NASD NOTICE TO MEMBERS 94-13

SEC Approves Sales-Charge Disclosure Exemption For Money Market Mutual Funds

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 February 24, 1994, the Securities and Exchange Commission (SEC) approved an amendment to Article III, Section 26(d)(4) of the Rules of Fair Practice exempting money market mutual funds with asset-based sales charges equal to or less than 25 basis points from disclosing that "long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charge" permitted under Section 26. The amendment takes effect immediately.

Background

On July 7, 1993, new rules codified in Article III, Section 26(d) of the Rules of Fair Practice took effect governing investment company sales charges. About that time, the NASD received several applications for exemptions from Section 26(d)(4), which requires that the prospectus for an investment company with an asset-based sales charge must disclose that "long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this section." The applicants noted that the rule language is specific and requires the disclosure, even if the statement may not be true for a particular mutual fund.

The applicants pointed out that in the case of a money market mutual fund, there is a high probability that the statement will be inaccurate because such funds generally have very low asset-based sales charges, and an investor would have to be a shareholder for an extremely long time before the disclosure would be true. According to one applicant, a shareholder of its fund, which has an asset-based charge of 15 basis points, would have to remain in the fund for more than 55 years before he would pay more than the maximum permitted front-end charge. The applicants suggested that, since money market mutual funds are traditionally short-term investments or cash management vehicles, it is unlikely that investors will stay in such funds for lengthy periods. As a result, they were of the view that the disclosure may be misleading, or at least confusing, to investors in money market mutual funds.

Description Of The Amendment

The NASD agreed with the applicants and has amended Section 26(d)(4) to exempt money market mutual funds from the disclosure requirement. The SEC approved the amendment on February 24, 1994. The NASD also determined, however, that for certain money market funds with higher asset-based sales charges the disclosure statement would be accurate. For example, a fund with an asset-based sales charge of 50 basis points and a 3 percent return on investment would reach the economic equivalent of the maximum front-end sales charge permitted by Subsection 26(d) in approximately 14 years. Accordingly, the NASD is limiting the exemption to money market mutual funds with asset-based sales charges equal to or less than .25 of one percent (25 basis points) of average net assets per annum.

In addition, in response to the SEC's request for comments on the amendment, one commenter asked that the exemption be expanded to include non-money market mutual funds with low asset-based sales charges or a class of shares with an asset-based sales charge that automatically converts to a class without such a charge after a fixed period of time. The commenter also

asked that the amendment give mutual funds more flexibility to determine if the disclosure is appropriate for their particular fund.

The NASD determined that the changes requested by the commenter would not be consistent with the original intent of the disclosure provision in Section 26(d)(4), nor with the intent of the money market mutual fund exemption announced here. The intent of the amendment is to permit money market mutual funds, which generally have low asset-based sales charges, to avoid the required disclosure that "long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this section." If the amendment were expanded to include non-money market funds, even if the return on investment of such a fund was currently low, the exemption would be available to funds, which could dramatically change their return on investment and thus significantly shorten the time to reach the maximum front-end load.

The amendment takes effect immediately. Questions regarding this Notice may be directed to R. Clark Hooper, Vice President, Investment Companies Regulation Department, (202) 728-8329, or Elliott R. Curzon, Senior Attorney, Office of General Counsel, (202) 728-8451.

Text Of Amendment To Article III, Section 26(d)(4) Of The Rules Of Fair Practice

* * * * *

(**Note:** New language is underlined.)

Investment Companies

Sec. 26

(d)

(4) No member or person associated with a member shall offer or sell the securities of an investment company with an asset-based sales charge unless its prospectus discloses that long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this section. Such disclosure shall be adjacent to the fee table in the front section of a prospectus. <u>This subsection shall not apply to money market mutual funds which have asset-based sales charges equal to or less than .25 of 1% of average net assets per annum.</u>

NASD NOTICE TO MEMBERS 94-14

NASD Clarifies Compensation Disclosure Requirements For Mutual Funds In Article III, Section 26 Of The NASD Rules Of Fair Practice

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

Article III, Section 26 of the Rules of Fair Practice prohibits members from accepting compensation from an underwriter when selling its mutual fund unless such compensation is disclosed in the fund's prospectus. To the extent investment companies are not providing adequate disclosure currently, the NASD has determined to clarify the level of disclosure necessary to comply with NASD rules.

Background

Subsection (l)(1)(C) prohibits the receipt of any discount, concession, fee, or commission (together "compensation") by members from underwriters when selling their mutual fund securities unless the compensation is disclosed in the mutual fund prospectus. The provision further clarifies that if the compensation is not uniformly paid to all members purchasing the same dollar amount of the securities from the underwriters, the disclosure must include a description of the circumstances of any general variations from the standard schedule of concessions. Moreover, if special compensation arrangements have been made with individual members that are not generally available to all members, the details of the arrangements and the identities of the members receiving the special arrangements must be disclosed.

Subsection (l)(3)(A) further prohibits members and persons associated with members from accepting any item of material value from an underwriter in connection with retail sales of mutual fund securities that is in addition to the concessions disclosed in the prospectus. Items of material value include any payment in excess of $50 per person per year for the reimbursement of travel expenses in connection with a meeting held by an underwriter and payment by an underwriter for entertainment events (such as tickets to a sporting event, a dinner, theater, or other entertainment) where, in both cases, attendance by the associated person is conditioned on sales of shares of a mutual fund. Travel expense reimbursement is not required to be disclosed in the prospectus if the meeting attended by the associated person is a business meeting held by an underwriter for informational purposes relative to any mutual fund(s) it sponsors and is not conditioned on sales of shares of any mutual fund. Thus, disclosure of compensation encompasses disclosure of both cash and non-cash forms of compensation.

Discussion

For disclosure of cash and non-cash compensation that does not involve special compensation arrangements, the usual disclosure practices relating to underwriting compensation require the disclosure of the maximum cash compensation and the type of non-cash compensation to be provided to all participating members. As stated in the rule language, any variations from the standard schedule of concessions must be disclosed if concessions are not uniformly paid to all members purchasing the same dollar amounts of securities.

The fact that a non-cash compensation program has been established must be unequivocal (e.g., the disclosure should use the words "will" or "shall" not "may be"). Further, the statement of the type of non-cash compensation should indicate whether it is "luxury merchandise" or a "trip to a luxury resort at an exotic location" or "attendance at a sales seminar at a luxury resort." It

is believed that such disclosure can be sufficiently generic, without specifying the name of the resort or the item of merchandise, to not require stickers or amendments to the offering document as trips to different resorts or as different merchandise or offered over the lengthy period that the offering document is effective.

To disclose special compensation arrangements, underwriters must include an amendment or sticker to the offering document that identifies the member(s) to receive the special arrangements and the exact details of the arrangement including identification, for example, of the luxury resort and its location or the specific item of merchandise that is being offered. While it is anticipated that most special compensation arrangements would be non-cash in nature, the exact details of any special cash compensation arrangements entered into by the underwriter(s) with any member(s) and the identity of the member(s) must also be disclosed.

The NASD believes that the location of disclosure of cash and non-cash compensation, including special cash and non-cash compensation arrangements, should be consistent with SEC disclosure rules. Therefore, it is required to be made in the offering document and not in the Statement of Additional Information. Thus, all compensation, whether cash or non-cash, would be disclosed in the same part of the prospectus. As indicated above, special cash and non-cash compensation arrangements may be disclosed via a sticker to the prospectus.

Any questions regarding this Notice should be directed to R. Clark Hooper, Vice President, Investment Companies Regulation Department, (202) 728-8329.

NASD NOTICE TO MEMBERS 94-15

SEC Issues Alert Regarding Stolen Stock Certificates

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 February 15, 1994, the Securities and Exchange Commission (SEC) asked the NASD to alert its members to a possible fraud involving cancelled General Motors Corporation common stock certificates. The certificates involved were issued prior to January 1, 1984.

Background

According to the SEC, cancelled General Motors Corporation common stock certificates are being presented for sale or for use as collateral at banks and brokerage firms around the world. The certificates, which were stolen after cancellation, may number as many as 1.3 million.

Although United States criminal authorities are currently investigating this matter, the SEC is warning all securities firms, depositories, and other financial institutions that these securities are being circulated. The securities involved are General Motors Corporation common stock certificates issued prior to January 1, 1984. Please note, however, that not all securities issued prior to 1984 are invalid.

Verifying Certificates

Members should take whatever precautions necessary to protect themselves from possible loss, including examining certificates for indication of cancellation and verifying certificate numbers with the Securities Information Center and the transfer agent. The current transfer agent for these certificates is First Chicago Trust Company at (201) 222-4451, or members may write to John P. Bagdonas, Vice President, P. O. Box 2519, Jersey City, NJ 07303-2519.

The complete text of the SEC letter is reprinted on the following pages.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIRMAN

February 15, 1994

BY FAX: 9-785-1804

Mr. Joseph R. Hardiman
President
National Association of
Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

Re: GM Certificates

Dear Mr. Hardiman:

The purpose of this letter is to alert you to a possible fraud involving stolen stock certificates that has been detected in the United States.

The Securities and Exchange Commission ("SEC") has learned that as many as 1.3 million cancelled General Motors Corporation common stock certificates which should have been destroyed may have been misappropriated.1/ During recent months, many of these General Motors certificates have been presented for sale or as collateral for loans at brokerage firms and banks around the world. In particular, it appears that these certificates were stolen after cancellation. The cancellation is generally evidenced solely by small perforation holes in the lower right corner of the certificates (although some of the stolen certificates may not even bear the perforation marks). We understand that some people may erroneously interpret these perforation marks as a form of notarization.

In light of the potential losses to financial institutions and investors, it is critical that all securities firms, depositories, and other financial institutions be alerted that such securities are being circulated. As part of efforts to minimize the potential damage from continued circulation of the stolen certificates, I am forwarding this notice to all members of the International Organization of Securities Commissions for distribution to relevant financial institutions and others.

1/ For your information, U.S. criminal authorities have begun an investigation in connection with this matter.

It is our understanding that all the securities involved were General Motors Corporation common stock certificates issued prior to January 1, 1984. Not all securities issued prior to 1984, however, are invalid. In addition, there may be securities certificates of other issuers that have not yet been reported as lost or stolen. Thus, we urge care in accepting securities from non-customers and in the inspection of each certificate before treating it as valid. To determine the validity of a General Motors stock certificate you may call First Chicago Trust Company, the current transfer agent, at 201/222/4451 or write to Mr. John P. Bagdonas, Vice President, P.O. Box 2519, Jersey City, NJ 07303-2519.

Thank you for your attention to this matter. If you should need additional information, please contact Brandon Becker, Director of the SEC's Division of Market Regulation at (202) 272-3000, or Michael D. Mann, Director of the SEC's Office of International Affairs at (202) 272-2306.

Sincerely,

Arthur Levitt
Chairman

NASD NOTICE TO MEMBERS 94-16

NASD Reminds Members Of Mutual Fund Sales Practice Obligations

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

The NASD reminds members of their obligations under the Rules of Fair Practice with respect to mutual fund sales practices. Members and their associated persons must ensure that their communications with customers (both oral and written) are accurate and complete regarding disclosure of material information, SIPC coverage, breakpoints, and switching. In addition, members must ensure that suitability requirements are adequately addressed; that they have comprehensive internal supervisory and compliance controls over sales practices; and that their advertising and marketing materials and programs are accurate, fair and balanced, and comply with all applicable rules. Members and their associated persons who fail to communicate information concerning mutual funds accurately and completely may be subject to NASD disciplinary action.

Discussion

During the last decade, vast sums have moved into mutual funds as investors have searched for higher-yielding investment opportunities. The NASD has noted this trend recently in *Notices to Members 93-87* (December 1993) and *91-74* (November 1991) discussing reinvestment of maturing certificates of deposit or other bank depository instruments. The trend has substantially increased the attention members devote to mutual fund sales and has generated explosive growth in mutual fund sales by bank-affiliated broker/dealers and broker/dealers participating in networking arrangements with banks. In light of this trend, the NASD is publishing this Notice to emphasize again to members their obligations to ensure that the investments are suitable for their customers and to disclose and discuss certain matters in the sale of mutual funds.

Disclosure

In recommending the purchase or sale of a mutual fund to a customer, members must disclose all material facts to the customer. To determine adequately whether a fact concerning a mutual fund investment would be material to an investor, the member must attempt to obtain information sufficient to evaluate the suitability of the proposed investment for that investor. Material facts may include, but are not limited to, the fund's investment objective; the fund's portfolio, historical income, or capital appreciation; the fund's expense ratio and sales charges; risks of investing in the fund relative to other investments; and the fund's hedging or risk amelioration strategies. Disclosure of these and other facts concerning a proposed investment is required if the circumstances surrounding the investment decision lead one to believe the investor would regard a fact as material to his decision whether to invest in the fund.

To the extent there are sales charges associated with such a purchase or sale, such as contingent deferred sales charges on either the fund to be liquidated or the fund to be purchased, members should discuss with the customer the effect of those charges on the anticipated return on investment. Further, if a member recommends the purchase of a fund from a particular fund family based on the ability to switch easily between funds in the family, the member should disclose all fees or charges that may be imposed.

Other information that may enter

into the determination of whether a particular fact concerning a proposed fund investment is material includes, but is not limited to, the relative risks and rewards of the investment being liquidated to the proposed investment, the risk aversion of the investor, and the age and/or life expectancy of the investor. While many of these enumerated items are inextricably intertwined with the suitability determination, the NASD believes merely determining that an investment may be suitable for a particular investor does not excuse the member from disclosing material information to that investor.

Members are also advised that, although the prospectus and sales material of a fund include disclosures on many matters, oral representations by sales personnel that contradict the disclosures in the prospectus or sale literature may nullify the effect of the written disclosures and may make the member liable for rule violations and civil damages to the customers that result from such oral representations.

Breakpoints

A breakpoint is a reduction in sales charges based on the dollar volume of a purchase exceeding a certain minimum. If a proposed fund or fund family offers breakpoint discounts, members should disclose the existence of the breakpoints to enable the customer to evaluate the desirability of making a qualifying purchase. In this regard, members should be aware that recommending diversification among several funds with similar investment objectives may not be in the best interests of a customer, especially if the sales of those funds occur at prices just below the breakpoints of one or more of the funds sold. Moreover, the delivery of a "breakpoint letter" to a customer advising the customer of the possibility of breakpoint savings is not a safe harbor for member's compliance with their obligations to their customers. Members must affirmatively advise their customers of the impact of particular breakpoints on the contemplated transactions.

Switching

Members also have an obligation to evaluate the net investment advantage of any recommended switch from one fund to another. Switching among certain fund types may be difficult to justify if the financial gain or investment objective to be achieved by the switch is undermined by the transaction fees associated with the switch. Further, recommendations to fund investors to engage in market timing transactions should be made, if at all, for transactions in a single family of funds or where there are virtually no transaction costs associated with the trade. Market-timing transactions that do not adhere to this standard may subject the member to an additional burden of proving that the transaction was suitable for the customer. Members have an obligation to ensure that their supervisory and compliance procedures are adequate to monitor switching of customers among funds and should be prepared to document their reasons for switching a customer from one fund to another.

SIPC Coverage

Members are cautioned against stating or implying that Securities Investor Protection Corporation (SIPC) provides insurance against the loss of a customer's investment. The sole purpose of SIPC is to protect customers against losses to their account that result from the financial failure of a member. SIPC insurance does not insure against market related investment losses or losses related to misrepresentations by the firm or its employees, nor is it a guarantee against the bankruptcy or default of the issuer of an investment security purchased by a customer. In other words, SIPC is not the equivalent of the Federal Deposit Insurance Corporation (FDIC) and is not a guarantor of the value of a security in the manner that the U. S. Government is the guarantor of the face value of U. S. Treasury securities. Any representation to the contrary by a member or associated person is false and will result in disciplinary action. In addition, a member that fails to inform its customers adequately about the nature of SIPC coverage and account insurance, especially where the member is aware that the customer misunderstands such issues, may face disciplinary action.

Suitability

Members selling funds to elderly, retired, or first-time investors must have an adequate and reasonable basis for selling a particular fund to the investor. Further, a member should be able to demonstrate the rationale for recommending a particular fund to an investor based on the information obtained pursuant to Article III, Sections 2 and 21 of the Rules of Fair Practice for the purpose of making a suitability determination. As an added measure of care, members may wish to employ the procedures specified under SEC Rule 15g-9(b) for low-priced securities when selling funds to elderly, retired, or first-time investors. Such procedures would assist members in ensuring the suitability of funds sold to such investors.

Internal Controls

Members must develop appropriate internal controls, supervisory and compliance, to ensure that mutual fund sales practices comply with all relevant NASD rules, and are consistent with high standards of commercial honor and just and equitable principles of trade. New account and mutual fund sales procedures must include obtaining the information required by the NASD Rules of Fair Practice and other securities laws and rules, and should include requesting information necessary to making an informed suitability determination. Members should also include procedures for supervisory personnel to review the accuracy of information gathered and the appropriateness of the suitability determinations made by their associated persons.

Compliance reviews by member firms should also include account reviews for switching and unsuitable diversification. Finally, members should conduct periodic internal audits of correspondence, advertising, and other marketing efforts to determine compliance with the securities laws and rules.

It should be emphasized that supervision involves much more than establishing written procedures. Implementation of supervisory procedures is critical. Failure to enforce established procedures is the same as having no procedures at all.

Advertising/Marketing

Members acting as underwriters of mutual funds must also ensure that all advertising and marketing materials have been filed with and approved by the appropriate regulatory authorities. Any material not required to be filed must, nevertheless, comply with the NASD's advertising rules at Article III, Section 35 of the Rules of Fair Practice. Particular emphasis should be given to the adequacy and prominence of disclosure of information to ensure that material information is not omitted. Members are also cautioned aginst making or permitting changes to the material in the prospectus or other approved material, especially if the effect of the change is to exaggerate, obscure, or mimimize material information.

In addition, members must remain aware of the requirements of the Article III, Section 26 of the Rules of Fair Practice for sales-charge limitations, dealer concessions and discounts, and the maintenance of the public offering price, among others.

Questions regarding this Notice may be directed to R. Clark Hooper, Vice President, Investment Companies Regulation Department, (202) 728-8329, or Elliott R. Curzon, Senior Attorney, Office of General Counsel, (202) 728-8451.

NASD NOTICE TO MEMBERS 94-17

SEC Reproposes Large-Trader Reporting System

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

The Securities and Exchange Commission (SEC) is reproposing to adopt Rule 13h-1 and Form 13H under the Securities Exchange Act of 1934. Originally published for comment in 1991, the proposed rule establishes a system for identifying large-trader accounts and transactions, and places certain recordkeeping and reporting requirements on large traders and their registered broker/dealers. Comments on the proposed rule are due on or before April 18, 1994.

Background

The SEC initially proposed Rule 13h-1 following the passage of the Market Reform Act of 1990 (Market Reform Act). In congressional reports accompanying the Market Reform Act, legislators noted the importance of having the necessary information to reconstruct trading activity in periods of market stress. These reports noted that the SEC was limited in its ability to gather broad-based samples of investor-trading information. To remedy this situation, Congress provided the SEC with specific authority to establish a large-trader reporting system.

The initial proposal for a large-trader reporting system was contained in Securities Exchange Act Release No. 29593 and published in the *Federal Register* on August 28, 1991. The SEC noted that it received comments from broker/dealers, regulatory organizations, industry associations, and other market participants that, although generally supportive, expressed concern that the proposed rule would be unduly burdensome and costly.

Reproposal Of Rule 13h-1

To incorporate many of the suggestions made in the comment letters, the SEC determined to repropose Rule 13h-1, revising certain provisions to clarify the operation of the system and reduce the costs associated with the rule. The reproposed rule is contained in SEC Release No. 34-33608 and was published in the *Federal Register* on February 17, 1994.

The changes in the reproposed rule are intended to accomplish the following:

1. Clarify the definition of a large trader and provide a flexible concept of aggregation.

2. Increase the identifying and reporting activity levels.

3. Reduce the scope of information captured on Form 13H.

4. Streamline Form 13H filing and updating requirements that include an inactive filing status.

5. Provide more informative and detailed instructions to Form 13H.

6. Reduce the recordkeeping and reporting requirements for the large-trader identification numbers.

7. Provide a safe harbor for the duty to supervise.

Due to the extensive changes, the SEC is seeking comment on any aspect of the reproposed rule. In particular, the SEC invites comments as to whether there are more cost-effective alternatives to the reproposed system that would provide similar benefits. Because of the time that has elapsed, the SEC also is requesting comments that identify any new information technologies that would accomplish the

goals of the Market Reform Act while minimizing the costs to a greater extent.

NASD members that wish to comment on the reproposed rule should do so by April 18, 1994. Comment letters should refer to File No. S7-24-91 and should be sent, in triplicate, to:

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549.

Members are requested to send copies of their comment letters to:

Joan Conley
Corporate Secretary
National Association of Securities Dealers, Inc.
1735 K Street, NW
Washington, DC 20006-1500.

Questions concerning this Notice may be directed to Roberta Donohue, NASD Compliance Department, at (202) 728-8203.

NASD NOTICE TO MEMBERS 94-18

Municipal Securities Rulemaking Board Preparing Way For T+3 Settlement Of Municipal Securities

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

Securities and Exchange Commission (SEC) Rule 15c6-1, effective June 1, 1995, establishes three business days as the standard settlement time frame for most securities transactions. Although municipal securities currently are exempt from the rule, the SEC has requested the Municipal Securities Rulemaking Board (MSRB) to develop a T+3 implementation plan for the municipal securities market.

Background

In October 1993, the SEC approved Rule 15c6-1 under the Securities Exchange Act of 1934. This rule requires the securities industry to compress the current five-business-day settlement time frame to three business days in June 1995. The rule does not cover municipal securities; however, the SEC has asked the MSRB to undertake a similar commitment for municipal securities. The MSRB is drafting a plan for presentation to the SEC, discussing how to handle the conversion to T+3 settlement for municipal securities.

Discussion Of Preparatory Actions

Shortening the settlement cycle requires improved use of automated clearance and settlement systems. In a T+3 environment, dealers, customers, and clearing agents all will have less time to deal with transactions that are not cleared automatically. Thus, it is crucial that all transactions, including transactions between dealers and with institutions, are processed efficiently within centralized automated clearance and settlement systems.

The MSRB recently strengthened its rules governing automated clearance and settlement systems. In 1993, it amended Rules G-12(f)(ii) and G-15(d)(iii) to require book-entry settlement for essentially all transactions between dealers and with institutions that involve depository-eligible municipal securities. In addition, all transactions between dealers are now subject to comparison in an automated comparison system under an amendment to Rule G-12(f)(i). Effective July 1, 1994, all transactions with institutional customers must be confirmed/affirmed in an automated confirmation/affirmation system (e.g., the Depository Trust Company's ID system) under an amendment to Rule G-15(d)(ii). These amendments remove several broad exemptions that previously existed in the rules, leaving exceptions only for special, narrowly defined types of transactions.

Improved performance by dealers, institutions, and clearing agents in the automated clearance system is critical if T+3 settlement is to occur without increasing the number of failed transactions. At the present time, the comparison rate for transactions between dealers is approximately 75 percent in the initial comparison cycle (i.e., by the close on trade date). Similarly, the affirmation rate for institutions is approximately 82 percent on T+3. Both of these rates must improve significantly to ensure that transactions in municipal securities will settle on time in a three-day settlement cycle. In the corporate securities market, the affirmation rate presently is 96 percent, and the corporate industry is working to increase this rate prior to the conversion to T+3. *It is clear that, for the municipal securities market, it is even more important to address this area before T+3 is attempted.*

The MSRB and NASD currently are working with clearing corporations, depositories, members, and

industry associations to encourage educational efforts to improve the use of automated clearance systems for municipal securities transactions. Since participation in these systems by dealers is required under MSRB Rules G-12(g) and G-15(d), the NASD will increase its examination and surveillance focus on ensuring better member compliance with these MSRB rule requirements and improved performance in the systems. Members with poor comparison/affirmation rates must take immediate action to correct any deficiencies, and if an improvement is not made in a reasonable period of time, regulatory action by the NASD may become necessary. Through these efforts the MSRB and the NASD believe that it is possible to make great strides before the scheduled June 1995 date for conversion to T+3 settlement.

Conclusion

At this time, it appears the municipal securities industry can convert to T+3 along with other securities markets. Although the MSRB and the NASD believe there are unique problems on the institutional side of the municipal market, the solutions to these problems have been identified, and the remaining preparatory work, although considerable, can be done over the next several months if the industry makes the effort to do so. Persons having questions regarding this Notice may contact Brad Darfler, NASD Compliance Department, (202) 728-8946.

NASD NOTICE TO MEMBERS 94-19

Appointment Of A SIPC Trustee

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

On January 31, 1994, the Securities Investor Protection Corporation (SIPC) instituted a direct payment procedure for:

McCarley and Associates, Inc.
242A South Pleasantburg Drive
Greenville, SC 29606

Questions regarding the firm should be directed to SIPC:

Securities Investor Protection Corporation
805 Fifteenth Street, N.W.
Ste. 800
Washington, DC 20005-2207
(202) 371-8300

Members may use the "immediate close-out" procedures as provided in Section 59(i) of the NASD's Uniform Practice Code to close out open over-the-counter contracts. Also, Municipal Securities Rulemaking Board Rule G-12(h) provides that members may use the above procedures to close out transactions in municipal securities.

NASD NOTICE TO MEMBERS 94-20

Good Friday: Trade Date-Settlement Date Schedule

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

The Nasdaq Stock Market℠ and the securities exchanges will be closed on Good Friday, April 1, 1994. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Mar. 24	Mar. 31	Apr. 5
25	Apr. 4	6
28	5	7
29	6	8
30	7	11
31	8	12
Apr. 1	Markets Closed	—
4	11	13

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

Brokers, dealers, and municipal securities dealers should use the foregoing settlement dates for purposes of clearing and settling transactions pursuant to the NASD Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of these settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (203) 375-9609.

NASD NOTICE TO MEMBERS 94-21

Nasdaq National Market Additions, Changes, And Deletions As Of February 24, 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 February 24, 1994, the following 62 issues joined the Nasdaq National Market®, bringing the total number of issues to 3,537:

Symbol	Company	Entry Date	SOES℠ Execution Level
SLOT	Anchor Gaming	1/28/94	500
NSTA	Anesta Corp.	1/28/94	500
GNPT	GP Financial Corp.	1/28/94	1000
INTM	Interim Services Inc.	1/28/94	1000
NXGN	NeXagen, Inc.	1/28/94	500
DLNK	Digital Link Corporation	2/1/94	200
MAPS	MapInfo Corporation	2/1/94	1000
ORTH	Orthopedic Technology, Inc.	2/1/94	500
PARQ	ParcPlace Systems, Inc.	2/1/94	1000
RGCO	Roanoke Gas Company	2/1/94	200
EECNW	Ecogen Inc. (1/31/98 Wts)	2/2/94	1000
EMAK	Equity Marketing, Inc.	2/2/94	500
ESMR	Esmor Correctional Services, Inc.	2/2/94	500
USAM	USA Mobile Communications Holdings, Inc.	2/2/94	200
CTSC	Cellular Technical Services Company, Inc.	2/3/94	500
CTSCZ	Cellular Technical Services Company, Inc, (4/28/95 Wts Cl A)	2/3/94	200
HISSZ	HealthCare Imaging Services, Inc. (11/12/96 Wts B)	2/3/94	500
IGEN	IGEN, Inc.	2/3/94	500
ALTC	ALANTEC Corporation	2/4/94	500
RRRR	Renassance Communications Corp.	2/4/94	200
SKEYV	Softkey International Inc.(WI)	2/4/94	500
ANMR	Advanced NMR Systems, Inc.	2/7/94	500
LABKR	Lafayette American Bancorp	2/7/94	200
LSWY	Leaseway Transportation Corp.	2/7/94	200
SKEYW	Softkey International Inc. (3/26/96 Wts)	2/7/94	200
SILVR	Sunshine Mining Company (Rights exp 3/9/94)	2/7/94	200
FILAF	Federal Industries Ltd. (Cl A Conv)	2/8/94	500
ICEL	InterCel, Inc.	2/8/94	500
POST	International Post Group Inc.	2/8/94	200
LNCT	Lancit Media Productions, Ltd.	2/8/94	500
TRSM	TRISM, Inc.	2/8/94	500
WBCO	Webco Industries, Inc.	2/8/94	500
CSEP	Consep, Inc.	2/9/94	500
ELTN	Eltron International, Inc.	2/9/94	200
SGMA	SigmaTron International, Inc.	2/9/94	500
TOFF	Tatham Offshore, Inc.	2/9/94	500
DAKT	Daktronics, Inc.	2/10/94	500
PRCT	Procept, Inc.	2/10/94	500
SNIC	Sonic Solutions	2/10/94	200
DSPG	DSP Group, Inc.	2/11/94	200

Symbol	Company	Entry Date	SOES℠ Execution Level
FBGIA	Financial Benefit Group, Inc. (Cl A)	2/11/94	500
SDSK	Softdesk, Inc.	2/11/94	500
SENV	Security Environmental Systems, Inc.	2/14/94	500
XPED	Xpedite Systems, Inc.	2/14/94	500
ACSE	ACS Enterprises, Inc.	2/16/94	500
DENAF	Delrina Corporation	2/16/94	200
NTII	Neurobiological Technologies, Inc.	2/16/94	500
AUGIW	American United Global, Inc. (12/3/95 Wts)	2/17/94	200
BMPE	Blimpie International, Inc.	2/17/94	500
CAWS	CAI Wireless Systems, Inc.	2/17/94	500
ISSS	Integrated Silicon Systems, Inc.	2/17/94	500
PFWA	Pet Food Warehouse, Inc.	2/17/94	500
CEXCF	Conwest Exploration Company Limited	2/18/94	500
HRSH	Hirsch International Corp. (Cl A)	2/18/94	500
NMSS	Natural MicroSystems Corporation	2/18/94	500
SATC	SatCon Technology Corporation	2/18/94	500
TSCO	Tractor Supply Company	2/18/94	500
AFAS	Arden Industrial Products, Inc.	2/23/94	200
EMMS	Emmis Broadcasting Corporation (Cl A)	2/23/94	500
ENNS	Equity Inns, Inc.	2/23/94	500
FMST	FinishMaster, Inc.	2/23/94	500
KRGCF	Kinross Gold Corporation	2/23/94	500

Nasdaq National Market Symbol and/or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since January 28, 1994:

New/Old Symbol	New/Old Security	Date of Change
MFRI/MFRI	MFRI, Inc./Midwesco Filter Resources, Inc.	1/31/94
GACC/GACCV	Great American Communications Company (Cl A S/D-2/9) /Great American Communications Company (Cl A WI)	2/3/94
CDCR/CDCRA	Children's Discovery Centers of America, Inc. (Cl A) /Children's Discovery Centers of America, Inc. (Cl A)	2/9/94
CDIC/CDIC	Cardinal Health, Inc./Cardinal Distribution Inc.	2/14/94
CCRO/CCRO	Clintrials Research Inc./Clintrials Inc.	2/14/94
NOELZ/NOEL	Noel Group, Inc.(Combined Certificates)/Noel Group, Inc.	2/28/94
KIDS/PRCO	Childrens Comprehensive Services Inc./Pricor, Inc.	2/15/94
TATWF/TATWF	TAT Technologies Ltd.(3/30/95 Wts A)/TAT Technologies Inc. (3/30/94 Wts A)	2/17/94
POST/POST	International Post Limited/International Post Group Inc.	2/18/94
GOTK/GOTK	Geotek Communications Inc./Geotek Industries Inc.	3/3/94
LABS/HORL	LabOne, Inc./Home Office Reference Laboratory Inc.	2/22/94
WANG/WANGV	Wang Labratories, Inc. (New S/D2/28)/Wang Labratories, Inc.	2/22/94
SBYT/MPRS	Spectrum HoloByte, Inc./MicroProse, Inc.	2/23/94

Nasdaq National Market Deletions

Symbol	Security	Date
RMHIQ	Rocky Mountain Helicopters, Inc.	1/28/94
MTNR	Mountaineer Bankshares of West Virginia, Inc.	1/31/94
PCBC	Penn Central Bancorp, Inc.	1/31/94
FTSC	The First Savings Bank FSB	1/31/94
ANUC	American Nuclear Corporation	2/1/94
CRCC	Craftmatic Industries, Inc.	2/1/94
GFCT	Greenwich Financial Corporation	2/1/94
NLBK	National Loan Bank	2/1/94
PECN	Publishers Equipment Corporation	2/1/94
SNLT	Sunlite, Inc.	2/1/94
UPBI	United Postal Bancorp, Inc.	2/1/94
SKEYF	Softkey Software Products Inc.	2/4/94
SPKR	Spinnaker Software Corporation	2/4/94
WDST	Wordstar International Incorporated	2/4/94
RCII	RehabClinics, Inc.	2/7/94
WDSTW	Wordstar International Incorporated (3/26/96 Wts)	2/7/94
BOONQ	Boonton Electronics Corporation	2/10/94
CFIXE	Chemfix Technologies, Inc.	2/10/94
QUME	Qume Corporation	2/10/94
MEMXY	Memorex Telex N.V. ADR	2/11/94
FLBK	FloridaBank, A Federal Savings Bank	2/14/94
ENZY	Enzymatics, Inc.	2/16/94
AIPNR	American International Petroleum Corporation (2/11/94 Rts)	2/17/94
LABKR	Lafayette American Bancorp, Inc. (Rts)	2/22/94

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.

NASD DISCIPLINARY ACTIONS

Disciplinary Actions Reported For March

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 Monday, March 21, 1994. 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

Princeton American Equities Corp. (Phoenix, Arizona) was fined $45,000, jointly and severally with two individuals, required to pay $42,446.75 in restitution to customers, jointly and severally with an individual, and expelled from NASD membership. The sanctions were based on findings that the firm conducted a securities business while failing to maintain its minimum required net capital and failed to maintain accurate books and records. Moreover, the firm filed inaccurate FOCUS Part I reports and failed to respond to NASD requests for information.

Furthermore, the firm effected transactions in common stock with public customers at prices that were not reasonably related to the prevailing market price for these securities and with markdowns that ranged from 7.1 to 54.2 percent. Also, the firm failed to disclose to customers the amount of markup, markdown, or similar remuneration received in certain riskless principal transactions. The firm also purchased restricted securities from customers and failed to comply with the provisions of Rule 144(f) and (g) promulgated pursuant to the Securities Act of 1933.

Firms Expelled, Individuals Sanctioned

Bachus & Stratton Securities, Inc. (Pompano Beach, Florida), Wasatch Stock Trading, Inc. (Salt Lake City, Utah), Salvator Anthony Lanza (Registered Principal, Boca Raton, Florida), Dan Lawrence Mauss (Registered Principal, Salt Lake City, Utah), Thomas Eugene Russo (Registered Representative, Nanuet, New York), Edward Norman LaMarca (Registered Representative, Brooklyn, New York), and **Salvatore Dominic Romano (Registered Representative, Staten Island, New York)**. Bachus and Lanza were fined $200,000, jointly and severally and ordered to disgorge $815,259.71, jointly and severally. Wasatch and Mauss were fined $250,000, jointly and severally and ordered to disgorge $106,945.76, jointly and severally. Bachus and Wasatch were each expelled from NASD membership. Lanza and Mauss were each barred from association with any NASD member in any capacity. Russo was fined $40,000, ordered to disgorge $28,175.19, and barred from association with any NASD member in any capacity. LaMarca was fined $35,000, ordered to disgorge $13,725.39, and barred from association with any NASD member in any capacity. Romano was fined $20,000, ordered to disgorge $29,506.30, and barred from association with any NASD member in any capacity.

The sanctions were based on findings that Bachus sold shares of a common stock that it had purchased directly or indirectly from another entity to its customers through principal transactions. In so doing, Lanza knowingly or recklessly failed to disclose, and failed to cause the registered representatives

of Bachus to disclose, to customers the material fact that they were purchasing the common stock indirectly from an entity controlled by Lanza, resulting in profits to Bachus of $276,678.75. In addition, Lanza knowingly and recklessly failed to disclose certain material information to customers concerning warrants including the fact that a registration statement for the warrants was not declared effective by the Securities and Exchange Commission (SEC), thus preventing the purchasers from exercising the warrants and obtaining free-trading stock. Furthermore, Bachus, Wasatch, Lanza, Mauss, Russo, LaMarca and Romano, effected a series of transactions with the intention of and effect of creating actual and apparent trading activity in a common stock, and raising and maintaining the price of the stock for the purpose of inducing the purchase and sale of the stock by others, thereby manipulating the market for the common stock.

Also, Wasatch, acting through Mauss, Bachus, Lanza, Russo, LaMarca, and Romano, while participating in the distribution of a common stock as underwriters, brokers, dealers, or in concert with such participants, directly and indirectly, bid for and/or purchased such securities for their own account, or accounts they controlled, and induced others to purchase such securities before the completion of the distribution, in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-6, promulgated thereunder. In addition, Wasatch, acting through Mauss, transferred a common stock from various personal and nominee accounts without the authorization of the account holder and opened various accounts for persons associated with other members when they should have known that the account record maintained for each account was false. Russo and LaMarca also failed to respond to an NASD request for information.

DWS Securities Corporation (Sonora, California), Stephen Michael Rangel (Registered Principal, Sonora, California), and **Hugh Scott Liddle, Jr. (Registered Principal, Modesto, California)** were fined $394,550.16, jointly and severally, and required to make written offers of rescission to investors. Any amounts the respondents pay to the customers will be applied against the fine. In addition, the firm was expelled from NASD membership, and Rangel and Liddle were barred from association with any NASD member in any capacity.

The SEC imposed the sanctions following its review of a February 1992 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Rangel and Liddle, made fraudulent misrepresentations and omissions about the use of offering proceeds in two private offerings.

Firms Suspended, Individual Sanctioned

Richfield Securities, Inc. (Englewood, Colorado) and **Philip James Davis (Registered Principal, Littleton, Colorado)**. The firm was fined $30,133.97 and suspended from NASD membership for one year. Davis was fined $30,133.97, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination before becoming associated with any NASD member.

The SEC affirmed the sanctions following appeal of a June 1992 NBCC decision. The sanctions were based on findings that the firm, acting through Davis, charged its customers unfair and unreasonable prices on the sale of common stock, which it dominated and controlled, and failed to disclose the markups to the customers. The markup on these transactions ranged from 11.43 to 300 percent above the firm's contemporaneous cost for the securities, in violation of Article III, Sections 1, 4, and 18 of the NASD Rules of Fair Practice and the Interpretation of the Board of Governors concerning NASD Mark-Up Policy. Also, the firm, acting through Davis, failed to establish and implement adequate written supervisory procedures to detect and prevent the above activity.

Firms Fines, Individuals Sanctioned

Bryn Mawr Investment Group, Inc. (Rosemont, Pennsylvania), Thomas J. Falzani (Registered Principal, Rosemont Pennsylvania), and **Howard H. Flesher (Registered Principal, Rosemont, Pennsylvania)** submitted an Offer of Settlement pursuant to which the firm was fined $14,000, jointly and severally with Falzani, and fined $14,000, jointly and severally with Flesher. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Flesher and Falzani, effected securities transactions at unfair and unreasonable prices including markups or markdowns ranging from 5.05 to 43 percent. The findings also stated that the firm, acting through Flesher and Falzani, effected retail sales of corporate bonds at unfair prices including markups ranging from 4.5 to

6.83 percent. Moreover, the findings stated that the respondents failed to disclose the markup on 32 confirmations of principal transactions with customers.

In addition, the NASD found that the firm, acting through Flesher, effected municipal securities transactions without having a registered municipal securities principal. The NASD also determined that the firm, acting through Falzani, failed to prepare and maintain accurate books and records.

PaineWebber, Incorporated (Riverside, California), John L. Sherman (Registered Principal, Riverside, California), and **John K. Coolidge (Registered Representative, Riverside, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $50,000. Sherman was fined $20,000 and required to requalify as a principal before associating with any NASD member in that capacity. Coolidge was fined $10,000 and required to requalify as a general securities sales supervisor (Series 8). If Coolidge fails to requalify within 90 days, he will be suspended in that capacity until such time as he passes the examination.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Sherman and Coolidge, failed to supervise properly the activities of two of its registered representatives.

M. Rimson & Co., Inc. (New York, New York), Moshe Rimson (Registered Principal, New York, New York) and **Irving Levine (Registered Representative, Woodmere, New York)** submitted an Offer of Settlement pursuant to which the firm and Rimson were fined $15,000, jointly and severally, and ordered to disgorge $72,641 to public customers. If the firm and Rimson cannot within six months document for the NASD staff the disgorgement payments, they will be added to the fine to be paid by the firm and Rimson, jointly and severally. The firm is also required to submit written supervisory procedures designed to prevent and detect any future violations of the NASD Mark-Up Policy and Rimson was suspended from association with any NASD member as a general securities principal for 15 business days. Levine was fined $15,000 and suspended from association with any NASD member in any capacity for 15 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 Levine and Rimson, engaged in a course of conduct that operated as a fraud upon purchasers of a common stock. Specifically, the prices at which the firm sold the stock to customers were not fair with markups ranging from 94 to 1,900 percent above the prevailing market price of the securities. In addition, the NASD found that the firm, acting through Rimson, failed to establish, maintain, and enforce written supervisory procedures that would have enabled them to supervise properly the activities of the firm's associated persons.

Firm Fined

Barron Chase Securities, Inc. (Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to entry of findings that, after receiving notice from the NASD Advertising Department that certain misleading promotional materials should no longer be used, the firm continued to effect sales in common stock without ensuring that customers were not basing their investment decisions on the misleading statements contained in the promotional materials.

Individuals Barred Or Suspended

Theodore Allocca (Registered Representative, Huntington, New York) was suspended from association with any NASD member in any capacity for three business days. The NBCC imposed the sanction following an appeal of a District 10 District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Allocca failed to pay a $67,556.02 NASD arbitration award.

Douglas Paul Behl (Registered Principal, Loomis, California) was fined $4,199 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Behl, in connection with the sales of mutual funds to 11 customers, permitted an individual to act as a representative of a member firm and receive commissions without being registered with the NASD.

Nicholas A. Chambos (Registered Representative, Utica, Michigan) was fined $20,000 and barred from association with any NASD member in any capacity. In addition, he must pay $1,132.85 in restitution to a member firm. The sanctions were based on findings that Chambos obtained from public customers $1,132.85 through the cash surrender of a life insurance policy with

instructions to use such funds to purchase shares of stock. Chambos failed to follow said instructions and used the funds for some purpose other than for the benefit of the customers. Chambos also failed to respond to NASD requests for information.

William G. Coker, Jr. (Registered Representative, Baltimore, Maryland) was fined $30,000, barred from association with any NASD member in any capacity and must pay $2,027.43 in restitution. The sanctions were based on findings that Coker collected from an insurance customer a total of $2,807.91 in cash to pay insurance premiums. Coker, however, only applied $780.48 of the amount toward the above policies and misappropriated $2,027.43. In addition, Coker failed to respond to NASD requests for information.

Gregory Moncur Cozzens (Registered Representative, Fremont, California) was fined $162,375.79 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cozzens received from four public customers funds totaling $62,375.79, and misappropriated and converted the funds to his own use and benefit.

Andinos P. Damalas (Registered Representative, Virginia Beach, Virginia) was fined $15,000, barred from association with any NASD member in any capacity, and required to pay $2,993.94 in restitution. The sanctions were based on findings that Damalas received from an insurance customer a $9,111.96 check for insurance premiums. Damalas remitted only $6,118.02 of the amount to the insurance company and converted the $2,993.94 balance to his own use and benefit.

Joseph Stephen Fisher (Registered Representative, San Ramon, California) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fisher failed to respond to NASD requests for information addressing allegations made by public customers.

Kimberley E. Gorum (Registered Representative, Mobile, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000, barred from association with any NASD member in any capacity, and must pay $857.13 in restitution to the appropriate party. Without admitting or denying the allegations, Gorum consented to the described sanctions and to the entry of findings that he caused two rebate checks totaling $857.13 made payable to two public customers to be deposited into his bank account and converted to his own use and benefit without the knowledge or consent of the customers. In addition, the NASD found that Gorum failed to respond to NASD requests for information.

Keith Darnell Greene (Registered Representative, Dayton, Ohio) was fined $5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Greene misappropriated and converted from an insurance customer $90.54 which had been designated for the payment of insurance premiums.

Stephen Craig Harrison (Registered Representative, Merriam, Kansas) was fined $10,000 and required to requalify by examination before acting in any capacity with any member firm. The sanctions were based on findings that Harrison purchased or caused to be purchased shares of a common stock in the account of a public customer without the customer's prior knowledge, authorization, or consent.

Roland Infeanyi Ihejieto (Registered Representative, Chicago, Illinois) was fined $25,000, barred from association with any NASD member in any capacity, and required to pay $3,620.50 in restitution to the appropriate parties. The sanctions were based on findings that Ihejieto obtained a $2,096.50 check payable to a customer representing the proceeds from the sale of stock held in the customer's account. Without the knowledge or consent of the customer, Ihejieto endorsed the check and retained the proceeds for his own use and benefit. Ihejieto also received from another customer two checks totaling $1,524 for the purchase of stock, but retained the funds for his own use and benefit.

In addition, Ihejieto failed to respond to NASD requests for information.

John P. Lanigan (Registered Representative, Corapolis, Pennsylvania) was fined $5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lanigan received from an insurance customer an $886.63 check that the member firm had issued to the customer to pay an insurance premium and that the customer had endorsed. Lanigan induced a third party to negotiate the check and give Lanigan the money for his own use and benefit.

Sandra F. Long (Registered Representative, Nashville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $5,000 and suspended from association with any NASD member in

any capacity for two weeks. Without admitting or denying the allegations, Long consented to the described sanctions and to the entry of findings that she signed the name of a public customer to an application for a variable annuity policy.

Conrad C. Lysiak (Registered Principal, Spokane, Washington) was fined $15,000 and suspended from association with any NASD member in any principal capacity for 10 days. In addition, Lysiak must requalify by examination as a general securities principal. The SEC affirmed the sanctions following an appeal of a November 1992 NBCC decision. The sanctions were based on findings that Lysiak failed to establish, implement, and enforce reasonable supervisory measures necessary to prevent and detect violations by other persons associated with his member firm or to otherwise supervise certain employees' conduct.

This action has been appealed to a United States Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

James Y. Palmer (Registered Principal, Jackson, Mississippi) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any principal capacity for two weeks. Without admitting or denying the allegations, Palmer consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce a proper supervisory system as required by the written supervisory procedures of his member firm.

Christian John Randle (Registered Representative, Mount Prospect, Illinois) was fined $5,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a general securities representative within 90 days of the date of this decision or cease acting in such capacity until requalified. The sanctions were based on findings that Randle received an order from his member firm's branch office to purchase 1,000 shares of stock at $12.50 for a public customer's account. Randle obtained 1,000 shares at that price, but reported to his firm that he could only fill 600 shares of the order. Randle then placed the remaining 400 shares in his own account and thereafter sold the 400 shares later that day at $14.25.

Randle's suspension commenced with the opening of business February 28, 1994 and will conclude March 29, 1994.

William Frederick Rembert (Registered Representative, Torrance, California) was fined $10,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a May 1993 NBCC decision. The sanctions were based on findings that Rembert submitted to his member firm falsified records relating to the purchase by 55 customers of tax-sheltered annuities. Specifically, the documents reported inflated total annual payments to be made by the customers resulting in commission overpayments to Rembert totaling $24,502.01.

Kenneth M. Salzman (Registered Representative, Baltimore, Maryland) was fined $120,000, barred from association with any NASD member in any capacity, and must pay $28,536.08 in restitution. The sanctions were based on findings that Salzman received from two public customers two checks totaling $23,000 for the purchase of a mutual fund and received from a third customer two checks totaling $5,536.08 for the purchase of a variable annuity. Salzman deposited the aforementioned checks but instead of purchasing the shares or the annuity, converted the monies to his own use and benefit. Salzman also failed to respond to NASD requests for information.

Martin Conway Smith (Registered Principal, Moraga, California) was suspended from association with any NASD member in any capacity for 30 business days. The sanction was based on findings that Smith recommended to a public customer the purchase of securities without having reasonable grounds for believing that the recommendation was suitable for the customer considering her financial situation and needs.

Rod M. Solow (Registered Representative, New Orleans, Louisiana) 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, Solow consented to the described sanction and to the entry of findings that, during a Series 6 examination, he violated testing procedures by bringing written materials with him into the test area.

Penelope J. Thornton (Registered Representative, Temple Hills, Maryland) was fined $50,000, barred from association with any NASD member in any capacity, and must pay $5,799 in restitution. The sanctions were based on findings that Thornton received from two public customers checks totaling $5,799 for insurance premiums. Thornton failed to apply the funds towards the premiums; instead, she negotiated the checks and converted the proceeds to her own use and

benefit. Thornton also failed to respond to NASD requests for information.

Carl A. Torelli (Registered Principal, Fayetteville, Arkansas) submitted an Offer of Settlement pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $80,000 in restitution to his former member firm. Without admitting or denying the allegations, Torelli consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his member firm, he caused funds totaling $80,000 to be disbursed from the firm's payroll department to himself when he knew that he did not have proper authorization to do so.

Richard A. Torti (Registered Principal, Little Rock, Arkansas) submitted an Offer of Settlement pursuant to which he was fined $10,000 and suspended from serving in the capacity as owner or principal stockholder of any NASD member firm for two years. Without admitting or denying the allegations, Torti consented to the described sanctions and to the entry of findings that he failed to properly supervise the activities of a registered financial and operations principal for his member firm.

Michael C. Woloshin (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was fined $170,850, ordered to pay $204,150 in restitution to public customers, and suspended from association with any NASD member in any capacity for four years. Without admitting or denying the allegations, Woloshin consented to the described sanctions and to the entry of findings that he fraudulently used a nominee account to park securities thereby concealing his ownership of such securities and generated additional payout for himself. The findings also stated that Woloshin charged fraudulently excessive markups of 10 to 52 percent above the prevailing market price, markdowns of 10 to 30 percent below the prevailing market price, and unfair as well as unreasonable prices to customers for securities.

Furthermore, the NASD determined that Woloshin engaged in unauthorized trading in customer accounts and opened a customer account without authorization. In addition, the NASD found that Woloshin made misrepresentations and omissions of material facts to induce customers to purchase securities and willfully, with reckless disregard, caused the account of at least one customer to be excessively traded (churning) with the intention and effect of generating additional compensation for himself. The NASD also found that Woloshin made unsuitable recommendations to public customers.

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

Smetek, Van Horn & Cormack, Incorporated, Dallas, Texas

Firm Suspended

The following firm was suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The action was 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.

Alpine Broker Services Corp., Englewood, Colorado (February 16, 1994)

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

Ward H. Clarke, Redmond, Washington

David C. Green, Denver, Colorado

Gene A. Hochevar, Boulder, Colorado

Guy R. Labone, Lakewood, Colorado

John E. Schmitz, Dallas, Texas

John R. Schwenger, Sr., Denver, Colorado

Peter P. Smetek, Jr., Dallas, Texas

Leon W. Snearly, Jr., Irving, Texas

Scott G. Steward, Garland, Texas

James I. Weiss, New York, New York

FOR YOUR INFORMATION

SEC Issues No-Action Letter Regarding Prime Broker Arrangements

On January 25, 1994, the Securities and Exchange Commission (SEC) issued a no-action letter that permits broker/dealers to treat a prime broker account as if it were a broker/dealer credit account pursuant to Section 220.11 of Regulation T.

The term "prime broker account" refers to an account maintained by a broker/dealer (usually a full-service firm) to facilitate the clearing and settling of securities transactions for substantial retail and institutional customers that are active market participants. A unique feature of these accounts allows the customer to place orders directly with one or more other registered broker/dealers (the executing broker).

The letter, which was issued by the SEC Division of Market Regulation after consultation with the Division of Banking Supervision and Regulation of the Federal Reserve System, establishes certain conditions that broker/dealers must meet to treat these accounts in this manner. In particular, the letter clarifies the responsibilities and obligations of the prime broker, the executing broker, and the customer.

The position is effective on an interim basis until December 31, 1995. During this time period, the SEC will review the operation of these accounts to determine whether to extend, modify, or terminate its no-action position.

Members maintaining prime broker accounts for their customers are urged to review the no-action letter in its entirety. If you participate in these prime broker arrangements and have not already received a copy of the letter, please contact your local NASD district office.

NASD Member Voting Results

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 93-82***— NASD Solicits Member Vote On Proposed Amendment Exempting Money Market Mutual Funds From Disclosure Requirements. Ballots For: 1,874; Against: 242; and Unsigned: 9.

Correction to *Notice to Members 94-8*

Please note in your copy of *Notice to Members 94-8* that the missing fourth line from the top of the third column on page 41 should read "Rule 15c2-11." We regret any confusion this may have caused our readers.

NASAA Publishes Revisions To Form U-4 And DRP For Public Comment

The March 1994 edition of *CCH NASAA Reports* includes, for public comment, certain proposed revisions to Page 3 of Form U-4 and the Disclosure Reporting Pages (DRP). These changes represent an effort to categorize disclosure information and customize the reporting forms. Disclosures submitted in this format will be more precise, uniform, and consistent with the specifications being created for the redesigned Central Registration Depository (CRD).

The revised Form U-4 will not be implemented before the new CRD; however, the North American Securities Administrators Association (NASAA) has

proposed these changes at this time to allow for development of the system and conversion of existing disclosure information to the new format. Additionally, the Securities and Exchange Commission (SEC) requested amendments to Item 7 on Page 4 of the Form U-4 to accommodate the consent to service of process and investigative subpoenas or other documents in administrative and civil proceedings initiated by the SEC and the Commodity Futures Trading Commission (CFTC).

The redesign of CRD will require additional changes to the Form U-4 and revisions to other forms. Publication of these changes for comment should occur later this year, with final implementation expected to coincide with the new CRD.

filed with Notices to Members

Special Regulatory Alert March 10, 1994

NASD Reiterates Members' Firm-Quote Obligations

During the past several weeks the SelectNet℠ system has experienced a marked increase in the number of preferenced orders priced at the inside, entered in the system and an increase in the number of backing away complaints. The reliability of market makers' disseminated quotes and the assurance to market participants that they can trade at these quotes is one of the fundamental operating principles of The Nasdaq Stock Market℠ (Nasdaq) that ensures the fair, efficient, and orderly operation of Nasdaq and the protection of investors.

Under the SEC's "firm-quote rule," Rule 11Ac1-1, a market maker has the obligation to execute an order "presented" to it at its displayed quotation up to its displayed size. Additionally, Article III, Section 6 of the NASD's Rules of Fair Practice and Part V, Section 2(b) and Part VI, Section 2 of Schedule D to the NASD's By-Laws require market makers to honor their quotes up to their displayed size. A market maker is relieved from its firm-quote obligation if: (i) the market maker sends a quote change to the NASD before an order is presented or (ii) the market maker has effected or is in the process of effecting a transaction at the time an order sought to be executed is presented and immediately upon completion of the transaction communicates a revised quotation to the NASD. Thus, a market maker's firm-quote obligation with respect to a particular order is triggered when that market maker becomes aware of, or should reasonably be aware of, the pendency of that order.[1]

The NASD takes most seriously its regulatory obligation to ensure that NASD members fully comply with the SEC's firm-quote rule. When presented with a backing away complaint, the NASD conducts a preliminary facts and circumstances analysis to determine when an order was presented to a market maker and whether the market maker was entitled to rely on an exemption from the firm-quote rule. Thereafter, the NASD vigorously and thoroughly investigates all valid backing away complaints and will not hesitate to take prompt and appropriate disciplinary action when warranted.

Following are some guidelines that market makers should follow when simultaneously handling orders from multiple sources:

- **Once a market maker becomes aware of the receipt of an order,** regardless of how the order is transmitted to the market maker, it is obligated under the firm-quote rule to process and execute that order at its disseminated quote up to its displayed size, absent an exemption from the firm-quote rule.

- **Preferenced orders received through SelectNet** should be monitored with the same degree of diligence afforded other means of traditional order communication.

- **If a market maker failed to act on a preferenced SelectNet order** before it "timed out" and did not execute any other order during the time that SelectNet order was pending, the NASD will infer, in the absence of convincing contrary evidence, that the market maker saw the SelectNet order and backed away from its quote. The NASD also

[1] The Policy accompanying Article III, Section 6 of the NASD's Rules of Fair Practice also imposes upon market makers an obligation to monitor orders being received.

would draw the same inference if the market maker changed its quote while the order was pending and did no trades during the pendency of the SelectNet order.

In addition, to facilitate the aggressive review of all backing away complaints in a prompt manner, and, when backing away is established, to permit resolution that benefits the complainant, the NASD believes it is incumbent on members alleging backing away to raise their complaints in a timely manner. Moreover, the NASD believes that it is inappropriate for a firm to defer pursuing a backing away complaint, particularly in instances where the firm has an opportunity to determine if the market is moving in an advantageous direction for its order.

- **Members complaining of backing away** should contact, or take reasonable steps to contact, the relevant market maker as soon as possible after the alleged backing away. While it is difficult to establish a hard and fast rule governing when backing away complaints should be lodged with the relevant market maker, the NASD notes that the Intermarket Trading System Plan entered into and followed by the NASD and every national securities exchange provides that trade-through complaints must be lodged within five (5) minutes of the alleged trade-through. Thus, a member's failure to take reasonable steps to contact the relevant market maker within five (5) minutes after the alleged backing away will be a very important factor that the NASD will consider when evaluating what action, if any, may be appropriate in response to a backing away complaint. The market maker also should ensure that it has the ability to timely receive and respond to potential backing away complaints.

- **If contact with the relevant market maker** does not resolve the alleged backing away, the complaining member should notify the NASD's Market Surveillance Department within fifteen (15) minutes after the alleged backing away occurs, either by phone at (301) 590-6080 or by fax at (301) 590-6671. A member's failure to take reasonable steps to notify the NASD within fifteen (15) minutes of the alleged backing away will be a very important factor that the NASD will consider when evaluating what action, if any, may be appropriate in response to a backing away complaint. Thereafter, the complaint also must be filed on an official backing away complaint form within twenty-four (24) hours of the alleged backing away, copies of which can be obtained by contacting Market Surveillance at (301) 590-6080.

- **Recently, some order-entry firms** have been cancelling their preferenced SelectNet orders within the minimum three-minute time period that the order is pending without having received a "decline" from the relevant market maker and, thereafter, alleging backing away. The NASD notes that the cancellation of preferenced SelectNet orders which have not been declined effectively precludes market makers from satisfying their firm-quote obligations. Thus, members should be advised that their cancellation of preferenced SelectNet orders before a market maker has declined the order or before the order "times out" will generally be deemed conduct evidencing a lack of an intent to trade, thus precluding the member from raising a valid backing away complaint.

Questions regarding this notice may be directed to Bernard Thompson, Assistant Director, Market Surveillance, at (301) 590-6436, Sheila Dagucon, Market Surveillance, at (301) 590-6432, Robert Aber, Vice President & General Counsel, at (202) 728-8290, or Thomas Gira, Assistant General Counsel, at (202) 728-8957.