limited partnership programs which were not disclosed in the offering documents of such programs.

Furthermore, the NASD found that Bootes solicited and sold five public limited partnership programs to a public customer and failed to provide the customer with complete offering documents for each program. In addition, the findings stated that Bootes completed and submitted new account forms for public customers when he knew or should have known that the forms contained false and misleading information. The NASD also found that Bootes sent to public customers correspondence which contained false and misleading information and which did not disclose the identity and address of his member firm. According to the NASD, Bootes also recommended that public customers convert \$206,728.48 from their existing portfolio and reinvest \$191,101.85 of the proceeds in seven limited partnership programs which were unsuitable given the customers' financial situation, investment objectives, and needs. In connection with the purchase of interests in the aforementioned limited partnerships, the NASD found that Bootes made misleading statements to the same public customers regarding the payment of his sales commissions.

**John William Brosemer**

**(Registered Representative, Winter Springs, Florida)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brosemer received from insurance customers \$6,947.46 intended for deposit in an IRA account and as premium payments. Instead of using the funds as instructed, Brosemer converted the funds to his own use and benefit by depositing the monies into his personal bank account without the customers' knowledge or authorization. In addition, Brosemer failed to respond to an NASD request for information.

**John Joseph Capano (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Capano consented to the described sanctions and to the entry of findings that, in a scheme to defraud a public customer, he employed manipulative, deceptive, and fraudulent devices and contrivances in an effort to induce the customer to invest money with him for the purported purpose of buying and selling securities. The findings also stated that, based on misrepresentations, Capano made improper use of \$25,000 of the customer's funds and guaranteed at least a 10 percent return on her money.

Furthermore, the NASD found that, in connection with the above, Capano engaged in outside business activities and exercised complete discretion over the same customer's money and her purported account without receiving written authorization from the customer. In addition, the NASD determined that Capano sent fictitious monthly account

statements to the customer detailing her positions and the value of her account on the letterhead of an entity he fabricated to lull the customer into believing she actually maintained a securities account and that it was steadily increasing in value.

**George F. Cerwin, III (Registered Representative, Palm Harbor, Florida)** and **Darryll W. Rathburn (Registered Principal, Palm Harbor, Florida)** submitted an Offer of Settlement pursuant to which Cerwin was fined \$10,000 and suspended from association with any NASD member in any capacity for 60 days. Rathburn was fined \$7,500 and suspended from association with any NASD member in any capacity for 60 days. In addition, Cerwin and Rathburn are required to jointly and severally pay \$34,000 in restitution to public customers.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Cerwin acted as president and then vice president of a firm but failed to notify his member firm of such association. In addition, the NASD found that Cerwin and Rathburn engaged in private securities transactions outside the scope of their regular employment with a member firm without providing written notice to and obtaining written approval from the firm.

**John Lyle Clements (Registered Representative, Novi, Michigan)** submitted an Offer of Settlement pursuant to which he was fined \$7,500, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations Clements consented to the described sanctions and to the

entry of findings that he executed unauthorized transactions in the accounts of public customers.

**Dennis Michael Depping (Registered Representative, Springfield, Missouri)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Depping consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information. In addition, the NASD found that Depping misused \$431.38 in customer funds by signing a customer's name to the reverse side of two checks made payable to the customer and thereafter negotiated both checks.

**Mark Ross Elston (Registered Representative, Shawnee, Kansas)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Elston consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without their prior knowledge, authorization, or consent.

**Edward C. Farni, II (Registered Principal, Excelsior, Minnesota)** and **William S. Wright, Jr. (Registered Representative, Bloomington, Minnesota)** were each fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The NBCC imposed the sanctions following appeal of a Market Surveillance Committee decision. The sanctions were based on findings that Farni and Wright refused to answer NASD staff questions

during an investigative interview.

Farni has appealed this action to the SEC, and his sanctions are not effective pending consideration of the appeal.

**Kenneth David Freeman (Registered Representative, Swansea, South Carolina)** submitted an Offer of Settlement pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Freeman consented to the described sanctions and to the entry of findings that he solicited and accepted from a public customer a \$34,614.80 check for investment purposes and, instead, deposited the check in his insurance agency's bank account and applied the proceeds to his own use and benefit. In addition, the NASD found that Freeman failed to respond to an NASD request for information.

**Francis W. Giampa (Registered Representative, Philadelphia, Pennsylvania)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. In addition, Giampa must pay \$10,500 in restitution to a public customer and provide proof of such payment to the NASD within 45 days or his registration will be revoked. Furthermore, Giampa must requalify by examination as a general securities representative.

The NBCC imposed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Giampa engaged in a trading strategy or pattern in the joint account of public customers that was unsuitable for the customers and subjected them to unwarranted risks. Moreover, the frequency of the transac-

tions was excessive in light of the customers' investment objectives, financial situation, and other facts and circumstances disclosed to him.

Giampa has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

**Steve A. Goddard (Registered Principal, Haleyville, Alabama)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that, after receiving two letters from a public customer concerned over conversion of funds by a registered representative, Goddard neither notified his member firm of the letters nor maintained a proper file for them. Instead, Goddard submitted the correspondence to the registered representative for him to handle. In the aforementioned activity, Goddard failed to exercise reasonable and proper supervision over the registered representative.

**H. Barry Goodman (Registered Representative, Deerfield, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goodman consented to the described sanction and to the entry of findings that he participated in private securities transactions while failing to give written notice of his intention to engage in such activities to his member firm. The findings also stated that Goodman failed to update his *Uniform Application for Securities Industry Registration or Transfer Form (Form U-4)* to disclose an investigation by the State of Illinois Securities Department.

**Richard T. Greenfield (Registered Representative, Hermitage, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Greenfield consented to the described sanctions and to the entry of findings that he misused insurance customer funds by causing \$5,053.95 to be loaned against a customer's whole life insurance policy to pay premiums on the customer's variable life insurance policy. Furthermore, the findings stated that Greenfield forged the customer's signature to six loan applications without the customer's knowledge or consent.

**Vincent John Higgins (Registered Representative, Cape Coral, Florida)** and **George Cable Kelley (Registered Sales Supervisor, Fort Myers, Florida)**. Higgins was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$57,568.37 in restitution to public customers. Kelley submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Kelley consented to the described sanctions and to the entry of findings that he failed to ensure that "switch" letters were obtained from Higgins' customers as required by their member firm's written supervisory procedures. In addition, the findings stated that Kelley failed to adequately supervise trading in the accounts of public customers to prevent and detect suitability violations by Higgins.

The NASD also found that Higgins recommended mutual fund and/or unit investment trust "swaps" to

public customers without having reasonable grounds for believing that said transactions were suitable for the customers. Furthermore, Higgins sent a letter to public customers purporting to reflect the current value of the securities positions in their joint account which overstated the value of two of the securities positions listed. In addition, Higgins failed to respond to NASD requests for information.

**Salvatore Anthony Iradi, Jr. (Registered Representative, Monmouth Beach, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$41,900 in restitution to public customers. Without admitting or denying the allegations, Iradi consented to the described sanctions and to the entry of findings that he executed three transactions in the accounts of two public customers without their prior knowledge, authorization, or consent. In addition, the NASD found that Iradi made numerous misrepresentations to induce public customers to purchase and hold shares of common stocks.

**Francis A. Jacob (Registered Representative, Lakeland, Florida)** was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jacob withdrew from the life insurance policies of six public customers \$13,683.12 and converted the funds to his own use and benefit without the knowledge or authorization of the customers. In addition, Jacob failed to respond to an NASD request for information.

**Harold Frank Janecky, Jr. (Registered Representative, Excelsior, Minnesota)** was fined

\$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Janecky failed to respond to NASD requests for information concerning his termination from a member firm.

**Ida M. Jantz (Registered Representative, Oklahoma City, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jantz consented to the described sanction and to the entry of findings that she brought written study material into the testing area when she took the Series 63 examination.

**Robert M. Kaplan (Registered Representative, Paradise Valley, Arizona)** submitted an Offer of Settlement pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kaplan consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of six public customers that were excessive in size and frequency in view of the financial resources and character of the accounts.

**Larry William Kennaugh (Registered Representative, Mount Vernon, Washington)** was fined \$25,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Kennaugh participated in outside business activities and failed to provide prompt written notice to his member firm of such activities.

**Brian Gerard Krause (Registered Representative, St. Clair Shores,**

**Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Krause consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give prior written notice to, and before receiving prior written approval from his member firm to participate in such transactions.

**Joseph L. Lachermeier (Registered Representative, Northglenn, Colorado)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lachermeier engaged in private securities transactions while failing to provide prior written notice of such transactions to his member firm and failed to respond to NASD requests for information.

**Stephen Lentz (Registered Representative, Peabody, Massachusetts)** submitted an Offer of Settlement pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. In addition, Lentz is required to pay restitution totaling \$25,820 plus interest to a member firm. Without admitting or denying the allegations, Lentz consented to the described sanctions and to the entry of findings that he induced two public customers to wire \$25,000 to another customer account by representing that this account was an investment offered by his member firm. However, the NASD found that the funds were instead used to pay a debit balance in that account. The NASD also found that Lentz caused a customer account to be opened at his member firm using a mailing address and other informa-

tion which he knew belonged to another customer.

**George Locklear (Registered Representative, Pembroke, North Carolina)** was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Locklear solicited and accepted from a public customer \$50,000 for investment in mutual funds and instead of investing the entire amount, he invested only \$35,000 and kept the remaining \$15,000 of the funds.

**Steven W. Marzett (Registered Representative, Broken Arrow, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marzett consented to the described sanctions and to the entry of findings that he accepted two \$5,000 checks from public customers for investment purposes, failed to execute the customers' purchases, and, instead, converted the funds to his own use and benefit without the knowledge or consent of the customers. In addition, the NASD found that to conceal the conversion of funds from the aforementioned customers, Marzett created a false, undated account statement for the customers to reflect that the funds had been invested.

**David T. Nadell (Registered Principal, Clair Shores, Michigan)** submitted an Offer of Settlement pursuant to which he was fined \$2,500, suspended from association with any NASD member in any principal capacity for 60 days, and required to requalify by examination as a general securities principal. Without admitting or denying the allegations, Nadell

consented to the described sanctions and to the entry of findings that a former member firm, acting through Nadell, conducted a securities business while failing to maintain its minimum required net capital and failed to prepare and/or maintain accurate net capital computations.

In addition, the findings stated that the firm, acting through Nadell, filed with the NASD inaccurate FOCUS Part I and II reports, and failed to maintain order tickets for certain periods. Furthermore, the NASD determined that the firm, acting through Nadell, failed to comply with the terms of its restrictive agreement when it engaged in more than an occasional proprietary trade during certain periods.

**Roderick Odom (Registered Representative, Selden, New York)** was fined \$8,000, barred from association with any NASD member in any capacity, and required to requalify by examination as a general securities representative. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Odom failed to pay a \$4,000 NASD arbitration award.

**Michael W. Overly (Registered Representative, Dayton, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$8,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Overly consented to the described sanctions and to the entry of findings that he operated as an unregistered financial adviser without first notifying his member firm in writing of this outside business activity. In addition, the NASD found that Overly offered and sold securities

to public customers without first notifying or receiving permission to engage in such private securities transactions from his member firm.

**Chris G. Padgett (Registered Representative, Aiken, South Carolina)** was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$60,000 in restitution to his member firm. The sanctions were based on findings that Padgett solicited and accepted from an insurance customer a \$60,000 check for the purchase of a variable life insurance policy but, instead, deposited the check in his personal bank account and applied the proceeds to his own use and benefit. In addition, Padgett failed to respond to NASD requests for information.

**Greg S. Passales (Registered Representative, New York, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Passales failed to respond to NASD requests for information concerning a customer complaint.

**Daniel Bruce Perry (Registered Principal, Henderson, Nevada)** was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$21,554.50 in restitution to customers. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Perry engaged in sales to public customers of shares of stock in the secondary market at unfair prices, in violation of the Board of Governors' Interpretation of the "NASD Mark-Up Policy." Such sales resulted in markups ranging

from approximately 5.017 to over 100 percent.

**David James Pompo (Registered Representative, Romeo, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pompo consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give prior written notice to, and before receiving prior written approval from his member firm to participate in such transactions.

**Anthony I. Putman (Registered Representative, Detroit, Michigan)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Putman consented to the described sanction and to the entry of findings that without a public customer's knowledge or consent, he submitted a surrender of life insurance policy form to his member firm to request cash from the customer's policy. According to the findings, Putman obtained a check made payable to the customer for \$7,395.45, endorsed the check, and deposited the proceeds in a business account he maintained. Furthermore, the NASD found that Putman used \$2,515.15 of the funds for a mutual life insurance policy for the customer and used the remainder for some purpose other than for the benefit of the customer.

**Martin Rodriguez (Registered Representative, Salinas, California)** was fined \$8,390 and barred from association with any NASD member in any capacity.

The NBCC imposed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Rodriguez misappropriated \$1,678 from insurance customers and converted those funds to other uses.

**Michael K. Roglen (Registered Representative, Xenia, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$65,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roglen consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use insurance customers' funds totaling \$4,831.93.

**Helene R. Schwartz (Registered Representative, Maple Shade, New Jersey)** was barred from association with any NASD member in any capacity (with the right to reapply after one year). The NBCC imposed the sanction after review of a Philadelphia DBCC decision. The sanction was based on findings that Schwartz, during the course of taking the Series 6 examination, retained in her possession at her testing station notes related to the subject matter of the examination.

Schwartz has appealed this action to the SEC, but the bar remains in effect during the pendency of the appeal.

**Joel Eugene Shaw (Registered Representative, Greenville, South Carolina)** was fined \$10,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Shaw solicited and accepted two checks

drawn on the cash management account of a public customer totaling \$21,142.67 for investment purposes and, instead, deposited the checks in his personal bank account and applied the proceeds to his own use and benefit. In addition, Shaw made representations to the same public customer concerning her purported investments without having a factual basis for making such representations.

This action has been appealed to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Curtis Lester Thomas (Registered Representative, Burnsville, Minnesota)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Thomas failed to respond to NASD requests for information concerning his termination from a member firm. In addition, Thomas utilized an old insurance application that a public customer had signed in blank for adjustable life insurance. Thomas then submitted a customer service request to his member firm requesting that dividends be surrendered from the customer's other policy to serve as a binder on the unauthorized insurance application without the customer's knowledge or consent.

**Glenda Zoe Tolliver (née Vobornik) (Registered Representative, Kansas City, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tolliver consented to the described sanctions and to the entry of findings that without the knowledge or consent of her member firm or public customers, she

converted and/or misused funds totaling \$23,773.95 by transferring the funds via journal entries from company and customers accounts to the accounts of her husband and another customer.

**Troy A. Wetter (Registered Principal, Greenview, Illinois)** was fined \$20,000 and barred from association with any NASD member in any capacity. The SEC modified the sanctions following appeal of an October 1992 NBCC decision. The sanctions were based on findings that a former member firm, acting through Wetter, failed to maintain its minimum required net capital and prepared inaccurate net capital computations. Furthermore, the firm, acting through Wetter, filed inaccurate FOCUS Parts I and II reports and failed to file its audit reports in a timely manner. In addition, the firm, acting through Wetter, conducted a securities business when the firm was suspended from NASD membership.

**John D. Wilshere, Jr. (Registered Representative, St. Albans, West Virginia)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Wilshere executed unauthorized transactions in the account of two public customers.

#### **Individuals Fined**

**Robert A. Lacey (Registered Principal, Marietta, Georgia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and required to pay \$547.10 in restitution to his member firm. Without admitting or denying the allegations, Lacey consented to the described sanctions to the entry of findings that he exercised discretion

in the accounts of a public customer without having that discretionary authority reduced to writing and without having the customer's accounts approved by his member firm as discretionary. In addition, the NASD found that Lacey effected six transactions in the account of a public customer without the knowledge or authorization of the customer.

**Klaus Langheinrich (Registered Representative, Murray, Utah)** was fined \$10,000. The NBCC affirmed the sanction following an SEC remand of a Denver DBCC decision. The sanction was based on findings that Langheinrich accepted from public customers four checks totaling \$27,000 to purchase securities without providing prior written notification of these transactions to his member firm.

Langheinrich has appealed this action to the SEC and the sanction is not in effect pending consideration of the appeal.

**Mark A. Perosi (Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Perosi consented to the described sanction and to the entry of findings that he exercised discretion in two accounts of a public customer without written authorization.

#### **Firms Expelled For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations**

**A.C. Masingill & Associates, Incorporated, Knoxville, Tennessee**

#### **Firms Suspended**

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

**Maxxel Securities, Inc., Dallas, Texas (January 7, 1994)**

#### **Suspensions Lifted**

The NASD has lifted suspensions from membership on the dates shown for the following firms, because they have complied with formal written requests to submit financial information.

**Worthington & Dunn Securities, Inc., Dallas, Texas (December 28, 1993)**

#### **Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations**

**Douglas D. Alcalá, Seattle, Washington**

**Stephen R. Boadt, Marina del Rey, California**

**Paul J. Fortson, Madison, Alabama**

**John L. Gravitt, Denver, Colorado**

**Steven M. Hartwell**, Ft. Bragg,  
North Carolina

**Steven D. Lockshin**, Gaithersburg,  
Maryland

**Barry J. Miele**, Brooklyn, New  
York

**Brian L. Potashnik**, Los Angeles,  
California

**James M. Russen, Jr.**, Middle  
Island, New York

**Stanford K. Sokoloff**, Staten  
Island, New York

**Albert A. Terranova**, Paradise  
Valley, Arizona

# FOR YOUR INFORMATION

## **Member Assessments**

The NASD amended Section 1, Schedule A to the NASD By-Laws to decrease the credit against a member's annual gross income assessment from 67 percent to 59 percent for calendar year 1994.

The decrease is based on the estimated operating budget for 1994 and is subject to revision based on final actual gross income reports for 1993. After the NASD receives 1993 gross income reports this spring, it will adjust the mid-year assessment invoices to reflect 1993 actual gross income, less payments already made.

## **Government Securities Act Expands NASD Authority**

In November, Congress passed the Government Securities Act Amendments of 1993. The bill, which permanently reauthorizes the original Government Securities Act passed in 1986, gives the NASD full sales-practice authority over its members that conduct a government securities business. In addition to enforcing capital and recordkeeping rules for its government securities dealers, the NASD now will write and enforce sales-practice rules. The new legislation also requires the Federal Reserve and the SEC to study the effectiveness of private systems in disseminating price and volume information on government securities and permits the Treasury to require large-position reporting.

## **CMO/REMIC Brochure Can Help You Meet New NASD Requirements**

The NASD has recently mandated that securities dealers provide investors with materials to ensure

that they are fully educated about Collateralized Mortgage Obligations (CMOs)/Real Estate Mortgage Investment Conduits (REMICs).

The Public Securities Association (PSA), the international trade association of dealers in mortgage-backed securities, has published *An Investor's Guide to REMICs*, a 32-page booklet explaining the fundamentals of REMICs, their credit quality, interest and prepayment rates, tranches, types of REMICs, settlement and payment dates, minimum investments and liquidity, tax considerations, and other key points that every investor must know. It also features a worksheet, *Questions You Should Ask Before Investing*, and a full glossary of terms.

Copies of this brochure can be ordered directly from the PSA's Publications Department. The minimum order is 50; they can also be imprinted with your company's logo with a minimum order of 1,000. For pricing information, call Cheryl Dantoni at (212) 440-9430 or write to the Public Securities Association, ATTN: Publications Department, 40 Broad Street, New York, NY 10004-2373.

## **SEC Issues Alert Regarding So-Called "Prime" Bank And Similar Financial Instruments**

On November 2, 1993, the SEC issued a Commission Information for Investors bulletin to alert investors and regulated entities to the recent escalation in the number of possibly fraudulent schemes involving the issuance, trading, or use of so-called "prime" bank, "prime" European bank, or "prime" world financial instruments. The complete text of that bulletin is reprinted on the following pages.

# Information for Investors

II-101 (10/93)



From the U.S. Securities and Exchange Commission

## So-Called "Prime" Bank and Similar Financial Instruments

The Securities and Exchange Commission ("Commission") is alerting investors and regulated entities to the recent escalation in the number of possibly fraudulent schemes involving the issuance, trading or use of so-called "prime" bank, "prime" European bank or "prime" world bank financial instruments.<sup>1</sup> These instruments typically take the form of notes, debentures, letters of credit, and guarantees. Also typical in the offer of these instruments is the promise or guarantee of unrealistic rates of return; e.g., a 150 percent annualized rate of "profits." Common targets of these schemes include both institutional and individual investors, who may also be induced to participate in possible "Ponzi" schemes involving the pooling of investors' funds to purchase "prime" bank financial instruments.

On October 21, 1993, the federal financial institution supervisory agencies<sup>2</sup> issued an Interagency Advisory to their regulated financial institutions. The Interagency Advisory also warned of the use of schemes involving "prime" bank financial instruments and noted that:

- The agencies had been advised that "individuals have been improperly using the names of large, well-known domestic and foreign banks, the World Bank, and central banks in connection with their 'Prime Bank' schemes."
- These institutions "had no knowledge about the unauthorized use of their names or the issuance or anything akin to 'Prime Bank'-type financial instruments."
- The staffs of the federal financial institution supervisory agencies are unaware of the legitimate use of any financial instrument called a "Prime Bank" note, guarantee, letter of credit, debenture, or similar type of financial instrument.
- Financial institutions should be attentive to the attempted use of traditional types of financial instruments that are referred to in an unconventional manner, "such as a letter of credit referencing forms allegedly produced or approved by the International Chamber of Commerce."

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<sup>1</sup>These schemes do not involve the offer or sale of financial instruments issued by any financial institution having the word "prime" in its name; rather, that word (or a synonym, as in the phrase "top fifty world banks") is used to refer, generically, to financial institutions of purportedly high repute and financial soundness.

<sup>2</sup>These agencies are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

As to this latter point, the Interagency Advisory referred to examples of "bogus schemes involving the supposed issuance of an 'ICC 3034' or an 'ICC 3039' letter of credit by a domestic or foreign bank."

The Interagency Advisory also noted that many of the illegal or dubious schemes that have come to the attention of regulatory agencies "appear to involve overly complex loan funding mechanisms." In the eyes of an unsophisticated investor, this complexity may make a questionable investment appear worthwhile. The Commission warns investors and those who may advise them, particularly broker-dealers and investment advisors, of this possible hallmark of fraud and reminds them of a basic rule for avoiding securities fraud, "If it looks too good to be true, it probably is!"

\* \* \* \*

The Commission requests that those with information regarding the offer or sale of "prime" bank or similar financial instruments provide that information to one of the Commission offices listed below. When information is sent to one of the Commission's regional or district offices, it should be sent to the attention of the Assistant Regional Administrator (Enforcement).

Northeast Regional Office  
7 World Trade Center  
Suite 1300  
New York, NY 10048  
(212) 748-8000  
FAX: (212) 748-8049

Midwest Regional Office  
Northwestern Atrium Center  
500 West Madison Street  
Suite 1400  
Chicago, IL 60661-2511  
(312) 353-7390  
FAX: (312) 353-7398

Pacific Regional Office  
5670 Wilshire Boulevard  
11th Floor  
Los Angeles, CA 90036-3648  
(213) 965-3998  
FAX: (213) 965-3812

Boston District Office  
73 Tremont Street  
Suite 600  
Boston, MA 02108-3912  
(617) 424-5900  
FAX: (617) 424-5940

Central Regional Office  
1801 California Street  
Suite 4800  
Denver, CO 80202-2648  
(303) 391-6800  
FAX: (303) 391-6868

San Francisco District Office  
44 Montgomery Street  
Suite 1100  
San Francisco, CA 94104  
(415) 705-2500  
FAX: (415) 705-2501

Philadelphia District Office  
The Curtis Center, Suite 1005 E. 601  
Walnut Street  
Philadelphia, PA 19106-3322  
(215) 597-3100  
FAX: (215) 597-5885

Fort Worth District Office  
801 Cherry Street  
19th Floor  
Fort Worth, TX 76102  
(817) 334-3821  
FAX: (817) 334-2700

Seattle District Office  
3090 Jackson Federal Building  
915 Second Avenue  
Seattle, WA 98174  
(206) 220-7500  
FAX: (206) 220-7560

Southeast Regional Office  
1401 Brickell Avenue  
Suite 200  
Miami, FL 33131  
(305) 536-5765  
FAX: (305) 536-7465

Salt Lake District Office  
500 Key Bank Tower  
50 S. Main Street, Suite 500  
Box 79  
Salt Lake City, UT 84144-0402  
(801) 524-5796  
FAX: (801) 524-3558

Division of Enforcement  
Mail Stop 4-8A  
Washington, DC 20549  
(202) 504-2220  
FAX: (202) 272-3636

Atlanta District Office  
3475 Lenox Road, N.E.  
Suite 1000  
Atlanta, GA 30326-1232  
(404) 842-7600  
FAX: (404) 842-7666

## Exercise Caution When Opening New Offshore Accounts

The NASD Market Surveillance Department has been advised that a number of member firms have opened new accounts with customers who represented themselves to be corporate/institutional type accounts domiciled offshore who were unknown to the firms. These accounts are dealing in large dollar transactions and are not fulfilling contractual obligations to pay for the transactions, often resulting in significant losses for the firms executing the transaction. Accounts of this nature have been identified at firms in New York and Texas. The NASD investigation of these matters continues, and in the meantime, the NASD recommends that members be particularly careful when approached to open such

accounts for customers unknown to the firm.

## NASD Member Voting Result

As a member service, the NASD publishes the result of member votes on issues presented to them for approval in the monthly *Notices to Members*. Most recently, members voted on the following issue:

- **Notice to Members 93-76**—NASD Solicits Member Vote on Filing Requirements for Use of Mutual Fund Rankings and Elimination of Sunset Provisions in Prefiling Requirements for CMO Advertisements; **Last Voting Date: December 31, 1993**. Ballots For 1,759; Against 333; and Unsigned 15.

## Correction To Notice to Members 94-1

Under the definition of the term "maximum order size" on page 3 of *Notice to Members 94-1* dated January 5, 1994, the line of copy beginning at the bottom of the middle column and carrying over to the top of the last column incorrectly reads "Maximum order sizes for NASDAQ/NMS securities shall be 200, 500, or 1,000 shares depending upon trading characteristics of the securities." It should read "Maximum order sizes for NASDAQ/NMS securities shall be 200 or 500 shares depending upon trading characteristics of the securities," with the words "or 1,000" deleted.