

NASD NOTICE TO MEMBERS 94-93

**NASD Requests
Comment On Proposed
Rule Governing
Registered Persons
Lending To Or Borrowing
From Customers;
Comment Period Expires
January 31, 1995**

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 November 1994 meeting, the NASD Board of Governors (Board) approved the issuance of a Notice to Members soliciting member comment on a proposed amendment to Article III of the Rules of Fair Practice. The proposed rule would require registered persons to provide prior notification to, and obtain prior approval from, their employing member firm before personally borrowing funds or securities from a customer, or before personally lending funds or securities to a customer. As proposed by the rule, the notification and the prior approval must be in writing.

Background And Description Of The Proposed Amendment

In May 1994, the Board's Advisory Council (composed of District Business Conduct and Market Surveillance Committee Chairpersons) issued its report of recommendations to the Board. Included in the report was a recommendation that the NASD consider adopting a rule that would require registered persons to notify their employing member when personally borrowing funds or securities from customers. The Council's proposal was discussed by the National Business Conduct Committee (NBCC) at its November 1994 meeting.

The NBCC supported the Advisory Council's proposal and recommended to the Board that the coverage of the proposed rule be expanded to include lending of funds or securities, in addition to the borrowing of funds or securities, by registered persons with their customers. The NBCC also recommended that the member, upon prior written notification by the registered person, must record in writing the approval or disapproval of the proposed transaction with the customer.

The NBCC's determinations were based, in part, on several recent NASD disciplinary actions that demonstrated examples of abuse where registered representatives had borrowed funds or securities from customers. Specifically, the SEC affirmed two NASD disciplinary actions where the principal violation focused on registered representatives borrowing funds from, but not repaying, customers.¹

In approving this rule proposal for comment, the Board recognized that a number of member firms prohibit this type of conduct by their registered persons. Thus, the rule amendment is being proposed to establish a regulatory framework for member firms, which currently permit this practice by its registered persons, to follow.

A member's prior knowledge that a registered representative intends to borrow funds or securities from or loan funds or securities to its customers, and the member's subsequent approval, may serve as an effective deterrent to potential misconduct. It will also improve the member's ability to control and supervise the activities of its registered personnel. Additionally, the notice requirement will place an affirmative obligation on the representative that could be separately charged in a disciplinary action if not followed.

Along with the deterrent effect, the present proposal, if ultimately adopted, would clearly serve as an information gathering source for members about additional activities engaged in by their registered persons that may be considered to be beyond the scope

¹In the Matter of Terry Wayne White, Exchange Act Release No. 34-27895, April 11, 1990; and In the Matter of William Louis Morgan, Exchange Act Release No. 34-32744, August 12, 1993, respectively.

of their normal activities. With the information in hand, members would be able to evaluate, before granting approval, whether these activities pose any unnecessary risk to the customer and/or the member.

Request For Comments

The NASD asks members to provide comments on the proposed amendment to the Rules of Fair Practice. Comments should be directed to:

Ms. Joan Conley
Corporate Secretary
National Association of
Securities Dealers, Inc.

1735 K Street, NW
Washington, DC 20006-1500.

Comments must be received **no later than January 31, 1995**. Comments received by this date will be considered by the Board. Before becoming effective, the rule must be adopted by the Board and the membership and then filed with the SEC for its approval.

Text Of The Proposed Amendment To Article III Of The Rules Of Fair Practice

(Note: New language is underlined.)

Borrowing Or Loaning Funds Or Securities With Customers

Section ...

No person associated with a member in any registered capacity shall borrow funds or securities from or lend funds or securities to any customer of the member unless prior to such borrowing or loaning the registered person has provided written notice to the member and obtained written approval from the member. Notice shall be in the form required by the member. Activities subject to the requirements of Article III, Section 40 of the Rules of Fair Practice shall be exempted from the requirement of this Section.

NASD NOTICE TO MEMBERS 94-94

**NASD Requests
Comment On Proposed
Rule Governing Members
Operating On Bank
Premises; Comment
Period Expires
February 15, 1995**

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 National Association of Securities Dealers, Inc. (NASD) requests comment on proposed amendments to the NASD Rules of Fair Practice to adopt rules governing broker/dealers operating on the premises of financial institutions. The proposed rules adopt investor protection principles that are substantially similar to those embodied in a recent no-action letter issued by the staff of the Securities and Exchange Commission (SEC) to the Chubb Securities Corporation (the Chubb Letter). In particular, the Chubb Letter addresses broker/dealer networking agreements with financial institutions. The proposed rules respond to continuing concerns about the lack of clear guidance for NASD members in the nature of specific rules or regulations that address the activities of bank-affiliated and networking broker/dealers operating on the premises of financial institutions. The text of the proposed rules follows this Notice.

Background

On November 24, 1993, the SEC staff issued the Chubb Letter that describes the SEC's policy regarding certain broker/dealers operating on the premises of financial institutions. Following the release of the Chubb Letter, on February 15, 1994, the four banking agencies—the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision—issued an Interagency Statement on Retail Sales of Non-deposit Investment Products (the Interagency Statement). The Interagency Statement adopts many of the investor protection concepts of the Chubb Letter and directs banks to follow these principles when making

direct sales of securities to customers and overseeing the activities of NASD members selling securities on the premises of financial institutions.

To assist members doing business on the premises of financial institutions in their efforts to comply with the NASD Rules of Fair Practice, the federal securities laws, and applicable banking regulations, *Notice to Members 94-47* advised these members of the policies described in the Chubb Letter and the Interagency Statement. Bank-affiliated members and members participating in bank networking arrangements previously had been advised by the NASD to take precautions to protect investors by addressing issues of investor confusion.

In particular, *Notice to Members 94-16* reminded members of mutual fund sales practice obligations, citing the explosive growth of fund sales by bank-affiliated and networking broker/dealers. Similarly, *Notice to Members 93-87* provided members guidance for reinvestment of maturing certificates of deposits in mutual funds, focusing on NASD members affiliated with financial institutions or participating in networking arrangements. Among other things, *Notice to Members 93-87* described the specific disclosure requirements for money market, fixed income, and equity funds, and pointed out specific concerns that may arise in connection with sales of mutual funds on bank premises.

Regulatory Need For The Proposed Rules

Although the Chubb Letter provides regulatory guidance for some members operating on the premises of financial institutions, the NASD believes further action is required to establish uniform and consistent standards to govern this activity.

Most significantly, the Chubb Letter focuses on broker/dealer networking arrangements and, in this regard, presents some uncertainties as to the regulatory obligations of bank-affiliated broker/dealers. Accordingly, action is needed to ensure the existence of a level playing field for bank-affiliated members and members operating on the premises of banks pursuant to networking agreements. Further, because the Chubb Letter is a "no-action" position, it may be viewed as a guideline or an interpretive position rather than a required rule or regulation designed to protect investors.

Description Of The Proposed Rules

The proposed rules apply exclusively to the activities of NASD members that are conducting broker/dealer services on the premises of a financial institution where retail deposits are taken. Although applicable to all customers of such members, the main focus of the proposed rules is to minimize confusion by retail customers. Broker/dealer services are defined as services that include, but are not limited to, conducting an investment banking business, recommending any security, giving investment advice, describing investment vehicles, discussing the merits of any security or type of security with a customer, exercising judgment regarding securities and investment alternatives, accepting customer orders, transmitting orders, or handling customer funds or securities.

The proposed new rules also require that a member operating on the premises of a financial institution enter into a written agreement with the financial institution that describes the responsibilities of the parties to the agreement and the conditions to the agreement. Conditions for conducting broker/dealer services on the premises of a financial institution

include the member's physical location, customer disclosure, compensation, supervisory responsibilities, solicitation of customers, and communications with the public.

This written "Networking and Brokerage Affiliate Agreement" required by the proposed rules must stipulate that the broker/dealer will have exclusive responsibility for securities activities conducted through the broker/dealer at its location at the financial institution. Significantly, the agreement must contain provisions whereby the member agrees to notify the financial institution if any associated person of the member who is also an employee of the financial institution (dual employee) is terminated for cause by the member.

In turn, pursuant to the terms and conditions of the written agreement, the financial institution must agree to allow supervisory personnel of the member, and representatives of the SEC and the NASD, to have access to the financial institution's premises where the member conducts broker/dealer activities in order to conduct examinations and carry out any other regulatory responsibilities with regard to the member. Further, the financial institution must agree to monitor the unregistered employees of the financial institution to ensure that they perform only clerical- and ministerial-related functions with regard to investment-related services.

The written agreement also must stipulate that the financial institution agrees that unregistered employees of the financial institution will not receive any compensation, cash or non-cash, that is based on the effectiveness or the success of referrals of financial institution customers to the member. Importantly, the written agreement must contain provisions whereby the financial institution agrees that any dual employee whom

the member suspends from association with the member, or whom the SEC, the NASD, or any other regulatory or self-regulatory organization bars or suspends from association with the member or any other broker/dealer, will be terminated or suspended, respectively, from any securities activities conducted directly by the financial institution.

To minimize customer confusion, the proposed rules require that the member's broker/dealer services be conducted in a physical location distinct from the area where retail deposits of the financial institution are taken. Member's disclosure obligations require that, when an account is opened, the member obtain a written acknowledgement from each customer that products purchased or sold by the member:

- are not insured by the Federal Deposit Insurance Corporation;
- are not deposits or obligations of the financial institution;
- are subject to investment risks, including possible loss of principal invested; and
- are not protected by the Securities Investor Protection Corporation (SIPC) as to loss of principal.

The compensation conditions of the proposed rules prohibit the member from making any payments, including referral fees, to individuals employed with the financial institution who are not registered with the member. Broker/dealer services offered by the member are required to be provided only by persons associated with the member. To comply with the supervisory requirements of Article III, Section 27 of the NASD Rules of Fair Practice, associated persons must be properly supervised by the member in light of the member's particular activities conducted

at the financial institution. To that end, the rules require that the member designate a registered principal to supervise its associated persons at its location at the financial institution, and the member is further required to register its location at the financial institution as a branch office.

With regard to the member's communications with the public and the solicitation of customers, the rules stipulate that materials used to promote the member's broker/dealer services will be deemed to be materials of the member, and, as such, must be in compliance with Article III, Section 35 of the NASD Rules of Fair Practice. Additionally, the rules address the manner in which the financial institution may be referenced in advertising and promotional materials so as to ensure that it is clear that the broker/dealer services are provided by the member and not the financial institution. Finally, the rules prohibit the member from using confidential financial information maintained by the financial institution to solicit customers for its broker/dealer services.

Request For Comment

The NASD asks members and other interested persons to comment on the proposed amendments to the NASD Rules of Fair Practice. Comments should be directed to:

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

Comments must be received **no later than February 15, 1995**. Comments received by this date will be considered by the Board. Before becoming effective, the rule amendments must be adopted by the Board and the

membership and then filed with the SEC for its approval.

Text Of Proposed Rule

(Note: New language is underlined.)

Broker-Dealer Conduct on Premises of Financial Institution

(a) Applicability

This section shall apply exclusively to the activities of NASD members that are conducting broker-dealer services on the premises of a financial institution where retail deposits are taken. This section does not alter or abrogate members' obligations to comply with other applicable NASD rules, regulations, and requirements, nor those of bank regulatory authorities which may govern members operating on the premises of financial institutions.

(b) Definitions

(1) "Financial institution" shall mean federal and state chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions.

(2) "Networking arrangement" shall mean a contractual arrangement between a member and a financial institution pursuant to which agree-ment the member conducts broker-dealer services for customers of the financial institution and the general public on the premises of such financial institution, without the financial institution, any required service corporation, or their respective non-registered employees registering as broker-dealers under the Securities Exchange Act of 1934 ("Exchange Act").

(3) "Brokerage affiliate of a financial institution" shall mean a member

which is controlled by, or under common control with a non-member financial institution as defined in Schedule E of the NASD By-Laws.

(4) "Dual employees" shall mean associated persons of the member who are also employees of the financial institution.

(5) "Broker-dealer services" offered through an NASD member include, but are not limited to, conducting an investment banking business, recommending any security, giving investment advice, describing investment vehicles, discussing the merits of any security or type of security with a customer, exercising judgment regarding securities and investment alternatives, accepting customer orders, transmitting orders, or handling customer funds or securities.

(c) Conducting broker-dealer services on the premises of a financial institution shall be conditioned upon the initial and continuing compliance with the following requirements:

Physical Location

(1) The member's broker-dealer services shall be conducted in a physical location distinct from the area where the financial institution's retail deposits are taken and identified in a manner that clearly segregates and distinguishes the broker-dealer services from the activities of the financial institution. In all settings, it is incumbent upon the member to distinguish the broker-dealer services from the activities of the financial institution.

Signage

(2) The member's name shall be clearly displayed in the area in which the member conducts its broker-dealer services. In no event shall signs regarding the broker-dealer services appear in the financial institution's deposit-taking area.

Branch Office Registration

(3) The member must register as a branch office any of its offices which operates on the premises of a financial institution. As interpreted by the NASD Board of Governors, Article III, Section 27 of the NASD Rules of Fair Practice defines branch office to include any office location that:

(A) operates from public areas of buildings, such as bank branches, even when such locations are temporarily staffed;

(B) advertises an address in any public media;

(C) publicly displays signage; or

(D) performs any function of an office of supervisory jurisdiction as defined by Article III, Section 27.

Networking and Brokerage Affiliate Agreements

(4) Networking and brokerage affiliate arrangements between a member and a financial institution must be governed by a written agreement that sets forth the responsibilities of the parties, the conditions of the arrangement, and the compensation to be received by the financial institution. The agreement must contain provisions whereby the financial institution agrees:

(A) to allow supervisory personnel of the member, representatives of the Securities and Exchange Commission ("SEC"), and the NASD to have access to the financial institution's premises where the member conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the member with respect to broker-dealer services;

(B) to monitor the activities of the employees of the financial institution

who are not registered with the broker-dealer, and ensure their compliance with the limits on their permissible activities with respect to securities transactions and non-deposit broker-dealer services;

(C) to permit the member to conduct periodic reviews to assure that the financial institution and its unregistered employees comply with the limits on their activities with respect to securities transactions and non-deposit broker-dealer services;

(D) that any dual employee whom the member suspends from association with the member, or the SEC, the NASD, or any other regulatory or self-regulatory organization bars or suspends from association with the member or any other broker or dealer will be terminated or suspended, respectively, from all securities activities conducted directly by the financial institution; and

(E) that unregistered employees of the financial institution will not receive any compensation, cash or non-cash, that is based on the effectiveness or the success of referrals of customers of the financial institution to the member.

(5) The written agreement must contain provisions whereby the member agrees to notify the financial institution if any dual employee who is associated with the member is terminated for cause by the member.

Personnel Registration/Associated Persons

(6) Broker-dealer services offered by the member may be provided only by persons associated with the member, including dual employees who are registered and qualified as necessary with the NASD, and any appropriate state, or other self-regulatory authorities, provided however, that unregistered employees may provide clerical

and ministerial assistance.

Compensation of Registered/Unregistered Persons

(7)(A) The amount of any transaction-related compensation paid to the member's registered representatives, including dual employees, acting under a networking arrangement or as associated persons of a brokerage affiliate of a financial institution, shall be determined solely by the member. Transaction-related compensation may be paid to dual employees by the employer financial institution with a clear designation that such payments are made on behalf of the member.

(B) Employees of the financial institution who are not registered with the NASD member may not engage in any broker-dealer services on behalf of the member, nor receive any compensation from the member, cash or non-cash, in connection with but not limited to the referral of customers of the financial institution to the member, or locating or introducing customers of the financial institution to the member.

Supervision and Responsibility

(8)(A) The member shall establish, maintain, and enforce written procedures to supervise all broker-dealer services conducted by the member and its associated persons at its location at the financial institution. A designated principal of the member shall supervise registered personnel at the member's location at the financial institution. Pursuant to its responsibilities as a designated principal as set forth in Article III, Section 27 of the NASD Rules of Fair Practice, the designated principal shall review the member's supervisory system and written procedures and, where appropriate, recommend action by the member designed to achieve compliance with the applicable securities laws, regulations, and rules of the NASD.

(B) The member shall notify and make available to all of its associated persons the written procedures that govern the broker-dealer services conducted at the financial institution to its associated persons. The supervisory procedures governing the broker-dealer services conducted at the financial institution shall be amended by the member as appropriate within a reasonable time after changes occur in applicable securities laws and regulations, including the rules of the NASD, and the member shall be responsible for communicating amendments to all associated persons engaged in broker-dealer services at its location at the financial institution.

(C) The member shall make available to the financial institution, for distribution to its employees, written procedures that specify the limits of the permissible activities of unregistered persons.

Customer Disclosure and Written Acknowledgment

(9) At the time an account is opened, the member must obtain from each customer a separate written acknowledgment that the securities products purchased or sold by the member through offices located on the premises of the financial institution:

(A) are not insured by the Federal Deposit Insurance Corporation ("FDIC");

(B) are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution;

(C) are subject to investment risks, including possible loss of the principal invested; and

(D) are not insured by the Securities Investors Protection Corporation ("SIPC") as to the loss of principal

amounts invested.

Solicitation

(10) The member shall not use confidential financial information maintained by the financial institution to solicit customers for its broker-dealer services.

Communications with the Public

(11)(A) All member communications with the public must be in compliance with Article III, Section 35 of the NASD Rules of Fair Practice and the guidelines set forth thereunder.

(B) All communications regarding securities transactions and long and short positions, including confirmations and account statements, must be sent directly to the customer by the member, or by the issuer, transfer agent, or principal underwriter of the security. All communications sent by the member to a customer must clearly indicate that the broker-dealer services are provided by the member and not by the financial institution. The member shall be responsible for ensuring that any documentation regarding securities transactions sent directly to a member's customer by an issuer, transfer agent, or principal underwriter is in compliance with the federal securities laws and NASD rules.

(C) Any advertisement or sales literature, as defined in Article III, Section 35, of the NASD Rules of Fair Practice, used to describe or promote the availability of broker-dealer services of the member on the premises of a financial institution must be approved by the member prior to distribution, in compliance with Article III, Section 35(b)(1) of the NASD Rules of Fair Practice and, where required, filed with the NASD Advertising Regulation Department.

(D) All advertisements, sales literature and other similar materials issued by the member which relate exclusively to its broker-dealer services will be deemed to be the materials of the member and must indicate prominently that the broker-dealer services are being provided by the member and not the financial institution; that the financial institution is not a registered broker or dealer; and whether the member is or is not affiliated with the financial institution. The financial institution may be referenced in a non-prominent manner in advertising or promotional materials solely for the purpose of identifying the location where broker-dealer services are available.

(E) Notwithstanding the provisions of Subparagraph (11)(D), advertisements, sales literature, and other similar materials jointly issued by the member and a financial institution that discuss services or products offered by both entities must clearly separate the products and services offered by the financial institution from those offered by the NASD member. The name of the member must be displayed prominently in the section of the materials that describes the broker-dealer services offered by the member, which section will be deemed materials of the member, and, as such, the section must comply with the provisions of Subparagraph (11)(C).

(12) The member must be in compliance with rules of the SIPC, which require, among other things, that a member identify its SIPC membership in its principal place of business, branch offices, and in advertising material. If the member's sales activities include any written or oral representations concerning protection provided by SIPC, clear explanations of the protection must be provided to customers, including material distinctions between SIPC and FDIC insurance.

NASD NOTICE TO MEMBERS 94-95

**NASD Requests
Comment On Proposed
Customer Complaint
Rules; Comment Period
Expires January 31,
1995**

Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
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- Operations
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Executive Summary

The National Association of Securities Dealers, Inc. (NASD) requests comments on a proposed amendment to Article III of the Rules of Fair Practice (Rules) to require members to report to the NASD the occurrence of specified events and quarterly summary statistics concerning customer complaints. The proposed rule would provide important new regulatory information that will assist the NASD in the timely identification of problem members, branch offices, and registered representatives in order to more aggressively detect and investigate sale practice violations. If adopted, the proposed rule would significantly parallel comparable provisions of existing Rule 351 of the New York Stock Exchange (NYSE). The text of the proposed rule follows this Notice.

Background

In view of increasing concerns about sales practice abuses of some registered representatives associated with broker/dealers, the NASD's regulation program for 1994 required each District Office to identify and conduct intense sales practice examinations of main offices, branch offices, and individuals associated with such offices who may pose certain regulatory concerns due to, among other things, past misconduct related to abusive sales and trading practices.

In this regard, the NASD has developed an interim automated system that draws on the Central Registration Depository (CRD) and NASD internal regulatory systems to profile and analyze the current registered representative population. When incorporated with NASD regulatory systems that contain, for example, information about all examinations, District Business Conduct Committee (DBCC) disci-

plinary actions, customer complaints, and terminations for cause, the NASD has the capacity to more precisely and expeditiously profile registered representatives that pose regulatory risks to public investors.

Over the past several years, the NASD has taken a number of actions to increase sanctions for sales practice violations, to emphasize improving the hiring and termination practices of member firms, and to commit additional resources to sales practice cases. Member supervisory systems, practices, and procedures also remain the subject of increased scrutiny. Members employing individuals with a history of compliance or disciplinary problems have also been made aware of their heightened standard of supervisory responsibility that demands that special supervisory practices be designed to address the particular problems of those individuals.

In furtherance of its varied initiatives to address sales practice abuses and supervisory concerns, the NASD is proposing an amendment to Article III of the Rules that will significantly strengthen the NASD's regulatory and surveillance efforts by requiring member firms to report to the NASD the occurrence of certain specified events and summary statistics concerning customer complaints. If adopted, the proposed NASD rule would significantly parallel comparable provisions of NYSE Rule 351.

Critical material information identified in the proposed rule, such as reports on statutory disqualifications, internal disciplinary actions, and quarterly statistical data regarding customer complaints received by a member is not required by Form U-4 or other required filings made with the NASD. As such, this information is not available to the NASD staff on a routine, systematic, or timely basis. In this regard, the NASD believes

that the affirmative obligation of members to provide the NASD with notice of certain events concerning member firms or their associated persons will significantly enhance the NASD's ability to quickly identify problem representatives and appropriately respond in a timely manner.

The Securities and Exchange Commission (SEC) supported the NASD adoption of a customer complaint reporting rule similar to NYSE Rule 351 in its *Large Firm Project Report* issued in conjunction with a cooperative effort involving the NASD, SEC, and NYSE that examined the hiring and retention practices of nine of the largest broker/dealers in the United States. Similarly, the General Accounting Office (GAO) in its report titled *Securities Markets: Actions Needed to Better Protect Investors Against Unscrupulous Brokers*, recommended that member firms' customer complaint information be computer captured and utilized as an additional tool by regulators for identifying potentially problem firms.

Summary Of The Proposed Amendments

As proposed, Subsection (a) of the rule requires member firms to file a report with the NASD when any of 10 different specified events occurs. These 10 events vary significantly, ranging from situations where a court, government agency, or self-regulatory organization (SRO) has determined there has been a violation of the securities laws, to circumstances where a firm has received a written customer complaint alleging theft or misappropriation of funds or securities, or forgery. Subsection (b) of the proposed rule requires each person associated with an NASD member to properly report to the member the existence of any of the 10 conditions set forth in Subsection

(a) of the proposed rule.

Subsection (c) of the rule further requires members to report to the NASD statistical and summary information regarding written customer complaints received by the member firm or relating to the firm or any of its associated persons. Importantly, Subsection (e) of the proposed rule eliminates the possibility of unnecessary regulatory duplication by providing an exemption from filing with the NASD for members already subject to similar reporting requirements of another SRO. NYSE Rule 351 is the only such rule in place at this time.

Recision Of Schedule C, Part V

Currently, Part V of Schedule C to the NASD By-Laws requires members to promptly notify the NASD in writing of any disciplinary action that the member takes against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500, or any other significant limitation on activities. As this existing disclosure requirement is incorporated into the proposed rule in Subsection (a)(10), the NASD proposes to rescind this part of Schedule C with the adoption of the new rule.

Request For Comment

The NASD asks members and other interested persons to comment on the proposed amendment to the Rules of Fair Practice. Comments should be directed to:

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

Comments must be received **no later**

than January 31, 1995. Comments received by this date will be considered by the Board. Before becoming effective, the rule must be adopted by the Board and the membership and then filed with the SEC for its approval.

Text Of Proposed Rule

(Note: New language is underlined.)

Reporting Requirements

Section

(a) Each member should promptly report to the Association whenever such member or person associated with the member:

(1) has violated any provision of any securities law or regulation, or rule or standards of conduct of any governmental agency, self-regulatory organization, or business or professional organization, or engaged in conduct which is inconsistent with just and equitable principles of trade;

(2) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;

(3) is named as a defendant or respondent in any proceeding brought by a regulatory or self-regulatory body alleging the violation of any provision of the Securities Exchange Act of 1934, or any other federal or state securities, insurance, or commodities statute, or of any rule or regulation thereunder, or of any provision of the By-Laws, rules or similar governing instruments of any securities, insurance or commodities regulatory or self-regulatory organization;

(4) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry regula-

tory or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;

(5) is arrested, arraigned, indicted, or convicted of, or pleads guilty to, or pleads no contest to, any criminal offense (other than minor traffic violations);

(6) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company which was suspended, expelled or had its registration denied or revoked by any agency, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution which was convicted of or pleaded no contest to, any felony or misdemeanor;

(7) is defendant or respondent in any securities or commodities-related civil litigation or arbitration which has been disposed of by judgement, award or settlement for an amount exceeding \$15,000. However, when the member is defendant or respondent, then the reporting to the Association shall be required only when such judgement, award or settlement is for an amount

exceeding \$25,000;

(8) is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding \$15,000. However, when the claim for damages is against a member, then the reporting to the Association shall be required only when such claim is settled for and amount exceeding \$25,000;

(9) is, or learns that he is associated in any business or financial activity with any person who is, subject to a "statutory disqualification" as that term is defined in the Securities Exchange Act of 1934, and shall include with required reports the name of the person subject to the statutory disqualification and detail concerning the disqualification;

(10) is the subject of any disciplinary action taken by the member against any person associated with the member involving suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500, or otherwise disciplined in any manner which would have significant limitation on the individual's activities on a temporary or permanent basis.

(b) Each person associated with a member shall promptly report to the member the existence of any of the conditions set forth in paragraph (a)

of this rule.

(c) Each member shall report to the Association statistical and summary information regarding customer complaints in such detail as the Association shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the member. For the purposes of this paragraph, "customer" includes any person other than a broker or dealer with whom the member has engaged, or has sought to engage, in securities activities, and "complaint" includes any written grievance by a customer involving the member or person associated with a member.

(d) Nothing contained in paragraph (a), (b), and (c) of this Section shall eliminate, reduce, or otherwise abrogate the responsibilities of a member or person associated with a member to promptly file with full disclosure, required amendments to Form BD, Forms U-4 and U-5, or other required filings, and to respond to the Association with respect to any customer complaint, examination, or inquiry.

(e) Any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member is exempt from the provisions of this Section.

NASD NOTICE TO MEMBERS 94-96

**NASD Requests
Comment On Disclosure
Of Partnership Valuations
On Customer Account
Statements; Comment
Period Expires January
31, 1995**

Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
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- Training

Executive Summary

The NASD requests comments on proposed amendments to Article III, Section 45 of the Rules of Fair Practice that would require certain disclosures and reporting of Direct Participation Program (DPP) securities on customer account statements. Units of limited partnership interest are the most common DPP security held in customer accounts. The proposed amendments generally require that DPP securities held by the member or listed on a customer account statement be segregated from other securities. DPP securities may then be listed on the account statement without a price and include a statement that accurate pricing information is not available where no active secondary market exists. If, however, a DPP security is listed on the account statement with a price, the amendments would prohibit the value from being aggregated with the value of other securities held for the customer, or included in any calculation of net worth of the customer's securities. The member would also be required to provide a statement disclosing the method by which the value was obtained or derived, and advise the customer that DPP securities are generally illiquid and thus the value disclosed may not be realized if the customer needs to sell the security in the near future.

Background

The NASD Direct Participation Programs Committee (DPP Committee or Committee) has studied the issues surrounding how DPP security values are reported to investors on customer account statements. The issues addressed by the Committee were also reviewed and endorsed by the NASD Operations Committee. Both Committees recommended to the NASD Board of Governors that amendments to

Article III, Section 45 of the Rules of Fair Practice be proposed for member comment.

The DPP Committee recognizes that some members report purchase price as the value of partnership interests on customer account statements, which is usually not equivalent to the current market value. Further, members that list DPP securities at purchase price tend to include that amount in the aggregate total current value of all securities held in the customer's account. The Committee is particularly concerned about this practice because DPP securities are generally illiquid and the purchase price probably has no relationship to current value.

The Committee also reviewed issues that arise when members report partnership securities on customer account statements without a price. This is a growing practice that reflects the difficulty of arriving at a definitive current value for DPP securities because this type of security does not generally have an active secondary market.

The Committee is, however, also aware of both regulatory and practical business considerations that might make it desirable for a member to disclose a value for DPP securities on a customer account statement. For example, when members act as fiduciaries for individual retirement accounts or ERISA plans, the regulations on the Departments of Labor and Treasury require that at least annually, a value be obtained or derived, and reported. Thus, members acting as fiduciaries often report a value for these types of accounts on the customer account statement. The Committee also noted that often the only reliable source of obtaining information on the value of DPP securities is the general partner.

The Committee is also aware that

recently some members, general partners, and independent third-party services have begun to utilize sophisticated valuation methodologies to derive a value for DPP securities. These methodologies include the appraisal of the underlying assets, an analysis of income expected to be earned by the partnership, discounted to a current value, or an analysis of recent sales. The Committee believes that because the values obtained or derived through these methodologies could be beneficial if disclosed to investors, the proposed amendments provide for them to appear on the customer account statement.

Explanation Of Provisions

The proposed amendments set forth a general requirement that DPP securities listed on a customer account statement (even if not held by the member) must be segregated into a separate location from other securities on the customer account statement. This can be accomplished by grouping all DPP securities and placing them, for example, below a demarcation line on the statement. This requirement also covers any description of DPP securities listed by the member on an account statement even if the actual security is not held in possession or control of the member. This provision recognizes that often DPP securities were originally sold in uncertificated form and therefore, the member and customer are aware of the investment, even though physical securities do not exist. Thereafter, DPP securities may be listed as priced or unpriced as more specifically described below, so long as there is compliance with the disclosure provisions of the proposed amendments.

If a customer's ownership of DPP securities is listed without a price and there is no active secondary market in the securities, the proposal would

require a member to include a narrative statement that explains the difficulty of pricing DPP securities because no active secondary market exists. If a value is disclosed for DPP securities, it must not be aggregated with other non-DPP securities to arrive at a total value of the securities held in the customer account. Further, the methodologies utilized for obtaining or deriving the value of DPP securities must be adequately disclosed and a disclaimer must be included that indicates the value may not be realizable if the customer seeks to liquidate its DPP securities in the near future.

Request For Comments

The NASD encourages all members and other interested parties to comment on the proposed amendments. Comments should be addressed to:

Joan C. Conley
Office of the Secretary
National Association of Securities
Dealers, Inc.
1735 K Street, NW
Washington, DC 20006-1506

Comments must be received **no later than January 31, 1995.**

Comments received by this date will be reviewed by the Direct Participation Programs and Operations Committees and the NASD Board of Governors. Before becoming effective, the proposed amendments must be filed with and approved by the Securities and Exchange Commission.

Questions concerning this Notice may be directed to Charles L. Bennett, Director, Corporate Financing Department at (301) 208-2736.

Text Of Proposed Rule

(Note: New text is underlined.)

Deleted text is bracketed.)

Customer Account Statements

Sec. 45.

(a) Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer. Where the securities positions or account activity reported to the customer include direct participation program securities (even if not held by the member), the statement of account shall:

(1) segregate the direct participation program securities into a separate location on the customer account statement;

(2) if the direct participation program securities are listed without a price and there is no active secondary market in the securities, include a statement that accurate pricing information is not available because the value of the direct partnership program security is not determinable until the liquidation of the partnership and no active secondary market exists; and

(3) if the direct participation program securities are listed with a price,

(i) not aggregate the value of direct participation program securities with the value of any other securities;

(ii) not include the value of direct participation program securities in any customer account net worth calculation;

(iii) include a statement of the

methodology used for obtaining or deriving the valuation of the direct participation program securities; and

(iv) include a statement that direct participation program securities are generally illiquid securities and the price listed may not be realizable if the customer seeks to liquidate the security.

(b) For purposes of this section, the term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits,

charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

(c) For purposes of this section, the term "general securities member" shall refer to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraph (a)(2) and (a)(3).

Notwithstanding the foregoing definition, a member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of this section.

(d) The Association, acting through its Operations Committee, may, pursuant to a written request for good cause shown, exempt any member from the provisions of this section.

[Sec. 45 added effective January 31, 1993.]

NASD NOTICE TO MEMBERS 94-97

Treasury Proposes Risk Assessment Rules For Government Securities Broker/Dealers; Comment Period Expires January 17, 1995

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 Department of the Treasury (Treasury) is publishing for comment proposed amendments under the Government Securities Act of 1986 (GSA). The amendments would establish risk assessment rules for government securities broker/dealers registered under Section 15C (Section 15C broker/dealers) of the Securities Exchange Act of 1934 that parallel similar Securities and Exchange Commission (SEC) rules already in place for broker/dealers that conduct a general or municipal securities business. **Comments are due on or before January 17, 1995.**

Background And Description Of Proposed Amendments

The Market Reform Act of 1990 (the Reform Act) was passed by Congress in response to several developments in the securities markets, including the bankruptcy of Drexel Burnham Lambert Group, Inc. (Drexel) in February 1990. Among its provisions, the Reform Act authorized the SEC to promulgate risk assessment rules for broker/dealers holding company structures and authorized Treasury to promulgate risk assessment rules for registered government securities broker/dealers.

Risk assessment rules are intended to provide greater warning of situations, such as the Drexel failure, which could have a significant impact on the functioning of the markets and investors in general. The SEC adopted its risk assessment rules in July 1992. Treasury, whose rulemaking authority under the GSA expired on October 1, 1991, and was not renewed until December 17, 1993, was unable to issue proposed risk assessment rules until now.

Treasury's proposed risk assessment rules incorporate SEC Rules 17h-1T

and 17h-2T, with minor modifications. In general, the recordkeeping amendments require Section 15C broker/dealers to maintain and preserve records concerning the financial and securities activities of affiliates whose business activities are reasonably likely to have a material impact on the financial or operational condition of the Section 15C broker/dealers. The reporting amendments would require Section 15C broker/dealers to file with the SEC quarterly summary reports of this information.

The information required to be maintained and reported by the firms pertains only to the firms' "material associated persons" (MAPs). A number of factors that should be considered when determining which affiliates, or associated persons, might have a "material" impact on the broker/dealer's financial or operational conditions are incorporated as guidelines in SEC Rule 17h-1T. The initial designation of MAPs will be made by the Section 15C broker/dealers.

Information To Be Maintained And Reported

The proposed amendments would require the following general categories of information to be maintained and reported:

- an organizational chart of the holding company structure, showing the registered government securities broker/dealer and all its associated persons, including a designation of which associated persons are MAPs;
- written risk management policies and procedures;
- information on material legal proceedings to which the registered government securities broker/dealer or a MAP is a party or to which any of its property is subject, as would be required to be disclosed by all firms

under generally accepted accounting principles;

- quarterly consolidated and consolidating balance sheets and income statements;
- quarterly consolidated cash flow statements for the registered government securities broker/dealer and the highest level holding company that is a MAP;
- aggregate, gross long and short securities and commodities positions held by each MAP at quarter-end (and month-end if greater than quarter-end);
- a separate listing of each single unhedged securities or commodities position, other than U.S. Treasury securities, held by each MAP that exceeds the "materiality threshold" at any month-end;
- data on certain financial instruments with off-balance sheet risk and concentration of credit risk, such as gross long and short positions in when-issued securities, written stock options, futures, forwards, interest rate swaps, other swaps, foreign exchange, commodities, loan commitments, commercial letters of credit, assets sold with recourse, and a summary of delta or similar analysis if available; and
- data on bridge loans and other material unsecured extensions of credit by each MAP, funding sources for the registered government securities broker/dealer and each MAP, and real estate activities conducted by each MAP.

Exemptions

The proposed amendments would exempt a Section 15C broker/dealer if it:

- does not carry customer accounts and maintains capital of less than \$20 million;
- maintains capital of less than \$250,000 (regardless of whether it carries customer accounts or not); and
- has an affiliated registered broker/dealer that is subject to, and in compliance with, the SEC's risk assessment rules, and provided that all of the MAPs of the Section 15C broker/dealer are also MAPs of the registered broker/dealer.

A Section 15C broker/dealer that has no affiliates or holding company would not be subject to Treasury's risk assessment rules.

Special Provisions

The proposed amendments would allow affiliated Section 15C broker/dealers to request in writing that Treasury permit one of the firms (a "reporting registered government securities broker/dealer") to maintain and report risk assessment information on behalf of the other firms.

Treasury also is proposing to adopt the SEC's special provisions for affiliates that are already subject to supervision by certain U.S. or foreign financial regulatory authorities. With respect to such affiliates, Section 15C

broker/dealers would be deemed in compliance with the financial and securities recordkeeping requirements by maintaining copies of reports that such affiliates already submit to other regulators; however, they would be required to maintain organizational charts, risk management policies, and records of legal proceedings, and submit that information to the SEC.

* * *

Treasury's request for comments appeared in the November 15, 1994, *Federal Register*. Members wishing to comment on the proposed amendments have until **January 17, 1995**, to do so. Comment letters should be sent to:

Government Securities
Regulations Staff
Bureau of the Public Debt
Department of the Treasury
999 E Street, NW
Room 515
Washington, DC 20239-0001.

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

Ms. 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 Erin Gilligan, NASD Compliance Department, at (202) 728-8946.

NASD NOTICE TO MEMBERS 94-98

SEC Approves NASD Listing Requirements Proposal To Prohibit Immediate Delistings Of Units

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 September 20, 1994, the Securities and Exchange Commission approved a proposed rule change by the NASD that amends the listing requirements in Parts II and III of Schedule D to the NASD By-Laws to impose specific delisting requirements for units listed on the Nasdaq National Market[®] and The Nasdaq SmallCap MarketSM. The new requirements, which are effective immediately, specifically require:

- All units included for quotation on Nasdaq[®] must continue to be included for quotation for a minimum of 30 days from the first day of inclusion, barring suspension or withdrawal for regulatory purposes;
- Issuers or underwriters seeking to withdraw units from inclusion must provide Nasdaq with notice of intent 15 days before withdrawal; and
- Issuers of units are required to include in the prospectus or other offering document a statement disclosing any intention to withdraw the units immediately after the minimum inclusion period.

The NASD and The Nasdaq Stock Market, Inc., believe that these changes will diminish confusion, promote orderly trading markets, and enhance the integrity of Nasdaq listings. The text of the amendments, as approved by the SEC, follows the discussion below.

Background And Description Of The Rule Change

The NASD determined the integrity of The Nasdaq Stock MarketSM could be harmed by instances where units were withdrawn without previous notice almost immediately after initially being included for quotation on

Nasdaq. The sudden withdrawal, after trading begins, could adversely affect investors and market makers who had taken positions in these securities. In addition, the NASD was concerned that certain issuers and underwriters of units could be engaged in potentially manipulative activity related to immediate delisting of units. The NASD proposed several amendments to the listing criteria for units included for quotation in the Nasdaq National Market and The Nasdaq SmallCap Market. These changes were approved by the SEC.¹

Minimum 30-Day Listing Requirement

One of the critical problems with the immediate delisting of units was the uncertainty that units would continue to be available for trading for a reasonable period of time after initial listing. To counteract this problem, the new unit listing requirements include a minimum 30-day period for inclusion. Once the issuer and underwriter have obtained a listing on Nasdaq, the units must continue to be listed for 30 days thereafter. This change allows investors and others some certainty that the units will continue in the marketplace for a period of time. Of course, if there are regulatory problems with the units, the NASD retains the authority to remove the listings from trading before the 30-day minimum period expires.

15-Day Advance Notice Of Withdrawal

In a related vein, the lack of advance notice to market participants regarding withdrawal of units from listing harmed investors and others. Another change to the units requirements

¹ See Securities Exchange Act Release No. 34-34515 (August 10, 1994); 59 FR 42626 (August 18, 1994).

mandates that the issuer or underwriter of the units provide Nasdaq with 15-days notice that it intends to withdraw the units from listing. This notice period, coupled with the 30-day minimum period, should allow investors and market makers sufficient advance opportunity to make reasoned decisions concerning market activity in the units.

Prospectus Notice Requirement

Finally, the new rules include a provision that specifies the issuers obligation to provide adequate notice of any intention to withdraw units from listing shortly after final listing. Any such intention should be discussed as material information in the issuer's prospectus or other offering document to provide investors with adequate disclosure of a likely event that would materially affect the value of the securities.

Questions regarding this Notice should be directed to Eugene A. Lopez, Senior Attorney, Office of General Counsel, at (202) 728-6998.

Text Of Amendments To Schedule D To The NASD By-Laws

(Note: New language is underlined.)

Schedule D

Part II

Sec. 1(c)(10)(a) No Change.

(b) In the case of units, the minimum period for inclusion of the units shall be 30 days from the first day of inclusion, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw units from inclusion must provide the Association with notice of such intent at least 15 days prior to withdrawal.

Sec. 1(c)(11)-(20) No Change.

Sec. 1(c)

(21) The issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period.

Sec. 1(c)(22) - Sec. 4 No Change.

Sec. 5

(1) Units

(1) Minimum Inclusion Period and Notice of Withdrawal

In the case of units, the minimum period for inclusion of the units shall be 30 days from the first day of inclusion, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw units from inclusion must provide the Association with notice of such intent at least 15 days prior to withdrawal.

(2) Disclosure Requirements for Units

Each Nasdaq/NM issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period.

NASD NOTICE TO MEMBERS 94-99

Trade Date-Settlement Date Schedule For 1995

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

Martin Luther King, Jr., Day: Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Martin Luther King, Jr., Day, Monday, January 16, 1995. On January 16, 1995, The Nasdaq Stock MarketSM and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Jan. 5	Jan. 12	Jan. 16
6	13	17
9	17	19
10	18	20
11	19	23
12	20	24
13	23	25
16	23	25
17	24	26

Note: January 16, 1995, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on January 16 will be combined with transactions made on the previous business day, January 13, for settlement on January 23. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on January 16.

*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 two (2) business days after the settlement date of the purchase transaction 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."

Presidents' Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock MarketSM and the securities exchanges will be closed on Monday, February 20, 1995, in observance of Presidents' Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Feb. 10	Feb. 17	Feb. 22
13	21	23
14	22	24
15	23	27
16	24	28
17	27	Mar. 1
20	Markets Closed	—
21	28	2

Good Friday: Trade Date-Settlement Date Schedule

The Nasdaq Stock MarketSM and the securities exchanges will be closed on Good Friday, April 14, 1995. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Apr. 6	Apr. 13	Apr. 18
7	17	19
10	18	20
11	19	21
12	20	24
13	21	25
14	Markets Closed	—
17	24	26

Memorial Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock MarketSM and the securities exchanges will be closed on Monday, May 29, 1995, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
May 19	May 26	May 31
22	30	June 1
23	31	2
24	June 1	5
25	2	6
26	5	7
29	Markets Closed	—
30	6	8

T+3 Implementation: Trade Date-Settlement Date Schedule

The following schedule represents the implementation of the conversion from a five (5) business day settlement cycle to three (3) business days. The Nasdaq Stock MarketSM and the securities exchanges will settle "regular way" transactions on the business days noted below. Wednesday, June 7, 1995 will be the first trade date for the three (3) business day settlement period.

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
May 31	June 7	June 9
June 1	8	12
2	9	13
5	9	13
6	12	14
7	12	14
8	13	15

Note: Transactions made on June 5 will settle in four (4) business days and will be combined with transactions made on the previous business day, June 2, for settlement on June 9. Transactions made on June 6 will settle in four (4) business days and will be combined with transactions made on the next business day, June 7, for settlement on June 12.

Independence Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock MarketSM and the securities exchanges will be closed on Tuesday, July 4, 1995, in observance of Independence Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
June 28	July 3	July 6
29	5	7
30	6	10
July 3	7	11
4	Markets Closed	—
5	10	12

Labor Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock MarketSM and the securities exchanges will be closed on Monday, September 4, 1995, in observance of Labor Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Aug. 29	Sept. 1	Sept. 6
30	5	7
31	6	8
Sept. 1	7	11
4	Markets Closed	—
5	8	12

Columbus Day: Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 9, 1995. On this day, The Nasdaq Stock MarketSM and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Oct. 2	Oct. 5	Oct. 9
3	6	10
4	10	12
5	11	13
6	12	16
9	12	16
10	13	17

Note: October 9, 1995, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board. Transactions made on Monday, October 9, will be combined with transactions made on the previous business day, October 6, for settlement on October 12. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 9.

Thanksgiving Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock MarketSM and the securities exchanges will be closed on Thursday, November 23, in observance of Thanksgiving Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Nov. 17	Nov. 22	Nov. 27
20	24	28
21	27	29
22	28	30
23	Markets Closed	—
24	29	Dec. 1

Christmas Day and New Year's Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock MarketSM and the securities exchanges will be closed on Monday, December 25, 1995, in observance of Christmas Day, and Monday, January 1, 1996, in observance of New Year's Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Dec. 19	Dec. 22	Dec. 27
20	26	28
21	27	29
22	28	Jan. 2, 1996
25	Markets Closed	—
26	29	3
27	Jan. 2, 1996	4
28	3	5
29	4	8
Jan. 1, 1996	Markets Closed	—
2	5	9

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 those settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (203) 375-9609.

NASD NOTICE TO MEMBERS 94-100

Nasdaq National Market
Additions, Changes, And
Deletions As Of
November 28, 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 November 28, 1994, the following 37 issues joined the Nasdaq National Market[®], bringing the total number of issues to 3,739:

Symbol	Company	Entry Date	SOES Execution Level
CVTI	Covenant Transport, Inc. (CI A)	10/28/94	500
LION	Fidelity Southern Corp.	10/31/94	200
BUMM	B.U.M. International, Inc.	11/1/94	200
HSKL	Haskel International, Inc. (CI A)	11/1/94	200
SNIFF	American Sensors, Inc.	11/2/94	200
AMOO	AMERCO	11/3/94	200
MICN	Micrion Corp.	11/4/94	200
NECB	New England Community Bancorp, Inc.	11/4/94	200
TCAM	Transport Corporation of America, Inc.	11/4/94	500
AKSEF	Arakis Energy Corp.	11/7/94	200
CONT	Continental Waste Industries, Inc.	11/7/94	200
NWSB	Northwest Savings Bank	11/7/94	500
PCLE	Pinnacle Systems, Inc.	11/8/94	200
TMAT	Tele-Matic Corp.	11/8/94	1000
THOM	Thompson PBE, Inc.	11/8/94	500
YBTVA	Young Broadcasting, Inc. (CI A)	11/8/94	200
DPKG	Dolco Packaging Corp.	11/9/94	200
ELRRF	Elron Electronic Industries Ltd. (Rts 11/29/94)	11/10/94	200
CNMWR	Cincinnati Microwave, Inc. (Rts 12/8/94)	11/10/94	200
SINGW	The Singing Machine Company, Inc. (Wts 11/10/99)	11/10/94	500
SING	The Singing Machine Company, Inc.	11/10/94	500
NAGCV	National Gaming Corp. (WI)	11/14/94	200
FLSCV	The Florsheim Shoe Company (WI)	11/14/94	200
YSII	Youth Services International, Inc.	11/15/94	500
BIKE	Cannondale Corp.	11/16/94	500
JPFS	JP Foodservice, Inc.	11/16/94	200
ORRA	Orbit Semiconductor, Inc.	11/16/94	200
UTII	Unitech Industries, Inc.	11/16/94	200
FGCI	Family Golf Centers, Inc.	11/17/94	500
QUAL	Quality Semiconductor, Inc.	11/17/94	500
SHVA	Shiva Corp.	11/18/94	200
ALAB	Alabama National Bancorporation	11/22/94	200
ITII	ITI Technologies, Inc.	11/22/94	500
TWSTY	TeleWest Communications plc (ADR)	11/22/94	200
ADYNF	Andyne Computing, Ltd.	11/23/94	200
PHYN	Physician Reliance Network, Inc.	11/23/94	500
LGND	Ligand Pharmaceuticals, Inc. (CI B)	11/25/94	200

Nasdaq National Market Symbol And/Or Name Changes

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

New/Old Symbol	New/Old Security	Date of Change
BPIEL/BPIEW	BPI Packaging Technologies, Inc. (Wts A New 3/31/95)/BPI Packaging Technologies, Inc. (CI A)	10/31/94
PNCE/PFBS	PONCEBANK/Ponce Federal Bank FSB	11/1/94
HMIS/HMIS	Health Management, Inc./Homecare Management, Inc.	11/4/94
OUTL/OUTL	Outlook Group Corp./Outlook Graphics Corp.	11/14/94
CYNRW/CYNRW	Canyon Resources Corp. (Wts 6/30/95)/Canyon Resources Corp. (Wts 12/31/94)	11/15/94
ALPS/PRAN	Allegiant Physician Services, Inc./Premier Anesthesia, Inc.	11/15/94
REHB/MDEV	Rehabicare, Inc./Medical Devices, Inc.	11/17/94
BKCT/SSBB	Bancorp Connecticut, Inc./Southington Savings Bank (Conn.)	11/17/94
FLSC/FLSCV	Florsheim Shoe Co./Florsheim Shoe Co. (WI)	11/21/94
NAGC/NAGCV	National Gaming Corp./National Gaming Corp. (WI)	11/28/94

Nasdaq National Market Deletions

Symbol	Security	Date
AMSE	American Mobile Systems, Inc.	10/28/94
GRPI	Greenwich Pharmaceuticals, Inc.	10/28/94
PRETB	Price REIT (CI B)	10/31/94
VMORZ	Banyan Mortgage Investors L.P. III (Dep Uts)	11/1/94
FWES	First Western Financial Corp.	11/1/94
USCG	U.S. Capital Group, Inc.	11/1/94
BRCK	Brock Candy Company	11/2/94
CFED	Charter FSB Bancorp, Inc.	11/2/94
IGHC	Intergroup Healthcare Corp.	11/3/94
KMDC	Kirschner Medical Corp.	11/7/94
BASER	Base Ten Systems, Inc. (Ser B Rts 11/10/94)	11/10/94
RHNB	RHNB Corp.	11/10/94
SPLE	Sports/Leisure, Inc.	11/10/94
MENJ	Menley & James, Inc.	11/11/94
IPOP	Input/Output, Inc.	11/14/94
KURZE	Kurzweil Applied Intelligence	11/14/94
INFO	Information America, Inc.	11/15/94
SMMT	Summit Bancorp, Inc. (Wash)	11/15/94
GARI	General Atlantic Resources, Inc.	11/16/94
NCSI	National Convenience Stores, Inc.	11/16/94
GWAY	Gateway Communications, Inc.	11/17/94
PFIL	Purolator Products Company	11/17/94
KPTL	Keptel, Inc.	11/18/94
MRVCW	MRV Communications, Inc. (Wts 12/7/97)	11/18/94
AEAGF	Agnico-Eagle Mines, Ltd.	11/22/94
BWRLF	Breakwater Resources, Ltd.	11/23/94
SLIQ	Scott's Liquid Gold, Inc.	11/23/94
KOLL	Koll Management Services, Inc.	11/25/94
LGNDA	Ligand Pharmaceuticals, Inc. (CI A)	11/25/94
PHIP	Providential Corp.	11/25/94

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 NOTICE TO MEMBERS 94-101

Fixed Income Pricing System Additions, Changes, And Deletions As Of November 28, 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 November 28, 1994, the following bonds were added to the Fixed Income Pricing System (FIPSSM). These bonds are **not** subject to mandatory quotation:

Symbol	Name	Coupon	Maturity
SHST.GA	Sheffield Steel Corp.	12.000	11/1/01
CMDC.GA	Charter Med. Corp.	11.250	4/15/04
FOHO.GG	Fort Howard Corp.	8.250	2/1/02
YGBR.GA	Young Broadcasting Inc.	11.750	11/15/04
HRJZ.GA	Harrahs Jazz Co.	14.250	11/15/00
ORSP.GA	Orchard Supply Hardware Corp.	9.375	2/15/02
FLCS.GA	Florsheim Shoe	12.750	9/1/02
MLTT.GA	Malette Inc.	12.250	7/15/04

As of November 28, 1994, the following change to the list of FIPS symbols occurred:

New/Old Symbol	Name	Coupon	Maturity
SYND.GA/SYNT.GA	Synthetic Ind.	12.750	12/1/02

All bonds listed above are subject to trade-reporting requirements. 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 Board Of Governors In November

Board Elections—The Board of Governors has elected new officers for 1995, three new governors-at-large, and five governors from the Districts, all of whom begin their new terms in January 1995.

The new chairman of the Board is Ian B. Davidson, Chairman and Chief Executive Officer, D.A. Davidson & Co., Great Falls, Montana. D.A. Davidson & Co. operates 15 retail investment offices in Montana, Idaho, Wyoming, and Washington, plus eight specialist posts on the Pacific Stock Exchange in San Francisco and Los Angeles. The 1995 Vice Chairman is A. A. Sommer, Jr., formerly a Partner and currently of counsel to Morgan, Lewis & Bockius, Washington, DC, and the Vice Chairman-Finance is Richard G. McDermott, Jr., President, Chapdelaine & Co., New York, New York.

The National Business Conduct Committee (NBCC) elected Mary Alice Brophy, First Vice President-Compliance for Dain Bosworth Incorporated, Minneapolis, Minnesota, as its 1995 Chairman. The new Vice Chairman of the NBCC is Carl E. Lindros, Founder and President of Santa Barbara Securities, Inc., in Santa Barbara, California.

Representing public investors as a Governor-at-Large is (Robert) Brian Williamson, Chairman of Gerrard & National Holdings PLC. James S. Riepe, Managing Director, member of the Management Committee, and Director of T. Rowe Price Associates, Inc., was elected to represent investment companies. Edward L. Goldberg, Executive Vice President, Operations, Systems and Telecommunications for Merrill Lynch & Co., Inc., was elected to represent NASD member firms.

The following individuals were elected by the Districts:

- District 7—Edgar M. Norris, Jr., President/CEO of Edgar M. Norris & Co., Greenville, South Carolina.
- District 8—James A. Richter, Managing Partner & CEO of Roney & Co., Detroit, Michigan.
- District 9—Robert A. Woeber, Chief Executive Officer of Arthurs, Lestrangle & Co., Pittsburgh, Pennsylvania.
- District 10—Richard F. Brueckner, a Managing Director of Donaldson, Lufkin and Jenrette's Financial Services Group and its Pershing Division, Jersey City, New Jersey.
- District 11—Todd A. Robinson, Chairman and CEO of Linsco/Private Ledger Corp. Boston, Massachusetts.

Member Services—The Board requested member comment on the structure of a proposed NASD Mediation Program. From 1989 to 1993, the NASD Arbitration Department engaged in two pilot mediation programs. As a result, the NASD has determined to set up its own mediation program with experienced NASD arbitrators who are also trained mediators. The goal of mediation is to provide parties with an alternative to arbitration that gives them more control over the outcome of a dispute and an earlier resolution than could be achieved in arbitration. The parties, in turn, could save the costs associated with protracted litigation. In addition to the benefits derived by the parties, the NASD expects a direct benefit in reduction of its backlog as well as administrative and arbitrator costs associated with processing arbitration cases.

In another action, the Board gave its approval to establishing a formal continuing education requirement in the securities industry. The measure

must now be filed with the SEC for approval. Implementation of this requirement would be accomplished through a formal two-part continuing education program for securities industry professionals that would require uniform training in regulatory matters and ongoing programs by firms to keep employees up-to-date on job specific subjects. The Securities Industry/Regulatory Council on Continuing Education, comprising both industry and regulatory representatives, has the responsibility of working out the details of the program.

Market Services—The Board approved a measure to further conform the NASD Rule of Fair Practice governing the adjustment of open orders to that of the New York Stock Exchange, if approved by the Securities and Exchange Commission (SEC). The proposed changes specify that the rule does not apply to orders that are marked “do not reduce” where the dividend is payable in cash or to orders that are marked “do not increase” where the dividend is payable in stock. However, in the case of these “do not increase” orders with stock dividends, they must still be price adjusted in accordance with the provisions of the rule.

The Board authorized the filing of an amendment to the Nasdaq short-sale rule with the SEC to exempt specialists on national securities exchanges from the rule when trading Nasdaq National Market securities on an unlisted trading privilege basis. Under the proposal, the exemption would only be available to short sales made in connection with bona fide market-making activity and if the national securities exchange is a “qualified equity exchange.” To be classified as a “qualified equity exchange,” the national securities exchange must have rules and procedures that:

- Apply a short-sale equivalent to the Nasdaq rule to trading in national market securities in its marketplace.
- Allocate and assign national market issues to a particular specialist or co-specialist.
- Assess specialist performance periodically in national market securities, based, in part, on objective criteria.
- Authorize the exchange to reassign national market issues from one specialist to another.
- Require exchange members to adhere to all current relevant interpretations of the operation and meaning of the Nasdaq short-sale rule adopted by the NASD.
- Ensure the surveillance of its specialist using the exemption to assure that short sales effected by its specialists are exempt from the rule and that other non-qualified members of the exchange are not using the exemption.
- Authorize the NASD to withdraw, suspend, or modify the designation of an exchange specialist, but only if the exchange has determined that the exchange specialist has failed to comply with the terms of the exemption, and that such a withdrawal, suspension, or modification of the market maker’s exemption is warranted in light of the substantial, willful, or continuing nature of the violation.

The Board has approved for filing with the SEC modifications to the Nasdaq Primary Retail Order View and Execution (N•PROVE) system. The new N•PROVE service would affect both market orders to buy or sell a security at the going price in the market, and limit orders to buy or sell a security at a specific price. As proposed, N•PROVE will ensure that all market orders entered in it receive

a prompt, cost-effective execution at the best price available in Nasdaq at any point in time and will feature enhanced limit-order protection and additional opportunities for price improvement.

Under the new service, incoming market orders would enter N•PROVE, which would instantly attempt to get that order a better price by searching the limit-order file for a limit order within the spread. Should there be no such limit orders, the incoming market order would be automatically broadcast at the best price to all market makers in that stock for execution. If there are customer limit orders residing in N•PROVE that are within the spread, the market order would receive an improved price by automatically being crossed with the limit order unless a market maker executes the market order within 15 seconds at a price at least 1/16 better than the limit-order price.

N•PROVE would also provide dramatic new opportunities for public limit-order customers. A customer who wishes to enter a limit order in a Nasdaq security and asks his broker to enter the order in N•PROVE will have the order simultaneously broadcast to all Nasdaq market makers in the stock. In addition, if the order is at a superior price to the best bid and offer quotation of all market makers in the stock, the order will be provided to information vendors for public dissemination. This will be the first time that a U.S. stock market will disseminate limit-order information to the public. Finally, limit orders priced between the spread and entered into N•PROVE that match limit orders already in the N•PROVE file would be immediately executed without any market-maker participation.

Responding to a recommendation in the SEC’s *Market 2000 Report*, the

Board approved a change to Schedule G of the NASD By-Laws to require NASD members executing retail orders in the Third Market, in any Intermarket Trading System (ITS) securities, to afford an opportunity for price improvement in the execution of customer's market orders. If approved by the SEC, this change would take effect on the opening of the ITS/Computer-Assisted Execution System (CAES) linkage to all exchange-listed securities that are eligible for trading through ITS.

Another measure approved by the Board for SEC approval would place

customer limit orders ahead of any trading by market makers. The current rule applies to firms that accept limit orders directly from their own customers. In short, this rule says that if a firm has a customer's limit order to buy at 53 1/4, the same price at which the firm is itself bidding for stock, it must sell to that customer at 53 1/4 if it buys for itself at 53 1/4.

The proposed rule would extend this protection to the customer of a firm that sends a limit order of any size to another firm for execution. In many cases a firm with a customer's limit order will pass that order to a market

maker to hold and execute when the limit-order price is reached. The proposed changes would ensure that the customer receives identical protection no matter where his order is sent. To allow the NASD to evaluate whether this new requirement has any unanticipated adverse effect on liquidity, the new (same price) requirement will apply only to customer orders of 1,000 shares or less until July 1, 1995, and after that date will include all limit orders.

DISCIPLINARY ACTIONS

Disciplinary Actions Reported For December

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, December 19, 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 Fined, Individuals Sanctioned

Adams Securities, Inc. (Las Vegas, Nevada), James William Adams (Registered Principal, Henderson, Nevada), and Daniel Bruce Perry (Registered Principal, Henderson, Nevada). The firm and Adams were fined \$450,000, jointly and severally, however, the fine will be reduced by any amount paid to customers. Furthermore, Adams was fined an additional \$25,000 and suspended from association with any NASD member in any capacity for two years. Perry was also fined \$25,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination. The Securities and Exchange Commission (SEC) imposed the sanctions following appeal of a December 1991 National Business Conduct Committee (NBCC) decision.

The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Adams and Perry, sold securities to its retail customers in principal transactions at unfair prices. The markups on these transactions were excessive and fraudulent and ranged from 11 to 133 percent above the prevailing market price. In addition,

the firm and Adams failed to establish, maintain, and enforce adequate supervisory procedures regarding markups.

Pilgrim Distributors Corp. (Los Angeles, California), Palomba Charach Weingarten (Registered Principal, Los Angeles, California), and Robert Alan Grunburg (Registered Principal, Encino, California). The firm and Weingarten were fined \$25,000, jointly and severally. Weingarten was suspended from association with any NASD member in a principal capacity for three months and ordered to requalify by examination as a general securities principal should she seek to become associated in such capacity after her suspension has elapsed. Furthermore, the firm was ordered to file all advertisements and sales literature with the NASD Advertising Department at least 10 days before use by it, any of its affiliates, or any associated person for the firm for two years. Grunburg was fined \$5,000, suspended from association with any NASD member as a general securities principal for one month, and required to requalify by examination as a principal before again associating with any NASD member in such capacity.

The NBCC modified the sanctions following appeal of a Los Angeles District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Weingarten, published two newspaper advertisements approved by Grunburg that contained misleading or exaggerated statements concerning the ranking of mutual funds. The firm, acting through Weingarten and Grunburg, also failed to file the advertisements with the NASD within 10 days of the first use of the advertisements as required. Furthermore, the firm, acting through Grunburg, entered into a special sales concession arrangement

(a sales contest) with another member firm related to the sale of mutual funds on an oral basis with no written agreement executed and without proper disclosure of the arrangement in the prospectuses for each fund. Also, in connection with the sales contest, payments were made by a registered representative of Pilgrim directly to participating account executives of the competing member firm, instead of by Pilgrim. Moreover, the firm, acting through Grunburg, failed to establish and maintain adequate written supervisory procedures.

Grunburg has appealed this action to the SEC and the sanctions imposed against him are not in effect pending consideration of the appeal.

Protective Group Securities Corporation (Eden Prairie, Minnesota), Richard James Cochrane (Registered Principal, Edina, Minnesota), and Martin Melvin Fiterman (Registered Principal, Minnetonka, Minnesota) were fined \$17,500, jointly severally. In addition, Fiterman was fined \$5,000. The SEC affirmed the sanctions following appeal of an August 1992 NBCC decision. The sanctions were based on findings that the firm, acting through Cochrane and Fiterman, sold unregistered securities without an applicable exemption from the registration requirements of the Securities Act of 1933. Furthermore, the firm, acting through Cochrane and Fiterman, sold the aforementioned securities to customers at prices that were unfair and unreasonable. In addition, Fiterman executed transactions for the accounts of public customers on a discretionary basis without obtaining written authorization from the customers and written acceptance of the accounts as discretionary by his member firm. Also, in contravention of SEC Rule 10b-10, the firm, acting through another individual, failed to

disclose on customer confirmations the amount of compensation it received on riskless principal transactions.

Firms And Individuals Fined

Schneider Securities, Inc. (Denver, Colorado) and Steven Ray Pata (Registered Principal, Littleton, Colorado) submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally. The firm was fined an additional \$5,000, and required to pay \$41,897 in restitution to customers and establish enhanced supervisory procedures concerning markups and markdowns. Pata was also required to requalify by examination as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Pata, effected principal transactions in securities with public customers at excessive and unfair prices. In addition, the firm failed to establish and maintain an adequate supervisory system or to enforce its written supervisory procedures concerning markups.

Individuals Barred Or Suspended

William B. Alpert (Registered Principal, Kansas City, Missouri) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Alpert failed to respond to NASD requests for information concerning his termination from a member firm. In addition, without the knowledge or consent of the estate of a public customer, Alpert submitted a change of address form for the estate's account to his own address. Thereafter, Alpert submitted a request to liquidate mutual fund shares in the account and negotiated a \$10,522.62 check made

payable to the customer that was sent to Alpert's address without the knowledge or consent of the estate.

Paul D. Baune (Registered Representative, Huntsville, Alabama) was fined \$21,222.76, suspended from association with any NASD member in any capacity for 20 days, and required to requalify as a general securities representative. The sanctions were based on findings that Baune executed in the accounts of public customers purchase transactions that were unsuitable because the undue concentration of investments in limited partnerships did not meet the customers' objectives, financial situations, and needs.

Jeffrey D. Berkoff (Registered Representative, Tequesta, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500, suspended from association with any NASD member in any capacity for five business days, and required to disgorge to public customers his net commissions on the unsuitable trades totaling \$6,545. Without admitting or denying the allegations, Berkoff consented to the described sanctions and to the entry of findings that he made recommendations to public customers that involved the purchase of certain securities on margin. These transactions were excessive and unsuitable for the customers' upon the basis of the facts they disclosed as to their tax status, investment objectives, and financial situations.

Robert H. Byars (Registered Principal, Jacksonville, Florida) submitted an Offer of Settlement pursuant to which he was fined \$125,000, barred from association with any NASD member in any capacity, and required to pay \$31,200 in restitution to his former member firm. Without admitting or denying the allegations, Byars consented to the described sanctions and to the

entry of findings that he received from a public customer a \$31,200 check for investing in securities but failed to execute the purchase. Instead, the findings stated that Byars cashed the check and converted the funds to his own use and benefit without the customer's knowledge or consent. In addition, the NASD found that Byars failed to respond to NASD requests for information.

Silvio Canto, Jr. (Registered Representative, Carrollton, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$105,000, barred from association with any NASD member in any capacity, and required to pay \$30,000 in restitution to his former member firm. Without admitting or denying the allegations, Canto consented to the described sanctions and to the entry of findings that he made improper use of customer funds. Specifically, the NASD found that Canto requested a \$30,000 loan against a public customer's insurance policy without the customer's authorization, forged the customer's name on the loan check, and deposited the funds into his bank account.

Jean Anthony Carrieri (Registered Representative, East Haven, Connecticut) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carrieri consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit insurance customer funds totaling \$1,481.80 without the knowledge or consent of the customers.

Kirk L. Ferguson (Registered Principal, Centerville, Utah) was fined \$5,000 and required to provide restitution of \$56,335 plus interest to customers, each jointly and severally

with a former member firm. The NASD has to approve an explanation to the customers of the reason for the restitution and the firm and Ferguson must provide proof to the NASD that they have made such restitution. Ferguson was fined individually an additional \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by examination as a financial and operations principal and general securities principal before acting in those capacities with any NASD member firm.

The SEC affirmed the sanctions following appeal of an August 1993 NBCC decision. The sanctions were based on findings that the firm, acting through Ferguson, conducted a securities business while failing to maintain its minimum required net capital and effected securities transactions with retail customers in a common stock that included markups ranging from 6 to 39 percent above the firm's contemporaneous costs. Moreover, the firm, acting through Ferguson, engaged in, and induced others to engage in, deceptive and fraudulent devices and contrivances in connection with the aforementioned stock by dominating and controlling the market in the stock such that there was no independent, competitive market in the shares.

Norman C. Jackson (Associated Person, Broken Arrow, Oklahoma) was fined \$28,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jackson received from insurance customers \$1,362 in cash and checks as payment of insurance premiums. Jackson failed to submit the funds to his member firm and, instead, converted the funds to his own use and benefit without the customers' knowledge or consent. In addition, Jackson pledged two laptop comput-

ers belonging to his member firm as security for a loan he received without the firm's knowledge or consent, and failed to respond to NASD requests for information.

Judy L. Marino (Registered Representative, Morgan City, Louisiana) submitted an Offer of Settlement pursuant to which she was fined \$30,000, barred from association with any NASD member in any capacity, and required to pay \$2,000 in restitution to her former member firm. Without admitting or denying the allegations, Marino consented to the described sanctions and to the entry of findings that she received from a public customer a \$2,000 check for investment purposes but failed to invest the funds. Instead, the findings stated the Marino endorsed the check and deposited the funds in her personal bank account, thereby converting the funds to her own use and benefit, without the knowledge or consent of the customer. In addition, the NASD found that Marino failed to respond to NASD requests for information.

Anthony J. Parisi (Registered Representative, Chandler, Arizona) was fined \$20,000, required to pay \$6,830.38 in restitution to a customer, and suspended from association with any NASD member in any capacity for 90 days. In addition, Parisi was required to requalify by examination as a general securities representative or be prohibited from acting in such a capacity until he requalifies. The sanctions were based on findings that Parisi recommended that a customer sell his shares in one mutual fund and purchase two others with similar investment objectives, purportedly without the need to pay commissions for the purchase. However, after the purchase was made, the customer was charged \$6,830.38 in commissions.

Joel Eugene Shaw (Registered Representative, Greenville, South Carolina) was fined \$10,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a November 1993 NBCC decision. The sanctions were based on findings that Shaw solicited and accepted two checks that totaled \$21,142.67 for a mutual fund investment. Instead, Shaw deposited the checks in his personal bank account and applied the proceeds to his own use and benefit. When the customer questioned Shaw as to why she never received statements, Shaw provided the customer with falsified statements reflecting her purported mutual fund shares.

Charles R. Stedman (Registered Representative, Tucson, Arizona) was fined \$20,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a January 1994 NBCC decision. The sanctions were based on findings that Stedman failed to provide complete and timely responses to NASD requests for information regarding a customer complaint.

Henry Edward Vail (Registered Representative, Houston, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Dallas DBCC decision. The sanctions were based on findings that Vail made improper use of funds of a local political club by converting \$11,000 to his own use and benefit.

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

Philip M. Young (Registered Principal, Phoenix, Arizona) was fined \$20,000 and barred from asso-

ciation with any NASD member in any capacity. The sanctions were based on findings that Young participated in private securities transactions without having notified his member firm in writing.

Individuals Fined

Brent Lowell Basham (Registered Representative, Fort Worth, Texas) and **Van Dell Sharpley (Registered Representative, Lubbock, Texas)** submitted an Offer of Settlement pursuant to which they were fined \$5,000, jointly and severally, and required to pay \$11,740 in disgorgement to the NASD, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Basham permitted Sharpley to become associated with a member firm and sell nonexempt securities to public customers without qualifying or registering with the NASD. In addition, the NASD found that Sharpley received \$11,740 in commissions from the aforementioned sales.

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

First Independence Group, Inc., Garden City, New York

First Inland Securities Incorporated, Spokane, Washington

Phoenix Financial Corporation, Atlanta, Georgia

Firms Suspended

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

tion 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.

Bridgemere Capital Markets, Inc., San Francisco, California (November 2, 1994)

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

Robert E. Adams, Jr., Reston, Virginia

Gary E. Arbogast, Louisville, Kentucky

Scott L. Arnold, Seabrook, Maryland

James M. Brown, Atlanta, Georgia

David L. Burgess, Jr., Warren, Michigan

Derek K. Cole, Denver, Colorado

Randolph O. Coleman, St. George, Utah

Anthony G. DeCamillis, Denver, Colorado

Kenneth R. Dew, Jr., Jackson, Mississippi

Eric M. Diehm, Tampa, Florida

Jeffrey D. Field, Lafayette, California

Michael J. Highlands, New Oxford, Pennsylvania

James R. Hill, Memphis, Tennessee

Stephen M. Kann, Alexandria,
Virginia

William R. MacCallum, Jr.,
Littleton, Colorado

Glen L. Ottmar, Bothell, Washington

James C. Peterson, Atlanta, Georgia

Rene R. St. Pierre, Meadow Valley,
California

Kevin W. Roberts, Jackson,
Tennessee

Michael J. Schlueter, Rogersville,
Missouri

Hale R. Spiegelberg, Atlanta, Georgia

Neil Stamm, Englewood, Colorado

Stanley L. Swoyer, Palm Desert,
California

Kevin M. Thomas, Deerfield Beach,
Florida

John K. Watton, Denver, Colorado

Robert W. Zollinger, Clearwater,
Florida

FOR YOUR INFORMATION

Excess Spread Calculation Includes Exchange Quotes

On October 28, 1994, the Securities and Exchange Commission (SEC) approved an NASD proposal to include quotations from national securities exchanges in the calculation of excess spread parameters for CQS securities. The rule change went into effect on November 21, 1994.

Registered market makers in CQS securities are prohibited from entering quotations in CQS securities that exceed the NASD's parameters for maximum allowable spreads. Before this rule change, the maximum allowable spread for any given CQS security was 125 percent of the average of the three narrowest market maker spreads in that security, with the limitation that the maximum allowable spread could never be less than 1/4 of a point. This calculation methodology, however, only factored in quotations by CQS market makers and did not take into account quotations disseminated by exchanges. Accordingly, in order to have the excess spread parameters for CQS securities be more reflective of and related to quotations disseminated by all market centers trading CQS securities, the NASD proposed, and the SEC approved, the inclusion of exchange quotations in the calculations of excess spread parameters for CQS securities. Thus, with this rule change, the maximum allowable spread for any CQS security will be 125 percent of the average of the three narrowest market maker spreads in that security, which average spread calculations shall include quotations from national securities exchanges (if the number of CQS

market makers in that security plus the number of national securities exchanges trading that security is less than three, the maximum allowable spread will be 125 percent of the average spread). In addition, as before the rule change, the maximum allowable spread shall never be less than 1/4 of a point.

Short-Sale Revision Postponed Until January 9, 1995

In *Notice to Members 94-80*, the NASD announced that the SEC approved an NASD rule change that amends the Prompt Receipt and Delivery of Securities Interpretation (Interpretation) issued by the NASD Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice. Specifically, the Interpretation, as amended, requires members to annotate their affirmative determinations as to stock availability that are required to be made when effecting short sales for their own proprietary account or the account of a customer. **This rule change was scheduled to go into effect on November 30, 1994; however, the NASD has postponed the effective date of the rule change until January 9, 1995.**

The NASD is also clarifying that the Interpretation applies to any security traded by an NASD member, including exchange-listed securities, non-Nasdaq securities, and foreign securities. With respect to foreign securities, however, short sales in such securities effected on a foreign securities exchange or market through a member of such exchange or market are not subject to the Interpretation.

SPECIAL NASD NOTICE TO MEMBERS 94-102

New Exercise Advice Procedures For Expiring Equity Options

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

New uniform provisions regarding the exercise cut-off rules for expiring equity options will become effective **commencing with the February 1995 expiration** at each of the five registered national options exchanges and the National Association of Securities Dealers, Inc. (the SROs).¹ This circular describing these new provisions and requirements was prepared by the SROs acting jointly as members of the Intermarket Surveillance Group (ISG).

The exercise cut-off rules continue to require that exercise decisions relating to expiring equity options that are contrary to the Options Clearing Corporation's (OCC) Exercise-by-Exception (Ex-by-Ex)² procedure, be made and recorded by clearing firms prior to 5:30 p.m. Eastern Time, 4:30 p.m. Central Time, or 2:30 p.m. Pacific Time on the last business day prior to expiration (i.e., the exercise cut-off time). The new rules, however, required that evidence of such contrary exercise decisions must also be submitted in the form of a Contrary Exercise Advice to an eligible options exchange³ or directly to OCC prior to the cut-off time.

Contrary Exercise Advices represent decisions of an option holder to either (1) exercise an out-of-the-money expiring equity options position or (2) not exercise an in-the-money expiring equity options position, as defined by the Ex-by-Ex procedures of OCC Rule 805. In addition, cancellations or changes to previously submitted Contrary Exercise Advices also must be submitted to an eligible exchange or to OCC prior to the cut-off time.

Member organizations that maintain standing instructions from customers or market makers to routinely exercise options contracts at closing values below the OCC Exercise-by-

Exception parameters, will not be required to submit a Contrary Exercise Advice in those instances where the closing value meets or exceeds the standing instruction. Member organizations must retain such dated standing instructions on file and submit copies of the instructions to each options SRO of which they are a member (market-maker standing instructions need only be forwarded to the exchange where the market maker is a member). Should a customer or member elect to take action on a specific occasion that differs from a standing instruction, a Contrary Exercise Advice must be submitted in the prescribed form and the member organization must prepare for its files a time-stamped written memorandum prior to the exercise cut-off time detailing the change.

The rules require member organizations that maintain proprietary or customer account positions in expiring equity options to be responsible for ensuring that Contrary Exercise Advices are communicated to an eligible exchange or directly to OCC (by OCC clearing members) regarding such positions. In addition, mem-

¹ American Stock Exchange - Rule 980
Chicago Board Options Exchange - Rule 11.1
National Association of Securities Dealers, Inc. - Uniform Practice Code, Section 63
New York Stock Exchange - Rule 780
Philadelphia Stock Exchange - Rule 1042
Pacific Stock Exchange - Rule 6.24

² Under OCC's Exercise-by-Exception procedure, expiring equity options that are 3/4 of a point or more in-the-money for customer accounts and 1/4 of a point or more for firm or market-maker accounts are automatically exercised. Expiring options that are below these parameters, will be exercised only if the OCC clearing member holding the position submits an Exercise Notice to OCC.

³ An eligible exchange is an exchange of which a member or member organization is a member and which lists a particular option.

ber organizations may make arrangements to indicate their final exercise decisions to an OCC clearing member that has accepted the responsibility to submit Contrary Exercise Advices on their behalf. The OCC clearing member shall take reasonable steps to ensure that such decisions are properly submitted to an eligible exchange or directly to OCC.

Contrary Exercise Advices must be submitted at the place designated by each exchange. In the alternative, Contrary Exercise Advices may be submitted by OCC clearing members directly to OCC via the electronic Clearing Management and Control System (C/MACS). A sample of a Contrary Exercise Advice Form (see Attachment 1) used for manual submission to an exchange is attached, as well as a sample of OCC's automated C/MACS Contrary Exercise Advice page (see Attachment 2), to be used for electronic submissions.

It should be noted that the responsibility of providing an explanation regarding late submissions or the failure to submit a Contrary Exercise Advice (under the extraordinary circumstance exception of the Rules), is the responsibility of the member or member organization holding the options position, unless that member or member organization has appropriately submitted the instruction to a clearing member that has agreed to

make the submission on that member's or member organization's behalf. Explanations relating to extraordinary circumstances must be submitted by members or member organizations to each SRO of which they are a member on the business day following expiration.

Member organizations may wish to establish a time by which customers must inform them of contrary exercise intentions. Such times should be sufficiently prior to the SROs' exercise cut-off time to allow the clearing member adequate time for the processing of Contrary Exercise Advices.

It is important to note that, while submission of a Contrary Exercise Advice evidences that a contrary exercise decision was made prior to the exercise cut-off time, it does not serve as an effective notice to OCC to exercise or not exercise the option in question. The Expiration Saturday procedure for the submission of exercise notices to OCC is not affected by these new procedures.

The primary purpose of these new provisions is to promote fairness among options market participants by ensuring compliance with the SROs' exercise cut-off rules. In this regard, members and member organizations are hereby advised that a

decision to either exercise an option that is out-of-the-money, or not exercise an option that is in-the-money, on the basis of news obtained after the exercise cut-off time will be deemed to be conduct inconsistent with just and equitable principles of trade in violation of exchange and NASD rules, and may also be fraudulent activity in violation of the federal securities laws.

* * *

Questions regarding the new provisions may be directed to the Market Surveillance representatives at each of the following SROs or OCC:

AMEX: George Peckman
(212) 306-1550

CBOE: Jeffrey Schroer
(312) 786-7716

NASD: Joseph Alotto
(301) 590-6845

NYSE: Hope Duffy
(212) 656-6197

OCC: Stan Schretter
(312) 322-4534

PHLX: Rick McDonald
(215) 496-5407

PSE: Thao Ngo
(415) 393-7957

AMEX, CBOE, NYSE, PHLX, PSE

CONTRARY EXERCISE ADVICE
(For Expiring Equity Options)

To be filed no later than 5:30 P.M. (New York Time) on the business day immediately prior to the expiration date at a location designated by the Exchange*, by members for customer, firm or market-maker accounts that intend to either (1) *not exercise* an options position which would automatically be exercised, or (2) *exercise* an options position that would not be automatically exercised, pursuant to OCC Rule 805.

Date: _____ Clearing Firm No.: _____

Account Type (check one): -Firm -Customer -Market-Maker

- DO NOT EXERCISE - EXERCISE

- *Cancel Previous Advice*

M.M. Acronym/Cust. A/C #	Quantity	Put/Call	Symbol	Month	Strike

Prepared By: _____ (Print Name) _____ (Signature)

Preparer's Telephone Number: _____

This form does not serve as an effective notice to OCC. Exercise notices must still be submitted to OCC on Expiration Saturday to exercise or not exercise expiring options.

Time stamp this form upon submission.

*Broker/dealers may submit Contrary Exercise Advice Forms in multiply-traded options to any exchange at which they are a member, provided the option is listed there.

MM/DD/YY THE OPTIONS CLEARING CORPORATION CMADE137
HH:MM:SS FIRM 9999 XXXXXXXXXXXXXXXXXXXXX
CONTRARY EXERCISE INTENTIONS FOR OPTIONS EXPIRING XXXXX, 19XX

THIS IS NOT AN EXERCISE INSTRUCTION

CFM	SUB/ ACCT	QUANTITY	P	SYMBOL	STRIKE	
			C		DOL	FR
_____	_____	_____	___	_____	_____	_____
_____	_____	_____	___	_____	_____	_____
_____	_____	_____	___	_____	_____	_____

INSTRUCTIONS:

1. ENTER THE QUANTITY NOT TO BE EXERCISED IF THE SERIES IS IN THE MONEY BY THE THRESHOLD AND WILL BE EXERCISED BY OCC.
2. ENTER THE QUANTITY TO BE EXERCISED IF THE SERIES IS NOT IN THE MONEY BY THE THRESHOLD AND WILL NOT BE EXERCISED BY OCC.

SEQUENCE

RESPONSE A A=ADD I=INQUIRE PF1=HELP PF10=QUIT CLEAR=EXIT