

NASD Notice to Members 98-47

SEC Approves Changes To Books And Records Requirements

Suggested Routing

- Senior Management
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Executive Summary

On May 29, 1998, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD[®]) Rule 3110 (the Books and Records Rule) that (i) change the definition of "institutional account" to include the accounts of investment advisers that are now required to register with the states pursuant to the National Securities Markets Improvement Act of 1996 (NSMIA), and (ii) exclude certain customer accounts from the requirement to obtain certain tax and employment information from the customer.

Questions concerning this *Notice* may be directed to Joseph E. Price, Counsel, Advertising/Investment Companies Regulation, NASD Regulation, Inc., at (202) 728-8877 or Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD RegulationSM, at (202) 728-8176.

Discussion

The Books and Records Rule requires that members obtain certain information for all accounts. The Rule requires that, for accounts other than institutional accounts and accounts limited to money market funds, members must make reasonable attempts to obtain: (i) a customer's tax identification or social security number; (ii) a customer's occupation and the name and address of the employer; and (iii) information about whether the customer is an associated person of another member (Retail Customer Information).

Similarly, NASD Conduct Rule 2310 (Suitability Rule) requires members to make reasonable efforts to obtain certain information, such as the customer's financial status and investment objectives, from retail customers prior to the execution of a transaction.

Interpretive Material 2310-3 (IM-2310-3) describes members' suitability obligation in making recommendations to institutional customers. The primary considerations under IM-2310-3 include the customer's capability to evaluate risk independently and the extent to which individual judgment is exercised when making investment decisions.

Accounts Of Registered Investment Advisers

NSMIA and new rules recently adopted by the SEC under the Investment Advisers Act of 1940 (Advisers Act) reallocated regulatory oversight of investment advisers between the SEC and the states. Under the new rules, advisers to registered investment companies and those with assets under management of at least \$25 million generally will register exclusively with the SEC. Most others will register exclusively with the states.

The Books and Records Rule provides that, for purposes of both the Books and Records Rule and the Suitability Rule, the term "institutional account" includes the account of an investment adviser registered with the SEC. Consequently, advisory accounts that were considered to be "institutional accounts" when the Retail Customer Information provision in the Books and Records Rule was adopted became excluded from the definition because they migrated to state regulation under NSMIA.

The amendments take into account the bifurcation of investment adviser regulation between the SEC and the states by changing the definition of "institutional account" in subparagraph (c)(4) of the Books and Records Rule to include both investment advisers required to register with the SEC and those required to register with the states. The amendments treat the state-regulated advi-

sory accounts as “institutional accounts” for purposes of the Books and Records Rule and the Suitability Rule.

Accounts Limited To Mutual Fund Shares

A primary purpose of obtaining Retail Customer Information is to help a member evaluate the suitability of a recommendation. NASD Regulation has determined that the requirement to obtain Retail Customer Information is burdensome and largely unnecessary as it applies to members who distribute directly marketed mutual funds and other unsolicited accounts that are limited to mutual fund shares and for which no recommendations are made. With regard to the requirement in the Books and Records Rule to obtain a customer's tax identification or social security number, the tax laws already impose obligations on funds to obtain this information.¹ The requirement in the Books and Records Rule to determine whether a customer is an associated person of another member also is unnecessary because NASD Conduct Rule 3050, which provides the obligations of executing members when the member knows that a person associated with an employing member has an interest in an account, expressly excludes accounts that are limited to transactions in mutual fund shares.

The amendments thus revise subparagraph (c)(2) of the Books and Records Rule to exclude mutual funds that are not recommended by the member or its associated persons from the obligation to obtain Retail Customer Information. Members are still required to make reasonable efforts to obtain Retail Customer Information for retail accounts that are not subject to these limitations. This change will not affect the need to obtain any information from customers or others

in order to meet any other regulatory obligations that may exist.

Text Of New Rule

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

3100. Books and Records, and Financial Condition

3110. Books and Records

(a) Requirements

Each member shall keep and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association.

(c) Customer Account Information

Each member shall maintain accounts opened after January 1, 1991 as follows:

(1) for each account, each member shall maintain the following information:

(A) customer's name and residence;

(B) whether customer is of legal age;

(C) signature of the registered representative introducing the account and signature of the member or partner, officer, or manager who accepts the account; and

(D) if the customer is a corporation, partnership, or other legal entity, the names of any persons authorized to transact business on behalf of the entity;

(2) for each account, other than an institutional account, and accounts in which investments are limited to transactions in [money market funds] open-end investment company

shares that are not recommended by the member or its associated persons, each member shall also make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, the following information to the extent it is applicable to the account:

(A) customer's tax identification or Social Security number;

(B) occupation of customer and name and address of employer; and

(C) whether customer is an associated person of another member; and

(3) for discretionary accounts, in addition to compliance with subparagraphs (1) and (2) above, and Rule 2510(b) of these Rules, the member shall:

(A) obtain the signature of each person authorized to exercise discretion in the account;

(B) record the date such discretion is granted; and

(C) in connection with exempted securities other than municipals, record the age or approximate age of the customer.

(4) For purposes of this Rule and Rule 2310 the term “institutional account” shall mean the account of:

(A) a bank, savings and loan association, insurance company, or registered investment company;

(B) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or

(C) any other entity (whether a natural person, corporation, partnership,

trust or otherwise) with total assets of at least \$50 million.

Endnote

¹ If a customer refuses to provide tax identification, Internal Revenue Service rules require a fund to withhold 31 percent of all redemptions or distributions.

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NASD Notice to Members 98-48

SEC Approves
Amendments To Free-
Riding And Withholding
Interpretation; Effective
August 17, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
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Executive Summary

On May 18, 1998, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD[®]) Interpretive Material 2110-1 (IM-2110-1) and Rule 2720, revising certain provisions of the Free-Riding and Withholding Interpretation (Interpretation). These amendments address direct and indirect owners of broker/dealers, investment grade debt offerings, foreign investment companies, secondary offerings, issuer directed share programs, and accounts under the Employment Retirement Income Security Act. The amendments also provide NASD Regulation, Inc., staff with general exemptive authority. These rule amendments will be effective on August 17, 1998. The text of the amended rules and the *Federal Register* version of the SEC approval order are attached. This *Notice* is being issued to alert members of their revised compliance responsibilities under the Interpretation.

Questions concerning this *Notice* should be directed to Gary L. Goldsholle, Assistant General Counsel, Office of General Counsel, NASD RegulationSM, at (202) 728-8104.

Background

The purpose of the Interpretation is to protect the integrity of the public offering system by ensuring that members make a bona fide public distribution of "hot issue" securities and do not withhold such securities for their own benefit or use such securities to reward persons who are in a position to direct future business to the member. Hot issue securities are defined by the Interpretation as securities of a public offering that trade at a premium in the secondary market whenever such trading commences. The Interpretation also assures that members and partici-

pants in the securities industry do not take unfair advantage of their "insider position" in the industry to the detriment of public investors.

The Interpretation prohibits members from retaining the securities of hot issues in their own accounts and prohibits members from allocating such securities to directors, officers, employees, and associated persons of such members and other broker/dealers. It also restricts member sales of hot issue securities to the accounts of specified categories of persons, including, among others, senior officers of banks, insurance companies, investment companies, investment advisory firms, or any other institutional type account, and any other person with such organizations whose activities influence or include the buying and selling of securities. These basic prohibitions and restrictions are also made applicable to sales by members to accounts in which any such persons may have a beneficial interest and, with some exceptions, to members of the immediate family of those persons restricted by the Interpretation.

Amended Rules

NASD Regulation has received SEC approval of amendments to IM-2110-1 and Rule 2720. See 63 FR 28535 (May 26, 1998). These amendments provide for the following:

Exemptive Authority

New paragraph (a)(5) of the Interpretation provides NASD Regulation staff with general exemptive authority. As revised, the Interpretation authorizes NASD Regulation staff, upon written request made by a member, pursuant to the Rule 9600 Series, to provide an exemption unconditionally or on specified terms from any or all provisions, consistent with the purposes of the Interpretation, the protection of investors, and

the public interest. Persons requesting an exemption from the Interpretation should submit a detailed written statement of the grounds for granting the exemption to: NASD Regulation, Inc., Attn: Office of General Counsel, 1735 K Street, N.W., Washington, DC 20006.

Treatment Of Direct And Indirect Owners Of Broker/Dealers

New paragraph (b)(9) addresses persons who directly or indirectly have an ownership interest in a broker/dealer, other than a limited business broker/dealer as defined in paragraph (c) of the Interpretation. The subparagraph creates a new category of restricted person, providing generally that members shall not sell hot issue securities to a person, or a member of the immediate family of such person who is supported directly or indirectly to a material extent by such person, who has contributed capital to a broker/dealer, other than solely a limited business broker/dealer, or the account in which any such person has a beneficial interest. The amendments provide an exemption from this new category for persons whose ownership interest is passive and less than 10 percent, and where either: (1) such person purchases hot issues from a person other than the member in which it has a passive ownership and such person is not in a position to direct the allocation of hot issues; or (2) the member in which such person has a passive ownership interest or the parent of such member is publicly traded on an exchange or The Nasdaq Stock MarketSM (Nasdaq[®]).

The provisions in new paragraph (b)(9) also provide an exemption for sales to the account of any person restricted under subparagraph (b)(9) that is established for the benefit of bona fide public customers, includ-

ing, among others, insurance company general, separate, and investment accounts, and bank trust accounts. Members should be aware that this exemption applies solely to the accounts of persons restricted pursuant to paragraph (b)(9). It should be noted that paragraph (b)(9) does not restrict purchases of hot issues by any entity owned in part or whole by the person restricted by paragraph (b)(9), but instead reaches only the "accounts" in which restricted owners have a beneficial interest.

Rated Investment Grade Debt

The amendments to the Interpretation exempt certain classes of debt securities. Specifically, the amendments exempt debt securities (other than debt securities convertible into common or preferred stock) and financing instrument-backed securities that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. Members should be aware that debt securities and financing instrument-backed securities must *both* be rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. NASD Regulation reminds members that the Interpretation will continue to apply to all other types of debt instruments, except those expressly excluded.

Foreign Investment Companies

The amendments to paragraphs (f) and (l)(6) of the Interpretation exempt sales of hot issues to foreign investment companies that meet the following criteria: (1) the fund has 100 or more investors; (2) the fund is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; (3) no more than 5 percent of the fund assets are to be invested in the hot

issue securities being offered; and (4) any person owning more than 5 percent of the shares of the fund is not a restricted person as described in paragraph (b)(1), (2), (3), (4), or (9) of the Interpretation. In order for a member to sell hot issues to a foreign investment company, as defined above, the member must receive a written certification prepared by counsel admitted to practice law before the highest court of any state of the United States or the foreign jurisdiction where the investment company is organized, or by an independent certified public accountant licensed in any state of the United States or the foreign jurisdiction where the investment company is organized.

The written certification made pursuant to paragraph (l)(6) shall be deemed current for the same period as certifications furnished pursuant to paragraph (f)(1)(B). Specifically, a written certification by counsel or an independent certified public accountant shall be deemed current if it is based upon the status of the account as of a date not more than 18 months prior to the date of the hot issue transaction.

For purposes of paragraph (l)(6), NASD Regulation interprets the provision that there be 100 or more investors to require that 100 or more persons have direct investments in the foreign investment company. NASD Regulation would not permit investors of an entity that in turn invests in the foreign investment company to be included in the total number of investors for purposes of paragraph (l)(6).

Secondary Distributions

The amendments also exempt certain secondary offerings from the Interpretation. The amendments to the definition of the term "public offering"¹ in paragraph (l)(1) exempt hot

issues in a secondary distribution by an issuer, or any security holder of the issuer, of “actively-traded securities.” New paragraph (l)(7)(A) defines “actively-traded securities” as securities that have an average daily trading volume (ADTV) of at least \$1 million and are issued by an issuer whose common equity securities have a public float of at least \$150 million. New paragraph (l)(7)(B) defines the term “ADTV.” The definitions of “actively-traded securities” and “ADTV” were modeled after the SEC’s Regulation M. 62 FR 520 (January 3, 1997).

Issuer-Directed Share Exemptions

Issuer-directed share programs have become an increasingly valuable and popular tool for employee development and retention. The amendments to paragraph (d) of the Interpretation are designed to simplify the application of the issuer-directed share exemption to employees and directors of an issuer. The amendments permit an issuer specifically to direct its own shares to employees and directors, or employees and directors of a parent or subsidiary of the issuer, or any other entity which controls or is controlled by the issuer, or potential employees and directors resulting from an intended merger, acquisition, or other business combination of the issuer. For purposes of this paragraph, a parent-subsidiary or other control relationship would be deemed to include an entity that holds 50 percent or more of any class of equity securities of another entity. Employees and directors of sister corporations to the issuer are not subject to an exemption for issuer-directed securities, however, members may request an exemption for such persons under paragraph (a)(5) as discussed above.

Members should note that the issuer-directed share program is no longer limited to persons restricted in paragraphs (b)(3) through (8) of the Interpretation. NASD Regulation’s amendments permit employees and directors of an issuer to purchase hot issues from such issuer’s directed share program even if such employees and directors are materially supported by persons associated with a member restricted under paragraph (b)(2) of the Interpretation.

The amendments also consolidate the issuer-directed share provisions in paragraph (d). Separate provisions addressing issuer-directed share programs of members and parents of members were contained in Rule 2720(m). The new provisions standardize the “lock-up” period for issuer-directed securities to three months.

NASD Regulation reminds members that the Interpretation is designed to ensure that members make a bona fide public distribution of hot issue securities of a public offering that trade at a premium in the secondary market regardless of whether such securities are acquired by the member as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or a selling group member, or otherwise. These provisions ensure that the Interpretation applies to securities that are part of a public offering notwithstanding that some of those securities are specifically directed by the issuer on a non-underwritten basis. NASD Regulation will continue its practice of requiring the managing underwriter of the offering to be responsible for ensuring that the distribution of non-underwritten securities is made in compliance with the Interpretation.

As a result of the plenary exemptive authority granted in new paragraph (a)(5), NASD Regulation has elimi-

nated paragraph (d)(2) from the Interpretation. Members may request an exemption for the sale of issuer-directed securities to a restricted person who is neither an employee nor director of the issuer under the general exemptive procedures described above. While NASD Regulation staff will be able to exercise greater flexibility than currently permitted under the Interpretation, members should articulate a valid business reason for such sales. In addition, members should represent that such securities shall not be subject to the same “lock-up” provisions as securities directed by an issuer pursuant to paragraph (d).

Accounts For Qualified Plans Under The Employment Retirement Income Security Act (ERISA)

New paragraph (f)(3) addresses the status of qualified employee benefit plans under ERISA. Generally, the amendments provide that an employee benefits plan qualified under ERISA shall not be deemed restricted. The amendments in new paragraph (b)(3) provide guidance in determining the factual circumstances in which a qualified ERISA plan would be deemed restricted.

Questionnaire

In its review for compliance with the Interpretation, NASD Regulation regularly issues a Free-Riding Questionnaire through the Compliance Desk software service to the managing underwriter and other members participating in the distribution of hot issue securities. NASD Regulation has revised the questionnaire to reflect the amendments to the Interpretation. A copy of the new Questionnaire follows this *Notice*. Additional information about the Compliance Desk and the Questionnaire is contained in *Notice to Members 96-18*.

Text Of Rule Amendments

(Note: Next text is underlined; deletions are bracketed.)

IM-2110-1. Free-Riding and Withholding

(a) Introduction

(1) No change.

(2) As in the case of any other interpretation issued by the [Board of Governors of the] Association, the implementation thereof is a function of the NASD Regulation staff [District Business Conduct Committee] and the [Board of Governors] NASD Regulation Board of Directors. Thus, the interpretation will be applied to a given factual situation by NASD Regulation staff, subject to oversight by the Board, with staff soliciting input from individuals active in the investment banking and securities business [who are serving on these committees or on the Board. They]. In making such interpretations, staff and the Board will construe this interpretation to effectuate its overall purpose to assure a public distribution of securities for which there is a public demand.

(3)-(4) No change.

(5) The NASD Regulation staff, upon written request, may, taking into consideration all relevant factors, provide an exemption either unconditionally or on specified terms from any or all of the provisions of this interpretation upon a determination that such exemption is consistent with the purposes of the interpretation, the protection of investors, and the public interest. A member may appeal a decision issued by NASD Regulation staff to the National Adjudicatory Council pursuant to the Code of Procedure.

(b) Violations of Rule 2110

(1)-(8) No Change

(9) Sell any of the securities to any person, or to a member of the immediate family of such person who is supported directly or indirectly to a material extent by such person, who owns or has contributed capital to a broker/dealer, other than solely a limited business broker/dealer as defined in paragraph (c) of this interpretation, or the account in which any such person has a beneficial interest, provided, however, that:

(A) The prohibition shall not apply to any person who directly or indirectly owns any class of equity securities of, or who has made a contribution of capital to, a member, and whose ownership or capital interest is passive and is less than 10% of the equity or capital of a member, as long as:

(i) such person purchases hot issues from a person other than the member in which it has such passive ownership and such person is not in a position by virtue of its passive ownership interest to direct the allocation of hot issues, or

(ii) such member's shares or shares of a parent of such member are publicly traded on an exchange or Nasdaq.

(B) This prohibition shall not apply to sales to the account of any person restricted under this subparagraph (9) established for the benefit of bona fide public customers, including insurance company general, separate and investment accounts, and bank trust accounts.

(C) For purposes of this subparagraph (9), any person with an equity ownership or capital interest in an entity that maintains an investment in a member shall be deemed to have

a percentage interest in the member equal to the percentage interest of the entity in the member multiplied by the percentage interest of such person in such entity.

(c) No Change

(d) Issuer-Directed Securities

[(1) This interpretation shall apply to securities which are part of a public offering notwithstanding that some or all of those securities are specifically directed by the issuer to accounts which are included within the scope of paragraph (b)(3) through (8) above. Therefore, if a person within the scope of those subparagraphs to whom securities were directed did not have the required investment history, the member would not be permitted to sell him such securities. Also, the "disproportionate" and "insubstantial" tests would apply as in all other situations. Thus, the directing of a substantial number of securities to any one person would be prohibited as would the directing of securities to such accounts in amounts which would be disproportionate as compared to sales to members of the public. If such issuer-directed securities are sold to the issuer's employees or directors or potential employees or directors resulting from an intended merger, acquisition, or other business combination, such securities may be sold without limitation as to amount and regardless of whether such employees have an investment history as required by the interpretation; provided, however, that in the case of an offering of securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of three months following the effective date of the offering. This interpretation shall also apply to securities which are part of a public offering notwithstanding that some of those securities are

specifically directed by the issuer on a non-underwritten basis. In such cases, the managing underwriter of the offering shall be responsible for insuring compliance with this interpretation in respect to those securities.]

[(2) Notwithstanding the above, sales of issuer-directed securities may be made to non-employee/director restricted persons without the required investment history after receiving permission from the Board of Governors. Permission will be given only if there is a demonstration of valid business reasons for such sales (such as sales to distributors and suppliers, who are in each case incidentally restricted persons), and the member seeking permission is prepared to demonstrate that the aggregate amount of securities so sold is insubstantial and not disproportionate as compared to sales to members of the public, and that the amount sold to any one of such persons is insubstantial in amount; provided, however, that such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of three months following the effective date of the offering.]

Employees and directors of an issuer, a parent of an issuer, a subsidiary of an issuer, or any other entity which controls or is controlled by an issuer, or potential employees and directors resulting from an intended merger, acquisition, or other business combination of an issuer otherwise subject to this interpretation in paragraphs (b)(2) through (9) may purchase securities that are specifically directed by the issuer to such persons; provided, however, that in the case of an offering of securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of three months

following the effective date of the offering.

(e) No Change

(f) Investment Partnerships and Corporations

(1) A member may not sell a hot issue to the account of any investment partnership or corporation, domestic or foreign (except companies registered under the Investment Company Act of 1940 or foreign investment companies as defined herein) including but not limited to hedge funds, investment clubs, and other like accounts unless the member complies with either of the following alternatives:

(A)-(B) No Change

(2) The member shall maintain a copy of the names and business connections of all persons having any beneficial interest in the account or a copy of the current written representation in its files for at least three years following the member's last sale of a new issue to the account, depending upon which of the above requirements the member elects to follow. For purposes of this paragraph (f) and the certification required pursuant to paragraph (l)(6), a list or written representation shall be deemed to be current if it is based upon the status of the account as of a date not more than 18 months prior to the date of the transaction.

(3) An employee benefits plan qualified under the Employee Retirement Income Security Act shall be deemed restricted under this interpretation in accordance with the following provisions:

(A) Any plan sponsored by a broker/dealer is restricted;

(B) Any plan sponsored by an entity that is not involved in financial ser-

vices activities is not restricted whether or not any plan participants may be restricted;

(C) Any plan sponsored by an entity that is engaged in financial services activities, including but not limited to, banks, insurance companies, investment advisers, or other money managers, is not restricted, provided that the plan permits participation by a broad class of participants and is not designed primarily for the benefit of restricted persons.

(g)-(k) No Change

(l) Explanation of Terms

The following explanation of terms is provided for the assistance of members. Other words which are defined in the By-Laws and Rules shall, unless the context otherwise requires, have the meaning as defined therein.

[(1) Associated Person

A person associated with a member or any other broker/dealer, as defined in Article I of the Association's By-Laws, shall not include a person whose association with the member is limited to a passive ownership interest in the member of 10% or less, and who does not receive hot issues from the member in which he or she has the ownership interest; and that such member is not in a position to direct hot issues to such person.]

[(2)1] Public Offering

The term public offering shall mean any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, and all other securities distributions of any kind whatsoever

except any offering made pursuant to an exemption under Section 4(l), 4(2) or 4(6) of the Securities Act of 1933, as amended. The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act, and debt securities (other than debt securities convertible into common or preferred stock) and financing instrument-backed securities that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. The term public offering shall exclude secondary offerings by an issuer, or any security holder of the issuer, of actively-traded securities.

([3]2) Immediate Family

The term immediate family shall include parents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children. In addition, the term shall include any other person who is supported, directly or indirectly, to a material extent by the member, person associated with the member or other person specified in paragraph (b)(2) above.

([4]3) Normal Investment Practice

Normal investment practice shall mean the history of investment of a restricted person in an account or accounts maintained by the restricted person. Usually the previous one-year period of securities activity is the basis for determining the adequacy of a restricted person's investment history. Where warranted, however, a longer or shorter period may be reviewed. It is the responsibility of the registered representative effecting the allocation, as well as the member, to demonstrate that the restricted person's investment history justifies the allocation of hot issues. Copies of customer account statements or other records maintained

by the registered representative or the member may be utilized to demonstrate prior investment activity. In analyzing a restricted person's investment history the Association believes the following factors should be considered:

(A) The frequency of transactions in the account or accounts during that period of time. Relevant in this respect are the nature and size of investments.

(B) A comparison of the dollar amount of previous transactions with the dollar amount of the hot-issue purchase. If a restricted person purchases \$1,000 of a hot issue and his account revealed a series of purchases and sales in \$100 amounts, the \$1,000 purchase would not appear to be consistent with the restricted person's normal investment practice.

(C) The practice of purchasing mainly hot issues would not constitute a normal investment practice. The Association does, however, consider as contributing to the establishment of a normal investment practice, the purchase of new issues which are not hot issues as well as secondary market transactions.

([5]4) Disproportionate

(A) In respect to the determination of what constitutes a disproportionate allocation, the Association uses a guideline of 10% of the member's participation in the issue, however acquired. It should be noted, however, that the 10% factor is merely a guideline and is one of a number of factors which are considered in reaching determinations of violations of the interpretation on the basis of disproportionate allocations. These other factors include, among other things:

(i) the size of the participation;

(ii) the offering price of the issue;

(iii) the amount of securities sold to restricted accounts; and

(iv) the price of the securities in the aftermarket.

(B) It should be noted that disciplinary action has been taken against members for violations of the interpretation where the allocations made to restricted accounts were less than 10% of the member's participation. The 10% guideline is applied as to the aggregate of the allocations.

(C) Notwithstanding the above, a normal unit of trading (100 shares or 10 bonds) will in most cases not be considered a disproportionate allocation regardless of the amount of the member's participation. This means that if the aggregate number of shares of a member's participation which is allocated to restricted accounts does not exceed a normal unit of trading, such allocation will in most cases not be considered disproportionate. For example, if a member receives 500 shares of a hot issue, he may allocate 100 shares to a restricted account even though such allocation represents 20% of the member's participation. Of course, all of the remaining shares would have to be allocated to unrestricted accounts and all other provisions of the interpretation would have to be satisfied. Specifically, the allocation would have to be consistent with the normal investment practice of the account to which it was allocated and the member would not be permitted to sell to restricted persons who were totally prohibited from receiving hot issues.

([6]5) Insubstantiality

This requirement is separate and distinct from the requirements relating to disproportionate allocations and normal investment practice. In addition,

this term applies both to the aggregate of the securities sold to restricted accounts and to each individual allocation. In other words, there could be a substantial allocation to an individual account in violation of the interpretation and yet be no violation on that ground as to the total number of shares allocated to all accounts. The determination of whether an allocation to a restricted account or accounts is substantial is based upon, among other things, the number of shares allocated and/or the dollar amount of the purchase.

(6) Foreign Investment Company

The term foreign investment company shall include any fund company organized under the laws of a foreign jurisdiction, which has provided to the member a written certification prepared by counsel admitted to practice law before the highest court of any state of the United States or such foreign jurisdiction, or by an independent certified public accountant licensed to practice in any state of the United States or such foreign jurisdiction, that states that:

(A) the fund has 100 or more investors;

(B) the fund is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority;

(C) no more than 5% of the fund assets are to be invested in the securities being offered; and,

(D) any person owning more than 5% of the shares of the fund is not a

restricted person as described in paragraphs (b)(1), (2), (3), (4) or (9) of this interpretation.

(7) Actively-traded securities

(A) Actively-traded securities means securities that have an ADTV value of at least \$1 million and are issued by an issuer whose common equity securities have a public float value of at least \$150 million.

(B) "ADTV" means the worldwide average daily trading volume, during the two full calendar months immediately preceding, or any 60 consecutive calendar days ending within the 10 calendar days preceding, the filing of the registration statement; or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to Securities Act Rule 415, two full calendar months immediately preceding, or any consecutive 60 calendar days ending within the 10 calendar days preceding, the determination of the offering price.

(m) No Change

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(a)-(l) No Change

[(m) Sales to Employees—No Limitations

Notwithstanding the provisions of IM-2110-1, "Free-Riding and Withholding," a member may sell securities issued by a member, a parent of a member, an entity which wholly

owns a member, an entity which owns (alone or in the aggregate with any wholly-owned, non-public subsidiary) at least 51% of the outstanding voting stock of a member or by an issuer treated as a member or parent of a member under paragraph (i) hereof to the member's employees; potential employees resulting from an intended merger, acquisition, or other business combination of members resulting in one public successor corporation; persons associated with the member; and the immediate family of such employees or associated persons without limitation as to amount and regardless of whether such persons have an investment history with the member as required by IM-2110-1; provided, however, that in the case of an offering of equity securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of five months following the effective date of the offering.]

(n)-(q) are redesignated as (m)-(p)

Endnote

¹ The amendments to the definition of "public offering" apply only to the Interpretation and do not affect any other NASD rule, including Rules 2710, 2810, and 2720.

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CHX's jurisdiction,¹⁸ the proposal also will facilitate the CHX's oversight of such persons by ensuring that the CHX has the authority to enforce its rules and the federal securities laws against such persons.

The CHX's proposal also protests investors and the public interest by noting that a person characterized as an independent contractor must register with the CHX if he or she falls within the definition of registered person. This position is consistent with the 1982 Letter,¹⁹ which stated, among other things, that an independent contractor salesperson whose activities are subject to control by a broker-dealer must be registered with a SRO. By providing a clear statement of the CHX's policy regarding the registration of independent contractors, the CHX's proposal should help to ensure that independent contractors who come within the CHX's definition of registered person register with the CHX.

CHX Article VI, Rule 2(c), "Person Exempt from Registration," provides exemptions from registration for associated persons who functions are solely and exclusively clerical or ministerial or who are not actively engaged in the securities business.²⁰ The Commission notes that the rules of the National Association of Securities Dealers, Inc. ("NASD") also provide these exemptions from registration.²¹ Accordingly, the Commission believes that these exemptions from registration are reasonable and raise no new regulatory issues.

New CHX Article VI, Rule 2(d), "Other Registration Requirements," prohibits members from making application for the registration of any associated person when there is no intent to employ such person in the member's securities business. NASD Rule 1031(a) also contains this prohibition. Accordingly, the Commission believes that this provision of the CHX's proposal is reasonable and raises no new regulatory issues.

The Commission believes that it is reasonable for the CHX to amend Interpretation and Policy .01 to indicate that amendments to Forms U-4 and BDA regarding any registered person must be submitted to the CHX within 30 days after the registered person learns

the facts or circumstances requiring the forms to be revised, or, if the amendment involves a statutory disqualification, as defined in the Act, within 10 days after the disqualification occurs.²² The Commission notes that the rules of the NASD contain a similar provision.²³ Accordingly, the Commission believes that the CHX's amendment to Interpretation and Policy .01 is reasonable and raises no new regulatory issues.

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 clarifies new CHX Article VI, Rule 2(b) by indicating that members, as well as associated persons, are registered persons under CHX Article VI, Rule 2(b). This change reflects the inclusion of sole proprietors within CHX Article VI, Rule 1(b)'s enumerated list of registered persons and eliminates an inconsistency that would arise if the CHX defined registered persons to include only persons associated with members and member organizations. Amendment No. 3 strengthens the CHX's proposal by requiring the filing of amendments to Forms U-4 and BD that involve a statutory disqualification within 10 days after the statutory disqualification occurs. Accordingly, the Commission believes that it is consistent with Sections 6 and 19(b) of the Act to approve Amendment Nos. 2 and 3 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be

available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR-CHX-98-06 and should be submitted by June 16, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-CHX-98-06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

[FR Doc. 98-13816 Filed 5-22-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40001; File No. SR-NASD-97-95]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change By the National Association of Securities Dealers, Inc. Relating to Amendments to the Free-Riding and Withholding Interpretation

May 18, 1998.

I. Introduction

On December 23, 1997,¹ the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),² and Rule 194-b thereunder.³ Notice of the proposal appeared in the **Federal Register** on February 11, 1998.⁴ The Commission received one comment letter regarding the proposal.⁵ The

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

¹ On March 12, 1998, NASD Regulation filed Amendment No. 1 to the proposal. Amendment No. 1 revised Paragraph (b)(9)(A)(ii) to include the shares of a member's parent that are publicly traded on an exchange or Nasdaq in the exemption granted for shares of members traded on an exchange or Nasdaq. Section III of this approval order contains a further discussion of this amendment. In brief, the technical amendment was necessary to reflect the fact that members are often part of a holding company structure wherein the parent of the member is the entity that actually trades on an exchange or Nasdaq. Amendment No. 1 also corrected a drafting error in the original proposal's Paragraph (d) of IM-2110-1 to clarify that both employees and directors may take advantage of an exemption for issuer directed securities programs. Because this amendment is technical the statute does not require that it be published for comment.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240-19b-4.

⁴ Securities Exchange Act Release No. 39620 (February 4, 1998), 63 FR 7026 (February 11, 1998).

⁵ See letter from Sullivan & Cromwell to Jonathan G. Katz, Secretary, SEC, dated March 13, 1998.

¹⁸ Registered persons submit to the authority of the organizations or states to which they apply for registration on the Form U-4.

¹⁹ See 1982 Letter, *supra* note 9.

²⁰ As noted above, persons in this category may include, for example, for example, senior officers in a division of a broker-dealer that does not participate in the member's securities business. See March 13 Conversation, *supra* note 10.

²¹ See NASD Rule 1060(a)(1) and (2).

²² See Amendment No. 3, *supra* note 6.

²³ See NASD By-Law Article V, Section 2(c).

commenter generally supported the proposed rule change with some modifications.⁶

The proposal amends Interpretative Material IM-2110-1 and Rule 2720 to revise certain aspects of the Free-Riding and Withholding Interpretation ("Interpretation"). The purpose of the Interpretation is to protect the integrity of the public offering system by ensuring that members make a bona fide public distribution of "hot issue" securities and do not withhold such securities for their own benefit or use the securities to reward other persons who are in a position to direct future business to the member. Hot issues are defined by the Interpretation as securities of a public offering that trade at a premium in the secondary market whenever such trading commences.

The Interpretation prohibits members from retaining the securities of hot issues in their own accounts and prohibits members from allocating such securities to directors, officers, employees and associated persons of such members and other broker-dealers. It also restricts member sales of hot issue securities to the accounts of specified categories of persons, including, among others, senior officers of banks, insurance companies, registered investment companies, registered investment advisory firms and any other person with such organizations whose activities influence or include the buying and selling of securities. These basic prohibitions and restrictions are also made applicable to sales by members of hot issue securities to accounts in which any such persons may have a beneficial interest and, with some exceptions, to members of the immediate family of those persons restricted by the Interpretation.

In March 1997, the NASD Regulation Board of Directors ("Board"), acting upon recommendation from the National Business Conduct Committee ("NBCC")⁷ considered various amendments to the Interpretation. The Board submitted a series of proposed rule amendments to the membership for comment in Notice to Members 97-30.

⁶ On April 9, 1998, NASD Regulation filed Amendment No. 2 to the proposal. See letter to Katherine A. England, Assistant Director, Division of Market Regulation. Amendment No. 2 responds to the comment letter submitted by Sullivan and Cromwell regarding the proposed rule change. NASD Regulation's response to the comment letter is discussed in detail in Section III of this approval order. Because this amendment is technical the statute does not require that it be published for comment.

⁷ The name of this committee has been changed to National Adjudicatory Council. See Securities Exchange Act Release No. 39470 (December 19, 1997), 62 FR 67927 (December 30, 1997).

NASD Regulation received 22 comment letters in response to Notice to Members 97-30. As described below, the proposal has been amended in response to these comments.

II. Summary Description of the Proposed Rule Change

A. Exemptive Authority

Previously, there has not been a provision in the Interpretation itself to allow the NBCC, the Board, or NASD Regulation staff to grant exemptive relief. In the past, the NBCC, relying on the NASD By-Law's grant of authority to the Board and its Committees, granted exemptions in certain unique circumstances. NASD Rule 9600 delegates exemptive authority in the Interpretation to the Office of General Counsel. The Interpretation previously provided for exemption relief solely in cases involving sales of issuer-directed securities to non-employee-director restricted persons pursuant to Paragraph (d)(2) of the Interpretation.

As revised, the Interpretation authorizes NASD Regulation staff, upon written request and taking into consideration all relevant factors, to provide an exemption either unconditionally or on specified terms from any or all of the provisions of the Interpretation, consistent with the purposes of the Interpretation, the protection of investors and the public interest. The proposed rule revisions also provide that persons may appeal decisions of NASD Regulation staff to the National Adjudicatory Council.

B. Treatment of Direct and Indirect Owner of Broker-Dealers

In 1994, the Interpretation's definition of "associated person" was amended to exempt certain passive investors in broker-dealers.⁸ Among other things, the rule amendments approved in the instant filing address two limitations from the previous amendments. First, the definition of associated person as previously provided in the Interpretation did not include non-natural persons that have an ownership interest in or have contributed capital to a broker-dealer. Secondly, the Interpretation did not affirmatively specify any ownership levels at which a natural person becomes an associated person by reason of his or her ownership interest in a broker-dealer. Rather, the Interpretation only specified when a natural person is not an associated person.

⁸ Securities Exchange Act Release No. 35059 (December 7, 1994), 59 FR 64455, 64457 (December 14, 1994).

In Notice to Members 97-30, NASD Regulation proposed creating a new definition of "restricted person." Among other things, commenters advised the NASD that this approach would result in confusion because the term "restricted person" was already used throughout the Interpretation. Commenters also observed that when the proposed restricted persons provisions were read with other sections of the Interpretation, the Interpretation would appear to be so broad as to preclude purchases by any entity that owns 10 percent or more of a broker-dealer or any account in which such entity has a beneficial interest.

Having considered the potential problems with creating a new definition of "restricted person," to clarify the application of the Interpretation to natural and non-natural persons, the Interpretation has been revised by NASD Regulation to create a new Paragraph (b)(9) of IM 2110-1. Paragraph (b)(9)(A) would exempt from the Interpretation's prohibitions purchases by any person who directly or indirectly owns any class of equity securities of, or who has made a contribution of capital to, a member, and whose ownership or capital interest is passive and is less than 10 percent of the equity or capital of a member, as long as such person purchases hot issues from a person other than the member in which it has such passive ownership and such person is not in a position by virtue of its passive ownership interest to direct the allocation of hot issues.

Alternatively, a second exemption embodied in Paragraph (b)(9)(A) would exclude purchases by any person who directly or indirectly owns any class of equity securities of, or who has made a contribution of capital to, a member, and whose ownership or capital interest is passive and is less than 10 percent of the equity or capital of a member, as long as such member's shares, or shares of a parent of such member, are traded on an exchange or Nasdaq.

In response to commenters' concerns that the rule revisions proposed in Notice to Members 97-30 would prohibit sales of hot issues to all entities within many insurance companies that own a broker-dealer, Paragraph (b)(9)(B) of the proposal exempts sales of hot issues to any account established for the benefit of bona fide public customers of a person restricted pursuant to Paragraph (b)(9). This exception expressly notes that such accounts would include, but are not limited to, an insurance company's general or separate accounts.

Finally, Paragraph (b)(9)(C) retains the indirect ownership provisions originally proposed in Notice to Members 97-30. Specifically, it provides that any person with an equity ownership or capital interest in an entity that maintains an investment in a member shall be deemed to have a percentage interest of the entity of the member multiplied by the percentage interest of such person in such entity.

C. Exception to the Public Offering Definition

Heretofore, debt offerings have been included in the Interpretation's definition of "public offering." The proposed rule change would provide an exception from the Interpretation for debt securities other than debt securities convertible into common or preferred stock. This exclusion is based upon the rationale that such offerings do not raise the same issues as equity offerings inasmuch as the price for a particular debt security generally fluctuates based on interest rate movements rather than demand factors. The definition of public offering also would except financing instrument-backed securities that are rated by a nationally recognized statistical rating organization in one of the four highest generic rating categories. Lastly, NASD Regulation has reconsidered its earlier position and, in response to comment letters received regarding Notice to Members 97-30, revised the term public offering so as to exclude secondary offerings by an issuer whose securities are actively traded securities. The modified Interpretation defines actively traded securities to include securities that have a worldwide average daily trading volume value of at least \$1 million and are issued by an issuer whose common equity securities have a public float value of at least \$150 million.

D. Foreign Mutual Funds

Purchases of shares of investment companies registered under the Investment Company Act of 1940 were previously exempt from the Interpretation based upon the rationale that the interest of any one restricted person in an investment company ordinarily is de minimis and because ownership of investment company shares generally is subject to frequent turnover. The proposed rule revisions would extend this rationale to the purchase of shares of foreign investment companies and thus exempt such shares from the Interpretation, subject to verification procedures designed, among other things, to ensure that the company is listed on a foreign exchange or

authorized for sale to the policy by a foreign regulatory authority.

E. Issuer-Directed Share Exemption

In Notice to Members 97-30, NASD Regulation stated that persons have requested that the language of Paragraph (d) of the Interpretation be modified to clarify that the exemption is available to employees of the issuer who are materially supported by a restricted person and both employees and non-employee directors. Based upon the comments received and its own initiative to clarify and streamline the issuer-directed securities provisions more generally, the proposed rule change modifies Paragraph (d) of the Interpretation to permit persons associated with a member and their immediate family members to purchase hot issues. The amendments clarify that the exemptions apply to employees and directors of a parent or subsidiary of the issuer, consistent with NASD Regulation's past practice.

F. Accounts for Qualified Plans Under the Employment Retirement Income Security Act ("ERISA")

The Interpretation has not previously expressly addressed the status of qualified employee benefit plans under ERISA. In direct response to the requests of commenters, the proposed rule change clarifies the status of such accounts. To that end, the proposal incorporates within the Interpretation itself a prior NBCC interpretation governing the matter. As a general rule, NASD Regulation believes qualified ERISA plans should not be deemed an "investment partnership or corporation" and should not be considered a "restricted account" for purposes of the Interpretation. The proposed amendments to the Interpretation provide guidance, however, in determining the factual circumstances wherein a qualified ERISA plan could be deemed restricted.

III. Comments Letters Received and Amendment No. 2 to the Proposal

As noted above, the Commission received one comment letter from Sullivan and Cromwell. Amendment No. 2 to the filing responds to the comment letter and, as discussed below, amends the proposal to address issues raised by the Sullivan and Cromwell letter.

A. Investment Grade Securities

The proposed rule change exempts from the Interpretation debt securities (other than debt securities convertible into common or preferred stock) and financing instrument backed securities

that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. Sullivan and Cromwell recommends that NASD Regulation exempt "investment grade preferred securities," (i.e., preferred equities) from the Interpretation based upon its understanding that prices for such securities are principally based on prevailing interest rates and that many investors view investment grade preferred securities of different issuers as being largely fungible.

NASD Regulation does not agree with Sullivan and Cromwell that "investment grade preferred securities" should be excluded from the Interpretation, because NASD Regulation does not believe that the prices of investment grade preferred securities are based on interest rate movements to the same extent as investment grade debt. NASD Regulation believes that demand-side factors play an important role in the price of many preferred securities. In addition, preferred securities generally differ from investment grade debt in that they are rarely collateralized. Moreover, purchasers of preferred securities often look to the issuer's business and management in determining whether to purchase the security. For these reasons, NASD Regulation believes that "investment grade preferred securities" should not be excluded from the Interpretation. Amendment No. 2 to the filing states, however, that NASD Regulation will evaluate the impact of excluding investment grade debt and investment grade financing-backed securities from the Interpretation and will consider in the future whether preferred equities should also be excluded.

B. Paragraph (b)(9) and Direct/Indirect Owners of Broker-Dealers

In Paragraph (b)(9) of the proposed rule change, NASD Regulation prohibits members from selling hot issues to any person or to a member of the immediate family of such person who owns or has contributed capital to a broker-dealer, other than solely a limited business broker-dealer as defined in Paragraph (c) of the Interpretation, or the account in which any such person has a beneficial interest, with certain exceptions for ownership interest of less than 10%. Importantly, however, Paragraph (b)(9) exempts sales to the account of a restricted person that is established for the benefit of bona fide public customers.

The Sullivan & Cromwell letter makes a number of particularized comments, which are discussed in detail below. The thrust of Sullivan & Cromwell

comments is that Paragraph (b)(9) should be revised to apply only to institutions that are "principally engaged in the broker-dealer business." In responding to the suggestion, NASD Regulation notes that it has rejected this argument many times and continues to believe that such a narrow approach is inconsistent with the scope and intent of the Interpretation. As reiterated in Amendment No. 2 to the filing, NASD Regulation is of the opinion that the proposed revisions by Sullivan and Cromwell would leave open a substantial possibility of reciprocal self-dealing among broker-dealer and owners of broker-dealers.

NASD Regulation notes that the Interpretation protects the integrity of the public offering process by ensuring that members make a bona fide public distribution at the public offering price of hot issue securities and do not withhold such securities for their own benefit or use such securities to reward other persons in the financial services business who are in a position to direct future business to the member. NASD Regulation believes the Interpretation also ensures that members of the securities industry do not take advantage of their inside position in the industry to the detriment of public investors. In light of the foregoing rationales, NASD Regulation believes that persons who own a significant percentage of a broker-dealer, *i.e.*, 10% or more, should be restricted under the Interpretation.

NASD Regulation notes that it has provided an exemption from the interpretation for persons that own 10% or more of a broker-dealer by permitting such persons to purchase hot issues for the benefit of bona fide public customers, or for an ERISA account pursuant to Paragraph (f)(3). NASD Regulation does not believe that permitting such persons to purchase hot issues for proprietary accounts, even if such hot issues directly or indirectly benefit some public shareholder, is consistent with the purposes of the Interpretation.

1. Banks and Industrial Companies with Broker-Dealer Subsidiaries and Affiliates

Sullivan and Cromwell states in its letter that it is concerned that the proposed rule change would affect the public offering market by making hot issues unavailable to many institutional customers, and in particular, banks with broker-dealer subsidiaries and affiliates. Sullivan and Cromwell observes that proposed Paragraph (b)(9) generally would prohibit the sale of hot issues to banks with broker-dealer subsidiaries

and affiliates. To the extent that these banks purchase hot issues on a proprietary basis, NASD Regulation believes that the Interpretation should apply. NASD Regulation notes, however, that banks with broker-dealer subsidiaries and affiliates may purchase hot issues on behalf of bona fide public customers, pursuant to the exemption set forth in Paragraph (b)(9).

The proposed rule change also would prohibit industrial companies that own broker-dealers, such as General Electric Company ("GE") and Ford Motor Company ("Ford") from purchasing hot issues for their own account. Here again, NASD Regulation believes that this is the correct result. However, companies such as GE and Ford would be able to purchase hot issues for an account in which they have a beneficial interest, provided that such account is established for the benefit of bona fide public customers.

2. Accounts Established for the Benefit of Bona Fide Public Customers

As stated above, Paragraph (b)(a) of the proposed rule change contains an exemption for sales to the account of any person restricted under this subparagraph that is established for the benefit of bona fide public customer. Specifically, Paragraph (b)(9) states that such accounts would include "insurance company general and separate accounts." NASD Regulation included these examples because it understood that investments from such accounts are passed on directly to policy holders, *i.e.*, bona fide public customers.

The Sullivan and Cromwell letter suggests that the exemption for accounts established for the benefit of bona fide public customers applies solely to life insurance companies. As explained by NASD Regulation, it was not intended that the exemption described in Paragraph (b)(9) apply solely to life insurance companies. NASD Regulation intended that the exemption apply across all industries. Accordingly, Paragraph (b)(9)(B) of the proposed rule change has been amended. The revised language is set forth below. Additions to the provision are italicized. Language to be deleted appears in brackets.

This prohibition shall not apply to sales to the account of any person restricted under this paragraph established for the benefit of bona fide public customers, including [an] insurance company general [or] , separate *and investment* accounts *and bank trust accounts*.

3. Shares of a Member Traded as Part of a Holding Company

As originally proposed, Paragraph (b)(9) of the proposed rule change would exempt any person who owns any class of equity securities of, or who has made a contribution of capital to, a member, and whose ownership or capital interest is passive and is less than 10% of the equity or capital of a member, so long as such member's shares are publicly traded on an exchange or Nasdaq. Sullivan & Cromwell states that this exemption does not properly reflect the fact that many of the largest broker-dealers are subsidiaries of publicly traded holding companies and are not themselves publicly traded. NASD Regulation previously addressed this issue in Amendment No. 1 to the filing. Amendment No. 1 revises paragraph (b)(9)(A)(ii) to include within the exemption shares of a parent of a member firm that are publicly traded on an exchange or Nasdaq.

4. Immediate Family Members

Paragraph (b)(9) applies to "any person, or to a member of the immediate family of such person." Sullivan and Cromwell states that Paragraph (b)(9) would require a member, for example Merrill Lynch, to confirm not only that its customer does not own any Merrill Lynch Parent stock, but also that none of his or her immediate family members owns any such stock. Sullivan and Cromwell also states that Paragraph (b)(9) does not exempt immediate family members who are not materially supported by the restricted person, as does Paragraph (b)(2) of the Interpretation. Sullivan and Cromwell maintains that it would be almost impossible for a broker-dealer owned by a publicly traded holding company to comply with Paragraph (b)(9) since, on its face, it would require the broker-dealer to obtain complete information regarding the securities portfolios of each of its customers' immediate family members. Proposed Paragraph (b)(9), however, is implicated only by persons who own 10% or more of a member. Nevertheless, NASD Regulation believes that the provisions regarding the immediate family members of restricted persons under proposed Paragraph (b)(9) should not be more restrictive than the provisions in Paragraph (b)(2), which pertain to associated persons of a member. NASD Regulation has therefore amended Paragraph (b)(9) so as to exclude immediate family members who are not materially supported by restricted persons. Revised

Paragraph (b)(9) is set forth below. New language is italicized.

Sell any of the securities to any person, or to a member of the immediate family of such person *who is supported directly or indirectly to a material extent by such person.* * * *

5. Miscellaneous Changes to Paragraph (b)(9)

Pursuant to Amendment No. 2, NASD Regulation also corrected an inadvertent clerical error in Paragraph (b)(9)(C) of the proposed rule change that was identified by the Sullivan and Cromwell comment later. The missing language set forth below was contained in the proposed rule change as published in NASD Notice to Members 97-30, but was omitted from the rule filing. New language is italicized. Revised Paragraph (b)(9)(C) has been amended to read as follows:

For purposes of this paragraph, any person with an equity ownership or capital interest in an entity that maintains an investment in a member shall be deemed to have a percentage interest *in the member equal to the percentage interest of the entity in the member multiplied by the percentage interest of such person in such entity.*

C. Foreign Investment Companies

Paragraphs (f) and (1)(6) of the proposed rule change would exempt foreign investment companies *i.e.*, foreign mutual funds, organized under the laws of the foreign jurisdiction, that have provided to the member a written certification prepared by counsel or an independent certified public accountant, which states that: (1) The fund has 100 or more investors; (2) the fund is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority, (3) no more than 5% of the fund assets are to be invested in the hot issue securities being offered, and (4) any person owning more than 5% of the shares of the fund is not a restricted person.

Sullivan and Cromwell states that while it agrees that an exemption should be provided for foreign investment companies, it opposes any requirement that NASD members obtain written certification from an attorney or accountant. Sullivan and Cromwell proposes instead that NASD Regulation exempt foreign investment companies based upon their "status" under foreign regulatory regimes, for example, any fund qualified for sale under the European Union's Directive on Undertakings for Collective Investment in Transferable Securities.

In response to comments received regarding Notice to Members 97-30, and to alleviate the burdens associated with the written certification requirement,

NASD Regulation modified proposed Paragraph (1)(6) to permit foreign, and not just U.S., attorneys and accountants to provide written certifications. NASD Regulation continues to believe, however, that written certifications are an appropriate method of determining whether a particular foreign investment company meets the criteria for exemption from the Interpretation and does not agree that this requirement should be eliminated.

Sullivan and Cromwell states in its comment letter that if written certifications are to be required, it recommends two changes. First Sullivan and Cromwell states that foreign investment companies, like registered investment companies, do not investigate the status of their shareholders and thus will be unable to comply with the requirement to certify that "any person owning more than 5% of the shares of the fund is not a person described in Paragraphs (b)(1), (2), (3), or (4) of the Rule."

NASD Regulation considered this issue in proposing the exemption for foreign investment companies but concluded that the concerns of the Interpretation that restricted persons do not indirectly purchase hot issues through foreign investment companies were paramount. Accordingly, if a foreign investment company is owned more than 5% by a person, an attorney or accountant must certify that such person is not a restricted person under the Interpretation. The attorney or accountant providing the written certification required pursuant to paragraph (1)(6) may rely upon information supplied by the foreign investment company and any shareholder that owns more than 5% of the foreign investment company. NASD Regulation is of the opinion that the shareholder is likely to cooperate with any request by the foreign investment company, or its counsel or accountant, regarding the shareholder's status under the Interpretation since the shareholder's cooperation may enhance the foreign investment company's investment opportunities by permitting it to invest in hot issues. As a practical matter, however, the requirement to determine whether a more than 5% shareholder is a restricted person is unlikely to affect many foreign investment companies because, as Sullivan and Cromwell concedes in its comment letter, each foreign investment company must have at least 100 shareholders and, consequently, it is unlikely that the interest of any one person will exceed the 5% threshold.

Second, Sullivan and Cromwell states that, as drafted, Paragraph (1)(6) of the

Interpretation would require a member firm to obtain a written certification prior to each hot issue sale to a foreign investment company. Sullivan and Cromwell views this as unduly burdensome and recommends that NASD Regulation revise Paragraph (1)(6) to be consistent with Paragraph (f)(2), which states that "a written representation shall be deemed to be current if it is based upon the status of the account as of a date more than 18 months prior to the date of the transaction." NASD Regulation agrees that members should not be required to obtain a written certification before each transaction and will adopt the same standard in effect for certifications made pursuant to Paragraph (f)(2). Accordingly, the final sentence of Paragraph (f)(2) of the Interpretation shall be amended as set forth below. New language is italicized.

For purposes of this paragraph (f) *and the certification required pursuant to paragraph (1)(6)*, a list or written representation shall be deemed to be current if it is based upon the status of the account as of a date not more than 18 months prior to the date of the transaction.

In addition to responding to the Sullivan and Cromwell observations, Amendment No. 2 corrected proposed Paragraph (1)(6)(D) to make the paragraph clearer and more consistent with other parts of the Interpretation. The revised paragraph is set forth below. New language is italicized. Language to be deleted from the paragraph appears in brackets.

Any person owning more than 5% of the share of *the* fund is not a *restricted* person as described in paragraph (b)(1), (2), (3), [or] (4) *or (9)* of the [Rule] *interpretation*.

D. Secondary Distributions

The proposed rule change exempts from the Interpretation secondary distributions by an issuer whose securities are actively-traded securities. Sullivan and Cromwell supports the decision to exempt secondary offerings but objects to the provision in the definition of "actively-traded securities" that excludes securities issued by the distribution participant or an affiliate of the distribution participant. NASD Regulation's proposed rule change to exempt secondary offerings was drafted to track the exemption for actively-traded securities set forth in the SEC's Regulation M. In adopting the exemption for secondary distributions, NASD Regulation was focusing on the average daily trading value and public float value provisions of Regulation M exempt securities. NASD Regulation agrees with Sullivan and Cromwell concerning secondary offerings of

members or affiliates of members and proposes revising the definition of "actively-traded securities" to extend the exemption to securities issued by a distribution participant or an affiliate of the distribution participant. Paragraph (1)(7)(A), as amended, is set forth below. Language to be deleted from the paragraph appears in brackets.

Actively-traded securities means securities that have an ADTV value of at least \$1 million and are issued by an issuer whose common equity securities have a public float value of at least \$150 million[; provided, however, that such securities are not issued by the distribution participant or an affiliate of the distribution participant].

Finally, Sullivan Cromwell notes that Paragraph (1)(1) refers to secondary distributions "by an issuer." Sullivan and Cromwell asks whether secondary distributions by an existing security holder are subject to the Interpretation. If not, Sullivan and Cromwell recommends amending the text of proposed Paragraph (1)(1) to extend the exemption to such distributions. NASD Regulation did not intend to exclude from the exemption secondary offerings by security holders. Accordingly, it has revised Paragraph (1)(1) as set forth below. New language is italicized. Language to be deleted from the paragraph appears in brackets.

The term public offering shall exclude secondary distributions by an issuer or any security holder of the issuer, of [whose securities are] actively-traded securities.

IV. Conclusion

The Commission has carefully considered the comments set forth in the Sullivan and Cromwell letter. As discussed in detail above, the NASD Regulation has made a number of technical amendments to the proposal in response to the Sullivan and Cromwell letter, which the Commission believes are consistent with the spirit of the Interpretation. Indeed, the Commission believes the changes to the proposal which were made pursuant to Amendment No. 1 and No. 2 will facilitate the ability of NASD member firms to comply with the Interpretation, because the amendments further clarify the intent of the proposed rule change. For example, in response to the Sullivan and Cromwell letter, the Interpretation was amended to clarify that the exemption in paragraph (b)(9)(B) for sales to the accounts of restricted persons established for the benefit of bona fide public customers was intended to apply across all industries, as opposed to life insurance companies exclusively. Similarly, Amendment No. 1 to the proposal facilitates member firm compliance by amending the paragraph

(b)(9)(A)(ii) exemption for shares of a member traded on an exchange or Nasdaq to include an exemption for shares of a member traded as a part of a holding company. This amendment fosters member firm compliance with the Interpretation by recognizing that many of the largest broker-dealers are subsidiaries of publicly traded holding companies and are not themselves publicly traded.

NASD Regulation has determined not to revise the proposal in response to Sullivan and Cromwell's suggestion that paragraph (b)(9) of the Interpretation, which with certain exceptions, prohibits sales of hot issue securities to any person who owns or has contributed capital to a broker-dealer, be revised such that it only applies to institutions engaged "principally in the broker-dealer business." The Commission agrees with NASD Regulation that such an amendment is inconsistent with the scope and intent of the proposal, because the modification would leave open a substantial possibility of self-dealing between broker-dealers and owners of broker-dealers. Accordingly, the Commission believes NASD Regulation has a sound investor protection basis for its decision not to narrow the scope of paragraph (b)(9) of the Interpretation as requested by Sullivan and Cromwell.

The Commission believes the proposed rule change, as amended, is consistent with the provisions of section 15(A)(b)(6) of the Act,⁹ which provides in pertinent part that the rules of a national securities association be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade and protect investors and the public interest. Specifically, the proposal preserves public confidence in the fairness of the investment banking and securities business by ensuring that members of the investment banking community do not unfairly benefit from public offerings by virtue of their positions as insiders, to the detriment of public investors. Preservation of investor confidence in the fairness of the markets is critical to the continued participation of all classes of securities marked participants. The Commission believes, moreover, that the proposed rule change is consistent with section 15A(b)(9)¹⁰ in that it will alleviate certain inequities caused by the Interpretation, which imposed burdens on competition not necessary or appropriate in furtherance of the purposes of the Act.

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3.

In approving this proposal, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation.¹¹ The Commission believes the proposal will facilitate the capital raising process by removing restrictions and compliance burdens imposed by the Interpretation with respect to certain transactions where application of the Interpretation does not enhance investor protection or the public interest. For example, the proposal excludes from the definition of public offering secondary offerings by an issuer whose securities are actively traded securities. At the same time, the Interpretation continues to apply to those securities allocations that pose a risk of undercutting the Interpretation's objective of ensuring a bona fide distribution of hot issue securities to the public.

It is therefore ordered, pursuant to Section 19(b)(2)¹² of the Act, that the proposed rule change SR-NASD-97-95 be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-13850 Filed 5-22-98; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 22 existing Small Business Development Centers (SBDCs) for refunding on October 1, 1998, subject to the availability of funds. Four states do not participate in the EO 12372 process, therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 90 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the addresses section. A copy of this notice also is being furnished to the

¹¹ 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Firm: _____

Address: _____

Re: _____ Offering Date: _____

INSTRUCTIONS: Each member is required to complete either Section I or Section II based upon the capacity in which they acted in the distribution of the new issue. Sections III and IV must be completed by all firms for their "confirmed"* securities. It is the executing broker/dealer's responsibility to ensure that securities were distributed in compliance with the Free-Riding and Withholding Interpretation, IM-2110-1.

SECTION I. TO BE COMPLETED BY THE MANAGING UNDERWRITER ONLY

- A. Total number of securities offered for public distribution: _____
(Include any additional shares sold as part of any over-allotment provision and any shares sold short for the account of the syndicate.)
- B. Total number of securities allocated for sale to other underwriters and selling group members: _____
- C. Total number of securities confirmed* by your firm to retail and institutional customers, including all shares billed and delivered on behalf of others, designated orders, group sales, directed sales, etc.: _____

SECTION II. TO BE COMPLETED BY ALL UNDERWRITERS, SELLING GROUP MEMBERS AND OTHER PARTICIPANTS IN THE DISTRIBUTION

- A. Total number of securities confirmed* by your firm to retail and institutional customers. (Do not include shares billed and delivered on your behalf by the managing underwriter, designated orders, group sales, directed sales, etc.):
- B. Indicate capacity in which your firm participated in the offering:
- Underwriter
 - Selling Group
 - Other (define) _____

* For purposes of this questionnaire, "confirmed" means the number of new issue securities allocated to the firm for distribution purposes and for which the firm has issued a confirmation/comparison reflecting the full detail of such sale to retail customers, institutional accounts, or other broker/dealers. When participating in a distribution of new issue securities, broker/dealers are responsible for ensuring compliance with the Free-Riding and Withholding Interpretation for all securities allocated and confirmed by that broker/dealer.

SECTION III. BREAKDOWN OF SECURITIES DISTRIBUTED BY YOUR FIRM

INSTRUCTIONS: Indicate total number of securities distributed in each category and, unless otherwise noted, provide detailed information in Section IV, "Sales to Restricted Accounts." This breakdown should contain the final figures after giving effect to all cancellations and reallocations. For additional information regarding categories, please refer to the Free-Riding and Withholding Interpretation, IM 2110-1.

1. **Securities held in a firm account.** _____

2. **Sales to any officer, director, general partner, employee or agent of the member or any other broker/dealer, or to person associated with the member or with any other broker/dealer, or to a member of the immediate family of such a person.** _____

Indicate the number of shares/units that were sold pursuant to the following provisions:

(A) Sales to persons associated with broker/dealers whose business is limited to investment company/variable contract securities or direct participation programs.

Number of shares/units _____

(B) Sales to a member of the immediate family of a person associated with a member who is not supported directly or indirectly by that person if the sale is by a broker/dealer other than that employing the restricted person and the restricted person has no ability to control the allocation of the hot issue.

Number of shares/units _____

It is not necessary to complete Section IV for items 2 (A) and (B).

3. **Sales to a person who is a finder with respect to the public offering or to any person acting in a fiduciary capacity to the managing underwriter, including among others, attorneys, accountants and financial consultants, or to any other person who is supported directly or indirectly, to a material extent, by any person specified in this paragraph.** _____

4. **Sales to any senior officer of a bank, savings and loan institution, insurance company, investment company, investment advisory firm, or any other institutional type account, (including, but not limited to hedge funds, investment partnerships, investment corporations, or investment clubs) domestic or foreign, or to any person in the securities department of, or to any employee or any other person who may influence or whose activities directly or indirectly involve or are related to the function of buying and selling securities for any bank, savings and loan institution, insurance company, investment company, investment advisory firm, or other institutional type account, domestic or**

foreign, or to any other person who is supported directly or indirectly, to a material extent, by any person specified in this paragraph. _____

5. Sales to any account in which any person specified under paragraphs (2), (3), or (4) has a beneficial interest. _____

6. Sales to other domestic broker/dealers for bona fide public customers, other than those enumerated in paragraphs (2), (3), (4), or (5) above. _____

Name of Broker/Dealer	No. of Shares/Units	Written Representation Received (pursuant to paragraph 6)	
		Yes	No
_____	_____	Yes	No
_____	_____	Yes	No
_____	_____	Yes	No

It is not necessary to complete Section IV for item 6.

7. Sales to any domestic bank, domestic branch of a foreign bank, trust company or other conduit for an undisclosed principal. _____

(A) Indicate the number of shares/units that were sold based upon assurances obtained that ultimate purchasers were not restricted persons.
Number of shares/units _____

It is not necessary to complete Section IV for item 7(A).

8. Sales to a foreign broker/dealer or bank. _____

Indicate the number of shares/units that were sold pursuant to the following conditions.

(A) Sales by a foreign broker/dealer or bank participating in the distribution as an underwriter that were made in accordance with provisions of underwriting agreement.
Number of shares/units _____

(B) Affirmative inquiry was obtained that ultimate purchasers were not restricted persons.
Number of shares/units _____

It is not necessary to complete Section IV for items 8(A) and (B).

9. Sales to direct and indirect owners of a broker/dealer. _____

Indicate the number of shares/units that were sold pursuant to the following provisions.

- (A) Sales to direct and indirect owners whose passive ownership interest amounts to less than 10% of the broker/dealer, and:
- (1) the owner purchases hot issues from a person other than the member in which it has a passive ownership interest, and such owner is not in a position to direct the allocation of hot issues, or
Number of shares/units _____
- (2) the shares of the member or parent of the member in which the passive owner has an ownership interest are traded on an exchange or Nasdaq. _____
Number of shares/units _____
- (B) Sales to the account of any person restricted under paragraph (b)(9) of the Interpretation established for the benefit of bona fide public customers.
Number of shares/units _____

It is not necessary to complete Section IV for items 9(A) and (B).

10. Sales to an investment partnership or corporation, domestic or foreign (except companies registered under the Investment Company Act of 1940 or exempt foreign investment company as defined in the Free-Riding and Withholding Interpretation) including but not limited to hedge funds, investment clubs, and other like accounts. _____

Indicate the number of shares/units that were sold pursuant to the following conditions:

- (A) "Carve out" mechanism was utilized.
Number of shares/units _____
- (B) Determination was made based upon file containing information on all persons having a beneficial interest, or the opinion of counsel or accountants was obtained.
Number of shares/units _____

It is not necessary to complete Section IV for items 10(A) and (B).

11. Sales to public customers. _____

It is not necessary to complete Section IV for item 11.

TOTAL (1 through 11) _____

Please note that the total should be equal to total securities confirmed by your firm as noted in Section I or II.

Indicate the number of shares/units that were originally sold to a restricted account and were subsequently canceled prior to the end of the first business day after the date on which secondary market trading begins and were reallocated to an unrestricted account.

Not Applicable

Signature of Principal

Title

NOTE: *Questionnaires should be returned to the Corporate Financing Department by the date specified.*

NASD Notice to Members 98-49

SEC Approves
Amendments To Rule
Regarding Options
Position Limits; Effective
June 12, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On June 12, 1998, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD[®]) Rule 2860 and Interpretive Material 2860-1 (IM-2860-1). The amendments to Rule 2860 make three basic changes. First, the amendments increase the position limits on conventional equity options to the greater of three times the basic limit of 4,500 contracts, or three times any standardized equity options position limit for which the underlying security qualifies or would be able to qualify. Second, the amendments disaggregate conventional equity options from standardized equity options and FLEX equity options for position limit purposes, *i.e.*, standardized and FLEX equity option positions do not count towards the position limits for conventional equity options on the same underlying security. Third, the amendments provide that the OTC Collar Aggregation Exemption shall be available with respect to an entire conventional equity options position, not just that portion of the position that is established pursuant to the NASD's Equity Option Hedge Exemption (Hedge Exemption). In addition, the amendments to IM-2860-1 clarify and update the illustrative examples to be consistent with the new amendments and prior increases in the Hedge Exemption. The amendments became effective on June 12, 1998. The text of the amended rules and the *Federal Register* version of the SEC Release are attached. See 63 FR 33746 (June 19, 1998).

Questions concerning this *Notice* should be directed to Gary L. Goldsholle, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8104.

Background And Discussion

NASD Rule 2860 governs members' activities in standardized, conventional, and FLEX equity options. Standardized options are exchange-traded options issued by the Options Clearing Corporation (OCC) that have standardized terms for strike prices, expiration dates, and the amount of the underlying security. Conventional options are any other options contracts not issued, or subject to issuance, by the OCC. Conventional options are also frequently referred to as over-the-counter (OTC) options. FLEX equity options are exchange-traded options issued by the OCC that give investors the ability, within specified limits, to designate certain terms of the option (*i.e.*, the exercise price, exercise style, expiration date, or option type).

NASD Rule 2860(b)(3) imposes a ceiling or position limit on the number of conventional and standardized equity options contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by a member, a person associated with a member, a customer, or a group of customers acting in concert. The position limits for equity options are established according to a five-tiered system whereby more actively traded securities with larger public floats are subject to higher position limits and less actively traded stocks are subject to lower limits. The current tiers for standardized equity options are 4,500, 7,500, 10,500, 20,000, and 25,000 options contracts.¹ The NASD rules do not specifically govern whether a particular equity option falls within one of the position-limit tiers. Rather, the NASD position limit rule generally provides that the position limit established by an options exchange(s) for a particular equity option is the applicable position limit for purposes of the NASD rule.

On September 9, 1997, the Commission approved a two-year pilot program to eliminate position and exercise limits for FLEX equity options, which are traded on the various options exchanges.² In light of the pilot program, NASD RegulationSM amended its rules governing position and exercise limits for conventional equity options to foster competition between the OTC market and the options exchanges.

NASD Regulation believes that FLEX equity options closely resemble and are economically equivalent to conventional equity options. Accordingly, the amendments to Rule 2860(b)(3) seek to more closely align the NASD's position limit rules for conventional equity options with those for FLEX equity options. In fact, the new limits on conventional equity options correspond to the position limits that were in effect for FLEX equity options prior to the elimination of such limits in the pilot program. Under the new amendments, the position limits for conventional equity options have increased to the greater of three times the basic limit of 4,500 contracts, or three times any higher standardized equity options position limit for which the underlying security qualifies or would be able to qualify.

The new amendments also provide that conventional equity options positions shall not be aggregated with standardized and FLEX equity options positions overlying the same security for position limit purposes. Disaggregation of conventional and other options is necessary to give full effect to the increase in position limits for conventional equity options. Without disaggregation, positions in FLEX equity options or standardized equity options would reduce or potentially even eliminate (in the case of FLEX equity options) the available position limits for conventional equity options.

To illustrate how these new limits work, consider the following example of stock ABCD, which is subject to a position limit of 25,000 standardized equity option contracts. In this example, a market participant could establish a position of 25,000 standardized option contracts on ABCD and an additional 75,000 conventional option contracts on ABCD on the same side of the market, since conventional and standardized option positions would be disaggregated. In addition, the market participant also may have a position of any size in FLEX Equity Options overlying ABCD, since such FLEX equity options would not be aggregated with either the conventional equity options or standardized equity options overlying ABCD.

The NASD's Hedge Exemption³ provides for an automatic exemption from equity option position limits for accounts that have established hedged positions on a limited one-for-one basis (*i.e.*, 100 shares of stock for one option contract). Under the Hedge Exemption, the largest options position that may be established (combining hedged and unhedged positions) may not exceed three times the basic position limits for either standardized or conventional equity options. The OTC Collar Aggregation Exemption⁴ provides that positions in conventional put and call options establishing OTC collars need not be aggregated for position limit purposes. An OTC collar transaction involves the purchase (sale) of a put and the sale (purchase) of a call on the same underlying security to hedge a long (short) stock position.

The new amendments modify the terms of the OTC Collar Aggregation Exemption to apply to an entire conventional equity option position, not just the portion that is established pursuant to the Hedge Exemption. This amendment is consistent with the economic logic underlying the

OTC Collar Aggregation Exemption, *i.e.*, that if the terms of the exemption are met, the segments of an OTC collar will never both be in-the-money at the same time or exercised.

To illustrate how these new provisions work, consider the following example of stock ABCD that is subject to a standardized equity option position limit of 25,000 contracts and a conventional equity option position limit of 75,000 contracts. If the market participant had increased the size of its conventional equity options position to 225,000 pursuant to the Hedge Exemption (based upon a limit of three times the 75,000 conventional equity options position limit), the market participant could then establish an OTC collar on ABCD involving 225,000 long (short) calls and 225,000 short (long) puts, for a total of 450,000 contracts.

Finally, members are reminded that Rule 2860(b)(5) imposes reporting obligations on "each account in which the member has an interest . . . and each customer account, which has established an aggregate position of 200 or more option contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security." Information reported to the NASD is used by NASD Regulation Market Regulation staff as part of their ongoing market surveillance operations. Additional information concerning members' options reporting obligations may be found in *Notice to Members 94-46*.

Text Of Rule Amendments

(Note: New text is underlined; deletions are bracketed.)

Rule 2860. Options

(a) No Change

(b) Requirements

(2) Definitions

The following terms shall, unless the context otherwise requires, have the stated meanings:

(A) - (UU) No Change

(VV) Standardized Equity Option—
The term “standardized equity option” means any equity options contract issued, or subject to issuance by, The Options Clearing Corporation that is not a FLEX Equity Option.

(WW) - (AAA) Redesignated accordingly.

(3) Position Limits

(A) Stock Options—Except in highly unusual circumstances and with the prior written approval of the Association in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) 4,500 option contracts of the put

class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

(ii) 7,500 options contracts of the put class and the call class on the same side of the market covering the same underlying security, providing that the 7,500 contract position limit shall only be available for option contracts on securities which underlie [or qualify to underlie] Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 7,500 option contracts; or

(iii) 10,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security providing that the 10,500 contract position limit shall only be available for option contracts on securities which underlie [or qualify to underlie] Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 10,500 option contracts; or

(iv) 20,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 20,000 contract position limit shall only be available for option contracts on securities which underlie [or qualify to underlie] Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 20,000 option contracts; or

(v) 25,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 25,000 contract position limit shall only be available for option contracts on securities which underlie [or qualify to underlie] Nasdaq or exchange-traded options qualifying under

applicable rules for a position limit of 25,000 option contracts; or

(vi) such other number of stock options contracts as may be fixed from time to time by the Association as the position limit for one or more classes or series of options provided that reasonable notice shall be given of each new position limit fixed by the Association.

(vii) Equity Option Hedge Exemption

a. The following positions, where each option contract is “hedged” by 100 shares of stock or securities readily convertible into or economically equivalent to such stock, or, in the case of an adjusted option contract, the same number of shares represented by the adjusted contract, shall be exempted from established limits contained in subparagraph (b)(3)(A)(i) through (vi) above:

1. long call and short stock;
2. short call and long stock;
3. long put and long stock;
4. short put and short stock.

b. Except as provided [under] in paragraph (b)(3)(A)(ix) and in the OTC Collar Exemption contained in paragraph (b)(3)(A)(viii), in no event may the maximum allowable position, inclusive of options contracts hedged pursuant to the equity option position limit hedge exemption in subparagraph a. above, exceed three times the applicable position limit established in subparagraphs (b)(3)(A)(i) through (v) with respect to standardized equity options, or paragraph (b)(3)(A)(ix) with respect to conventional equity options.

c. The Equity Option Hedge Exemption is a pilot program authorized by the Commission through December 31, 1998.

(viii) OTC Collar Aggregation Exemption

a. For purposes of this paragraph (b), the term OTC collar shall mean a conventional equity option position comprised of short (long) calls and long (short) puts overlying the same security that hedge a corresponding long (short) position in that security.

b. Notwithstanding the aggregation provisions for short (long) call positions and long (short) put positions contained in subparagraphs (b)(3)(A)(i) through (v) above, the conventional options positions involved in a particular OTC collar transaction [established pursuant to the position limit hedge exemption in subparagraph (vii)] need not be aggregated for position limit purposes, provided the following conditions are satisfied:

1. the conventional options can only be exercised if they are in-the-money;

2. neither conventional option can be sold, assigned, or transferred by the holder without the prior written consent of the writer;

3. the conventional options must be European-style (i.e., only exercisable upon expiration) and expire on the same date;

4. the strike price of the short call can never be less than the strike price of the long put; and

5. neither side of any particular OTC collar transaction can be in-the-money when that particular OTC collar is established.

6. the size of the conventional options in excess of the applicable basic position limit for the options established pursuant to paragraph (b)(3)(A)(ix) [(A)(i)-(v) above] must be hedged on a one-to-one basis with

the requisite long or short stock position for the duration of the collar, although the same long or short stock position can be used to hedge both legs of the collar.

c. For multiple OTC collars on the same security meeting the conditions set forth in subparagraph b. above, all of the short (long) call options that are part of such collars must be aggregated and all of the long (short) put options that are part of such collars must be aggregated, but the short (long) calls need not be aggregated with the long (short) puts.

d. Except as provided above in subparagraphs b. and c., in no event may a member fail to aggregate any conventional [or standardized] options contract of the put class and the call class overlying the same equity security on the same side of the market with conventional option positions established in connection with an OTC collar.

e. Nothing in this paragraph (b)(3)(A)(viii) changes the applicable position limit for a particular equity security.

(ix) Conventional Equity Options

a. For purposes of this paragraph (b), standardized equity options contracts of the put class and call class on the same side of the market overlying the same security shall not be aggregated with conventional equity options contracts or FLEX Equity Options contracts overlying the same security on the same side of the market. Conventional equity options contracts of the put class and call class on the same side of the market overlying the same security shall be subject to a position limit equal to the greater of:

1. three times the basic limit of 4,500 contracts, or

2. three times any standardized equity options position limit as set forth in subparagraphs (b)(3)(A)(ii) through (v) for which the underlying security qualifies or would be able to qualify.

b. In order for a security not subject to standardized equity options trading to qualify for an options position limit of more than 4,500 contracts, a member must first demonstrate to the Association's Market Regulation Department that the underlying security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

(footnotes deleted)

IM-2860-1. Position Limits

The following examples illustrate the operation of position limits established by Rule 2860(b)(3) (all examples assume a position limit of 4,500 contracts and that the options are standardized options):

(a) Customer A, who is long 4,500 XYZ calls, may at the same time be short 4,500 XYZ calls, since long and short positions in the same class of options (i.e., in calls only, or in puts only) are on opposite sides of the market and are not aggregated for purposes of paragraph (b)(3).

(b) Customer B, who is long 4,500 XYZ calls, may at the same time be long 4,500 XYZ puts. Paragraph (b)(3) does not require the aggregation of long call and long put (or short call and short put) positions, since they are on opposite sides of the market.

(c) Customer C, who is long 1,700 XYZ calls, may not at the same time be short more than 2,800 XYZ puts, since the 4,500 contract limit applies to the aggregation of long call and short put positions in options covering the same underlying security.

Similarly, if Customer C is also short 1,600 XYZ calls, he may not at the same time be long more than 2,900 puts, since the 4,500 contract limit applies separately to the aggregation of short call and long put positions in options covering the same underlying security.

(d) Customer D, who is short 900,000 [450,000] shares of XYZ, may be long up to 13,500 [9,000] XYZ calls, since the "hedge" exemption contained in paragraph (b)(3)(A)(vii) permits Customer D to establish an options position up to

13,500 [9,000] contracts in size. In this instance, 4,500 of the 13,500 [9,000] contracts are permissible under the basic position limit contained in paragraph (b)(3)(A)(i) and the remaining 9,000 [4,500] contracts are permissible because they are hedged by the 900,000 [450,000] short stock position.

Endnotes

¹ Rule 2860(b)(3)(A)(i) through (v).

² See 62 FR 48683 (September 16, 1997) (approving two-year pilot program eliminating position limits on FLEX equity options

traded on the American Stock Exchange, the Chicago Board Options Exchange and the Pacific Exchange); see also 63 FR 14743 (March 26, 1998) (amending NASD rules to eliminate position limits on FLEX equity options, consistent with the pilot program).

³ Rule 2860(b)(3)(A)(vii).

⁴ Rule 2860(b)(3)(A)(viii).

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availability of information needed to fully investigate a potential manipulation if it were to occur. For foreign stock index derivative products, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions. In order to address the above concerns, the Commission notes that the Index will be maintained in accordance with CBOE Rule 31.5(E)(7), which states that foreign country securities or ADRs that are not subject to a comprehensive surveillance agreement and have less than 50% of their global trading volume in dollar value in the United States, cannot, in the aggregate, represent more than 20% of the weight of an index.

For the reasons discussed above, the Commission finds good cause to approve Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 provides that the Index value will be disseminated every 15 seconds and will be calculated based on real-time prices, for all of the component stocks, including those foreign stocks that are traded during CBOE trading hours. With respect to foreign stock components that trade during CBOE trading hours, each Index calculation will use the most recent last sale price from the appropriate home market. For foreign stocks that do not trade during CBOE trading hours, the closing price will be used to calculate the Index value. In addition, Amendment No. 2 clarifies that component securities will be replaced or supplemented only under the events discussed below. Absent unusual circumstances involving a merger or consolidation, conversion into another class of securities, a spin-off, or the termination of a depositary receipt program, the Exchange will adhere to the following procedures: (1) in the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (2) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (3) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included

comprehensive surveillance agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity and customer identity. See Securities Exchange Act Release No. 31529 (November 27, 1992).

in the Index, unless the subsidiary is an insignificant percentage of the original security, in which case the CBOE will consult with the SEC prior to omitting the subsidiary issuer from the Index; and (4) should a depositary receipt program be terminated, for any reason, after an ADR had already been included in the Index, the CBOE in consultation with the SEC staff will evaluate the appropriate procedure to be employed to ensure continuity of the Index. The Commission notes that no comments were received when the original notice of the proposed rule change was published and that no new regulatory issues are presented in Amendment No. 2.

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)¹⁹ of the Act, to find good cause exists to approve Amendment No. 2 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-98-17 and should be submitted by July 10, 1998.

For the foregoing reasons, the Commission finds that the CBOE's proposal to list and trade warrants based on the Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-98-17), as amended, is approved.

¹⁹ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Jonathan G. Katz,
Secretary.

[FR Doc. 98-16349 Filed 6-18-98; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40087; File No. SR-NASD-98-23]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 and Amendment No. 2 to Proposed Rule Change Relating to an Amendment to the NASD's Options Position Limit Rule

June 12, 1998.

I. Introduction

On March 10, 1998, NASD Regulation, Inc. ("NASD Regulation") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 2860(b) of the National Association of Securities Dealers, Inc. ("NASD") or "Association") to: (1) increase the position limits on conventional equity options to three times the basic position limits for standardized equity options on the same security; (2) disaggregate conventional equity options from standardized equity options and FLEX Equity Options for position limit purposes; and (3) provide that the OTC Collar Aggregation Exemption shall be available with respect to an entire conventional equity options position, not just that portion of the position that is established pursuant to the NASD's Equity Option Hedge Exemption.

The proposed rule change was published for comment in Exchange Act Release No. 39893 (April 21, 1998), 63 FR 23317 (April 28, 1998) NASD Regulations submitted an amendment to the proposed rule change on April 29, 1998.³ A second amendment to the

²⁰ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See Letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from John M. Ramsay, Vice President and Deputy General Counsel, NASD Regulation, dated April 29, 1998 ("Amendment No. 1"). Amendment No. 1 makes certain technical corrections to the text of the proposed rule change.

proposed rule change was submitted on June 3, 1998.⁴ One comment letter was received on the proposal.⁵ This order approves the proposed rule change, as amended.

II. Description

NASD Rule 2860(b)(3) provided that the position limit⁶ for each equity option is determined according to a five-tiered system whereby more actively traded securities with larger public floats are subject to higher position limits and less actively traded stocks are

subject to lower limits.⁷ Presently, conventional and standardized equity options are subject to the same position limits, and all equity options overlying a particular equity security on the same side of the market are aggregated for position limit purposes, regardless of whether the option is a conventional, standardized or FLEX Equity Option.⁸ On September 9, 1997, the Commission approved a two-year pilot program ("Pilot Program") to eliminate position and exercise limits for FLEX Equity Options, which are traded on the American Stock Exchange, Inc. ("AMEX"), the Chicago Board Options Exchange, Inc. ("CBOE"), and the Pacific Exchange, Inc. ("PCX") (collectively "Options Exchange").⁹ In light of the Pilot Program, NASD Regulation is proposing to amend its rules governing position and exercise limits for conventional equity options. NASD Regulation previously has filed a proposed rule change to eliminate position and exercise limits on FLEX Equity Options to make its rules consistent with the Pilot Program.¹⁰ NASD Regulation believes the proposed rule change herein is necessary to foster competition between the over-the-counter ("OTC") market and the Options Exchanges.

FLEX Equity Options are exchange-traded options issued by the OCC that give investors the ability, within specified limits, to designate certain terms of the option (*i.e.*, the exercise price, exercise style, expiration date, and option type). Because they are non-uniform and individually negotiated, FLEX Equity Options closely resemble and are economically equivalent to conventional equity options. Accordingly, to align more closely the NASD's position limit rules for conventional equity options with the rules for FLEX Equity Options, NASD Regulation proposes to amend Rule 2860(b)(3) to provide that: (1) position

limits on conventional equity options shall be increased to three times the basic position limits for standardized equity options on the same security, (2) conventional equity options shall be disaggregated from standardized equity options FLEX Equity Options for position limit purposes; and (3) the OTC Collar Aggregation Exemption shall be available with respect to an entire conventional equity options position, not just that portion of the position that is established pursuant to the NASD's Equity Option Hedge Exemption.

The NASD's Equity Option Hedge Exemption¹¹ provides for an automatic exemption from equity option limits for accounts that have established hedged positions on a limited one-for-one basis (*i.e.*, 100 shares of stock for one option contract). Under the Equity Option Hedge Exemption, the largest options position that may be established (combining hedged and unhedged positions) may not exceed three times the basic position limit. The OTC Collar Aggregation Exemption¹² provides that positions in conventional put and call options establishing OTC collars need not be aggregated for position limit purposes. An OTC collar transaction involves the purchase (sale) of a put and the sale (purchase) of a call on the same underlying security to hedge a long (short) stock position.

At the present time, NASD Regulation believes that the prudent regulatory approach is to increase position limits on conventional equity options in conjunction with continued availability of the Equity Option Hedge Exemption and OTC Collar Aggregation Exemption. NASD Regulation proposes an incremental approach and in this case believes increasing position limits for conventional equity options to three times the position limits for standardized equity options is appropriate. These proposed limits correspond to the position limits in effect for FLEX Equity Options prior to the Pilot Program.

NASD Regulation also believes that conventional equity options positions should not be aggregated with standardized and FLEX Equity Options on the same securities for position limit purposes. It believes that disaggregation of conventional and other options is necessary to give full effect to the proposed increase in position limits for conventional equity options. Without disaggregation, positions in FLEX Equity Option or standardized option positions would reduce or potentially even eliminate (in the case of FLEX

⁴ See Letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Gary L. Goldsholle, Assistant General Counsel, NASD Regulation, dated June 2, 1998 ("Amendment No. 2"). Amendment No. 2 corrects a deficiency in the language of the proposed rule change by clarifying that the tripling aspect of the proposal will apply to all conventional equity options. Under the current rules, the position limits for conventional equity options overlying a security for which there is no standardize equity options contract is set at 4,500 contracts, or such higher limit for which the underlying security would qualify. As now written, the proposed rule language establishes position limits for conventional equity options at "three times the applicable position limit established for standardized equity options overlying the security," but does not take into account the circumstance where there is no standardized equity option contract overlying the security. Amendment No. 2 proposes language that triples the position limits for all conventional equity options, including those for which there is no standardize equity option contract overlying the security.

⁵ See Letter to Jonathan G. Katz, Secretary, Commission, from Deutsche Bank Securities, Inc., Merrill Lynch, Pierce Fenner & Smith, Inc., Morgan Stanley & Co., Inc., Salomon Brothers Inc./Smith Barney, Inc., and SBC Warburg Dillon Read, Inc., dated June 2, 1998 ("Firms' Letter"). The letter supports the approval of SR-NASD-98-23, as amended.

The Commission notes that it received a comment letter on a separate NASD rule filing (SR-NASD-97-80) on January 23, 1998, that is relevant to present filing. The letter supported the approval of SR-NASD-97-80, as well as SR-NASD-97-67, which was substantively very similar to the present filing. SR-NASD-97-67, was withdrawn and replaced by the present filing. See Letter to Jonathan G. Katz, Secretary, Commission, from Bear, Stearns & Co., Deutsche Morgan Grenfell, Inc., Goldman, Sachs & Co., Lehman Brothers, Inc., Merrill Lynch, Pierce Fenner & Smith, Inc., Morgan Stanley & Co., Inc., Natwest Securities Corporation, Salomon Brothers, Inc., SBC Warburg Dillon Read, Inc., and Smith Barney, Inc., dated January 23, 1998.

⁶ Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits restrict the number of options contracts that an investor or group of investors acting in concert can exercise within five consecutive business days. Under NASD Rules, exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise, during any five consecutive business days, only the number of options contracts set forth as the applicable position limit for those options classes. See NASD Rules 2860(b) (3) and (4).

⁷ Currently, the five tiers are for 4,500, 7,500, 10,500, 20,000, and 25,000 contracts NASD rules do not specifically govern how a specific equity option falls within one of the five position limit tiers. Rather, the NASD's position limit established by an options exchange(s) for a particular equity option is the applicable position limit for purpose of the Government's rule.

⁸ Standardized options are exchange-traded options issued by the Options Clearing Corporation ("OCC") that have standard terms with respect to strike prices, expiration dates, and the amount of the underlying security. A conventional option is any other option contract not issued, or subject to issuance by, OCC.

⁹ See Exchange Act Release No. 39032 (September 9, 1997) 62 FR 48683 (September 16, 1997).

¹⁰ SR-NASD-98-15. The Commission notes that SR-NASD-98-15 was approved on March 19, 1998. See Exchange Act Release No. 39771 (March 19, 1998), 63 FR 14743 (March 26, 1998).

¹¹ Rule 2860(b)(3)(A)(vii).

¹² 2860(b)(3)(A)(viii).

Equity Options) the available position limits for conventional equity options.

To illustrate how these proposed amendments would work, consider the following example of stock ABCD, which is subject to a position limit of 25,000 standardized equity option contracts. In this example, a market participant could establish a position of 25,000 standardized option contracts on ABCD and an additional 75,000 conventional option contracts on ABCD on the same side of the market, since conventional and standardized option positions would be disaggregated. In addition, the market participant also may have a position of any size in FLEX Equity Options overlying ABCD, since such FLEX Equity Options would not be aggregated with either the conventional equity options or standardized equity options overlying ABCD. Further, by taking advantage of the Equity Option Hedge Exemption, which permits a market participant to assume a hedged options position that is three times the otherwise applicable position limit, a market participant could increase the number of conventional equity options to 225,000 contracts.

NASD Regulation proposes to modify the terms of the OTC Collar Aggregation Exemption to apply to an entire conventional equity option position, not just the portion that is established pursuant to the Equity Option Hedge Exemption. NASD Regulation believes such an amendment is consistent with the economic logic underlying the OTC Collar Aggregation Exemption, *i.e.*, that if the terms of the exemption are met, the segments of an OTC collar will never both be in-the-money at the same time or exercised. Under current rules, assuming that stock ABCD is subject to a basic position limit of 25,000 contracts, a market participant taking advantage of the Equity Option Hedge Exemption could establish a hedged position on ABCD involving a total of 75,000 conventional equity option contracts (three times the basic limit), including 50,000 contracts that are established under the Equity Option Hedge Exemption. A market participant using the OTC Collar Aggregation Exemption could then establish a conventional position of 50,000 long (short) calls and 50,000 short (long) puts, for a total of 125,000 contracts overlying ABCD. The proposed rule change to the OTC Collar Aggregation Exemption would allow a market participant to establish a collar consisting of two segments, each of which involves a position three times greater than the basic position limit. Consequently, using the example above, a market participant could establish an

OTC collar on ABCD involving 75,000 long (short) calls and 75,000 short (long) puts, for a total of 150,000 contracts.¹³

If, however, the basic position limits for conventional options were tripled, as proposed above, the permissible options position established under the OTC Collar Aggregation Exemption would be correspondingly increased. For example, if the market participant in the above example had increased the size of its conventional options position to 225,000 contracts pursuant to the Equity Option Hedge Exemption as proposed above (based upon a limit of three times the 75,000 conventional equity options position limit), the market participant could establish an OTC collar on ABCD involving 225,000 long (short) calls and 225,000 short (long) puts, for a total of 450,000 contracts.

Finally, in addition to the proposed rule changes discussed above, the NASD is proposing to clarify and update the examples contained in IM-2860-1 so that they are consistent with the instant proposal and prior increases in the hedge exemption.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, with the requirements of Section 15A(b)(6).¹⁴ Specifically, the Commission believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also believes that the proposed rule changes is consistent with Section 11A of the Act in that it will increase the position limits on conventional equity options, disaggregate conventional equity options from exchange-traded equity options for position limit purposes, and provide that the OTC Collar Aggregation Exemption may be utilized with respect to any conventional equity options position, not just that part of the position that is established pursuant to the NASD's Equity Option Hedge Exemption, and thereby allow market

¹³ While the OTC Collar Aggregation Exemption is self-effectuating with respect to the hedged components of conventional options positions, NASD Regulation has also permitted members to include non-hedged positions within OTC collars under the terms of the OTC Collar Aggregation Exemption on a pre-approval basis. Accordingly, the instant rule change would turn this pre-approval process for non-hedged components of OTC collars into a self-effectuating process.

¹⁴ 15 U.S.C. 78o-3(b)(6).

participants in the OTC options market to compete effectively with the participants using standardized options or with entities not subject to position limit rules.

Since the inception of conventional equity options trading, the NASD has had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise.¹⁵ These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulation¹⁶ and for corners or squeezes of the underlying market. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.

The Commission has been careful to balance two competing concerns when considering a self-regulatory organization's position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security. At the same time, the Commission has realized that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.¹⁷

The Commission believes that the proposed rule change will improve the conventional equity options market for several reasons. First, the Commission notes that the NASD's current reporting requirements for all conventional equity options transactions establishing large options positions will apply to such transactions effectuated under the new rule. Rule 2860(b)(5)(ii) imposes

¹⁵ As stated earlier, under NASD rules conventional and standardized equity options currently are subject to the same position limits, and all equity options overlying a particular equity security on the same side of the market are aggregated for position limit purposes, regardless of whether the option is a conventional, standardized or FLEX Equity Option.

¹⁶ Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

¹⁷ See H.R. Rep. No. IFC-3, 96th Cong., 1st Sess. at 189-91 (Comm. Print 1978) ("Options Study").

reporting obligations on "each account in which the member has an interest * * * and each customer account, which has established an aggregate position of 200 or more option contracts * * *." Information reported to the NASD is used by the NASD Regulation Market Regulation staff as part of their ongoing market surveillance operations and helps to minimize the risk of any market manipulation or disruption related to the accumulation or disposition of large options positions. It also enables NASD Regulation to identify large positions held or written by a member that could pose a financial risk to the member or its clearing firm.

Second, the tripling of the position limits on conventional equity options will help those investors who utilize conventional equity options, typically large, sophisticated institutional investors, or persons of extremely high net worth, with their extensive hedging needs.¹⁸

Third, the Commission also believes that the proposed tripling of position limits for conventional equity options will expand the depth and competitiveness of the conventional equity option market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Broker-dealers and banks act as dealers in the OTC derivatives market, and compete with each other for counterparty business. The proposal will enable broker-dealers to compete more effectively with banks that are not subject to NASD rules for OTC options transactions. It will also enable NASD members to accommodate better their clients' risk management strategies. The Commission recognizes, however, that the proposal presents substantial increases in OTC options transactions. It will also enable NASD members to accommodate better their clients' risk management strategies. The Commission recognizes, however, that the proposal present substantial increases in OTC options positions. Although the proposed rule change increases threefold the position limits for conventional equity options, those markets that are relatively less active and not as deep in trading interest will remain subject to the lowest existing position limit, *i.e.*, 4,500x3, or 13,500

¹⁸ In the Firms' Letter, the commenters indicate that they "have experienced an overwhelming interest by institutional and other accredited investors to enter into collar transactions and other hedging transactions involving conventional options." On several occasions they have been unable "to meet the demand for this hedging activity due to the relatively low [applicable] conventional option position limits." See Firms' Letter, *supra*, note 5.

option contracts. Moreover, as noted above, the large positions will be reported to the NASD for monitoring. Finally, the Commission notes that the proposed positions for conventional equity options are still capped at a fixed level, whereas there are no position limits for FLEX Equity options.

Fourth, the Commission believes that the disaggregation of conventional equity options from standardized equity options is warranted given that the tripling provision will otherwise be of limited effect. That is, if an investor has reached the limit for standardized equity options and is required to aggregate those options with his conventional equity options, he will reach the total position limit for conventional equity options sooner than if the standardized and conventional equity options were not aggregated. The Commission also notes that, under the rules of the Options Exchanges, FLEX Equity Options, which are very similar to conventional equity options, are not aggregated with standardized equity options for position limit purposes.¹⁹

Fifth, the Commission notes that in September 1997, it approved the elimination of position and exercise limits for FLEX Equity Options on a two year pilot basis.²⁰ As stated above, FLEX Equity Options are exchange-traded options issued by the OCC that give investors the ability, within specified limits, to designate certain terms of the option (*i.e.*, the exercise price, exercise style, expiration date, and option type). Conventional equity options are very similar to FLEX Equity Options given that they are also non-uniform and individually negotiated.²¹ Traditionally, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission believes that increasing position limits for conventional equity options to three times the position limits for standardized equity options is appropriate given the Commission's previous approach to the expansion of position and exercise limits. The Commission also believes that the proposed rule change will help to foster competition between the OTC market and the Options Exchanges, as well as ensure that OTC market participants are not placed at a competitive

¹⁹ Positions in FLEX Index Options generally are also not aggregated with options on any stocks included in the index or with FLEX Index Option positions on another index. See, *e.g.*, CBOE Rule 24A.7(c).

²⁰ See *supra* note 9.

²¹ Conventional equity options are not, however, issued or subject to issuance by OCC.

disadvantage vis-à-vis the Options Exchanges.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 makes minor technical changes to the text of the proposed rule. Specifically, Amendment No. 1 clarifies in the rule language that the Equity Option Hedge Exemption program was approved by the Commission on a pilot basis only until December 31, 1998. Amendment No. 1 also makes certain clerical corrections. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 corrects a deficiency in the text of the proposed rule. Specifically, Amendment No. 2 clarifies in the rule language that position limits for conventional equity for which there is not standardized equity option contract overlying the security are also to be tripled. Under the current rules, the position limits for conventional equity options overlying a security for which there is no standardized equity options contract is set at 4,500 contracts, or such higher limit for which the underlying security would qualify. As now written, the proposed rule language establishes position limits for conventional equity options at "three times the applicable position limit established for standardized equity options overlying the security," but does not take into account the circumstance where there is no standardized equity option contract overlying the security. Amendment No. 2 proposes language that triples these limits. The Commission believes that accelerated approval of Amendment No. 2 is appropriate given that it clarifies the application of the new position limits in a manner that is consistent with the approach established in the original rule filing. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 and Amendment No. 2 to the proposed rule change, including whether the amendments are consistent

with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NASD-98-23 and should be submitted July 10, 1998.

IV. Conclusion

For the foregoing reasons, the Commission finds that NASD Regulation's proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-NASD-98-23) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Jonathan G. Katz,

Secretary.

[FR Doc. 98-16351 Filed 6-18-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40086; File No. SR-NSCC-98-4]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Adopting an Interpretation of the Board of Directors Regarding NSCC's Obligation to Continuously Review Participants to Determine if Participants Are Required to Reapply for Membership Due to a Material Change in Conditions

June 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on

April 24, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-98-4) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add Addendum T to NSCC's Rules and Procedures regarding NSCC's obligation to continuously review participants to determine if they are required to reapply for membership due to a material change in conditions. A copy of proposed Addendum T is attached as Exhibit A to the rule filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, NSCC will be permitted to (i) reexamine a participant who has undergone a material change in circumstances,³ (ii) reconsider the participant's continuing status as a participant as if such entity was initially applying for membership when conditions originally in existence at the time a participant was accepted for membership have materially changed, and (iii) require the participant to satisfy any concerns NSCC may have

² The Commission has modified the text of the summaries prepared by NSCC.

³ Proposed Addendum T sets forth three categories where changes may warrant reconsideration: (1) material changes in ownership, control of management, (2) material changes in business lines, including but not limited to, new business lines undertaken, or (3) participation as a defendant in litigation which could reasonably have a direct negative impact on the participant's business. Proposed Addendum T states that these categories are listed as examples and should not be viewed as exclusive in the process.

as to the participant's ongoing membership in NSCC as part of such reevaluation. In addition, Addendum T explicitly states that participants have the affirmative obligation to advise NSCC if such material change occurs.

Under the Act and the rules and regulations thereunder, NSCC is obligated to safeguard securities and funds in the possession and control. NSCC believes that this obligation, coupled with the fact that NSCC is the guarantor of participants' transaction submitted to it for clearance and settlement, require that NSCC have flexibility to consider material changes pertaining to such participants and have the ability to take appropriate steps in light of such changes.

When a material change occurs with respect to an existing participant's ownership, control or management, mix of business, use of third party service provides, or regulatory history, among other areas, NSCC is faced with a different risk perspective than that which it faced at the time it approved such participant's application for membership. The NSCC board has concluded that it is in the best interests of NSCC and its membership as a whole that NSCC address these types of changes, including the ability to require the participants to reapply for membership, as if the participant was not already a participant.

NSCC believes that participants change their business mix as their focus in the financial industry change. According to NSCC, enter new businesses, discontinue old ones, change management, change risk policies, or take other actions or steps which could result in an entirely different entity (other than changing the corporate name of such entity) from the one which was approved for NSCC membership. NSCC believes that if it did not have the ability to continually reexamine participants' status, the purpose behind scrutinizing applications and the comfort level provided by such process, would be undermined.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will clarify the rules of NSCC relating to the continuing standards required for membership and NSCC's obligation to safeguard securities and fund within its control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition that is

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1).

NASD Notice to Members 98-50

Treasury Updates List Of Specially Designated Persons And Entities

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

As requested by the Department of Treasury (Treasury), the National Association of Securities Dealers, Inc. (NASD[®]) provides members with information from the Office of Foreign Assets Control (OFAC) about persons and entities identified as "Specially Designated Nationals and Blocked¹ Persons." Effective May 26, 1998, OFAC updated its master list, adding the names of six individuals and 21 entities who have been determined to play a significant role in international narcotics trafficking centered in Colombia, or who have been determined to act for or on behalf of, or to be owned or controlled by other specially designated narcotics traffickers; adding the names of 62 entities which have been determined to act for or on behalf of, or to be owned or controlled by the Government of Sudan; and removing the names of two individuals previously designated as specially designated narcotics traffickers. In addition, OFAC issued Burmese Sanctions Regulations that prohibit new investment in Burma by U.S. persons effective May 21, 1998.

Questions concerning this *Notice* may be directed to OFAC's Compliance Hotline for financial institutions, at (800) 540-6322.

Background

The U.S. government mandates that all financial institutions located in the United States, overseas branches of these institutions and, in certain instances, overseas subsidiaries of the institutions comply with OFAC regulations governing economic sanctions and embargo programs regarding the accounts and other assets of countries identified as threats to national security by the President of the United States. This always involves accounts and assets of the sanctioned countries' governments, and may also involve the accounts and assets of individual

nationals of the sanctioned countries. Also, these regulations prohibit unlicensed trade and financial transactions with such countries.

Under these regulations, financial institutions must block identified assets and accounts when such property is located in the United States, is held by U.S. individuals or entities, or comes into the possession or control of U.S. individuals or entities. The definition of assets and property is very broad and covers direct, indirect, present, future, and contingent interests. In addition, Treasury identifies certain individuals and entities located worldwide that are acting on behalf of sanctioned governments, and that must be treated as if they are part of the sanctioned governments.

OFAC may impose criminal or civil penalties for violations of these regulations. Criminal violations may result in corporate and personal fines of up to \$1 million and 12 years in jail; civil penalties of up to \$275,000 per violation may also be imposed. To ensure compliance, OFAC enlists the cooperation of various regulatory organizations and asks the NASD to remind its members about these regulations.

Foreign Assets Control Regulations

OFAC currently administers sanctions and embargo programs against Libya, Iran, Iraq, the Federal Republic of Yugoslavia (Serbia and Montenegro), Serb-controlled areas of Bosnia and Herzegovina, Bosnian Serb military and civilian leaders, North Korea, Sudan, Syria, and Cuba. In addition, OFAC prohibits certain exports to the UNITA faction in Angola; new investment in Burma (Myanmar); and transactions with designated terrorists, foreign terrorist organizations, and narcotics traffickers.

Broker/dealers cannot deal in securities issued from these target countries and governments and must block or freeze accounts, assets, and obligations of blocked entities and individuals when this property is in their possession or control.

According to OFAC, broker/dealers need to establish internal compliance programs to monitor these regulations. OFAC urges broker/dealers to review their existing customer accounts and the securities in their custody to ensure that any accounts or securities blocked by existing sanctions are being treated properly. Broker/dealers also should review any other securities that may represent obligations of, or ownership interests in, entities owned or controlled by blocked commercial or government entities identified by OFAC.

Broker/dealers must report blockings within 10 days by fax to OFAC's Compliance Division at (202) 622-1657. Firms are prohibited from making debits to blocked customer accounts, although credits are authorized. Blocked securities may not be paid, withdrawn, transferred (even by book transfer), endorsed, guaranteed, or otherwise dealt in.

OFAC has issued general licenses authorizing continued trading on the national securities exchanges on behalf of blocked Cuban and North Korean customer accounts under conditions preserving the blocking of resulting assets and proceeds. Secondary market trading with respect to certain Yugoslav debt securities issued pursuant to the "New Financing Agreement" of September 20, 1988, is also authorized; however, certain restrictions and reporting requirements apply.

List Of Sanctioned Governments And Individuals

Whenever there is an update to its regulations, an addition or removal of a specifically designated national, or any other pertinent announcement, OFAC makes the information available electronically on the U.S. Council on International Banking's INTERCOM Bulletin Board in New York and the International Banking Operations Association's Bulletin Board in Miami. The information also is immediately uploaded onto Treasury's Electronic Library (TEL) on the FedWorld Bulletin Board network and is available through several other government services provided free of charge to the general public.

In addition, members can use the NASD Regulation, Inc., Web Site (www.nasdr.com) to link to OFAC's list of individuals and companies subject to economic or trade sanctions. OFAC's Web Site contains additional information that may be helpful to members and may be accessed directly (www.ustreas.gov/treasury/services/fac/fac.html). Members also may refer to *NASD Notices to Members 98-20, 98-8, 97-87, 97-35, 97-4, 96-23, and 95-97*.

NASD members are urged to review their procedures to ensure compliance with OFAC regulations.

Endnote

¹ Blocking, which also may be called freezing, is a form of controlling assets under U.S. jurisdiction. While title to blocked property remains with the designated country or national, the exercise of the powers and privileges normally associated with ownership is prohibited without authorization from OFAC. Blocking immediately imposes an across-the-board prohibition against transfers or transactions of any kind with respect to the property.

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NASD Notice to Members 98-51

Exemptive Relief Under MSRB Rule G-37(i)

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On May 28, 1998, the National Adjudicatory Council (NAC) considered two requests for exemptive relief under Municipal Securities Rulemaking Board (MSRB) Rule G-37(i). The NAC's decisions are published below in redacted form, pursuant to a publication policy that the NAC adopted, described below.

Questions regarding this *Notice* should be directed to Sharon Zackula, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8985.

Publication Policy

The NAC has decided to publish each final NAC decision regarding MSRB Rule G-37(i) in a redacted form in a *Notice*. Key identifying information will be redacted (*e.g.*, the name of the municipal finance professional (MFP); the name of the member firm; the name of the recipient of the contribution; the name of the city, state, or governmental entity that is the issuer; and other legal names that would allow a reader to identify the parties involved).

The publication policy will be subject to exceptions on a case-by-case basis. If the National Association of Securities Dealers, Inc. (NASD[®]) is apprised of particularly egregious conduct, including, for example, intentional conduct to evade the Rule by the contributor/MFP or the firm's management, the NASD may decide to identify fully some or all of the parties and other specifics.

The NASD believes that its obligation to further investor protection is fulfilled by the publication of such decisions, which will inform both the public and the broker/dealer community of the NASD's enforcement of MSRB Rule G-37. By publishing the decisions, the investing public and the broker/dealer community will

understand the rationale for such decisions. The policy will encourage firms to continue to maintain strict supervisory and screening procedures relating to political contributions by firm employees.

The first two decisions of the NAC regarding MSRB Rule G-37 and subject to this policy are set forth below. The NAC denied exemptive relief to Firm A, referenced in Letter 1, which was subject to a ban due to a \$25 contribution. However, based on the factors identified below, the NAC lifted the remaining term of the ban for Firm X, referenced in Letter 2. In Firm X's case, the ban was triggered by a \$100 contribution.

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Recent NAC Decisions Regarding MSRB Rule G-37(i) Exemptive Relief

Letter 1: Exemptive Relief Denied

Firm A
Address

Re: **Firm A** MSRB Rule G-37 Exemption Request

Dear **Mr. M**:

The National Adjudicatory Council (“NAC”) of NASD Regulation, Inc. (“NASD Regulation”) reviewed **Firm A’s** appeal for exemptive relief on **Date**, and denied the request.

In reaching this determination, the NAC was particularly concerned that the timing of the contribution and other circumstances surrounding the contribution created the appearance of a link between the contribution and the potential award of municipal securities business. Specifically, the Municipal Finance Professional (“MFP”) had personal knowledge of a proposed **Project**, was aware as a member of the **Project** Board that implementation of the proposed improvements included plans to issue a substantial amount of municipal bonds, based upon several public projections for the proposed project, and had signed **Firm A** documentation that made him eligible to receive a finder’s fee for the award of such business. In addition, the contribution was made to a City Council member who was one of a very small number of City Council members who sat on the City Council’s subcommittee exercising jurisdiction over the **Project** and who apparently was in a position to influence the award of business pertaining to a substantial municipal securities offering for which **Firm A** was a candidate.

In these circumstances, the NAC concluded that it would be inconsistent with the purposes of Rule G-37 to grant the requested exemption. Accordingly, the NAC denied the requested exemption. We note that the exemption request suggested that the contribution in question should not be deemed to have been made by an MFP to an “official of an issuer” as those terms are defined in Rule G-37. For purposes of this action, we assumed that the contribution would trigger the prohibitions of the rule. Any interpretive questions concerning the application of Rule G-37, including those identified in the request, should be addressed to the Municipal Securities Rulemaking Board.

The NAC granted the request for confidential treatment regarding the record generally, except that the decision of the NAC will be published in redacted form in the NASD’s *Notices to Members*, and otherwise provided in redacted form as requested. Key identifying information that may identify the actual parties or the issuer will be redacted (e.g., the name of the MFP; the name of the member firm; the name of the recipient of the contribution; the name of the city, state, or governmental entity that is the issuer; and other legal names that may allow a reader to identify the parties involved).

Letter 2: Exemptive Relief Conditionally Granted

Firm X
Address

Re: **Firm X** MSRB Rule G-37 Exemption Request

Dear Mr. **N**:

The National Adjudicatory Council (“NAC”) of NASD Regulation, Inc. (“NASD Regulation”) reviewed **Firm X’s** appeal for exemptive relief on **Date**, and granted it.

The contribution that was made by the **Firm X** Municipal Finance Professional (“MFP”) on **Date**, appears to have been made inadvertently, was small, and was immediately returned. Moreover, there appears to have been no *quid pro quo* sought by the making of the contribution by either the MFP or **Firm X**. **Firm X** acted both within the letter and intent of the rule when confronted with the knowledge of the inadvertent contribution. When the contribution was made, **Firm X** had very detailed policies in place regarding MSRB Rule G-37 and related rules. Upon discovering the contribution had been made, **Firm X** voluntarily avoided initiation of any prohibited activity with the municipality in question and took additional proactive steps to avoid any recurrence of any conduct that could trigger the MSRB Rule G-37 ban on business.

Based upon the facts and circumstances set forth above, the NAC granted conditional exemptive relief to **Firm X** by removing the ban on the municipal securities business activities described in MSRB Rule G-37(b) effective as of **NAC Meeting Date**. The NAC concluded that exemptive relief from the two-year ban on municipal securities business was consistent with the public interest, the protection of investors, and the purposes of the rule. In granting the relief, the NAC did not conclude that a one-year and one-month ban was appropriate in the circumstances. Rather, the NAC concluded that having the ban continue for any additional period beyond that period already served by **Firm X** would be disproportionate to the conduct of **Firm X** and its MFP.

The NAC granted the request for confidential treatment regarding the record generally, except that the decision of the NAC will be published in redacted form in the NASD’s *Notices to Members*, and otherwise provided in redacted form as requested. Key identifying information that may identify the actual parties or the issuer will be redacted (*e.g.*, the name of the MFP; the name of the member firm; the name of the recipient of the contribution; the name of the city, state or governmental entity that is the issuer; and other legal names that may allow a reader to identify the parties involved).

NASD Notice to Members 98-52

SEC Approves Taping
Rule; Effective August 17,
1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On April 17, 1998, in Release No. 34-39883, the Securities and Exchange Commission (SEC) approved an amendment to National Association of Securities Dealers, Inc. (NASD[®]) Rule 3010 to require members to establish special supervisory procedures, including the tape recording of conversations, when they have hired more than a specified percentage of registered persons from certain firms that have been expelled or that have had their broker/dealer registrations revoked for violations of sales practice rules (the Taping Rule or Rule).¹ The new Rule will be effective on August 17, 1998. The text of the new Rule and the *Federal Register* version of the SEC release are attached.

Interpretive questions concerning the new Rule should be directed to Mary Revell, Associate General Counsel, NASD Regulation, Inc., at (202) 728-8203. Questions concerning compliance with the new Rule should be directed to Susan Lang, Senior Research Analyst, Department of Member Regulation, NASD RegulationSM, at (202) 728-6969. Members should submit reports required by the Taping Rule to Compliance, Department of Member Regulation, NASD Regulation, 1735 K Street, N.W., Washington, D.C. 20006.

Background

The Taping Rule was developed to respond to two issues. First, it responds to concerns expressed in the *Joint Regulatory Sales Practice Sweep (Sweep) Report*² regarding the need for heightened supervision of certain registered representatives with troubled regulatory and compliance records. The Rule also addresses the particular problems that occur when a firm hires a large number of individuals who formerly worked at a firm that has been expelled or has had its registration

revoked and where they were inadequately supervised and trained.

The NASD initially published the Taping Rule for comment in *Notice to Members 96-59*. NASD Regulation revised the proposal in response to the 42 comment letters that were received, and filed the proposed Taping Rule with the SEC for approval in September 1997.

The SEC published notice of the proposed Taping Rule and one amendment to the Rule in the *Federal Register* in December 1997. The SEC received one comment letter on the proposed Rule. The SEC approved the proposed Rule, as amended, and Amendment No. 2 to the proposed Rule on April 17, 1998.

The text of the new Taping Rule is set forth below. For a complete description of the history of the Rule, members should review in detail the attached *Federal Register* version of the SEC release.

Taping Rule

The Taping Rule will apply whenever a specified percentage of a member firm's sales force is comprised of registered persons who were employed within the last three years by a firm that has been expelled from membership in a securities industry self-regulatory organization or has had its registration as a broker/dealer revoked by the SEC (a Disciplined Firm). The requisite percentage varies depending on the size of the firm, from 40 percent for a small firm to 20 percent for a larger firm. The firm must establish the required supervisory procedures within 30 days of receiving notice from NASD Regulation, or obtaining actual knowledge, that it is subject to the provisions of the Rule.

Under the Taping Rule, if the requisite percentage of a member's sales

force previously was employed by a Disciplined Firm, the member will be required to adopt special written procedures to supervise the telemarketing activities of all of its registered persons. The procedures require, at a minimum, that the member tape record all telephone conversations between all of its registered persons and both existing and potential customers for a period of two years. The measures required by the Rule are designed to prevent a reoccurrence of sales practice abuse or other customer harm that caused the Disciplined Firm to be expelled or have its registration revoked.

The Rule requires that firms ensure that they tape record any means of telecommunications that is regularly used by registered persons to communicate with customers. In connection with this requirement, firms should ensure that the means of telecommunications used is capable of being taped. If, for example, registered persons use cellular phones on a regular basis to call customers, and it is not possible to tape record cellular telephone conversations, a firm should prohibit the use of cellular telephones for communicating with customers. On the other hand, the occasional use of a cellular telephone where warranted for other business reasons would not be prohibited.

The Rule also requires firms subject to the taping requirement to establish reasonable procedures for reviewing tape recordings to ensure compliance with securities laws and NASD rules, to submit reports to the NASD on their supervision of telemarketing, and to retain and catalog the tapes. NASD Regulation believes that, in adopting review procedures reasonably designed to comply with this requirement, members generally would be expected to:

- specify the minimum percentage of

tape recordings that must be reviewed and how the review will be conducted, or, if a random review is utilized, specify how the random review will be conducted;

- identify one or more senior persons at the firm with appropriate knowledge and training to review the tape recordings;
- identify how the supervisory review will be conducted and documented;
- consider the complaint and overall disciplinary history, if any, of registered persons whose telephone conversations are being recorded in establishing the review procedures and specifying the minimum percentage of tape recordings that must be reviewed (with particular emphasis on complaints regarding telemarketing);
- maintain records documenting how and when tape recordings are reviewed; and
- monitor to ensure that the procedures are being implemented and complied with.

The factors above are not exclusive and members must consider all appropriate factors when developing their review procedures and implementing their supervisory reviews.

In complying with the Taping Rule, members must comply with federal and state civil and criminal statutes governing the tape recording of conversations. Each state has a statute governing wiretapping; there also is a federal statute governing wiretapping and electronic surveillance.³ The federal statute and the majority of the state statutes permit taping of telephone conversations with the consent of one party (one-party statutes);⁴ a minority of state statutes require the consent of all parties to the conversation (two-party

statutes).⁵ Three issues arise from the proposed Rule: what is necessary to comply with one-party statutes; what is necessary to comply with two-party statutes; and how to comply where a conversation occurs between a person in a one-party state and a person in a two-party state.

The question of which state law applies when a conversation occurs between a person in a one-party state and a person in a two-party state is an open issue that depends on the individual laws of each state and the individual facts. Firms would be required to independently determine that state laws are satisfied. The best practice in each case would be for member firms to notify their registered persons and customers that their telephone calls are being tape recorded.

While each firm is responsible for complying with the Taping Rule, NASD Regulation will provide firms with all of the information they need to determine if they are subject to the requirements of the Rule. NASD Regulation will make a monthly determination of which firms are subject to the Rule. NASD Regulation will then notify each firm that is subject to the Rule and that it has 30 days to establish the supervisory procedures required by the Rule. NASD Regulation also will compile and maintain a list of firms that met the definition of "Disciplined Firm" within the last three years that will be placed on the NASD Regulation Web Site (www.nasdr.com). A copy of the initial list is attached to this *Notice*.

NASD Regulation believes that firms should be able to rely on the accuracy of the information provided to them. Firms that are notified by NASD Regulation that they are subject to the Rule must establish the procedures required by the Rule. Firms that do not receive this notifi-

ation are not required to establish the special supervisory procedures. However, if a firm has actual knowledge, inconsistent with the information relied upon by NASD Regulation, that it is subject to the Rule, NASD Regulation anticipates that the firm will be disciplined for failure to comply with the Rule.

Finally, any member required to adopt these procedures may seek an exemption from the requirement. NASD Regulation may grant an exemption upon a satisfactory showing that the member's supervisory procedures ensure compliance with applicable securities laws and regulations and NASD rules. Members should follow the procedures detailed in the Rule 9600 Series when seeking an exemption.

Text Of Amendments To Rule 3010

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

Rule 3010. Supervision

(a) No change

(b) Written Procedures

(1) No change

(2) Tape recording of conversations

(i) Each member that either is notified by NASD Regulation or otherwise has actual knowledge that it meets one of the criteria in paragraph (b)(2)(viii) relating to the employment history of its registered persons at a Disciplined Firm as defined in paragraph (b)(2)(x) shall establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all of its registered persons.

(ii) The member must establish the supervisory procedures required by

this paragraph within 30 days of receiving notice from NASD Regulation or obtaining actual knowledge that it is subject to the provisions of this paragraph.

(iii) The procedures required by this paragraph shall include tape-recording all telephone conversations between the member's registered persons and both existing and potential customers.

(iv) The member shall establish reasonable procedures for reviewing the tape recordings made pursuant to the requirements of this paragraph to ensure compliance with applicable securities laws and regulations and applicable rules of this Association. The procedures must be appropriate for the member's business, size, structure, and customers.

(v) All tape recordings made pursuant to the requirements of this paragraph shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each member shall catalog the retained tapes by registered person and date.

(vi) Such procedures shall be maintained for a period of two years from the date that the member establishes the procedures required by the provisions of this paragraph.

(vii) By the 30th day of the month following the end of each calendar quarter, each member firm subject to the requirements of this paragraph shall submit to the Association a report on the member's supervision of the telemarketing activities of its registered persons.

(viii) The following members shall be required to adopt special supervisory procedures over the telemarketing activities of their registered persons:

- A firm with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been employed by one or more Disciplined Firms within the last three years;

- A firm with at least ten but fewer than twenty registered persons, where four or more of its registered persons have been employed by one or more Disciplined Firms within the last three years;

- A firm with at least twenty registered persons, where 20% or more of its registered persons have been employed by one or more Disciplined Firms within the last three years.

(ix) For purposes of this Rule, the term "registered person" means any person registered with the Association as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series or pursuant to Municipal Securities Rulemaking Board ("MSRB") Rule G-3.

(x) For purposes of this Rule, the term "disciplined firm" means a member that, in connection with sales practices involving the offer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the Securities and Exchange Commission revoking its registration as a broker/dealer.

(xi) Pursuant to the Rule 9600 Series, the Association may exempt any member unconditionally or on specified terms and conditions from the requirements of this paragraph upon a satisfactory showing that the member's supervisory procedures ensure compliance with applicable securities laws and regulations and applicable rules of the Association.

(3)(2) No change to text

(4)(3) No change to text

(c) through (g) No change

Text Of Amendments To Rule 9610

(Note: New language is underlined.)

Rule 9600. Procedures for Exemptions

Rule 9610. Application

(a) File With General Counsel

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860. Interpretive Material 2860-1, 3010(b)(2), 3350, 11870, or 11900, Interpretive Material 2110-1, or Rule G-37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

Disciplined Firms⁶

A. R. Baron & Co., Inc.
Banc Street Securities, Inc.
Beacon Securities, Inc.
Capital Investment Managers, Inc.
Coastline Financial, Inc.
Escalator Securities, Inc.
Euro-Atlantic Securities Inc.
F.N. Wolf & Co., Inc.
Feltman & Co.
H. L. Camp & Company, Inc.

Hibbard Brown & Co., Inc.
Jaron Equities Corp.
Johnston Kent Securities, Inc.
Kinlaw Securities Corporation
L. C. Wegard & Co., Inc.
M. H. Novick & Co., Inc.
M. Rimson & Co., Inc.
M.G.S.I. Securities, Inc.
Penn Capital Financial Services, Inc.
Prime Investors, Inc.
Retirement Investment Group
Selheimer & Co.
Shaner & Company, Inc.
Stratton Oakmont Inc.
Townsend Associates & Company, Inc.
U.S. Securities Corporation of Washington, D.C.
Westcap Securities, L.P.

Endnotes

¹ 63 FR 20232 (April 23, 1998). *See also* correction in Release No. 34-39883A (April 23, 1998), 63 FR 24202 (May 1, 1998).

² Staffs of the NASD, New York Stock Exchange (NYSE), North American Securities Administrators Association (NASAA), and the Office of Compliance Inspections and Examinations, SEC, *Joint Regulatory Sales Practice Sweep: A Review of the Sales Practice Activities of Selected Registered Representatives and the Hiring, Retention, and Supervisory Practices of the Brokerage Firms Employing Them* (March 1996). The *Sweep* was an initiative involving the staffs of the NASD, the SEC, the NYSE, and representatives of NASAA to review the sales practice activities of selected registered representatives and the hiring, retention, and supervisory practices of the brokerage firms employing them in order to

identify possible problem registered representatives, review their sales practices, and assess whether adequate hiring, retention, and supervisory mechanisms were in place. The *Sweep Report* was released on March 18, 1996.

³ 18 U.S.C. § 2519 *et seq.*

⁴ In one-party statute states, the only issue is whether the registered person knows of and consents to the tape recording. The recording requirement would run to the firm, and the equipment would be the firm's. Therefore, it would be necessary for the firm to ensure that the person has notice and consents to the tape recording of his or her telephone conversations. This could be accomplished through a clause in an employment agreement or employee handbook or other written notice to the registered person.

⁵ In two-party statute states, it would be necessary to insert on the firm's telephone line a recording stating that all telephone conversations are being taped, similar to customer service lines in other industries. Some states require a system of beeps or buzzers that sound throughout the conversation. Some states also have a "business use exception" to the two-party statute consent requirement, but it is worded and applied differently in each state.

⁶ This list is comprised of firms that were disciplined within the last three years and was compiled based on information available as of June 15, 1998.

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however, if more than six years have elapsed from the transaction, occurrence, or event giving rise to the claim, under Rule 10304 of the Code, the claim will not be eligible for submission to arbitration.¹¹ All claims involving general securities broker/dealers will continue to be accepted for arbitration consistent with past practice. Claims previously submitted that the Office has already declined to arbitrate under the old policy cannot be resubmitted under the policy being announced herein.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act¹² in that eliminating a barrier to the arbitration of disputes involving exempted securities, public customers and members will have access to a fair, efficient, and cost-effective forum for the resolution of such disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

¹¹ NASD Regulation notes that it has a proposed amendment to Rule 10304, rule filing SR-NASD-97-44, pending approval with the SEC. Under the proposed rule change all claims are presumed to be eligible; however, the presumption can be overcome if the respondent challenges the claim on the basis that more than six years have elapsed since the act or occurrence giving rise to the claim.

¹² 15 U.S.C. 78-3.

including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-04 and should be submitted by May 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-10754 Filed 4-22-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39883; File No. SR-NASD-97-69]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change, as Amended, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Tape Recording of Conversations

April 17, 1998.

I. Introduction

On September 12, 1997, the National Association of Securities Dealers, Inc. ("NASD"), through its regulatory subsidiary NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² In this filing, NASD Regulation proposed amendments to Rule 3010 to

require the tape recording of conversations where members hire more than a specified percentage of registered persons from certain firms that have been expelled or that have had their broker/dealer registration revoked for violations of sales practices rules. The proposed rule change also includes a conforming rule change to Rule 9610. Notice of this proposed rule change was published in the **Federal Register** on December 5, 1997 (as amended, the "Notice").³ The Commission received one comment letter, which expressed concerns about using tape recording as a method of supervision, in response to the Notice.⁴ On March 9, 1998, NASD Regulation filed Amendment No. 2 with the Commission.⁵ This order approves the rule change, as amended, and grants accelerated approval of Amendment No. 2 to the rule change.

II. Background

At its meeting in July 1996, the NASD Regulation Board of Directors authorized the staff to issue a Notice to Members soliciting comment on proposed changes to NASD supervisory Rule 3010 to require the tape recording of telephone conversations of registered representatives in certain circumstances. The Rule was developed both to respond to concerns expressed in the *Joint Regulatory Sales Practice Sweep ("Sweep") Report*⁶ regarding the

³ See Securities Exchange Act Release No. 39361 (November 26, 1997), 62 FR 64422 (File No. SR-NASD-97-69), Amendment No. 1 to the proposed rule filing was filed on November 12, 1997. The changes contained in this amendment were included in the Notice. See Letter from Mary N. Revell, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (November 17, 1997).

⁴ See Letter from R. Gerald Baker, Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, Commission, dated February 11, 1998.

⁵ See letter from Mary N. Revell, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Office of Market Supervision, Division of Market Regulation (March 9, 1998). In Amendment No. 2, NASD Regulation: (1) Applies the proposal to firms that have a work force comprised of a specified number of registered persons who were employed by a "disciplined firm" within the last three years instead of two years; (2) requires firms to establish special procedures to supervise the telemarketing activities of registered persons instead of registered representatives; (3) amends the definition of registered persons to include those persons who register as municipal securities principals or representatives pursuant to Municipal Securities Rulemaking Board Rule G-3; and (4) provides guidance on what would constitute "reasonable procedures for reviewing the tape recordings made pursuant to the requirements of" the taping rule in a Notice to Members announcing approval of the rule.

⁶ Staffs of the NASD, New York Stock Exchange ("NYSE"), North American Securities Administrators Association ("NASAA"), and the Office of Compliance Inspections and

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

need for heightened supervision of certain registered representatives with troubled regulatory and compliance records and also to address the particular problems that occur when a firm hires a larger number of individuals who formerly worked at a firm that has been expelled or has had its registration revoked (a "Disciplined Firm") where they were inadequately supervised and trained.

NASD Regulation stated in its filing that one of the key findings of the Sweep Report concerned the willingness of some firms to employ registered representatives with a history of disciplinary actions or customer complaints.⁷ Based on this finding, the Working Group collectively recommended that firms that hire registered representatives with a recent disciplinary history involving sales practice abuse or other customer harm should implement special supervisory procedures tailored to the individual registered representative, which include a heightened level of scrutiny of the registered representative's activities by his or her supervisor, for a period of time.⁸ The Sweep Report recommended that, if firms fail to establish such special supervisory procedures, the self-regulatory organizations ("SROs") should consider revising their rules to specifically require that registered representatives with a recent history of disciplinary actions involving sales practice abuse or other customer harm be placed under special supervision by the firm for a period of time.

NASD Regulation and the NYSE have issued a memorandum discussing the Sweep Report and providing guidance on actions firms could take to provide heightened supervision of problem registered representatives.⁹ While the special procedures designed to provide a heightened level of supervision recommended by the Sweep Report and described in the NASD/NYSE

Examinations, SEC, *Joint Regulatory Sales Practice Sweep: A Review of the Sales Practice Activities of Selected Registered Representatives and the Hiring, Retention, and Supervisory Practices of the Brokerage Firms Employing Them* (March 1996). The Sweep was an initiative involving the staffs of the NASD, the SEC, the NYSE, and representatives of the NASAA (collectively, the "Working Group") to review the sales practice activities of selected registered representatives and the hiring, retention, and supervisory practices of the brokerage firms employing them in order to identify possible problem registered representatives, review their sales practices, and assess whether adequate hiring, retention, and supervisory mechanisms are in place. The Sweep Report was released on March 18, 1996.

⁷ The current proposal focuses on the disciplinary history of the firm that formerly employed the registered representative.

⁸ *Id.* at ii, iv.

⁹ NASD Notice of Members 97-19 (April 1997); NYSE Information Memo 97-20 (April 15, 1997).

memorandum may provide adequate supervision of associated persons in most circumstances, NASD Regulation proposes to adopt specific procedures in certain situations in order to provide the level of supervision required by Rule 3010.

NASD Regulation proposes to amend NASD Rule 3010 to require firms that hire a specified number of individuals from Disciplined Firms to tape-record telephone conversations between their registered persons and existing and potential customers. The proposed Rule would apply when a firm hires a substantial number of registered persons from a firm or firms that have been expelled or had their registrations revoked for sales practice abuse. The measures are designed to prevent a reoccurrence of sales practice abuse or other customer harm that caused the Disciplined Firm to be expelled or have its registration revoked. The proposal is similar to an interpretation adopted by the National Futures Association ("NFA") in 1993 to combat abusive cold calling.¹⁰ The NFA's interpretation is discussed below.

A. Notice to Members 96-59 and Original Proposal

In its filing with the Commission, NASD Regulation described Notice to Members 96-59 ("NTM 96-59"), which contained the original proposed Rule ("original proposal" or "original Rule").¹¹ NASD Regulation's original proposal captured a broader swath of firms. It would have been triggered whenever a significant portion of a member's work force was comprised of associated persons who formerly were employed by a Disciplined Firm or firms or when the firm itself was a Disciplined Firm. The original proposal defined a Disciplined Firm, for purposes of the Rule, as one that had been disciplined (e.g., expelled, suspended, or enjoined) by a regulatory entity, an SRO, or a court within the previous five years for telemarketing or sales-practice abuses in connection with the solicitation, offer, or sale of securities.

NASD Regulation's original proposal also stated that if more than 20 percent of a member's sales force of associated persons previously were employed by a Disciplined Firm, the member would have been required to adopt special written procedures to supervise the telemarketing activities of its associated persons. Firms that were themselves

Disciplined Firms also would have been required to adopt these procedures. The procedures would have required, at a minimum, that the employer member tape record all telephone conversations between all of its associated persons and both existing and potential customers, and maintain these procedures for two years. For each firm that was itself a Disciplined Firm, at the end of the two-year period, NASD Regulation would have conducted an evaluation to determine whether, and for how long, the firm would continue to be subject to the requirements of the Rule. The Rule also would have required firms subject to the taping requirement to review the tapes periodically to ensure compliance with securities laws and NASD rules, to submit reports to NASD Regulation on their supervision of telemarketing activities, and to retain and index the tapes.

B. Comments and Response on the Original Proposal

NASD Regulation received 42 comment letters in response to its initial Notice to Members.¹² Of the 42

¹² NASD Regulation received the following comment letters: (1) Letter from Brian C. Underwood, A.G. Edwards & Sons, Inc. ("Edwards"), dated October 31, 1996; (2) Letter from Kevin P. Howe, American Express Financial Advisors ("AEFA"), dated October 31, 1996; (3) Letter from G. Thomas Mitchell, Aurora Insurance and Securities, Inc. ("Aurora"), dated October 10, 1996; (4) Letter from Jerome Snyder, Barington Capital Group, L.P. ("Barington"), dated October 23, 1996; (5) Letter from Leslie D. Smith, Berthel Fisher Company ("Berthel"), dated October 25, 1996; (6) Letter from Walter I. Miller, Capital Growth Planning, Inc. ("Capital"), dated September 24, 1996; (7) Letter from Sanford D. Greenberg, Chatfield Dean & Co. ("Chatfield Dean"), dated October 31, 1996; (8) Letter from Neil Lawrence Lane, Citicorp Investment Services ("CIS"), dated October 31, 1996; (9) Letter from David J. Master, Coastal Securities ("Coastal"), dated October 31, 1996; (10) Letter from John Polanin, Jr., Cowen & Company ("Cowen"), dated November 7, 1996; (11) Letter from Richard L. Sandow, Cullum & Sandow Securities, Inc. ("Cullum"), dated October 17, 1996; (12) Letter from Gregg Thaler, Duke & Company, Inc. ("Duke I"), dated October 10, 1996; (13) Letter from William Rotholz, Duke & Company, Inc. ("Duke II"), dated October 29, 1996; (14) Letter from Shannon Braymen, Duncan-Smith Securities, Inc. ("Duncan-Smith"), dated October 22, 1996; (15) Letter from James H. Pyle et al., E.E. Powell & Company, Inc., dated October 21, 1996; (16) Letter from Nancy K. Port, Equity Services, Inc. ("EST"), dated October 30, 1996; (17) Letter from Rick Fetterman, Fetterman Investments, Inc., dated October 1, 1996; (18) Letter from Herbert O. Sontz, GKN Securities ("GKN"), dated October 31, 1996; (19) Letter from Lawrence E. Wesneski, Hoak Breedlove Wesneski & Co. ("Hoak"), dated October 21, 1996; (20) Letter from Cabell B. Birdsong, Investors Security Company, Inc. ("ISC"), dated October 22, 1996; (21) Letter from David A. Rich, Jefferies & Company, Inc., dated November 8, 1996; (22) Letter from Thomas P. Koutris, John Hancock Distributors, Inc., dated September 23, 1996; (23) Letter from A.E. Monahan, Keystone Capital Corporation ("Keystone"), dated October 7, 1996;

comment letters, 39 were opposed to the proposal, including those filed by the Securities Industry Association, Lehman Brothers, Merrill Lynch, Morgan Stanley, and Smith Barney. NASD Regulation stated that most of the commenters supported the NASD's objective in proposing the taping Rule and agreed that firms should be discouraged from recruiting groups of registered persons from a Disciplined Firm, however, they did not believe that tape recording of conversations was an appropriate regulatory requirement and feared that regulators will require even more comprehensive tape recording in the future.

The definition of a Disciplined Firm is too broad: NASD Regulation stated that many of the commenters believe the definition of a Disciplined Firm in the original Rule was too broad. For example, the original definition would have included a firm that was the subject of an injunction for a technical or inadvertent violation of state law or as the result of a consensual injunction involving only a fraction of the firm's business and employees. NASD Regulation responded by narrowing the definition of a Disciplined Firm to include firms that have been expelled from membership in a securities industry SRO or that have had their

registration revoked by the SEC due to telemarketing or sales practice abuses.

The Rule is too broad with respect to the individuals included in the percentage calculation and the time frame: NASD Regulation stated that commenters complained the Rule was too broad in several respects. First, commenters said the Rule would target firms and individuals for the actions of other firms and individuals of which they had no knowledge or control.¹³ Second, the commenters criticized the Rule's application to all individuals that had ever been employed by a Disciplined Firm in the calculation of the percentage that would trigger the special supervisor procedures.¹⁴ Finally, NASD Regulation stated that commenters believed the Rule should be limited to personnel who have contact with customers, such as registered representatives, and should exclude clerical and ministerial employees from both the 20% calculation and the taping requirement.¹⁵

In response, NASD Regulation narrowed the scope of the original Rule to apply only to firms that hire a specified percentage of individuals who were employed at a Disciplined Firm within the last three years. NASD Regulation also limited the individuals calculated in the percentage to register persons, leaving out clerical and ministerial personnel. Also, NASD Regulation limited the persons subject to the taping requirement to registered representative in conversations with both existing and potential customers.

The Rule does not achieve the stated purpose: NASD Regulation noted that several commenters questioned whether the original Rule goes beyond the scope of the Sweep Report and would be effective in achieving the Sweep Report recommendations because taping is not an effective means of supervising sales efforts.¹⁶

NASD Regulation responded by emphasizing that the taping requirement is being restricted to particularly egregious situations. They stated their concern that when a firm hires high percentages of employees from firms that have been expelled by an SRO or that have had their registration revoked by the Commission, these groups of employees are unlikely to have been trained or supervised adequately. In

addition, NASD Regulation stated its belief in the *in terrorem* effect of recording telephone conversations to deter sales practice abuses. Finally, the NASD believes the Rule directly addresses the issues raised when a firm hires a high percentage of individuals who were employed by a Disciplined Firm where they were inadequately trained and supervised.

The costs of the Rule are too great: The NASD noted that some commenters expressed concerns that the costs of the original Rule would be too high, considering the limited benefits of the Rule. The commenters also stated that the Rule would have a disproportionate effect on small firms.¹⁷

The NASD stated that its narrowing of many aspects of the Rule would result in lower compliance costs. Specifically, in the revised proposal, the NASD exempted firms with five or fewer registered persons from the Rule and tiered the structure for determining the percentage of employees that trigger the taping requirement so that smaller firms would have to hire 30% or more of their registered persons from Disciplined Firms before they would trigger the requirement. In addition, the NASD stated that by narrowing the definition of a Disciplined Firm, fewer firms will be subject to the taping requirement.¹⁸ Finally, with respect to certain practical compliance difficulties, the NASD agreed to provide firms with all the relevant information they need to determine whether they are in compliance with the Rule.

Privacy concerns: The NASD stated that many commenters felt the original Rule would invade the privacy of both a firm's customers as well as the firm's registered representatives, which would be unfair to both firms and registered representatives that did not have disciplinary histories. Commenters also believe that the Rule would conflict with federal and state wiretapping laws. Finally, they are concerned that the

¹⁷ The commenters stated that small firms would be disproportionately effected both in the cost of taping and in the numbers of firms likely to become subject to the threshold percentage of 20%. See letters from Capital, Cowen, Duncan-Smith, Hoak, SIA, and Yee.

¹⁸ The NASD revised the definition of Disciplined Firm to include only expelled and revoked firms in order to focus, at least initially, on the most egregious cases with the greatest supervisory and disciplinary problems. For the two-year period 1995-1996, 14 firms met the definition of Disciplined Firm: 4 firms were expelled from SRO membership and 10 had their registrations revoked. This approach is similar to the one taken by the NFA, and will allow the NASD to gain experience with the implementation of the Rule before it considers expanding the definition of Disciplined Firm to include firms that have been suspended from SRO membership or from SEC registration.

(24) Letter from Paul B. Uhlenhop, Lawrence, Kamin, Saunders & Uhlenhop ("Lawrence, Kamin"), dated October 29, 1996; (25) Letter from Kathryn S. Reinmann, Lehman Brothers Inc. ("Lehman"), dated October 31, 1996; (26) Letter from Kenneth S. Spierer, Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), dated November 14, 1996; (27) Letter from Jack G. Levin, Montgomery Securities ("Montgomery"), dated January 16, 1997; (28) Letter from Frederick W. Bogdan, Morgan Stanley & Co., Incorporated ("Morgan Stanley"), dated October 30, 1996; (29) Letter from Dennis S. Kaminski, Mutual Service Corporation ("MSC"), dated October 29, 1996; (30) Letter from Richard Berenger, Nathan & Lewis Securities, Inc. ("Nathan & Lewis"), dated October 18, 1996; (31) Letter from Douglas L. Dunahay, Neidiger/Tucker/Bruner Inc. ("Neidiger"), dated October 29, 1996; (32) Letter from Edward T. Borer, Philadelphia Corporation ("PC"), dated October 17, 1996; (33) Letter from Michael Flannigan, Protective Group Securities Corporation ("PGSC"), dated September 24, 1996; (34) Letter from Robert A. Fitzner, Jr., RAF Financial Corporation ("RAF"), dated October 29, 1996; (35) Letter from Glen F. Hackmann, Robert W. Baird & Co., Incorporated ("Baird"), dated October 31, 1996; (36) Letter from Douglas F. Schofield, Schofield Investments, Inc., dated September 18, 1996; (37) Letter from Richard O. Scribner, Allen B. Holeman, and C. Evan Steward, SIA, dated November 4, 1996; (38) Letter from Dov S. Schechter, Smith Barney Inc. ("Smith Barney"), dated October 31, 1996; (39) Letter from Patrick C. Haayes, Stratton Oakmont, Inc. ("Stratton"), dated October 30, 1996; (40) Letter from Walter H. Schlobohm, dated February 10, 1997; (41) Letter from John Maceranka, The Windmill Group, Inc., dated September 28, 1996; and (42) Letter from Stanley J. Allen Jr., Yee, Desmond, Schroeder & Allen, Inc. ("Yee"), dated October 28, 1996.

¹³ See, e.g., letters from Lehman and Morgan Stanley.

¹⁴ See, e.g., letters from Edwards, Morgan Stanley, Nathan & Lewis, PC, SIA, and Stratton.

¹⁵ See, e.g., letters from Edwards, Barington, Chatfield Dean, Cullum, Duke II, ESI, ISC, Morgan Stanley, Baird, and Stratton.

¹⁶ See, e.g., letters from CIS, Duke II, ESI, Lehman, Merrill Lynch, MSC, Nathan & Lewis, and SIA.

Rule does not restrict the accessibility and manner in which the tapes may be used.¹⁹

As stated above, because the Rule has been revised to address only the most egregious situations, the impact on privacy will be minimized. Also, upon approval, NASD Regulation will inform NASD members that, in complying with this Rule, they must also comply with federal and state civil and criminal statutes governing the tape recording of conversations. This is the same approach the NFA has taken with respect to this issue.²⁰

Each state has a statute governing wiretapping; there also is a federal statute governing wiretapping and electronic surveillance.²¹ The federal statute and the majority of the state statutes permit taping of telephone conversations with the consent of one party ("one-party statutes"),²² a minority of state statutes require the consent of all parties to the conversation ("two-party statutes").²³ Three issues arise from the proposed Rule: what is necessary to comply with one-party statutes; what is necessary to comply with two-party statutes; and how to comply where a conversation occurs between a person in a one-party state and a person in a two-party state. The NASD has left compliance with the state statutes on wiretapping and privacy for each broker-dealer.

C. Proposed Rule

As revised and filed with the Commission, the proposed Rule would apply whenever a specified percentage of a member firm's sales force is

comprised of registered persons who were employed within the last three years by a firm that has been expelled from membership in a securities industry SRO or has had its registration as a broker/dealer revoked by the SEC. The requisite percentage varies depending on the size of the firm, from 40 percent for a small firm to 20 percent for a larger firm. The firm must establish the required supervisory procedures within 30 days of receiving notice from NASD Regulation or obtaining actual knowledge that it is subject to the provisions of the Rule.

Under the proposed Rule, if the requisite percentage of a member's sales force previously was employed by a Disciplined Firm, the member would be required to adopt special written procedures to supervise the telemarketing activities of all of its registered persons. The procedures would require, at a minimum, that the member tape record all telephone conversations between all of its registered persons and both existing and potential customers for a period of three years, and maintain these supervisory procedures for two years. The Rule would require firms to ensure that they tape record all regularly used means of telecommunications, including cellular phones. The Rule also would require firms subject to the taping requirement to establish reasonable procedures for reviewing the tape recordings to ensure compliance with securities laws and NASD rules, to submit reports to the NASD on their supervision of telemarketing, and to retain and catalog the tapes.

While each firm is responsible for complying with the Rule, NASD Regulation will provide firms with all of the information that they need to determine if they are subject to the requirements of the Rule. NASD Regulation believes that firms should be able to rely on the accuracy of the information provided to them by the NASD. Therefore, the NASD anticipates that a firm will be disciplined for failure to comply with the Rule only if it has actual knowledge of information that would make the firm subject to the Rule that is inconsistent with the information provided by NASD Regulation to the firm that indicated that the firm was not subject to the Rule.

NASD Regulation will compile and maintain several lists that firms will be able to review on a quarterly basis to assist them to determine if they are in compliance with the Rule. The primary list that will be prepared will be a list of firms that meet the definition of Disciplined Firm. Two additional lists will be prepared that should be helpful.

One list will contain an alphabetical listing of all registered persons who had worked for Disciplined Firms within the last three years. Another list will be compiled containing the same list of people grouped according to the firm for which they currently work. In order to alert firms that they are approaching the percentage that would make them subject to the requirements of the Rule, the second list will contain a computation of the percentage of all registered persons at the firm represented by registered persons who had been employed at a Disciplined Firm within the last three years.

The Rule is thus very similar to an NFA interpretation concerning supervision of telemarketing activity.²⁴ NFA member firms subject to the requirements of the interpretation must tape record all sales solicitations. The NFA interpretation applies to firms that meet criteria relating to the percentage of the firm's associated persons who formerly were employed at a firm that was closed down and barred from the industry through enforcement actions for deceptive telemarketing practices.²⁵ These firms are required by the NFA interpretation to tape record sales solicitations. An NFA member subject to these procedures may seek a waiver of the taping requirement upon a satisfactory showing that its current supervisory procedures provide effective supervision over its employees, including enabling the member to identify potential problem areas before customer abuse occurs. The NFA has rarely granted such waivers. In one instance, a waiver was granted to a firm that did not engage in telemarketing and had only institutional customers. In two other instances, partial waivers were granted to firms that hired outside consultants. NFA informed NASD Regulation that they were not satisfied with the work performed by the outside consultants and would not grant such waivers in the future.²⁶ In response to commenter requests, NASD Regulation has included a waiver provision in the proposed Rule, and also has proposed a

¹⁹ See, e.g., letters from AEFA, Duke II, Lawrence, Kamin, Lehman, Morgan Stanley, MSC, Neidiger, Montgomery, SIA, and Smith Barney.

²⁰ See Interpretive Notice to NFA Compliance Rule 2-9, *Supervision of Telemarketing Activity*, § 9021 (February 18, 1997).

²¹ 18 U.S.C. §§ 2519 *et seq.*

²² In one-party statute states, the only issue is whether the registered representative knows of and consents to the tape recording. Since the recording requirement would run to the firm, and the equipment would be the firm's, it might be argued that the firm, and not the representative, is doing the recording. Therefore, it would be necessary for the firm to insure that the representative has notice and consents to the tape recording of his or her telephone conversations. This could be accomplished through a clause in an employment agreement or employee handbook or other written notice to the representative.

²³ In two-party statute states, it would be necessary to insert on the firm's telephone line a recording stating that all telephone conversations are being taped, similar to customer service lines in other industries. Some states require a system of beeps or buzzers that sound throughout the conversation. Another possibility is to insert a clause into the customer agreement notifying customers that their calls will be tape recorded. Some states also have a "business use exception" to the two-party statute consent requirement, but it is worded and applied differently in each state.

²⁴ See Interpretive Notice to NFA Compliance Rule 2-9, *Supervision of Telemarketing Activity*, § 9021 (February 18, 1997).

²⁵ In early 1997, 44 firms met the NFA definition of Disciplined Firm. See Interpretive Notice to NFA Compliance Rule 2-9, *Supervision of Telemarketing Activity*, § 9021 (February 18, 1997).

²⁶ Telephone conversation between Mary N. Revell, Associate General Counsel, NASD, and Daniel Driscoll, Vice President, Compliance, NFA (February 26, 1997).

conforming change to the Rule 9600 Series.²⁷

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and the regulations thereunder applicable to registered securities associations, in particular the requirements of Section 15A(b)(6) of the Act.²⁸ Among other things, Section 15A(b)(6) of the Act requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

In particular, the Commission believes that the proposed rule change will discourage the revival of disciplined firms that have been barred by the industry or that have had their registrations revoked by the Commission. In essence, firms that decide to hire significant numbers of employees from disciplined firms will be required to ensure a proper supervisory environment that protects investors and prevents fraudulent and manipulative telemarketing acts and practices. The monitoring of registered persons' telephone conversations will help to provide additional supervision of individuals who formerly worked at a disciplined firm where they were inadequately trained and supervised.

In the Notice, the Commission requested comments on all aspects of the proposal, as well as the need to inform investors that their calls are being taped. The Commission received one comment letter concerning the proposal. The SIA expressed general concerns about tape recording conversations as a method of supervision. While the Commission recognizes the limitations of this form of supervision, the Commission believes that if registered persons know their phone calls are being taped then they are more likely to avoid making false or exaggerated representations. In addition, compliance officials will have another tool to monitor persons who worked previously at firms with significant sales practice problems. Moreover, the fact

that tapes of the telephone conversations will be available to persons who have disputes with broker-dealer firms will spur firms with a substantial percentage of representatives from an expelled firm to take extra measures to supervise these persons.

No comments were received concerning the issue of notice to investors that their calls are being taped. NASD Regulation has indicated its belief that the issue of notification is addressed by state privacy laws and that firms will be required to independently determine that state laws are satisfied. The Commission believes that the best practice would be for member firms to notify their registered persons and customers that their telephone calls are being tape recorded.

The Commission expects the NASD to monitor the Rule and assess its effectiveness. For example, the NASD should monitor the number of firms that become subject to the Rule as well as firms that hire representatives from disciplined firms but do not trigger the taping requirement to see if there is a need to adjust the percentages. Also, the NASD should monitor the number of firms exempt from the Rule because they have five or fewer employees to determine if this is an effective exclusion. Furthermore, the NASD should make sure firms comply with state laws on notification.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 2 applies the proposal to member firms with a work force comprised of a specified number of registered persons who were employed by a "disciplined firm" within the last three years instead of two years.²⁹ In the Notice, the Commission requested comment on whether the original two-year time frame was appropriate. Although no comments were received on this issue, NASD Regulation and the Commission believe that a three-year time frame will better capture registered persons who worked at disciplined firms during a period of inadequate training, supervision, and sales practice abuses. Therefore, the Commission believes that granting accelerated approval to Amendment No. 2 is appropriate and consistent with Section 15A of the Act.³⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-69 and should be submitted by May 15, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-NASD-97-69), including Amendment No. 2 thereto, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-10796 Filed 4-22-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39881; File No. SR-PCX-98-16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc., Relating to Communication Devices on the Trading Floor

April 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 31, 1998, the Pacific Exchange, Inc. ("PCX"

²⁷ See, e.g., letters from Edwards, Barington, Cullum, Duke I, Duke II, Duncan-Smith, GKN, Hoak, Morgan Stanley, Baird, and Montgomery.

²⁸ 15 U.S.C. § 78o-3(b)(6).

²⁹ Amendment No. 2 also makes several technical amendments which clarify the application of the previously noticed changes to Rules 3010 and 9610.

³⁰ 15 U.S.C. § 78o-3.

³¹ 15 U.S.C. § 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39883A; File No. SR-NASD-97-69]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change, as Amended, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Tape Recording of Conversations

April 23, 1998.

Correction

In FR Document No. 98-10796, beginning on page 20232 for Tuesday, April 23, 1998, make the following correction. On page 20235, second column, the first full paragraph, revise the second sentence to read:

"The procedures would require, at a minimum, that the member tape record all telephone conversations between all of its registered persons and both existing and potential customers for a period of two years, and maintain these supervisory procedures for two years."

Jonathan G. Katz,
Secretary.

[FR Doc. 98-11567 Filed 4-30-98; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D. C. 20416. Phone Number: 202-205-6629.

SUPPLEMENTARY INFORMATION:

Title: "8 (a) Export Survey Initiative".

Type of Request: New Request.

Form No: N/A.

Description of Respondents: 8 (a)

Firms who are located in the top ten exporting states and have more than one

of the SIC Codes listed as the top ten for exporting.

Annual Responses: 200.

Annual Burden: 50.

Comments: Send all comments regarding this information collection to William A. Fisher, Acting Associate Administrator, Office of Minority Enterprise Development, Small Business Administration, 409 3rd Street, S.W., Suite 8000, Washington, D.C. 20416. Phone No: 202-205-6412.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: April 27, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98-11540 Filed 4-30-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9841]

Commonwealth of Pennsylvania and Contiguous Counties in Ohio

Mercer County and the contiguous Counties of Butler, Crawford, Lawrence, and Venango in Pennsylvania and Mahoning and Trumbull Counties in Ohio constitute an economic injury disaster loan area as a result of a fire that occurred on April 6, 1998 in the Hermitage Square Plaza in the City of Hermitage, Pennsylvania. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on January 25, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for Ohio is 9842002.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 23, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98-11539 Filed 4-30-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3079]

Arkansas; (and Contiguous Counties in Missouri and Tennessee)

Mississippi County and the contiguous Counties of Craighead, Crittenden, and Poinsett in the State of Arkansas; Dunklin and Pemiscot Counties in the State of Missouri; and Dyer, Lauderdale, and Tipton Counties in the State of Tennessee constitute a disaster area as a result of damages caused by severe storms and tornadoes that occurred on April 16, 1998.

Applications for loans for physical damages as a result of this disaster may be filed until the close of business on June 22, 1998 and for economic injury until the close of business on January 25, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.000
Homeowners Without Credit Available Elsewhere	3.500
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damages are 307912 for Arkansas; 308012 for Missouri; and 308112 for Tennessee. For economic injury the numbers are 984300 for Arkansas; 984400 for Missouri; and 984500 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 23, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98-11538 Filed 4-30-98; 8:45 am]

BILLING CODE 8025-01-P

NASD Notice to Members 98-53

Members Reminded To Report Executive Representative And Address Changes

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The Office of the Corporate Secretary would like to remind members of the importance of keeping the names of Executive Representatives, as well as mailing addresses for branch offices, up-to-date. Making certain that the Central Registration Depository (CRDSM) is updated with changes in address and contact people, ensures that regular *Notices* and special mailings will be directed properly.

The National Association of Securities Dealers, Inc. (NASD[®]) By-Laws require each member to appoint and certify to the NASD one "executive representative." The Executive Representative of your firm must be a registered principal and a senior manager within the firm. The individual designated as the Executive Representative will represent, vote, and act in all NASD affairs.

To change the Executive Representative of your firm, you must submit written notification to the NASD Corporate Secretary. The form to use for this purpose is included with this Notice. You may submit the original or a photocopy to:

**Joan Conley, Corporate Secretary
Executive Representative Program
c/o CRD/PD Department
National Association of
Securities Dealers, Inc.
1390 Piccard Drive
Rockville, MD 20850
or fax to (202) 728-8075.**

To change the address for mailings sent to both main offices and branch offices, or to update the contact name, a properly executed Schedule E of Form BD must be sent to CRD. Notifications submitted on U.S. Post Office address change cards cannot be processed.

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EXECUTIVE REPRESENTATIVE FORM

Date: _____

NASD Member Firm: _____

Firm CRD #: _____

The NASD Member Firm referenced above designates (name) _____,
CRD # _____, as Executive Representative to the NASD as of
(date) _____. This person is a member of the firm's senior management and is a
registered principal with the firm.

Name of person preparing this form: _____

Telephone number: _____

Return this form to:

Joan Conley, Corporate Secretary
Executive Representative Program
c/o CRD/PD Department
National Association of Securities Dealers, Inc.
1390 Piccard Drive
Rockville, MD 20850
or fax to (202) 728-8075

NASD Notice to Members 98-54

SEC Approves Rule Change Regarding Approval Of Research Reports

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On June 22, 1998, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD[®]) Rule 2210 (Communications with the Public) that permit the approval of research reports by a supervisory analyst approved by the New York Stock Exchange (NYSE) to satisfy NASD requirements that research reports be approved by a registered principal. The amendments are effective immediately.

Questions concerning this *Notice* may be directed to Frank J. McAuliffe, Vice President, Member Regulation, NASD Regulation, Inc., at (301) 590-6694; Thomas A. Pappas, Associate Director, Advertising Regulation Department, NASD RegulationSM, at (202) 728-8330, or Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Discussion

NASD Rule 2210 regarding Communications with the Public requires each item of advertising and sales literature to be approved by signature or initial by a registered principal of an NASD member prior to use or filing with NASD Regulation. The definition of "sales literature" in Rule 2210 includes research reports. Paragraph (b) of NYSE Rule 472 regarding Communications with the Public requires that research reports be prepared or approved by a supervisory analyst acceptable to the NYSE under NYSE Rule 344.¹ A joint NASD/NYSE member raised the issue of whether the approval of research reports by a supervisory analyst approved by the NYSE under NYSE Rule 344 could satisfy the NASD requirement under NASD Rule 2210 that a registered principal approve research reports prior to use or filing with NASD Regulation.

In order to become a supervisory analyst under NYSE Rule 344, an applicant may present evidence of appropriate experience and either (i) pass an NYSE Supervisory Analysts Qualification Examination or (ii) successfully complete a specified level of the Chartered Financial Analysts Examination prescribed by the NYSE and pass only that portion of the NYSE Supervisory Analysts Qualification Examination dealing with Exchange rules on research standards and related matters.²

The NYSE designation of "supervisory analyst" does not constitute a registration category for NASD principals. However, NASD Regulation reviewed the NYSE content outline for the NYSE's Supervisory Analysts Qualification Examination and concluded that the coverage in the examination of the NYSE communication rules is comparable to the communication rules covered in the NASD general principal examination. In addition, the particular categories of securities addressed in the "securities analysis" section of the NYSE content outline are fixed income securities and equity securities.

Accordingly, NASD Regulation believes that, with respect to the level of training and experience necessary for the review of research reports on debt and equity, the level of supervisory analyst registration is comparable to the level of NASD general principal registration. Given that the scope of approval authority is limited to research reports on debt and equity and that the material in the supervisory analyst and general principal examinations is comparable, the investor protection goals intended by the NASD's current general principal review requirement can be satisfied by NYSE requirements in this area, thereby eliminating duplicative regulatory requirements.

The rule change amends subparagraph (b)(1) of Rule 2210 to state that the requirement that advertisements and sales literature be approved by a registered principal of an NASD member firm may be met, with respect to corporate debt and equity securities that are the subject of research reports as that term is defined in NYSE Rule 472, by the signature or initial of a supervisory analyst approved pursuant to NYSE Rule 344. Any other advertisements or sales literature requiring internal approval, such as Investment Company sales material, would continue to require approval by an NASD registered principal.

Text Of New Rule

(Note: New language is underlined.)

2200. Communications with Customers and the Public

2210. Communications with the Public

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member. This requirement may be met, only with respect to corporate debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York

Stock Exchange, by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

Endnotes

¹ "Research reports" are defined by the NYSE in Rule 472 as "...an analysis of individual companies, industries, market conditions, securities or other investment vehicles which provide information reasonably sufficient upon which to base an investment decision."

² See NYSE Rule 344, Supplementary Material .10.

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NASD Notice to Members 98-55

Transaction Reporting And Quotation Obligations Under The Fixed Income Pricing System (FIPS)

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On April 11, 1994, The Nasdaq Stock Market, Inc., began operation of the Fixed Income Pricing SystemSM (FIPS[®]) for members trading high-yield bonds. FIPS was created to facilitate the over-the-counter (OTC) trading of high-yield, corporate debt securities rated BB+ or lower by Standard & Poor's Corporation. The goals in the creation of FIPS were similar to those which led to the creation of The Nasdaq Stock Market[®]—to increase information and transparency in the marketplace, thereby encouraging investment and growth. As the list of bonds requiring FIPS reporting continues to expand, members are reminded of their reporting and quotation obligations.

Reporting Transactions (Market Place Rules 6240A And 6240B)

FIPS securities may be classified into two categories:

1. Mandatory Bonds consist of the most active top-tier FIPS securities **(currently totaling 50 bonds)**. These bonds must be reported within five minutes after trade execution.
2. Non-Mandatory Bonds are all other FIPS securities. There are approximately 2,000 bonds **that must be reported anytime during the trading day**.

The obligation to report transactions on FIPS securities depends on the role of each party in the trade. In transactions between:

- A FIPS dealer and a FIPS broker's broker—only the broker's broker reports the trade.
- Two FIPS dealers—only the sell-side dealer reports the trade.
- A FIPS participant and non-participant—only the FIPS participant

reports the trade.

Quotation Obligations (Market Place Rule 6230)

If you are actively trading in one or more FIPS mandatory bond(s) as a FIPS dealer as described in Market Place Rule 6230, **you may be obligated to enter and maintain firm quotations** into the FIPS system. The failure to quote in accordance with the FIPS rules may result in disciplinary action.

FIPS participants must continuously display firm bids/offers in the FIPS mandatory bonds in which they are actively trading. Quotations may be one- or two-sided and must be reasonably related to the prevailing market in each bond. Quotes must reflect a minimum size of 100 bonds (\$100,000 par value) and be in increments of 1/8 of a point. FIPS dealers may enter firm quotations into FIPS under their own names or through a FIPS broker. Quotes entered under a dealer's own name will be identified as such; all others will bear the name of the broker with the dealer remaining anonymous.

A FIPS broker must transmit all quotes received from FIPS dealers to the FIPS system for dissemination to all FIPS participants and to the public through market data vendors (via the Bond Quotation Dissemination Service (BQDS) data feed).

Please Note: If you are not actively trading in a particular FIPS security and only execute trades to accommodate customer orders, you still have an obligation to **report these trades** to the National Association of Securities Dealers, Inc. (NASD[®]).

Common Questions

The following questions may arise regarding the reporting of FIPS trades:

Question: If I believe that my firm is not a FIPS dealer or broker's broker, **do I have to report a trade** in a FIPS security to the NASD?

Answer: Yes, all transactions in FIPS securities must be reported, subject to limited exceptions. The reporting guidelines are set forth according to mandatory or non-mandatory bond categories. This would include all firms that trade high-yield bonds for their own (inventory) account and/or that execute trades on behalf of customers. Any trade executed by a firm in a FIPS bond must be reported to the NASD.

Question: What securities are eligible for quoting in FIPS?

Answer: FIPS securities are OTC high-yield, fixed-income corporate debt securities rated BB+ or lower by Standard & Poor's Corporation. It is also possible that a non-rated issue may be a FIPS-eligible security.

Question: If I am a broker/dealer who is a correspondent of a clearing firm, will my clearing firm report the trades on my behalf?

Answer: Not necessarily. The obligation to report falls on the shoulders of the firm that executes the trade, whether it be for inventory or to accommodate a customer order. Most clearing firms will not assume the responsibility to report trades they did not execute on behalf of their correspondents. **It should not be assumed** that the clearing firm is reporting your trades in FIPS securities.

Question: As a compliance officer, am I required to monitor the reporting of all FIPS transactions—especially on those desks that, in the normal course of business, may not consistently trade high-yield bonds?

Answer: Yes, all compliance officers should be certain that every part of

their firm is reporting FIPS trades. Many traders assume that, in a normal course of business, the high-yield trading desk is reporting all of the firm's FIPS transactions and the firm's obligations to the rules are being fulfilled. **This may not be completely accurate. For example, there are high grade desks that trade crossover bonds and utility desks that trade bonds that are rated BB+ or lower.** These desks may be located in different areas and/or different floors in a particular firm. The firm is obligated to report all of its FIPS transactions, regardless of the desk that trades the bonds.

It is imperative that all Compliance Officers, Head Traders, and all corporate traders be aware of the reporting obligation, regardless of which desk trades a FIPS bond, so that the firm remains in compliance. Failure to report FIPS trades as required may be grounds for disciplinary action by NASD Regulation, Inc.

Attached is a reprint of the letter that went out to all FIPS participants on June 3, 1998, concerning the recent increase in the number of bonds in our database.

The list of additions referenced in the letter below is attached in this *Notice*. This list of additions, as well as the entire list of FIPS bonds, can be obtained by calling Joanie Rizzo at (212) 858-3975. **The entire list can also be accessed through our FIPS Web Site located at www.nasdaqfips.com.** In order to ensure that you are in compliance with the reporting of all FIPS bonds, you must review the entire list. Many of these bonds may be traded by other trading desks within your firm.

Please familiarize yourself with the FIPS Web Site and utilize it for obtaining lists and other information, as it will eventually become

the primary source of FIPS system changes. The fax system is both cumbersome and expensive, so we will be moving toward a paper-free, timely method of contacting FIPS participants via the Web Site, hopefully before the end of the summer. Once the new method is in place, those of you who require contact through the fax system may continue to have that option at a fee to be determined.

If a daily e-mail subscription containing the complete list of FIPS mandatory and non-mandatory issues would be of interest to your firm at this time, please send us an e-mail at fipsfeedback@nasd.com.

As always, if you have any questions or concerns regarding FIPS, please contact:

Nasdaq[®]
General Questions
Justin Tubiolo
(212) 858-4419

Technology Questions
Jim Schroder
(212) 858-4321

FIPS Service Desk
Cheryl Glowacki
(203) 385-6373

FIPS Subscriber Services
Stacey Galullo
(800) 777-5606

FIPS Literature/Fax List Inquiries
Joanie Rizzo
(212) 858-3975

MarketWatch and TradeWatch
(800) 211-4953
or (301) 590-6890

NASD RegulationSM
Regulatory Questions
Stephen Simmes
(301) 590-6451

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June 3, 1998

Dear FIPS Participant:

I want to alert you to an upcoming significant increase in the number of bonds subject to trade reporting on the Fixed Income Pricing SystemSM (FIPS[®]).

As you know, a very large percentage of high-yield bonds have come to market as 144A issues. When these private placements are exchanged for like publicly traded securities, they become subject to FIPS reporting and National Association of Securities Dealers, Inc. (NASD[®]) oversight. Please be aware that approximately 450 such issues will be added to the FIPS database and faxed to you in increments over the next several weeks.

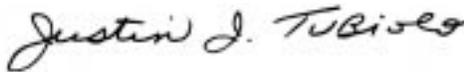
We have made every effort to contact every FIPS Participant Firm for a current fax number and the name of at least one designated FIPS responsible party, but it is the obligation of each Participant Firm to advise us of any changes in fax number or contact person. If you do not receive any faxes over the next several days, please call Joan Rizzo at (212) 858-3975 to verify your fax number.

Enclosed is a complete list of the exchanged 144A issues that will become eligible for reporting on FIPS. The entire list of FIPS bonds can be viewed and printed from the FIPS Web Site at www.nasdaqfips.com. From the homepage, click on "Issue Data," then enter your FIPS Workstation user ID and password. (Service Desk Participants can obtain a FIPS Web Site user ID/password by contacting Subscriber Services at (800) 777-5606.) For the full list, select one of the "Full List" files in the "Download" section of the Issue Data page. If you do not have Internet access, the full list can be obtained in hard copy by calling Joan Rizzo at (212) 858-3975.

Members are again specifically reminded of their reporting obligations under NASD Market Place Rules 6240A, 6240B, and 6230, which mandate timely reporting of all trades in FIPS listed bonds. **Failure to report FIPS trades as required may be grounds for disciplinary action by NASD Regulation, Inc.**

As always, members with questions regarding FIPS reporting or quotation obligations are urged to contact me at (212) 858-4419, Jim Schroder, Assistant Director, at (212) 858-4321, or Stephen Simmes, Market Regulation, at (301) 590-6451.

Sincerely ,



Justin Tubiolo
Director, Fixed-Income
Trading and Market Services

ISSUER NAME	COLLATERAL TYPE	CUSIP	Coupon	Maturity	Exchanged
AES CORP	Senior Sub Notes	00130HAG0	8.375	08/15/07	09/19/97
AES CORP	Senior Sub Notes	00130HAK1	8.500	11/01/07	03/16/98
AES CORP	Senior Sub Debs	00130HAL9	8.875	11/01/27	03/16/98
AFC ENTERPRISES	Senior Sub Notes	00104QAB3	10.250	05/15/07	09/08/97
APS INC.	Company Guarantee	002030AC8	11.875	01/15/06	07/18/96
ABRAXAS PETRO/CN ABRAXAS SERIES B	Senior Notes	003831AC8	11.500	11/01/04	03/14/97
ACKERLY COMM INC. SERIES B	Senior Notes	004527AD9	10.750	10/01/03	01/15/94
ACME BOOT CO. SERIES B	Senior Notes	004622AD8	11.500	12/15/00	08/02/94
ADAMS OUTDOOR ADVERTISING	Senior Notes	006348AB2	10.750	03/15/06	08/16/96
ADELPHIA COMMUNICATIONS SERIES B	Senior Notes	006848AS4	9.250	10/01/02	12/03/97
ADELPHIA COMMUNICATIONS SERIES B	Senior Notes	006848AK1	9.500	02/15/04	05/04/94
ADELPHIA COMMUNICATIONS SERIES B	Senior Notes	006848AH8	10.250	07/15/00	02/10/94
AFFINITY GROUP HOLDING	Senior Notes	00826WAC5	11.000	04/01/07	09/15/97
AFTERMARKET TECHNOLOGY SERIES D	Senior Sub Notes	008318AD9	12.000	08/01/04	09/11/95
AIRTRAN AIRLINES INC. SERIES B	Company Guarantee	00949KAA7	10.500	04/15/01	02/06/98
ALARIS MEDICAL SYSTEMS	Company Guarantee	011638AA1	9.750	12/01/06	10/21/97
ALL-AMERICAN BOTTLING	Senior Notes	016431AB4	13.000	08/15/01	01/07/94
ALLBRITTON COMMUNICATIONS SERIES B	Senior Sub Debs	016745AD3	9.750	11/30/07	06/05/96
ALLIANCE GAMING CORP. SERIES B	Company Guarantee	01859PAG9	10.000	08/01/07	01/05/98
ALLIED WASTE NORTH AMERICA	Company Guarantee	01958XAC1	10.250	12/01/06	07/23/97
ALLIED WASTE INDUSTRIES	Senior Discount Nts	019589AC4	0/11.300	06/01/07	12/16/97
ALLISON ENGINE INC.	Senior Sub Notes	019686AB0	10.000	12/01/03	07/01/94
ALPINE GROUP INC. SERIES B	Senior Notes	020825AD7	12.250	07/15/03	01/19/96
ALVEY SYSTEMS INC.	Senior Sub Notes	022380AB5	11.375	01/31/03	06/11/96
AMER COMMUNICATION SVCS	Senior Discount Nts	02520BAE2	0/12.750	04/01/06	06/25/96
AMER COMMUNICATION SVCS	Senior Discount Nts	02520BAC6	0/13.000	11/01/05	03/27/95
AM GENERAL CORPORATION SERIES B	Senior Notes	001702AB5	12.875	05/01/02	10/17/95
AMERICAN PAD & PAPER-DEL SERIES B	Senior Sub Notes	028821AA4	13.000	11/15/05	07/24/96
AMERICAN RESTAURANT SERIES *	Notes	029309AB7	12.000	09/15/98	10/13/92
AMER RESTAURANT SERIES 92	Senior Notes	029309AE1	13.000	09/15/98	08/28/96
AMER RESTAURANT SERIES 93	Senior Notes	029309AF8	13.000	09/15/98	08/28/96
AMER RESTAURANT GROUP	Senior Notes	029305AC3	0/14.000	12/15/05	03/14/94
AMERICAN SKIING CO. SERIES B	Senior Sub Notes	029654AG5	12.000	07/15/06	01/15/97
AMERICAN SKIING CO. SERIES B	Discount Notes	029654AH3	0/13.750	01/15/07	01/15/97
AMERICO LIFE INC.	Senior Sub Notes	03060NAB6	9.250	06/01/05	10/26/93
AMERIGAS PARTNERS, L.P. SERIES B	Senior Notes	030981AB0	10.125	04/15/07	07/14/95
AMERITRUCK DISTRIBUTION SERIES B	Senior Sub Notes	03071XAC9	12.250	11/15/05	02/22/98
AMTRAN INC.	Company Guarantee	03234GAC0	10.500	08/01/04	01/09/98
AMTROL INC.	Senior Sub Notes	03234AAC3	10.625	12/31/06	02/18/97
ANCHOR ADVANCED PRODUCTS	Senior Notes	032816AC4	11.750	04/01/04	10/00/97
ANKER COAL GROUP INC. SERIES B	Senior Notes	035396AB6	9.750	10/01/07	03/11/98
ANVIL KNITWEAR INC. SERIES B	Senior Notes	03734PAC5	10.875	03/15/07	08/22/97
ARCHIBALD CANDY CORP.	Company Guarantee	039525AC4	10.250	07/01/04	11/12/97
ASCENT ENTERTAINMENT GROUP	Senior Discount Nts	043628AC0	0/11.875	12/15/04	03/02/98
ATLAS AIR INC.	Senior Notes	049164AC0	10.750	08/01/05	12/04/97
ATRIUM COMPANIES INC.	Senior Sub Notes	04962VAC3	10.500	11/15/06	05/09/97
AUTOTOTE CORP. SERIES B	Company Guarantee	053323AF8	10.875	08/01/04	10/27/97
AVONDALE MILLS INC.	Company Guarantee	054393AB9	10.250	05/01/06	10/23/96
AXIA INC. SERIES B	Senior Sub Notes	054596AC5	11.000	03/15/01	08/24/94
BE AEROSPACE INC. SERIES B	Senior Sub Notes	055381AD9	9.875	02/01/06	05/14/96
B&G FOODS INC.	Company Guarantee	055088AC2	9.625	08/01/07	03/11/98
BPC HOLDING CORP. SERIES B	Senior Notes	055930AB7	12.500	06/15/06	09/27/96
BTI TELECOM CORP.	Senior Notes	05577BAC1	10.500	09/15/07	03/10/98

ISSUER NAME	COLLATERAL TYPE	CUSIP	Coupon	Maturity	Exchanged
BANKNORTH CAPITAL TRUST I SERIES B	Company Guarantee	06646QAC3	10.520	05/01/27	11/13/97
BAR TECHNOLOGIES	Company Guarantee	067016AE5	13.500	04/01/01	08/28/96
BELCO OIL & GAS CORP. SERIES B	Senior Sub Notes	077410AC2	8.875	09/15/07	11/00/97
BELCO OIL & GAS CORP. SERIES B	Company Guarantee	191886AC4	10.500	04/01/06	07/12/96
BELDEN & BLAKE CORP. SERIES B	Company Guarantee	077447AC4	9.875	06/15/07	11/00/97
BENEDEK BROADCASTING	Senior Notes	081904AC8	11.875	03/01/05	12/11/95
BENTON OIL & GAS	Senior Notes	083288AE0	9.375	11/01/07	02/20/98
BENTON OIL & GAS	Senior Notes	083288AC4	11.625	05/01/03	08/23/96
BIG 5 CORP. SERIES B	Senior Notes	089150AB2	10.875	11/15/07	02/18/98
BIG FLOWER PRESS	Senior Sub Notes	089160AC9	8.875	07/01/07	09/25/97
BOOTH CREEK SKI HOLDINGS SERIES B	Senior Notes	099408AC0	12.500	03/15/07	08/13/97
BUILDING MATERIALS CORP. SERIES B	Senior Notes	120111AJ8	8.000	10/15/07	03/20/98
BUILDING MATERIALS CORP. SERIES B	Senior Notes	120111AF6	8.625	12/15/06	03/12/97
BUILDING MATERIALS CORP. SERIES B	Senior Notes	120111AC3	11.750	07/01/04	12/15/94
BURKE INDUSTRIES INC.	Company Guarantee	121360AB7	10.000	08/15/07	01/28/98
BUSSE BROADCASTING CORP.	Senior Notes	123309AD8	11.625	10/15/00	03/08/96
BWAY CORP. SERIES B	Company Guarantee	056039AC4	10.250	04/15/07	03/11/98
CCPR SERVICES INC.	Company Guarantee	12489XAD4	10.000	02/01/07	07/29/97
CFP HOLDINGS INC .SERIES B	Senior Notes	12526FAB2	11.625	01/15/04	08/11/97
CLN HOLDINGS INC. 2nd PRIORITY DISCOUNT NTS	Senior Discount Nts	125638AB2	0.000	05/15/01	11/14/97
CMS ENERGY SERIES B	Senior Notes	125896AG5	7.375	11/15/00	02/13/97
CP FUNDING CORP. SERIES CL B	Disc 1st Mtge Nts	125923AC6	0/12.500	06/15/04	11/15/94
CS WIRELESS SYSTEMS INC. SERIES B	Senior Discount Nts	22942TAE1	0/11.375	03/01/06	12/09/96
CSK AUTO INC. SERIES A	Company Guarantee	12637KAB7	11.000	11/01/06	06/17/97
CABOT SAFETY CORP.	Senior Sub Notes	127098AB7	12.500	07/15/05	12/01/95
CALMAR INC. SERIES B	Senior Sub Notes	13126BAD9	11.500	08/15/05	01/10/96
CALPINE CORP.	Senior Notes	131347AF3	8.750	07/15/07	12/30/97
CALPINE CORP.	Senior Notes	131347AD8	10.500	05/15/06	11/05/96
CAMBRIDGE INDUSTRIES INC. SERIES B	Company Guarantee	132201AE4	10.250	07/15/07	01/14/98
CANANDAIGUA BRANDS SERIES C	Senior Sub Notes	137219AE1	8.750	12/15/03	03/07/97
CAPSTAR BROADCASTING	Senior Sub Notes	14066PAD8	9.250	07/01/07	09/15/97
CAPSTAR BROADCASTING	Senior Discount Nts	14066PAC0	0/12.750	02/01/09	09/11/97
CARSON INC. SERIES B	Company Guarantee	145845AB9	10.375	11/01/07	02/19/98
CASINO MAGIC-LOUISIANA SERIES B	Company Guarantee	147907AD1	13.000	08/15/03	08/28/97
CELLNET DATA SYSTEMS INC. SERIES B	Senior Discount Nts	15115MAF8	0/13.000	06/15/05	02/14/97
CELLNET DATA SYSTEMS INC.	Senior Discount Nts	15115MAL5	0/14.000	10/01/07	01/22/98
CENTRAL RENTS INC. SERIES B	Senior Notes	154900AE4	12.875	12/15/03	10/28/94
CHANCELLOR MEDIA CORP.-LA SERIES B	Company Guarantee	158916AC0	8.750	06/15/07	11/17/97
CHANCELLOR MEDIA CORP. SERIES B	Company Guarantee	158916AD8	10.500	01/15/07	05/15/97
CHARTER COMM SO. EAST L.P. SERIES B	Senior Notes	160907AC5	11.250	03/15/06	08/26/96
CHARTER COMM SO. EAST HLD. SERIES B	Discount Notes	161170AC9	0/14.000	03/15/07	08/26/96
CHATTEM INC. SERIES B	Senior Sub Notes	162456AE7	12.75	06/15/04	09/19/94
CHATWINS GROUP INC.	Senior Notes	162468AE2	13.000	05/01/03	09/01/93
CHEMICAL LEAMAN CORP.	Senior Notes	163749AC8	10.375	06/15/05	11/10/97
CHESAPEAKE ENERGY CORP.	Senior Notes	165167AF4	10.500	06/01/02	09/25/95
CINEMARK USA INC. SERIES B	Senior Sub Notes	172441AL1	8.500	08/01/08	03/09/98
CINEMARK USA INC. SERIES B	Senior Sub Notes	172441AF4	9.625	08/01/08	11/22/96
CINEMARK USA INC. SERIES D	Senior Sub Notes	172441AJ6	9.625	08/01/08	10/30/97
CITADEL BROADCASTING CO.	Senior Sub Notes	17285EAC3	10.250	07/01/07	01/28/98
CLARK MATERIALS HANDLING	Company Guarantee	181475AC8	10.750	11/15/06	03/17/97
CLARK REFINING & MARKETING INC.	Senior Sub Notes	181900AE1	8.875	11/15/07	02/23/98
CLARK-SCHWEBEL INC. SERIES B	Debentures	181515AB3	12.500	07/15/07	12/00/97
CLEVELAND ELEC/TOLEDO EDISON SERIES B	Notes	186118AG0	7.190	07/01/00	10/27/97

ISSUER NAME	COLLATERAL TYPE	CUSIP	Coupon	Maturity	Exchanged
CLEVELAND ELEC/TOLEDO EDISON SERIES B	Notes	186118AH8	7.670	07/01/04	10/27/97
CLIFFS DRILLING CO. SERIES D	Company Guarantee	18682CAF7	10.250	05/15/03	12/16/97
COACH USA INC. SERIES B	Company Guarantee	18975LAC0	9.375	07/01/07	11/12/97
COAST HOTELS & CASINO SERIES B	Company Guarantee	19035CAC6	13.000	12/15/02	08/22/96
COBBLESTONE GOLF GROUP SERIES B	Senior Notes	190885AC7	11.500	06/01/03	11/05/96
COINMACH CORP. SERIES D	Senior Notes	192596AE4	11.750	11/15/05	02/06/98
COLE NATIONAL GROUP INC.	Senior Sub Notes	193292AG4	8.625	08/15/07	01/27/98
COLLINS & AIKMAN FLOORCOVER. SERIES B	Senior Sub Notes	19483NAC9	10.000	01/15/07	07/07/97
COLORADO GAMING & ENT.	Senior Notes	196469AA8	12.000	06/01/03	06/07/96
COLORADO PRIME CORP.	Company Guarantee	196902AD2	12.500	05/01/04	10/10/97
COMCAST CELLULAR HOLDINGS SERIES B	Senior Notes	20029YAC4	9.500	05/01/07	11/07/97
COMFORCE OPERATING INC. SERIES B	Senior Notes	20038MAC9	12.000	12/01/07	03/30/98
COMMUNICATIONS INSTRUMEN. SERIES B	Company Guarantee	203406AC7	10.000	09/15/04	03/05/98
COMMUNICATIONS & POWER IND. SERIES B	Senior Sub Notes	20338CAC8	12.000	08/01/05	12/20/95
COMMUNITY DISTRIBUTORS SERIES B	Company Guarantee	203646AB0	10.250	10/15/04	03/13/98
CONNECTICUT LIGHT & POWER SERIES C	1st Mortgage	207597DQ5	7.750	06/01/02	10/00/97
CONSECO INC. SERIES B	Senior Sub Notes	066229AB1	13.000	11/01/02	05/14/93
CONTIFINANCIAL CORP.	Senior Notes	21075VAC1	7.500	03/15/02	06/11/97
CONTINENTAL AIRLINES INC. SERIES 962D	Pass-thru Certificate	210805AU1	11.500	04/02/08	11/01/96
CORE-MARK INTERNATIONAL	Senior Sub Notes	218682AD4	11.375	09/15/03	02/07/97
CORPORATE EXPRESS SERIES B	Senior Sub Notes	219888AB0	9.125	03/15/04	03/20/95
COURTYARD BY MARRIOTT SERIES B	Senior Notes	222746AC3	10.750	02/01/08	06/17/96
CROSS TIMBERS OIL CO. SERIES B	Senior Sub Notes	227573AG7	8.750	11/01/09	12/19/97
CROSS TIMBERS OIL CO. SERIES B	Senior Sub Notes	227573AD4	9.250	04/01/07	06/16/97
CURTICE-BURNS FOODS INC.	Senior Sub Notes	231382AA0	12.250	02/01/05	01/19/95
DADE INTERNATIONAL INC. SERIES B	Senior Sub Notes	233663AE3	11.125	05/01/06	12/04/96
DAY INTERNATIONAL GROUP INC. SERIES B	Senior Notes	239536AB1	11.125	06/01/05	12/05/95
DECORATIVE HOME ACCENTS SERIES B	Senior Notes	243626AE8	13.000	06/30/02	12/13/95
DEL MONTE CORP./FOODS CO. SERIES B	Senior Sub Notes	245217AH7	12.250	04/15/07	08/21/97
DELCO REMY INTERNATIONAL INC.	Company Guarantee	246626AE5	10.625	08/01/06	01/00/98
DELL COMPUTER	Senior Notes	247025AC3	11.000	08/15/00	01/30/94
DELTA BEVERAGE GROUP	Senior Notes	247389AB5	9.750	12/15/03	04/04/97
DELTA MILLS INC. SERIES B	Company Guarantee	247701AB1	9.625	09/01/07	02/12/98
DETAILS INC. SERIES B	Senior Sub Notes	25063WAC4	10.000	11/15/05	03/16/98
DETAILS HOLDINGS CORP. SERIES B	Senior Discount Nts	25063TAA5	0/12.500	11/15/07	03/16/98
DI GIORGIO CORP. SERIES B	Senior Notes	252435AF9	10.000	06/15/07	10/10/97
DII GROUP INC.	Senior Sub Notes	232949AC1	8.500	09/15/07	01/22/98
DIAL CALL COMMUNICATIONS SERIES B	Senior Discount Nts	25246PAE5	10.250	12/15/05	05/23/94
DIGITAL TV SVC./DTS CAPTL SERIES B	Company Guarantee	25387XAC1	12.500	08/01/07	01/30/98
DISCOVERY ZONE	Company Guarantee	25468BAF4	13.500	08/01/02	03/06/98
DOBSON COMMUNICATIONS CORP.	Senior Notes	256069AC9	11.750	04/15/07	06/17/97
DOLLAR FINANCIAL GROUP SERIES A	Senior Notes	256666AB4	10.875	11/15/06	04/10/97
DRYPERS CORP. SERIES B	Senior Notes	262497AG5	10.250	06/15/07	10/15/97
DRYPERS CORP. SERIES B	Senior Notes	262497AC4	12.500	11/01/02	08/12/93
DYNCORP INC.	Senior Sub Notes	268162AD6	9.500	03/01/07	07/28/97
E&S HOLDINGS CORP. SERIES B	Senior Sub Notes	26822QAC7	10.375	10/01/06	02/12/97
EV INTERNATIONAL INC. SERIES A	Company Guarantee	269263AC3	11.000	03/15/07	09/05/97
EASCO CORP. SERIES B	Senior Notes	270330AG8	10.000	03/15/01	08/19/94
ECHOSTAR DBS CORP.	Company Guarantee	27876GAC2	12.500	07/01/02	11/28/97
ECHOSTAR SATELLITE BROADCAST.	Senior Discount Nts	27876DAB1	0/13.125	03/15/04	07/26/96
ELECTRONIC RETAILING SYS.	Senior Discount Nts	285825AC9	0/13.250	02/01/04	07/07/97
ENVIRODYNE INDUSTRIES SERIES B	Senior Notes	294037AJ5	12.000	06/15/00	12/08/95
EXIDE ELECTRONICS GROUP SERIES B	Senior Sub Notes	302052AC9	11.500	03/15/06	07/19/96

ISSUER NAME	COLLATERAL TYPE	CUSIP	Coupon	Maturity	Exchanged
EYE CARE CENTERS	Senior Notes	302294AC7	12.000	10/01/03	06/09/94
FM HOLDINGS INC. SERIES B	Debentures	301933AB3	13.125	09/15/05	01/18/94
FAIRCHILD SEMICONDUCTOR	Senior Sub Notes	303727AC5	10.125	03/15/07	08/13/97
FALCON DRILLING CO. INC. SERIES B	Senior Notes	305914AB9	9.750	01/15/01	08/30/94
FALCON HOLDING GROUP, L.P.	Senior Sub Notes	306064AB2	11.000	09/15/03	10/29/93
FARM FRESH INC. SERIES A	Senior Notes	307669AE1	12.250	10/01/00	05/20/94
FEDERAL DATA CORP.	Company Guarantee	313252AC2	10.125	08/01/05	01/22/98
FELCOR SUITES, L.P.	Company Guarantee	313917AE6	7.375	10/01/04	03/20/98
FELCOR SUITES, L.P.	Company Guarantee	313917AF3	7.625	10/01/07	03/20/98
FINGERHUT CO.	Senior Notes	317867AC3	7.375	09/15/99	02/03/97
FIRST PALM BEACH BANCORP SERIES B	Debentures	33589BAC9	10.350	06/30/02	12/23/97
FLEMING COMPANIES INC. SERIES B	Company Guarantee	339130AK2	10.500	12/01/04	02/10/98
FLEMING COMPANIES INC. SERIES B	Company Guarantee	339130AL0	10.625	07/31/07	02/10/98
FLORIDA COAST PAPER LLC SERIES B	1st Mortgage	340606AC6	12.750	06/01/03	11/13/96
FONDA GROUP INC. SERIES B	Senior Sub Notes	344555AC1	9.500	03/01/07	07/31/97
FORMAN PETROLEUM CORP. SERIES B	Company Guarantee	346361AE8	13.500	06/01/04	10/31/97
FOUR M CORP. SERIES B	Senior Notes	350870AC5	12.000	06/01/06	11/13/96
FOX/LIBERTY NETWORKS LLC	Senior Notes	351437AC2	8.875	08/15/07	01/23/98
FOX/LIBERTY NETWORKS LLC	Senior Discount Nts	351437AD0	0/9.750	08/15/07	01/23/98
FREEDOM CHEMICALS INC.	Senior Sub Notes	356371AC8	10.625	10/15/06	03/17/97
GFSI HOLDINGS INC. SERIES B	Senior Discount Nts	36169LAC8	0/11.375	09/15/09	01/30/98
GENERAL MEDIA	Senior Notes	370295AD9	10.625	12/31/00	07/15/94
GENESIS HEALTH VENTURES	Senior Sub Notes	371912AF3	9.250	10/01/06	02/28/97
GENMAR HOLDINGS SERIES A	Senior Sub Notes	372305AB8	13.500	07/15/01	11/30/94
GEOTEK COMMUNICATION INC. SERIES B	Senior Discount Nts	373654AG7	0/15.000	07/15/05	12/05/95
GIANT INDUSTRIES	Company Guarantee	374508AD1	9.000	09/01/07	12/26/97
GLASSTECH INC. SERIES B	Senior Notes	377265AG8	12.750	07/01/04	12/01/97
GLOBALSTAR L.P./CAPITAL SERIES *	Senior Notes	379363AK0	11.375	02/15/04	08/15/97
GORGES/QUIK TO FIX FOOD SERIES B	Senior Sub Notes	382883AB2	11.500	12/01/06	04/28/97
GOTHIC ENERGY CORP. SERIES B	Company Guarantee	383482AE6	12.250	09/01/04	12/01/97
GRAHAM FIELD HEALTH PDS SERIES A	Senior Sub Notes	384632AB1	9.750	08/15/07	02/09/98
GRAND CASINOS INC. SERIES B	Company Guarantee	385269AC9	9.000	10/15/04	02/17/98
GRANITE DEVELOPMENT PARTNERS	Senior Notes	387347AB3	10.830	11/15/03	12/05/94
GREENPOINT CAPITAL TRUST I	Company Guarantee	39538PAC7	9.100	06/01/27	10/14/97
GREYHOUND LINES SERIES B	Company Guarantee	398048AH1	11.500	04/15/07	08/01/97
GREYSTONE HOMES INC.	Senior Notes	398068AB2	10.750	03/01/04	07/29/94
HCC INDUSTRIES	Company Guarantee	404125AE6	10.750	05/15/07	12/03/97
HAMMONS, JOHN Q., HOTELS L.P.	1st Mortgage	408628AC9	9.750	10/01/05	12/16/96
HARRAHS OPER. INC. SERIES B	Senior Sub Notes	413627AB6	8.750	03/15/00	08/23/93
HAYES LEMMERZ INTL. INC. SERIES B	Company Guarantee	420804AG1	9.125	07/15/07	10/28/97
HAYES LEMMERZ INTL. INC. SERIES B*	Company Guarantee	420804AH9	9.125	07/15/07	10/28/97
HEALTHSOUTH CORP. SERIES B	Senior Sub Notes	211642AD5	10.375	04/01/03	05/26/93
HEARTLAND WIRELESS COMM.	Senior Notes	42235WAC2	13.000	04/15/03	03/13/96
HEARTLAND WIRELESS SERIES D	Senior Notes	42235WAG3	13.000	04/15/03	01/22/97
HEARTLAND WIRELESS SERIES B	Senior Notes	42235WAH1	14.000	10/15/04	04/10/97
HEDSTROM CORP.	Company Guarantee	42279QAC2	10.000	06/01/07	12/11/97
HEDSTROM HOLDINGS INC.	Senior Discount Nts	422914AE1	0/12.000	06/01/09	12/04/97
HERFF JONES INC.	Senior Sub Notes	42718EAB0	11.000	08/15/05	12/04/95
HINES HORTICULTURE INC. SERIES B	Senior Sub Notes	433245AB3	11.750	10/15/05	02/16/96
HOLLYWOOD PARK/OPERATING SERIES B	Senior Sub Notes	43625PAB5	9.500	08/01/07	03/17/98
HOLLYWOOD ENTERTAINMENT SERIES B	Senior Sub Notes	436141AC9	10.625	08/15/04	10/31/97
HORSESHOE GAMING LLC SERIES B	Company Guarantee	44075LAF8	9.375	06/15/07	11/07/97
HORSESHOE GAMING LLC SERIES B	Senior Notes	44075LAC5	12.750	09/30/00	06/12/96

ISSUER NAME	COLLATERAL TYPE	CUSIP	Coupon	Maturity	Exchanged
HUBCO INC.	Sub Debentures	404382AC7	7.750	01/15/04	07/02/94
HUBCO INC.	Sub Debentures	404382AF0	8.200	09/15/06	12/13/96
HYDROCHEM INDUSTRIAL SVC. SERIES B	Company Guarantee	448850AB3	10.375	08/01/07	11/12/97
HYPERION TELECOMMUNICATIONS SERIES B	Senior Notes	44914KAH1	12.250	09/01/04	11/20/97
ICG HOLDINGS INC.	Company Guarantee	449247AE5	0/11.625	03/15/07	07/16/97
ICG HOLDINGS INC.	Senior Discount Nts	449247AA3	0/13.500	09/15/05	01/08/96
ICN PHARMACEUTICALS INC. SERIES B	Senior Notes	448924AD2	9.250	08/15/05	11/11/97
ICO INC. SERIES B	Senior Notes	449294AE7	10.375	06/01/07	11/18/97
IHF HOLDINGS INC. SERIES B	Senior Discount Nts	449619AC9	0/15.000	11/15/04	05/17/95
IMC GLOBAL INC. SERIES B	Notes	449669AG5	10.750	06/15/03	10/11/93
ISP HOLDINGS INC. SERIES B	Senior Notes	450302AE4	9.000	10/15/03	04/09/97
ISP HOLDINGS INC. SERIES B	Senior Notes	450302AF1	9.750	02/15/02	04/09/97
ITC DELTACOM INC.	Senior Notes	45031TAC8	11.000	06/01/07	11/12/97
IXC COMMUNICATIONS INC. SERIES B	Company Guarantee	450713AC6	12.500	10/01/05	08/02/96
ICON HEALTH & FITNESS SERIES B	Senior Sub Notes	44929HAB4	13.000	07/15/02	05/17/95
IMAGYN MEDICAL TECHNOLOGIES	Company Guarantee	45244EAA8	12.500	04/01/04	11/05/97
IMPERIAL HOLLY CORP.	Company Guarantee	452835AD3	9.750	12/15/07	03/12/98
INDSPEC CHEMICAL SERIES B	Senior Sub Notes	455781AC8	0/11.500	12/01/03	03/14/93
INSILCO CORP.	Senior Sub Notes	457659AH3	10.250	08/15/07	11/14/97
INTELCOM GROUP (USA) INC.(see also ICG)	Company Guarantee	449247AB1	0/12.500	05/01/06	08/09/96
INTERMEDIA COMMUNICATION SERIES B	Senior Notes	458801AR8	8.500	01/15/08	03/11/98
INTERMEDIA COMMUNICATION SERIES B	Senior Notes	458801AS6	8.875	11/01/07	02/12/98
INTERMEDIA COMMUNICATION OF FL SERIES B	Senior Notes	458801AE7	13.500	06/01/05	09/06/95
INTERNATIONAL KNIFE & SAW INC.	Senior Sub Notes	459733AC5	11.375	11/15/06	03/17/97
INTERNATIONAL WIRELESS COMMUNICATIONS	Senior Discount Nts	46058GAE8	0.000	08/15/01	12/20/96
IRIDIUM LLC/CAPITAL CORP. SERIES B	Company Guarantee	46268KAK1	14.000	07/15/05	10/07/97
IRON MOUNTAIN INC.	Company Guarantee	46284PAD6	8.750	09/30/09	01/13/98
ISLE OF CAPRI/CAP. CORP. SERIES B	1st Mortgage	464587AC8	13.000	08/31/04	01/21/98
IVEX HOLDINGS CORP. SERIES B	Debentures	465851AB9	13.250	03/15/05	06/30/93
JOHNSTOWN AMERICA INDUSTRIES SERIES C	Company Guarantee	479477AD3	11.750	08/15/05	12/18/97
JORDAN INDUSTRIES INC. SERIES B	Senior Notes	480695AJ4	10.375	08/01/07	09/29/97
JORDAN INDUSTRIES INC. SERIES B	Senior Sub Notes	480695AK1	0/11.750	04/01/09	09/29/97
JORDAN TELECOM PRODUCTS SERIES B	Senior Discount Nts	480767AH5	0/11.750	08/01/07	12/11/97
K&F INDUSTRIES SERIES B	Senior Sub Notes	482240AG3	9.250	10/15/07	03/06/98
KSL RECREATION GROUP INC. SERIES B	Senior Sub Notes	482683AC3	10.250	05/01/07	10/13/97
KEEBLER CORP.	Senior Sub Notes	487251AC4	10.750	07/01/06	11/25/96
KELLEY OIL & GAS CORP. SERIES B	Senior Sub Notes	487906AD1	10.375	10/15/06	02/10/97
KINETIC CONCEPTS INC. SERIES B	Company Guarantee	49460WAC3	9.625	11/01/07	03/03/98
KITTY HAWK INC.	Company Guarantee	498326AC1	9.950	11/15/04	03/20/98
KNOLL INC.	Senior Sub Notes	498904AB7	10.875	03/15/06	07/15/96
KNOLOGY HOLDINGS INC.	Senior Discount Nts	499179AE9	0/11.875	10/15/07	03/24/98
LDM TECHNOLOGIES INC. SERIES B	Company Guarantee	50182PAC3	10.750	01/15/07	05/28/97
LADY LUCK GAMING SERIES QTR	1st Mortgage	505903AC8	11.875	03/01/01	03/29/96
LADY LUCK GAMING SERIES SA	1st Mortgage	505903AD6	11.875	03/01/01	03/29/96
LEINER HEALTH PRODUCTS	Senior Sub Notes	52536PAC2	9.625	07/01/07	12/15/97
LENFEST COMMUNICATIONS	Senior Sub Notes	526055AD0	10.500	06/15/06	10/09/96
LESLIE'S POOLMART	Senior Notes	527069AC2	10.375	07/15/04	11/28/97
LILLY INDUSTRIES INC.	Senior Notes	532491AC1	7.750	12/01/07	01/00/98
LODGENET ENTERTAINMENT	Senior Notes	540211AC3	10.250	12/15/06	05/15/97
LOOMIS FARGO & CO.	Company Guarantee	543462AC9	10.000	01/15/04	07/22/97
MMI PRODUCTS INC. SERIES B	Senior Sub Notes	553090AC5	11.250	04/15/07	10/01/97
MAJESTIC STAR CASINO LLC	Senior Notes	56075NAC5	12.750	05/15/03	11/13/96
MARK IV INDUSTRIES INC.	Senior Sub Notes	570387AQ3	7.500	09/01/07	12/15/97

ISSUER NAME	COLLATERAL TYPE	CUSIP	Coupon	Maturity	Exchanged
MARSH SUPERMARKET INC. SERIES B	Company Guarantee	571783AD1	8.875	08/01/07	12/03/97
MAXXIM MEDICAL	Company Guarantee	57777GAC9	10.500	08/01/06	11/25/96
MCCAW INTERNATIONAL LTD.	Senior Discount Nts	579472AE1	0/13.000	04/15/07	09/05/97
MEGO MORTGAGE CORP.	Company Guarantee	585165AA1	12.500	12/01/01	11/22/96
MERIT BEHAVIORAL CARE	Senior Sub Notes	589867AB6	11.500	11/15/05	04/18/96
METALLURG INC.	Notes	591261AA0	12.000	04/14/07	04/14/97
METRIS COMPANIES INC.	Company Guarantee	591598AC1	10.000	11/01/04	03/09/98
METROCALL INC.	Senior Sub Notes	591647AD4	9.750	11/01/07	03/17/98
METROCALL INC.	Senior Sub Notes	74342CAC9	11.875	06/15/05	11/06/95
METRONET COMMUNICATIONS	Senior Notes	59169YAE8	12.000	08/15/07	01/20/98
MOHEGAN TRIBAL GAMING SERIES B	Senior Notes	608329AC2	13.500	11/15/02	07/18/96
MORAN TRANSPORTATION CO.	Notes	616506AB7	11.750	07/15/04	11/18/94
MOTHERS WORK INC.	Senior Notes	619903AB3	12.625	08/01/05	11/29/95
MOTORS AND GEARS INC. SERIES D	Senior Notes	620103AE1	10.750	11/15/06	02/18/98
NTL INCORPORATED SERIES B	Senior Notes	459216AG2	0/11.500	02/01/06	05/23/96
NTL INCORPORATED SERIES A	Senior Notes	459216AD9	0/12.750	04/15/05	08/18/95
NATIONAL FIBERSTOCK CORP.	Senior Notes	636049AC2	11.625	06/15/02	11/20/96
NAVISTAR FINANCIAL CORP. SERIES B	Senior Sub Notes	638902AK2	9.000	06/01/02	08/26/97
NEENAH CORPORATION SERIES D	Senior Sub Notes	640071AF3	11.125	05/01/07	09/11/97
NEWFIELD EXPLORATION CO. SERIES B	Senior Notes	651290AC2	7.450	10/15/07	12/19/97
NEWS CORP. LTD. SERIES B	Senior Discount Nts	62944VAB6	0.000	06/15/99	12/08/94
NEWFLO CORP. SERIES B	Sub Notes	651305AB0	13.250	11/15/02	05/28/93
NEXTLINK COMMUNICATIONS	Senior Notes	65333AAC2	12.500	04/15/06	08/05/96
NORMEX TECHNOLOGIES CORP. SERIES B	Senior Discount Nts	45322KAC5	14.000	05/15/02	12/20/95
NORTEK INC. SERIES B	Senior Notes	656559AW1	9.125	09/01/07	11/18/97
OLYMPUS COMM. L.P./CAP. CORP. SERIES B	Senior Notes	68162YAC0	10.625	11/15/06	06/09/97
OMEGA CABINETS	Senior Sub Notes	682070AB3	10.500	06/15/07	01/21/98
OMNIPOINT CORP.	Senior Notes	68212DAE2	11.625	08/15/06	12/17/96
OMNIPOINT CORP. SERIES A	Senior Notes	68212DAF9	11.625	08/15/06	03/21/97
ORBCOMM GLOBAL L.P./CAPITAL SERIES B	Senior Notes	68555RAC0	14.000	08/15/04	01/16/97
OUTSOURCING SOLUTIONS SERIES B	Senior Sub Notes	690132AC9	11.000	11/01/06	05/29/97
OXFORD AUTOMOTIVE INC.	Company Guarantee	690903AC3	10.125	06/15/07	11/21/97
PM HOLDINGS CORP.	Debentures	69344KAC9	0/11.500	09/01/05	01/21/94
PACKAGED ICE INC. SERIES B	Company Guarantee	DD0121960	12.000	04/15/04	10/15/97
PACKAGING RESOURCES INC.	Senior Notes	695168AC8	11.625	05/01/03	09/20/96
PAGEMART INC.	Senior Discount Nts	695534AC1	12.250	11/01/03	09/14/94
PAGEMART NATIONWIDE	Senior Discount Nts	69553QAC2	0/15.000	02/01/05	07/12/95
PANDA FUNDING CORP. SERIES A-1	Bonds	69833DAC3	11.625	08/20/12	03/20/97
PANDA GLOBAL ENERGY CO.	Company Guarantee	69833HAE0	12.500	04/15/04	10/15/97
PANTRY INC.	Company Guarantee	698657AE3	10.250	10/15/07	02/09/98
PARAGON HEALTH NETWORKS SERIES B	Senior Sub Notes	698940AF0	0/10.500	11/01/07	03/13/98
PARK-OHIO INDUSTRIES	Senior Sub Notes	700677AE7	9.250	12/01/07	02/24/98
PEGASUS COMMUNICATIONS SERIES B	Senior Notes	705904AD2	9.625	10/15/05	02/25/98
PEGASUS MEDIA & COMMUNICATIONS SERIES B	Notes	70557GAC8	12.500	07/01/05	11/13/95
PETERS (J.M.) CO.	Senior Notes	716035AC4	12.750	05/01/02	11/10/94
PETRO SHOPPING CENTER/FINANCIAL	Senior Notes	715911AB9	10.500	02/01/07	07/18/97
PETSEC ENERGY INC. SERIES B	Senior Sub Notes	71676MAC9	9.500	06/15/07	11/20/97
PILLOWTEX CORPORATION SERIES B	Company Guarantee	721501AE4	9.000	12/15/07	03/25/98
PIONEER AMERICAS ACQUISITION SERIES B	Company Guarantee	723551AF4	9.250	06/15/07	10/29/97
PLAINS RESOURCES INC. SERIES B	Senior Sub Notes	726540AE7	10.250	03/15/06	08/08/96
PLAINS RESOURCES INC. SERIES D	Company Guarantee	726540AH0	10.250	03/15/06	10/30/97
PLASTIC CONTAINERS INC. SERIES B	Senior Notes	727547AC5	10.000	12/15/06	05/22/97
PLAYTEX PRODUCTS INC. SERIES B	Company Guarantee	72813PAD2	8.875	07/15/04	10/07/97

ISSUER NAME	COLLATERAL TYPE	CUSIP	Coupon	Maturity	Exchanged
POGO PRODUCING CO. SERIES B	Senior Sub Notes	730448AH0	8.750	05/15/07	10/16/97
POLAND COMMUNICATION INC. SERIES B	Senior Notes	730873AC0	9.875	11/01/03	06/16/97
PORT ROYAL HOLDINGS INC.	Company Guarantee	501148AC4	10.250	10/01/07	01/23/98
POTASH CORP.-SASKATCHEWAN SERIES B	Senior Notes	039230AB3	10.750	05/01/05	07/21/93
PRECISE TECHNOLOGY INC. SERIES B	Company Guarantee	74018PAC3	11.125	06/15/07	11/19/97
PREMIER PARKS SERIES A	Senior Notes	740540AB5	12.000	08/15/03	12/11/95
PRIMEDIA INC. SERIES B	Company Guarantee	482727AE4	8.500	02/01/06	08/21/96
PRINTPACK INC. SERIES B	Senior Notes	74257PAE9	9.875	08/15/04	02/07/97
PRINTPACK INC. SERIES B	Senior Sub Notes	74257PAF6	10.625	08/15/06	02/07/97
PROTECTION ONE ALARM MON	Senior Discount Nts	743659AK0	13.625	06/30/05	11/17/95
QWEST COMMUNICATIONS INTL SERIES B	Senior Notes	749121AE9	10.875	04/01/07	08/25/97
RBX CORPORATION SERIES B	Company Guarantee	749280AB9	11.250	10/15/05	05/31/96
RXI HOLDINGS INC. SERIES B	Senior Notes	749922AC4	14.000	07/15/02	11/13/95
RADNOR HOLDINGS INC.	Senior Notes	750495AC7	10.000	12/01/03	05/08/97
RAYOVAC CORP. SERIES B	Senior Sub Notes	755081AB2	10.250	11/01/06	03/19/97
RED ROOF INNS	Senior Notes	757005AB9	9.625	12/15/03	06/30/94
REGAL CINEMAS INC.	Senior Sub Notes	758754AB1	8.500	10/01/07	12/19/97
REGAL CINEMAS INC.	Company Guarantee	19088KAC4	10.625	03/01/03	09/12/96
RELIANT BUILDING PRODUCT SERIES B	Senior Sub Notes	75952GAC8	10.875	05/01/04	10/14/97
RENAISSANCE COSMETICS	Company Guarantee	759664AH8	11.750	02/15/04	06/17/97
RENCO METALS INC.	Senior Notes	759677AB3	12.000	07/15/00	01/12/94
RESOURCE AMERICA INC.	Senior Notes	761195AC0	12.000	08/01/04	03/13/98
RIDDELL SPORTS INC.	Company Guarantee	765670AC8	10.500	07/15/07	09/16/97
RIFKIN ACQ. PARTNERS L.P.	Senior Sub Notes	766520AC4	11.125	01/15/06	06/19/96
RIGGS CAPITAL TRUST SERIES A	Company Guarantee	766560AC0	8.625	12/31/26	03/28/97
RIGGS CAPITAL TRUST II SERIES C	Company Guarantee	76656RAB3	8.875	03/15/27	08/29/97
RIO HOTEL & CASINO INC.	Company Guarantee	767147AF8	9.500	04/15/07	05/30/97
RIVIERA HOLDINGS CORP.	Company Guarantee	769627AD2	10.000	08/15/04	01/08/98
ROSE HILLS CO.	Senior Sub Notes	777110AC1	9.500	11/15/04	09/11/97
RUTHERFORD-MORAN OIL	Company Guarantee	783286AB3	10.750	10/01/04	02/06/98
RYDER TRS INCORPORATED	Senior Sub Notes	783551AC8	10.000	12/01/06	05/09/97
STC BROADCASTING INC.	Senior Sub Notes	784752AC1	11.000	03/15/07	10/02/97
SABRELINER CORP. SERIES B	Senior Notes	78571LAA6	12.500	04/15/03	11/18/93
SAFETY COMPONENTS INTL SERIES B	Senior Sub Notes	78647AC0	10.125	07/15/07	10/01/97
SALEM COMMUNICATIONS CORP. SERIES B	Company Guarantee	794089AC6	9.500	10/01/07	03/11/98
SAUL, B.F., REIT	Senior Notes	804396AL3	11.625	04/01/02	06/09/94
SCOVILL FASTENERS INC. SERIES B	Company Guarantee	810909AC5	11.250	11/30/07	03/23/98
SELMER CO. INC.	Senior Sub Notes	816591AE1	11.000	05/15/05	09/08/95
SHEFFIELD STEEL CORP. SERIES B	1st Mortgage	821266AE3	11.500	12/01/05	03/18/98
SHOP VAC CORP.	Senior Notes	825085AC7	10.625	09/01/03	03/04/97
SILGAN HOLDINGS INC.	Senior Sub Debs	827048AF6	9.000	06/01/09	09/05/97
SIMMONS CO.	Senior Sub Notes	828709AB1	10.750	04/15/06	09/04/96
SINCLAIR BROADCAST GROUP	Company Guarantee	829226AE9	9.000	07/15/07	11/07/97
SIX FLAGS ENTERTAINMENT	Senior Notes	829903AB9	0.000	12/15/99	08/17/93
SIX FLAGS THEME PARKS SERIES A	Senior Sub Notes	83001WAB0	12.250	06/15/05	12/18/95
SOUTHDOWN INC. SERIES B	Senior Sub Notes	841297AJ3	10.000	03/01/06	07/05/96
SOUTHWEST ROYALTIES INC. SERIES B	Company Guarantee	84522BAC2	10.500	10/15/04	03/11/98
SOVEREIGN CAPITAL TRUST I	Company Guarantee	84603KAC4	9.000	04/01/27	11/25/97
SPANISH BROADCASTING SYSTEM	Senior Notes	846425AC0	12.500	06/15/02	12/01/94
SPECIALTY FOODS CORP. SERIES B	Senior Notes	847499AF7	11.125	10/01/02	10/27/95
SPECIALTY FOODS ACQ. SERIES B	Senior Notes	847499AC4	10.250	08/15/01	12/15/93
SPECIALTY FOODS ACQ. SERIES B	Debentures	847498AC6	0/13.000	08/15/05	12/15/93
SPEEDWAY MOTORSPORTS INC.	Company Guarantee	847788AF3	8.500	08/15/07	10/28/97
STAR MARKETS CO.	Senior Sub Notes	855151AB2	13.000	11/01/04	04/10/95

ISSUER NAME	COLLATERAL TYPE	CUSIP	Coupon	Maturity	Exchanged
STONE ENERGY CORP.	Company Guarantee	861642AC0	8.750	09/15/07	12/10/97
SULLIVAN GRAPHICS INC.	Senior Sub Notes	865301AD7	12.750	08/01/05	01/04/96
SUN WORLD INTERNATIONAL SERIES B	Company Guarantee	867015AC3	11.250	04/15/04	11/13/97
SYNTHETIC INDUSTRIES INC. SERIES B	Senior Sub Notes	871914AE7	9.250	02/15/07	07/14/97
TALTON HOLDINGS INC. SERIES B	Company Guarantee	87483BAC2	11.000	06/30/07	02/10/98
TEKNI-PLEX INC. SERIES B	Senior Sub Notes	87910PAB6	11.250	04/01/07	10/03/97
TELEGROUP INC.	Senior Discount Nts	879422AE3	0/10.500	11/01/04	03/04/98
TELETRAC INC. SERIES B	Senior Notes	87951CAC3	14.000	08/01/07	12/18/97
TELEX COMMUNICATIONS INC.	Company Guarantee	879569AD3	10.500	05/01/07	10/10/97
TERRA INDUSTRIES SERIES B	Senior Notes	880915AE3	10.500	06/15/05	09/14/95
THERMA-WAVE INC. SERIES B	Senior Notes	88343AAC2	10.625	05/15/04	10/13/97
TOKHEIM CORP. SERIES B	Senior Sub Notes	889073AC6	11.500	08/01/06	01/14/97
TOM'S FOODS INC.	Senior Notes	890124AB6	10.500	11/01/04	03/17/98
TOWN SPORTS INTERNATIONAL SERIES B	Senior Notes	892134AC1	9.750	10/15/04	02/23/98
TRANS WORLD AIRLINES	Senior Notes	893349BG4	12.000	04/01/02	09/03/97
TRANSAMERICAN ENERGY SERIES B	Senior Notes	89351LAE1	11.500	06/15/02	01/13/98
TRANSAMERICAN ENERGY SERIES B	Senior Discount Nts	89351LAF8	0/13.000	06/15/02	01/13/98
TRANSTAR HOLDINGS L.P. SERIES B	Senior Discount Nts	89388QAB3	0/13.375	12/15/03	06/01/94
TRAVELCENTERS OF AMERICA	Company Guarantee	894172AC9	10.250	04/01/07	08/22/97
TRIANGLE CAPITAL TRUST	Company Guarantee	895849AB3	9.375	06/01/27	12/29/97
TRICO MARINE SERVICES SERIES D	Company Guarantee	896106AH4	8.500	08/01/05	03/24/98
TRIZEC HAHN CORP. SERIES B (see also Clark USA)	Senior Notes	181581AD1	10.875	12/01/05	04/15/96
TULTEX CORP.	Company Guarantee	899900AC8	9.625	04/15/07	09/04/97
TWIN LABORATORIES INC.	Company Guarantee	901645AC5	10.250	05/15/06	10/25/96
UIH AUSTRALIA/PACIFIC SERIES B	Senior Discount Nts	902745AC2	0/14.000	05/15/06	09/11/96
UIH AUSTRALIA/PACIFIC SERIES D	Senior Discount Nts	902745AE8	0/14.000	05/15/06	01/08/98
UNICCO SERVICE/FINANCE SERIES B	Company Guarantee	90460KAC3	9.875	10/15/07	03/12/98
UNIFI COMMUNICATIONS INC.	Senior Notes	90467NAE6	14.000	03/01/04	09/02/97
UNISYS CORP. SERIES B	Senior Notes	909214BD9	12.000	04/15/03	07/22/96
UNITED ARTISTS	Senior Notes	909408AB2	11.500	05/01/02	11/06/92
UNITED DEFENSE INDUSTRIES INC.	Company Guarantee	91018BAC8	8.750	11/15/07	03/24/98
UNITED STATIONER SUPPLY	Senior Sub Notes	913008AB4	12.750	05/01/05	09/29/95
UNIVERSAL OUTDOOR INC. SERIES B	Senior Sub Notes	913777AJ7	9.750	10/15/06	05/07/97
VAN DE KAMPS INC.	Senior Sub Notes	920891AB4	12.000	09/15/05	12/14/95
VENTURE HOLDINGS TRUST SERIES B	Senior Notes	92326YAD1	9.500	07/01/05	12/08/97
VIALOG CORP.	Company Guarantee	92552XAE6	12.750	11/15/01	03/26/98
VIATEL INC.	Senior Discount Nts	925529AC3	15.000	01/15/05	09/29/95
WATERFORD GAMING LLC	Senior Notes	941388AC4	12.750	11/15/03	06/20/97
WAVETEK CORP.	Company Guarantee	944020AC0	10.125	06/15/07	10/29/97
WELLS ALUMINUM CORP. SERIES B	Senior Notes	94973NAE5	10.125	06/01/05	11/07/97
WILLIAM CARTER SERIES A	Senior Sub Notes	146303AC6	10.375	12/01/06	05/08/97
WILLIAMHOUSE REGENCY DEL.	Senior Sub Notes	969307AF4	11.500	06/15/05	09/14/93
WILLIAMS, J.B., HOLDINGS	Senior Notes	465919AB4	12.000	03/01/04	11/30/94
WILLIAMS SCOTSMAN INC.	Company Guarantee	96949VAC7	9.875	06/01/07	11/04/97
WILSHIRE FINANCIALSERVICES SERIES B	Notes	971867AE6	13.000	08/15/04	03/04/98
WILSONS THE LEATHER EXPERT SERIES B	Company Guarantee	972463AC7	11.250	08/15/04	01/09/98
WINDY HILL PET FOOD CO.	Senior Sub Notes	973818AC1	9.750	05/15/07	10/10/97
WINSTAR COMMUNICATIONS INC.	Company Guarantee	975515AL1	14.500	10/15/05	09/27/97
WINSTAR EQUIPMENT II CORP SERIES *	Company Guarantee	975518AB7	12.500	03/15/04	01/27/98
WISER OIL CO.	Company Guarantee	977284AC2	9.500	05/15/07	10/15/97
WRIGHT MEDICAL TECHNOLOGY SERIES D	Senior Notes	982351AE8	11.750	07/01/00	11/03/97
YOUNG BROADCASTING INC. SERIES B	Company Guarantee	987434AJ6	8.750	06/15/07	09/12/97
YOUNG BROADCASTING INC. SERIES B	Company Guarantee	987434AF4	9.000	01/15/06	05/29/96
ZALE CORP. SERIES B	Senior Notes	988858AB2	8.500	10/01/07	02/27/98

NASD Notice to Members 98-56

SEC Approves Rule Change Regarding Arbitration Of Statutory Employment Disputes; Effective January 1, 1999

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On June 22, 1998, the Securities and Exchange Commission (SEC) approved an amendment to National Association of Securities Dealers, Inc. (NASD[®]) Rule 10201 to modify the current requirement that associated persons arbitrate all disputes arising out of their employment or termination of employment with a member broker/dealer.¹ The amended rule provides that associated persons no longer will be required, solely by virtue of their association or their registration with the NASD, to arbitrate claims of statutory employment discrimination. Associated persons still will be required to arbitrate other employment-related claims, as well as any business-related claims involving investors or other persons. **The amended rule will be effective on January 1, 1999, for claims filed on or after that date.** The text of the amended rule is attached.

Interpretive questions concerning the amended rule should be directed to Jean I. Feeney, Assistant General Counsel, NASD Regulation, Inc. (NASD RegulationSM), at (202) 728-6959.

Background

The NASD, other self-regulatory organizations (SROs), and state regulatory authorities require all applicants for registration as persons associated with a broker/dealer to complete and sign the Form U-4, the "Uniform Application for Securities Industry Registration or Transfer." Form U-4 requires registered persons to submit any claim to arbitration that is eligible under the rules of the organizations with which they register. Thus, the Form U-4 incorporates by reference the rules of the SRO with which the individual is to be registered. NASD Rule 10201 requires arbitration of disputes arising in connection with the business of a member or the activities of an

associated person, and disputes arising out of the employment or termination of employment of associated persons with a member. These disputes must be arbitrated at the request of any member or associated person.

As described in the SEC release, courts generally have upheld the arbitration requirement, including cases in which there were allegations of statutory employment discrimination.² Nevertheless, registered persons and others have continued to question the policy of requiring the arbitration of statutory discrimination claims. The NASD formed the Arbitration Policy Task Force (Task Force) in September 1994 for the purposes of studying the securities arbitration process administered by the NASD and of making suggestions for reform. The Task Force, chaired by David S. Ruder, former SEC Chairman, delivered its report to the NASD Board of Governors (NASD Board) in January 1996. The Task Force found that employment arbitration offers the advantages of speed and cost that are identified with customer arbitration, and observed that statutory discrimination claims are almost always interwoven with industry-specific issues. Moreover, the Task Force believed that arbitration's equitable approach to dispute resolution is fully capable of vindicating the important public rights expressed in the anti-discrimination statutes. The Task Force, therefore, found compelling reasons to keep employment-related disputes within NASD arbitration. The Task Force report recommended that employment-related disputes, including statutory discrimination claims, remain eligible for arbitration with certain enhancements, many of which had been recommended elsewhere in the report in the context of customer arbitration.

In May 1997, NASD Regulation

formed an Advisory Committee to assist it in considering the suggested enhancements to the employment arbitration process. The Advisory Committee, which consisted of six persons of varying and distinguished backgrounds, held meetings in June 1997 and heard from representatives of civil rights organizations, the Equal Employment Opportunity Commission, general counsels of member firms, attorneys who represent employees, employee organizations, attorneys who represent member firms, and arbitration experts. After consideration of all the views presented, and in light of the public perception that civil rights claims may present important legal issues better dealt with in a judicial setting, the NASD determined that the appropriate action was to remove the arbitration requirement for such claims, but to further improve the forum so that it is viewed by both registered employees and firms as the fairest and most efficient forum for resolving all employment disputes. In August 1997, proposals were presented to the NASD Regulation Board of Directors and the NASD Board, which authorized the rule change. The text of the proposed rule was provided to the Boards at their meetings in September and October 1997.

The NASD filed the rule proposal with the SEC for approval on October 17, 1997. The SEC published notice of the proposed rule in the *Federal Register* on December 17, 1997.³ The SEC received nine comment letters on the proposed rule. The NASD filed a response to the comments and a minor amendment to the rule proposal on April 14, 1998. The SEC approved the proposed rule, as amended, on June 22, 1998. For a more complete discussion of the history of the rule, members and associated persons should review the SEC release.

Description Of Rule

Paragraph (a) of the rule adds an introductory phrase indicating that the general requirement to arbitrate employment disputes contains an exception, set forth in paragraph (b).

New paragraph (b) provides that claims alleging employment discrimination, including sexual harassment claims, in violation of a statute are not required to be arbitrated by NASD rules. This means that such claims may be filed in the appropriate court, if the employee chooses to do so and is not under an enforceable predispute obligation to arbitrate the dispute. An employee also may agree to arbitrate after a dispute arises. Some member firms use private arbitration agreements that require employees to arbitrate employment disputes apart from any arbitration requirement in SRO rules, and such agreements would not be affected by this rule change. Because arbitration offers many advantages to parties, the NASD expects that many employees will continue to file their discrimination claims in arbitration, particularly in light of planned enhancements to make the arbitration forum even more attractive to parties.

Paragraph (b) applies only to claims alleging employment discrimination, including a sexual harassment claim, in violation of a statute. The term "statute" is to be interpreted broadly, to include any formal written enactment of a legislative body, whether federal, state, city, or county. The Supreme Court has held that sexual harassment is a form of sex discrimination and thus a violation of laws prohibiting discrimination on the basis of sex. However, since the term "sexual harassment" may not be found in some statutes dealing with sex discrimination, the phrase "including a sexual harassment claim" was added to clarify that such claims are meant to be included in

the category of statutory employment discrimination. Paragraph (b) does not apply to causes of action created solely by judicial precedents or to other causes of action under state or federal law, which remain subject to mandatory arbitration under paragraph (a). Such judicially created causes of action might include, for example, claims alleging "wrongful discharge" without any accompanying claim of discrimination on account of age, sex, race, or other status protected by a specific law.

Paragraph (c) of the proposed rule is former paragraph (b), which is unchanged except for the renumbering.

Effective Date

The NASD originally requested that the proposed rule become effective one year from the date of SEC approval. In light of comments received in response to the SEC's publication of the proposed rule and in consultation with SEC staff, the NASD subsequently asked that the proposed rule change become effective on January 1, 1999. Accordingly, the rule change will apply to claims filed on or after the effective date of the rule change. The practical effect is that the rule will apply to all claims filed on or after the effective date without regard to the date the alleged discrimination occurred or the date that the employee signed a Form U-4, but subject to the usual time limitations for bringing such claims.

Text Of Amendments

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

10201. Required Submission

(a) Except as provided in paragraph

(b). [Any] a dispute, claim, or controversy eligible for submission under the Rule 10100 Series between or among members and/or associated persons, and/or certain others, arising in connection with the business of such member(s) or in connection with the activities of such associated person(s), or arising out of the employment or termination of employment of such associated person(s) with such member, shall be arbitrated under this Code, at the instance of:

(1) a member against another member;

(2) a member against a person associated with a member or a person associated with a member against a member; and

(3) a person associated with a member against a person associated with a member.

(b) A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose.

[(b)] (c) Any dispute, claim or controversy involving an act or failure to act by a clearing member; a registered clearing agency; or participants, pledgees, or other persons using the facilities of a registered clearing agency, under the rules of any registered clearing agency with which the Association has entered into an agreement to utilize the Association's arbitration facilities and procedures shall be arbitrated in accordance with such agreement and the rules of such registered clearing agency.

Endnotes

¹ See Exchange Act Release No. 40109 (June 22, 1998) 63 FR 35299 (June 29, 1998) ("SEC Release"). The text of the SEC Release may be viewed on the NASD Regulation Web Site at www.nasdr.com.

² As described in the June *Notices to Members*, one federal circuit court has recently held that the Form U-4 arbitration agreement is unenforceable with regard to claims under certain federal and state anti-discrimination laws. *Duffield v. Robertson Stephens & Co.*, No. 97-15698 (9th Cir. May 8, 1998).

³ Exchange Act Release No. 39421 (December 10, 1997), 62 FR 66164 (December 17, 1997).

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NASD Notice to Members 98-57

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of June 24, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of June 24, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
ABN.GA	American Bank Note Corp	11.250	12/01/07
AXCL.GA	Airxcel Inc	11.000	11/15/07
BZH.GB	Beazer Homes USA Inc	8.875	04/01/08
CDGY.GA	Coda Energy Inc	10.500	04/01/06
CEXH.GA	CEX Holdings Inc	9.625	06/01/08
CHSE.GA	CHS Electronics Inc	0.000	04/15/05
CVXP.GL	Cleveland Elec Illum Co	7.430	11/01/09
CWNI.GA	Crown Castle Int'l Corp	10.625	11/15/07
FTL.GA	Fruit/Loom Inc	7.000	03/15/11
FTL.GB	Fruit/Loom Inc	7.875	10/15/99
FTL.GC	Fruit/Loom Inc	6.500	11/15/03
FTL.GD	Fruit/Loom Inc	7.375	11/15/23
GNL.GA	Galey & Lord Inc	9.125	03/01/08
GYSL.GA	Grant Geophysical Inc	9.750	02/15/08
HMAR.GB	Hvide Marine Inc	8.375	02/15/08
IROP.GA	Iridium Oper LLC/Cap Corp	10.875	07/15/05
IROP.GB	Iridium Oper LLC/Iridium Cap	11.250	07/15/05
KCC.GC	K-III Communications Corp	8.500	02/01/06
LBGP.GA	Liberty Group Operating Inc	9.375	02/01/08
LKNS.GA	Lukens Inc	7.625	08/01/04
LTHR.GB	L-3 Communications Corp	8.500	05/15/08
MARI.GA	Marriott Int'l Inc	6.750	12/01/09
MCLD.GC	McLeod USA Inc	8.375	03/15/08
MUZK.GB	Musicland Group Inc	9.875	03/15/08
OI.GK	Owens-Illinois Inc	7.350	05/15/08
OI.GL	Owens-Illinois Inc	7.500	05/15/10
OI.GM	Owens-Illinois Inc	7.150	05/15/04
OI.GN	Owens-Illinois Inc	7.800	05/15/18
OLOG.GA	Offshore Logistics Inc	7.875	01/15/08
PGSU.GA	Pegasus Shipping Hellas LTD	11.875	11/15/04
PNET.GB	ProNet Inc	11.875	06/15/05
REVL.GD	Revlon Consumer Products Corp	8.125	02/01/06
SKLE.GA	Safety-Kleen Corp	9.250	09/15/99
TATO.GA	Trident Automotive PLC	10.000	12/15/05
THX.GA	Houston Exploration Co	8.625	01/01/08
TSXC.GA	Transco Energy Co	11.250	07/01/99
WBB.GE	Webb (DEL) Corp	9.375	05/01/09

As of June 24, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
ADLA.GB	Adelphia Communications Corp	12.500	05/15/02
DGAS.GA	Delta Natural Gas Inc	9.000	04/30/11
DIGO.GA	Di Giorgio Corp	12.000	02/15/03
DRBT.GA	Dr. Pepper Bottling Co Tex	10.250	02/15/00
ESXG.GA	Essex Group Inc	10.000	05/01/03
IV.GB	Mark IV Inds Inc	8.750	04/01/03
OLYM.GA	Olympic Finl Ltd	13.000	05/01/00
PNM.GB	Public Service Co N Mex	7.250	04/01/99
SGNT.GA	Signet Banking Corp	9.625	06/01/99
SMGS.GD	Southeast'n Mich Gas Co	8.625	04/15/17

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASD Regulation, Inc., Market Regulation, at (301) 590-6451.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq[®] Market Operations, at (203) 385-6310.

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NASD Notice to Members 98-58

NASD Manual Now On-Line

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Through this *Notice*, NASD Regulation, Inc., is announcing that the electronic version of the *NASD Manual* is now accessible on the NASD RegulationSM Web Site (www.nasdr.com). With the advent of Internet availability, the primary method to comply with the requirement found in NASD Rule 8110—that the *Manual* be available in each member office—is through on-line Internet access. The National Association of Securities Dealers, Inc. (NASD[®]) has discontinued the free distribution of the annually updated paperback version of the *Manual*. Those desiring hard copies of the *Manual* may purchase them at cost by contacting NASD MediaSourceSM.

Questions regarding this *Notice* may be directed to Jay Cummings, Director, Internet and Investor Education, NASD Regulation, at (301) 590-6070.

Background And Discussion

In May, NASD Regulation posted the *NASD Manual* on the NASD Regulation Web Site. The on-line *Manual*:

- contains the complete text of NASD rules;
- is free and easy to navigate;
- provides a key word index;
- offers complete word search capability;
- includes links from rules to selected *NASD Notices to Members*;
- allows for convenient printing of entire sections;
- includes an on-line help function; and
- will be updated monthly (more frequently than current hard copy methods).

The *Manual* is being made available as a service to members and the public. It is provided by Compliance International, Inc., publisher of books on screenTM. Visitors to the NASD Regulation Web Site may access the on-line *NASD Manual* via links found on the Home Page, as well as under the "Members Check Here" and "Press Room" Web Pages.

In anticipation of an on-line *Manual*, the NASD approved discontinuing the free distribution of the annually updated paperback version of the *Manual*. NASD Rule 8110 requires that each office of a member have available the *NASD Manual*, and in prior years, complimentary paperback copies were sent to each branch office by the NASD to aid in compliance with this requirement. Therefore, there are now two methods to comply with NASD Rule 8110: (1) Internet access or (2) a hard copy version of the *Manual*. If a member or branch office relies on Internet access in order to remain compliant, it must have access to the NASD Regulation Web Site at the office location.

To purchase a copy of the annually updated paperback *Manual*—at a cost of \$10 each for members (\$29.95 for non-members)—contact NASD MediaSource at (301) 590-6142. (Note: The annual paperback *Manual* is not to be confused with the *Manual* that is updated quarterly by Commerce Clearinghouse, better known as CCH. This service will continue as usual.)

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NASD Notice to Members 98-59

SEC Approves Amendments To NASD Rule 1120 (Continuing Education Requirements)

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
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- Training
- Variable Contracts

Executive Summary

The Securities and Exchange Commission (SEC) recently approved amendments to National Association of Securities Dealers, Inc. (NASD[®]) Rule 1120 relating to Continuing Education requirements (see SEC Release No. 34-39712, dated March 3, 1998, and File No. SR-NASD-98-03). The text of amended Rule 1120 is included in this *Notice*. The rule changes are effective as of July 1, 1998.

Any questions relating to this *Notice* should be directed to John Linnehan, Director, Continuing Education, NASD Regulation, Inc., at (301) 208-2932 or Daniel M. Sibears, Vice President, District Oversight, NASD RegulationSM at (202) 728-6911.

Background

NASD Rule 1120 (the Rule) provides for a Continuing Education Program for registered persons of NASD members. The Program, which is uniform within the industry, consists of two parts - a Regulatory Element and a Firm Element. The Regulatory Element requires all registered persons to periodically complete a computer-based training program on compliance, ethical, sales practice, and regulatory matters. The Firm Element requires members to provide ongoing training specifically tailored to their business.

New Cycle For Participation In The Regulatory Element

The time frames for registered persons to participate in the Regulatory Element training have been revised. The Rule now requires ongoing participation in the Program by registered persons throughout their securities industry careers. Specifically, participation in the Regulatory Element is required within 120 days of the second anniversary of initial registration and every three years

thereafter (*i.e.*, the fifth, eighth, 11th, 14th, etc., anniversaries), with no graduation from the program. Incurring a significant disciplinary action will result in an immediate requirement to complete the Regulatory Element within 120 days of the effective date of the significant disciplinary action. The cycle for participation in the Regulatory Element will then be reset based on the effective date of the significant disciplinary action rather than on the initial securities registration date.

Formerly, the Rule required registered persons to complete the Regulatory Element computer-based training on just three occasions, *i.e.*, within 120 days of their second, fifth, and 10th anniversaries of initial registration (and also when they were the subject of significant disciplinary action), with graduation once persons were registered for more than 10 years.

Graduates From The Regulatory Element And Persons Registered In A Principal Category

The Rule allows an exception from the Regulatory Element participation for persons currently graduated from the Program. Those persons who have been registered for more than 10 years as of the effective date of the rule amendments (*i.e.*, July 1, 1998), and who have not been the subject of significant disciplinary action during the preceding 10 years, will be excluded from the mandatory participation in the Regulatory Element. However, in order for persons registered in a principal capacity to be excluded from the Regulatory Element, they must have been registered in a principal capacity for more than 10 years. Therefore, those principals who have graduated from the Regulatory Element based on their initial registration date, but who have not completed 10 years as a princi-

pal, are required to re-enter the Program.

New Program For Principals

The Regulatory Element program applies generally to all registered persons and, as originally adopted, did not discern between registration types or categories. The Rule now allows the NASD, when appropriate, to designate specific Regulatory Element programs for various registration categories, thereby providing customized training for such categories. The first initiative will be a principal's program which will be announced and implemented in the near future. Principals must continue to take the current Regulatory Element program until implementation of the new principal's program. In the future, specific programs may be implemented for other registration categories.

For purposes of NASD rules, the following registrations will be included in the principal category: Series 4 (Registered Options Principal); Series 8 (General Securities Sales Supervisor); Series 26 (Investment Company Products/Variable Contracts Limited Principal); Series 27 (Financial and Operations Principal); Series 28 (Introducing Broker-Dealer Financial and Operational Principal); Series 39 (Direct Participation Programs Principal); Series 53 (Municipal Securities Principal Qualification); and the Government Securities Principal (no series number).

Firm Element

The Firm Element requires that each member conduct an annual analysis of their training needs. Members must also administer appropriate training to their registered persons who have direct contact with customers and the immediate supervisors of such registered persons, on an ongoing basis. The training must

cover topics specifically related to their business, such as new products, sales practices, risk disclosure, and new regulatory requirements and concerns.

The Rule requires members to focus specifically on supervisory needs in their analysis and, if it is determined that supervisory training is necessary, it must be addressed in the Firm Element training plan.

Amended NASD Membership and Registration Rule 1120

(Note: New text is underlined; deletions are bracketed.)

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with the Association. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1) Requirements

No member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person unless such person has complied with the requirements of paragraph (a) hereof.

(A) Each registered person shall complete the Regulatory Element on [three occasions, after] the occurrence of their second[, fifth and tenth] registration anniversary [dates] date and every three years thereafter, or as otherwise prescribed by the Association. On each [of three occasions] occasion, the Regulatory Element must be completed within [one hundred twenty] 120 days after the per-

son's registration anniversary date. A person's initial registration date shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element shall be [prescribed by the Association] determined by the Association and shall be appropriate to either the registered representative or principal status of person subject to the Rule.

(B) Persons Exempted from the Rule - [Registered persons] Persons who have been continuously registered for more than 10 years [as of the effective date of this Rule] on July 1, 1998, shall be exempt from participation in the Regulatory Element programs for registered representatives, provided such persons have not been subject within the last ten years to any disciplinary action [within the last 10 years] as enumerated in paragraph (a)(3). A person who has been continuously registered as a principal for more than ten years on July 1, 1998, shall be exempt from participation in the Regulatory Element programs for registered principals, provided such person has not been subject within the last ten years to any disciplinary action as enumerated in paragraph (a)(3). In the event [of such disciplinary action,] that a [person] registered representative or principal who was exempt from participation in Regulatory Element programs subsequently becomes the subject of a disciplinary action as enumerated in paragraph (a)(3), such person shall [will] be required to satisfy the requirements of the Regulatory Element [by participation for the period from the effective date of this Rule to 10 years after the occurrence of the disciplinary action] as if the date of such disciplinary action is such person's initial registration date with the Association.

(C) Persons who have been currently registered for 10 years or less as of [the effective date of this Rule]

July 1, 1998, shall [initially] participate in the Regulatory Element within 120 days after the occurrence of the second[, fifth or tenth] registration anniversary date, or every third year thereafter, whichever anniversary date first applies[, and on the applicable registration anniversary date(s) thereafter. Such persons will have satisfied the requirements of the Regulatory Element after participation on the tenth registration anniversary].

[(D) All registered persons who have satisfied the requirements of the Regulatory Element shall be exempt from further participation in the Regulatory Element subject to re-entry into the program as set forth in paragraph (a)(3).]

(2) Failure to Complete

Unless otherwise determined by the Association, any registered persons who have not completed the Regulatory Element within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Rule 1020 Series and the Rule 1030 Series. The Association may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

(3) Re-entry into Program

Unless otherwise determined by the Association, a registered person will be required to re-enter the Regulatory Element and satisfy all of its requirements in the event such person:

(A) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Act;

(B) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(C) is ordered as a sanction in a disciplinary action to re-enter the continuing education program by any securities governmental agency or self-regulatory organization.

Re-entry shall commence with initial participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (A) above, or the disciplinary action becoming final, in the case of (B) and (C) above[, and on three additional occasions thereafter, at intervals of two, five and 10 years after re-entry, notwithstanding that such person has completed all or part of the program requirements based on length of time as a registered person or completion of ten years of participation in the program]. The date of the disciplinary action shall be treated as such person's initial registration date with the Association.

(4) Reassociation in a Registered Capacity

Any registered person who has terminated association with a member

and who has, within two years of the date of termination, become reassociated in a registered capacity with a member shall participate in the Regulatory Element at such intervals [(two, five and 10 years)] that may apply (second anniversary and every three years thereafter) based on the initial registration anniversary date rather than based on the date of reassociation in a registered capacity.

(5) Definition of Registered Person

For purposes of this Rule, the term "registered person" means any person registered with the Association as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series.

(b) Firm Element

(1) Persons Subject to the Firm Element

The requirements of this subparagraph shall apply to any person registered with a member who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons (collectively, "covered registered persons"). "Customer" shall mean any natural person and any organization, other than another broker or dealer, executing securities transactions with or through or receiving investment banking services from a member.

(2) Standards for the Firm Element

(A) Each member must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill, and professionalism. At a minimum, each member shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan

must take into consideration the member's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element. If a member's analysis establishes the need for supervisory training for persons with supervisory responsibilities, such training must be included in the member's training plan.

(B) Minimum Standards for Training Programs - Programs used to implement a member's training plan must be appropriate for the business of the member and, at a minimum must cover the following matters concerning securities products, services, and strategies offered by the member:

(i) General investment features and

associated risk factors;

(ii) Suitability and sales practice considerations; and

(iii) Applicable regulatory requirements.

(C) Administration of Continuing Education Program - A member must administer its continuing education programs in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by covered registered persons.

(3) Participation in the Firm Element

Covered registered persons included in a member's plan must take all appropriate and reasonable steps to

participate in continuing education programs as required by the member.

(4) Specific Training Requirements

The Association may require a member, individually or as part of a larger group, to provide specific training to its covered registered persons in such areas as the Association deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied, and, where appropriate, the actual training content.

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NASD Notice to Members 98-60

NASD Extends Filing Period For New Equity Trader Examination And Responds To Questions Regarding New Equity Trader Qualification Rule

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
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- Variable Contracts

Executive Summary

On April 1, 1998, NASD Regulation, Inc., implemented amendments to the National Association of Securities Dealers, Inc. (NASD[®]) Registration Rules regulating the qualification of representatives who trade equity securities in The Nasdaq Stock Market[®] (Nasdaq[®]) and/or over-the-counter (OTC) (see *Notice to Members 98-17* for full details on the amendments to the Registration Rules). There is no grandfather provision in the amended rules for persons who functioned as equity traders before April 1, 1998. Such persons may continue functioning as equity traders but must pass the new Equity Trader Examination (Series 55) by May 1, 2000. To be eligible for this extended qualification period, equity traders had to submit applications to NASD RegulationSM before May 1, 1998. The NASD now has amended its Registration Rules to extend the filing period to August 31, 1998, for persons who were functioning as equity traders before May 1, 1998, and who missed that cut-off date for filing their applications for the Series 55 Examination.

Qualification Requirements

The amendments to the Registration Rules establish a registration category (ET) and qualification examination (Series 55) for equity traders. In the context of this new qualification requirement, the term "equity trader" includes Market Makers, agency traders, and proprietary traders in equity or convertible debt securities and persons who directly supervise these activities. The amendments provide a single exemption for traders whose primary activities are executing orders on behalf of an affiliated investment company that is registered with the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940. In addition to the required examination (Series 55), equity

traders must pass (or have passed) either the General Securities Registered Representative Examination (Series 7) or the Corporate Securities Limited Representative Examination (Series 62).

The new qualification requirement for equity traders does *not* have a "grandfather" provision. Individuals have until May 1, 2000, to pass the Series 55 Examination if they were functioning as equity traders before May 1, 1998, and filed their applications for the Series 55 Examination by that date. The period was extended administratively by NASD Regulation through May 15, 1998, to accommodate a very heavy volume of filings received immediately before May 1, 1998.

Extended Filing Period

The NASD now has amended its Registration Rules to extend the filing deadline for the two-year qualification period to August 31, 1998. The extended filing period is available only for persons who were functioning as equity traders for members before May 1, 1998, and who missed the earlier deadline. Members must submit an application with a letter that states the applicant was functioning as an equity trader before May 1, 1998, to:

NASD Regulation
Qualification Examinations
1390 Piccard Drive, 2nd Floor
Rockville, MD 20850

Persons availing themselves of the extended filing period may continue to function as equity traders until May 1, 2000, but must pass the Series 55 Examination by that date.

Equity traders who are eligible for the extended filing period, but who fail to file their applications by the August 31, 1998, deadline must cease trading in the Nasdaq or OTC markets until

they satisfy the qualification requirements. Market Makers and other proprietary traders who fail to file by that date may continue to effect liquidating transactions to the market or to retail and/or institutional customers, but may not establish new long or short positions after August 31, 1998. After this date, agency traders must cease effecting transactions as agent for customers in the Nasdaq or OTC markets until they satisfy the qualification requirements.

Questions Submitted By Members

Following are responses from NASD Regulation to a number of members' questions regarding the scope of the new equity trader registration category.

Question: Are listed stock traders who sometimes execute transactions in 19c-3 securities in the Nasdaq market included in the definition of equity trader?

Answer: Yes. The definition of equity trader in Rule 1032(f) includes all traders who effect any transactions in equity, preferred or convertible debt securities in the Nasdaq or OTC markets. No exemption is provided to traders whose primary trading activities take place on a securities exchange and who only occasionally effect transactions in Nasdaq or OTC.

Question: Are listed stock traders who effect after-hours transactions in foreign markets engaged in OTC trading and, therefore, subject to the Series 55 requirement?

Answer: No. The new rule is not intended to include trading activity conducted in foreign markets.

Question: Are institutional salespersons who report trades executed by their firms' traders for the salesper-

sons' customers to the Automated Confirmation Transaction ServiceSM (ACTSM) included in the definition of equity trader?

Answer: No. The mere reporting of trades to ACT does not bring institutional salespersons within the scope of the rule. If, however, institutional salespersons effect transactions on behalf of their institutional customers in the Nasdaq or OTC markets, then they are acting as agency traders and must qualify on the Series 55 examination.

Question: Are "order processors" who receive and transmit orders to a trading desk, either in their own firms or at another dealer, included in the definition of equity trader?

Answer: No. Such persons are not effecting trades in the Nasdaq or OTC markets. Such persons would be subject to the Series 55 requirement only if they themselves executed a principal or agency transaction for their firms to fill the orders.

Question: Are a firm's proprietary traders included in the definition of equity trader, especially proprietary traders whose primary activities are in exchange-listed securities?

Answer: Yes. Rule 1032(f) explicitly covers without exception proprietary traders who effect any transactions in equity, preferred or convertible debt securities in the Nasdaq or OTC markets. For purposes of this rule, "program" or "basket" traders would be considered proprietary traders.

Question: Does the definition of equity trader include persons in foreign offices who effect transactions in non-U.S. securities in non-U.S. markets that are reported to a non-U.S. exchange or regulatory body?

Answer: No. Rule 1032(f) is intend-

ed for traders executing transactions in covered securities in the Nasdaq or domestic OTC market.

Question: Are bond traders who effect a small number of transactions in convertible securities included in the definition of equity trader?

Answer: Yes. There is no de minimis exemption for bond traders who do an occasional small dollar volume business in convertible securities.

Question: Are "buy side" traders in a member acting solely on behalf of advisory accounts under management by the member included in the definition of equity trader?

Answer: Yes. Rule 1032(f) only exempts traders whose activities are conducted in behalf of an affiliated investment company that is registered under the Investment Company Act of 1940. This exemption does not apply to traders for advisory accounts managed by a member.

Contact Persons

The following persons in NASD Regulation's Testing and Continuing Education Department may be contacted for additional information concerning the new qualification requirements and the Series 55 Examination:

Carole B. Hartzog, Lead Qualifications Analyst, at (301) 590-6696.

Elaine P. Warren, Senior Qualifications Analyst, at (301) 590-6135.

Eva E. Cichy, Qualifications Analyst, at (301) 208-2789.

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Disciplinary Actions

Disciplinary Actions Reported For July

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal 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, July 20, 1998. The information relating to matters contained in this *Notice* is current as of the end of June 24.

Firms Expelled

Burnett Grey & Co., Inc. (Atlanta, Georgia). The firm was censured, fined \$100,000, and expelled from NASD membership. The sanctions were based on findings that the firm accepted consideration from, or on behalf of, issuers for filing Form 211s with the NASD to list each issuer's securities on the OTC Bulletin Board[®]. The firm also received unfair and unreasonable compensation in connection with public offerings. In addition, the firm failed to establish, implement, and enforce reasonable supervisory procedures designed to assure compliance with NASD rules and policies and federal securities laws involving public underwriting and investment banking activities even though it engaged in such activities.

Joseph Roberts & Co., Inc. (Pompano Beach, Florida) was censured, fined \$100,000, and expelled from NASD membership. The sanctions were based on findings that the firm violated its restrictive agreement by carrying an inventory position, the value of which was greater than 50 percent of the firm's previous month's excess net capital by amounts ranging from \$1.5 to \$10.8 million. Furthermore, the firm conducted a securities business while failing to maintain minimum required net capi-

tal and failed to maintain complete, current, and accurate books and records. In addition, the firm filed false and inaccurate FOCUS Reports Part I and Part IIA that materially overstated the firm's net capital.

Firms Expelled, Individuals Sanctioned

Questron Securities, Inc. (Sherman Oaks, California) and **Sam E. Harris (Registered Principal, Thousand Oaks, California).** The firm was censured, fined \$20,000, and expelled from NASD membership and Harris was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm and Harris failed to respond to NASD requests for information.

Firms And Individuals Fined
Honor, Townsend & Kent, Inc. (Horsham, Pennsylvania) and **Michael D. Sweeney (Registered Principal, Philadelphia, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$12,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Sweeney, failed to provide the Firm Element training required by the NASD's Continuing Education Program to some of its registered representatives.

Firms Fined

Dean Witter Reynolds, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings

that it failed to respond to NASD requests for documents and information in connection with an NASD arbitration.

NationsBanc Investments, Inc. (Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$5,000, jointly and severally with an individual, and fined an additional \$11,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed an individual to continue performing duties as a principal although he had not satisfied the Regulatory Element of his continuing education requirement. The findings also stated that the firm failed to have an individual performing duties requiring principal registration properly qualified and registered as such, failed to provide an adequate supervisory system with respect to principal registrations, and failed to prepare and maintain written procedures reasonably designed to achieve compliance with all applicable rules and regulations.

R.D. White & Co., Inc. (New York, New York) submitted an Offer of Settlement pursuant to which the firm was censured and fined \$20,000, and fined \$5,000, jointly and severally with an individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to the NASD on a timely basis statistical and summary information regarding customer complaints and a securities consent judgment entered into with the State of New Jersey Bureau of Securities. The findings also stated that the firm failed to develop and maintain a continuing and current education program for its registered persons and to develop a written training plan. In addition, the NASD determined that the firm failed to establish, maintain,

and enforce adequate supervisory systems as well as written supervisory procedures reasonably designed to ensure its compliance with reporting and continuing education requirements.

Individuals Barred Or Suspended

Alan L. Alexander (Registered Representative, Coconut Grove, Florida) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Alexander failed to respond to NASD requests for information.

Gary W. Atwood (Registered Principal, Tampa, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$150,000, barred from association with any NASD member in any capacity, and required to pay \$80,000 in restitution to a public customer. Without admitting or denying the allegations, Atwood consented to the described sanctions and to the entry of findings that he induced a public customer to invest \$80,000 in promissory notes issued by a fictitious entity that Atwood created. According to the findings, Atwood prepared the notes and signed them on behalf of this fictitious entity, converted the proceeds of the \$80,000 in checks he received from the customer, and used the funds for his own benefit.

William B. Badinelli, Jr. (Registered Principal, West Nyack, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for 20 days, and required to requalify by exam for the Series 24 registration before again acting in that capacity. Without admitting or

denying the allegations, Badinelli consented to the described sanctions and to the entry of findings that, in his capacity as his member firm's compliance director, Badinelli failed to establish, maintain, and enforce adequate supervisory procedures reasonably designed to prevent excessive markups.

Edward F. Escamilla (Registered Representative, Long Beach, California) was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to reimburse his member firm \$1,000. The sanctions were based on findings that Escamilla converted money orders totaling \$1,000 that he received from a public customer by endorsing and depositing them in his personal bank account. Escamilla also failed to respond to NASD requests for information.

Ilya Fisher (a/k/a Ilya Fikher, Elliot Fisher and Elliot Fikher, Registered Representative, Rego Park, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$70,000, barred from association with any NASD member in any capacity and ordered to disgorge \$38,789.55 to the NASD. Without admitting or denying the allegations, Fisher consented to the described sanctions and to the entry of findings that he executed transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The findings also stated that Fisher had an impostor take the Series 7 and 63 exams on his behalf and gave false and misleading testimony to the NASD during an on-the-record interview.

Maureen E. Galligan (Registered Representative, San Diego, California) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The

sanctions were based on findings that Galligan failed to respond to NASD requests for information.

James A. Goetz (Registered Representative, Dickinson, North Dakota) was censured, fined \$2,500, and barred from association with any NASD member in any capacity, with the right to reapply after one year to become associated with an NASD member. The Securities and Exchange Commission (SEC) imposed the sanctions following appeal of a November 1996 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Goetz submitted applications to his member firm's matching gifts program requesting that \$1,600 be donated to his daughter's school, misrepresenting that he had contributed personal funds in that amount, a requirement of the program. Goetz knew or should have known that the funds were used to offset the tuition of his daughter at the designated school, in further violation of the matching gifts program.

Arthur R. Hall (Registered Representative, Amston, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hall consented to the described sanctions and to the entry of findings that he commingled funds of a public customer totaling \$10,617.34 with those of his book-keeping and advisory business, independent of his member firm.

Mary Margaret Hart (Registered Representative, Scranton, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$20,000, and barred from association with any NASD member in

any capacity. Without admitting or denying the allegations, Hart consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests to appear for testimony.

David Richard Hasler (Registered Principal, West Des Moines, Iowa) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hasler failed to respond to NASD requests for information.

Forrest Gahl Jackson (Registered Principal, Marina Del Rey, California) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jackson failed to respond to NASD requests for information.

John Robert Jones, Jr. (Registered Principal, Santa Monica, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member as a general securities principal for 30 days, and ordered to requalify by exam as a general securities principal. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he permitted an individual to engage actively in the management of the securities business of his member firm without being registered in a principal capacity. The findings also stated that Jones permitted individuals to execute corporate securities transactions for the accounts of public customers when they were not licensed to sell corporate securities.

Furthermore, the NASD determined that Jones, as the branch manager of his member firm's Office of Supervisory Jurisdiction (OSJ), failed to

establish and maintain a system to supervise the activities of registered representatives and associated persons in the OSJ that was reasonably designed to achieve compliance with NASD rules. Specifically, Jones failed to establish and maintain a system for handling customer complaints.

Nicholas L. Keating, III (Registered Principal, Toms River, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$12,500, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by taking the Series 26 exam. Without admitting or denying the allegations, Keating consented to the described sanctions and to the entry of findings that he signed the names of public customers on account applications after the customers had signed similar forms acknowledging their transaction. The findings also stated that Keating signed the name of a licensed agent on life insurance applications after the customers had signed the applications.

Lawrence M. Knapp (Registered Representative, Lakewood, Colorado) was censured, fined \$170,000, ordered to reimburse his member firm \$30,069.47, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Knapp received checks totaling \$30,069.47 from a public customer for investment purposes. Knapp instructed the customer to make the checks payable to him. Instead of investing the funds, Knapp converted the money to his own use and benefit. Knapp also failed to respond to NASD requests for information.

Robert E. Ligowski (Registered Representative, Matawan, New Jersey) and **Louis C. Marchione,**

Jr. (Registered Representative, N. Massapequa, New York) submitted an Offer of Settlement pursuant to which they were each censured, fined \$2,500, suspended from association with any NASD member in any capacity for two weeks, and required to requalify by exam as a general securities representative. If the respondents fail to requalify, they will be suspended from association with any NASD member until they have requalified. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they charged public customers unfair prices in connection with the sale of warrants. Furthermore, Ligowski and Marchione failed to make a reasonable inquiry as to the fairness of the prices charged and had discretion in the pricing of these transactions. Ligowski and Marchione also charged gross commissions ranging from 12 to 30 percent of the total dollar amount paid by the customers in transactions in the subject securities.

Anthony C. Louvaris (Registered Principal, Tallahassee, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, suspended from association with any NASD member in any capacity for one year, and required to requalify as a general securities principal by taking and passing the Series 24 exam. Without admitting or denying the allegations, Louvaris consented to the described sanctions and to the entry of findings that he induced public customers to participate in private securities transactions without the authority or knowledge of his member firm.

Curtis Lewis Marchand, III (Registered Principal, Denver, Colorado) and **David Keith Nelson (Registered Principal, Pleasantville, New York)** submitted Offers of Settlement pursuant to which Marchand was

censured, fined \$1,000, and suspended from association with any NASD member in any capacity for five days. In addition, Marchand must submit to additional supervision by his member firm for one year following the suspension, and at the end of the one-year period of additional supervision, Marchand or his member firm must submit a report to the NASD detailing the additional supervision over his activities. Nelson was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Marchand employed devices to defraud public customers by recommending and urging customers to buy speculative and unseasoned securities through baseless price predictions and predictions of returns in transactions. Furthermore, Marchand omitted or misstated to customers material information in sales of recommended securities and failed to have a reasonable basis for his recommendations.

The findings also stated that Nelson failed to supervise several registered representatives adequately and properly, encouraged them to participate in a boiler room to market speculative and unseasoned companies to public customers, and to engage in aggressive and high-pressure sales tactics without concern for suitability and without having a reasonable basis for the recommendations to customers. In addition, the NASD determined that Nelson distributed, instructed, or permitted associated persons to utilize telemarketing scripts in making sales presentations to the public that did not conform to the NASD advertising rules. Nelson also failed to respond completely to NASD requests for information.

Paul J. Maton (Associated Person, Northbrook, Illinois) submitted an

Offer of Settlement pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Maton consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Duane Lee McBride (Registered Principal, Escondido, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$1,950,685, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McBride consented to the described sanctions and to the entry of findings that he received funds totaling \$653,594.17 from public customers for investment purposes. The NASD determined that McBride failed to execute the purchase of partnership interests on the customers' behalf, and instead, converted approximately \$390,137.12 of these funds to his own use and benefit without the customers' knowledge or consent.

Leonard D. Moore (Registered Representative, Spartanburg, South Carolina) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Moore consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on a disbursement request form.

Scott T. Nichol (Registered Representative, Brookfield, Wisconsin) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nichol failed to respond to NASD requests for information.

Thomas Niemczyk (Registered Principal, Syoset, New York) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam prior to becoming associated with any member firm. Without admitting or denying the allegations, Niemczyk consented to the described sanctions and to the entry of findings that he made baseless and improper price predictions pertaining to highly speculative securities. The findings also stated that Niemczyk engaged in unauthorized trading in the accounts of public customers and discouraged, and refused to accept, sell orders from customers on several occasions.

Alfred Salvatore Palagonia (Registered Representative, Quogue, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Palagonia consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Michael T. Pinto (Registered Representative, Margate, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$6,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Pinto consented to the described sanctions and to the entry of findings that he effected transactions in the account of a public customer without the customer's knowledge or authorization. The findings also stated that, without his member firm's knowledge, Pinto entered into a written agreement with the customer wherein shares of

stock, previously sold from the customer's account to cover a debit balance, would be replaced.

Michael William Riley (Registered Representative, Mt. Vernon, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Riley consented to the described sanctions and to the entry of findings that he signed a public customer's name to a variable life insurance application and a request for liquidation of mutual fund shares with instructions that the \$7,446 proceeds of the liquidation be applied to the insurance policy and another variable life policy, without the customer's knowledge or consent.

Janice D. Russo (Registered Representative, Van Nuys, California) was censured, fined \$20,000, suspended from association with any NASD member in any capacity for 18 months, ordered to pay \$4,871 in restitution, and ordered to requalify by exam before re-associating with any member firm. The sanctions were based on findings that Russo executed transactions in the account of a public customer without the customer's consent or authorization.

Terence Taylor (Registered Representative, Locust Valley, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$40,000, barred from association with any NASD member in any capacity, and ordered to pay \$21,500 in restitution to a public customer. Without admitting or denying the allegations, Taylor consented to the described sanctions and to the entry of findings that he misused the funds of a public customer through a wire transfer of \$21,500 into his personal

bank account. According to the findings, the customer was misled into believing he was a customer of Taylor's firm and that the funds were being used to purchase securities. The findings also stated that Taylor failed to respond to an NASD request for information.

Scott I. Torres (Registered Representative, Holbrook, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$125,000, barred from association with any NASD member in any capacity, and ordered to pay \$168,302 in restitution to public customers. Without admitting or denying the allegations, Torres consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his recommendation of securities to public customers. The findings also stated that Torres made fraudulent price predictions to customers in connection with his recommendation of these securities. Furthermore, the NASD determined that Torres purchased and sold shares of stock in a public customer's account without first obtaining the customer's authorization and failed to testify truthfully to the NASD during an on-the-record interview.

Abdul H. Umer (Registered Principal, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$11,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Umer consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without obtaining prior written authorization from the customer and prior written acceptance of the account as discretionary by his mem-

ber firm. The findings also stated that Umer guaranteed to cover a customer against losses in the customer's account.

Michael S. Wachs (Registered Principal, New York, New York)

submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$250,000, barred from association with any NASD member in any capacity and required to make full restitution to his member firm. Without admitting or denying the allegations, Wachs consented to the described sanctions and to the entry of findings that he misappropriated \$20,800,000 in proceeds by means of false and fraudulent pretenses, representations, and promises for the sale of certain of his member firm's assets and then diverted the proceeds to himself and others.

John Mark Wallach (Registered Representative, Lakeworth, Florida)

was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Wallach exercised discretion in the accounts of public customers without having the discretionary authority reduced to writing and without having the accounts accepted as discretionary accounts by his member firm.

Sheldon Gary Zimmerman (Registered Principal, San Diego, California)

submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, suspended from association with any NASD member in any capacity for six months, and ordered after the suspension to requalify by exam in any capacity in which he wishes to become associated or be suspended in those capacities until the time of such requalification. Without admitting or denying the allegations, Zimmerman consented to the described

sanctions and to the entry of findings that he solicited and sold investments to public customers without providing prior written notification to his member firm.

Individuals Fined

Jacques V. Pessah (Registered Representative, Staten Island, New York)

submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Pessah consented to the described sanctions and to the entry of findings that he permitted an individual to purchase shares of stock and warrants that traded at a premium in the immediate aftermarket, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation.

Henry L. Sullivan, Jr. (Registered Representative, New Orleans, Louisiana)

submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$15,000. In addition, Sullivan must attend an advanced training program conducted by his member firm and undergo an annual private compliance session with a firm compliance officer for the next two years. Without admitting or denying the allegations, Sullivan consented to the described sanctions and to the entry of findings that he prepared and allowed a public customer to take from his office documents containing a list of the customer's assets maintained at Sullivan's member firm that inaccurately reflected the value of the customer's investments.

Decisions Issued

The following decisions have been issued by the District Business Conduct Committee (DBCC) or the Office of Hearing Officers and have been appealed to or called for review by the National Adjudicatory Council

(NAC) as of May 29, 1998. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Brian D. Angiuli (Registered Representative, Port Washington, New York)

was censured, fined \$16,694, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Angiuli effected securities transactions in the account of a public customer without the customer's authorization.

Angiuli has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Donald Clyde Bozzi, Jr. (Registered Representative, Basking Ridge, New Jersey)

was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bozzi submitted false insurance applications containing numerous misstatements of fact that he knew or should have known were false. Bozzi also provided false information in written and testimonial form during the course of an NASD investigation.

Bozzi has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Michael Bruzzese (Registered Representative, Brooklyn, New York)

and **Nicholas J. Mormando, Jr. (Registered Representative, Brooklyn, New York)** were each censured, fined \$5,000, suspended from association with any NASD

member in any capacity for one month, and required to requalify by taking and passing the Series 7 exam. In addition, Bruzzese was required to disgorge to public customers his excessive commissions totaling \$5,407.70, and Mormando was required to disgorge \$227,587.45 in excessive commissions to public customers. The sanctions were based on findings that Bruzzese and Mormando received commissions on their sales of securities to public customers that were excessive and unfair.

The action was called for review by the NAC and the sanctions are not in effect pending consideration of the review.

Jawahar K. Doshi (Registered Principal, Bayside, New York) was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Doshi entered into an oral agreement with a public customer whereby he agreed to reimburse the customer for any and all future losses incurred in the customer's account in return for a share of any profits generated. Doshi also failed to respond truthfully to the NASD during an on-the-record interview.

Doshi has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Henry A. Hale (Registered Principal, Marietta, Georgia) was censured, fined \$10,000, and suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. The sanctions were based on findings that Hale failed to supervise reasonably the sales activities of an individual in order to prevent and/or detect the unsuitable trading that occurred in the account of a public

customer.

This action has been called for review by the NAC and the sanctions are not in effect pending consideration of the review.

Institutional Investor Services, Inc. (Chicago, Illinois), Eugene V. Rintels (Registered Principal, Highland Park, Illinois), Joel Chestler (Registered Representative, Glenco, Illinois), and Dennis G. Guy (Registered Principal, Delray Beach, Florida). The firm, Rintels, Guy, and Chestler were censured and fined \$170,000, jointly and severally. Rintels, Guy, and Chestler were each suspended from association with any NASD member in any capacity for 90 days and required to take and pass all exams required for the capacities in which they wish to function with an NASD member or cease to function in any such capacity until they requalify. The sanctions were based on findings that the firm, Rintels, Guy, and Chestler, acting through partnerships they created, purchased stocks through dividend reinvestment and stock purchase plan programs (DRIP Plans), received a total discount of \$122,162, and exceeded the limits that each issuer placed on each purchaser contained in the DRIP Plans.

The firm, Rintels, Guy, and Chestler have appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Gregory Paul Maggipinto (Registered Representative, San Jose, California) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Maggipinto effected securities transactions in the account of a public customer without the prior knowledge or con-

sent of the customer.

Maggipinto has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Derick Adamson (Registered Representative, Glassboro, New Jersey) was named as a respondent in an NASD complaint alleging that he forged a public customer's signature to establish both a life insurance policy and an insurance service account, permitting the funding of the insurance service account via electronic fund transfers from the customer's personal bank account, and falsified records by changing the customer's address to Adamson's own address. The complaint alleges that Adamson forged the customer's signature on the policy record audit letter and the accompanying statistics document and advised the insurance company to surrender the policy. In addition, the complaint alleges that Adamson caused a \$1,600 loan to be taken against the policy without the customer's knowledge, forged the customer's name on the back of the loan check, and then converted the loan check to his personal use and benefit by depositing it into his personal bank account.

The complaint also alleges that

Adamson deposited approximately \$16,045.60 into a life access fund account on behalf of a public customer, caused the address for the account to be changed from the customer's address to Adamson's own address, wrote checks totaling \$25,700 against the account, forged the customer's name on each check, converted the checks to his personal use and benefit by depositing the checks into his bank account, and forged the customer's name to a flexible premium annuity application. In addition, the complaint alleges that Adamson failed to respond to NASD requests for information.

Kurt Fethke (Registered Representative, Los Angeles, California) was named as a respondent in an NASD complaint alleging that he made unauthorized transactions in the accounts of public customers. The complaint also alleges that Fethke failed to respond to NASD requests for information.

Robert Anthony Gatto (Associated Person, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he came into possession of a check drawn on his employer firm's account. The complaint alleges that Gatto proceeded to have the check in the sum of \$1,093.84 made payable to himself, affixed the signatures of the firm's authorized signatories on the check without their knowledge, authorization or consent, and converted the proceeds of the check to his own personal use and benefit. The complaint also alleges that Gatto failed to respond to NASD requests for information.

Richard D. Holloway (Registered Representative, Tulsa, Oklahoma) was named as a respondent in an NASD complaint alleging that he received insurance refund checks totaling \$1,991.65 for delivery to public customers, but failed and neglect-

ed to deliver the refund checks to these customers. The complaint alleges that Holloway converted these funds to his own use and benefit by forging endorsements on each of the checks. The complaint also alleges that Holloway failed to respond to NASD requests for information.

Steven T. Mayes (Registered Representative, Oak Ridge, Tennessee) was named as a respondent in an NASD complaint alleging that he received approximately \$1,700 from a public customer to be invested in a mutual fund, but failed and neglected to submit these funds on the customer's behalf. The complaint alleges that Mayes instead maintained possession of the funds for his own use and benefit. The complaint also alleges that Mayes failed to respond to NASD requests to provide information.

Steven J. Napoli (Registered Representative, Belle Mead, New Jersey) was named as a respondent in an NASD complaint alleging that he received \$10,000 in cash from a public customer for the purpose of paying insurance premiums, remitted a total of \$7,300 on the insurance policy, and failed to remit the remaining \$2,700 to the insurance company. The complaint alleges that Napoli commingled the remaining \$2,700 received from the customer with his own personal funds and converted the funds to his own personal use and benefit without the customer's knowledge, authorization, or consent. The complaint also alleges that Napoli failed to respond to NASD requests for information.

Christopher John Plucinski (Registered Representative, Stevenson Ranch, California) was named as a respondent in an NASD complaint alleging that he received \$35,000 from a public customer for the pur-

pose of investing in a growth and income fund. The complaint alleges that Plucinski did not apply the funds as directed by the customer, and instead, converted the funds to his personal use and benefit by depositing the funds into his bank account and writing personal and business checks on the funds.

Donald E. Radle (Registered Principal, Springfield, Missouri) was named as a respondent in an NASD complaint alleging that he made unsuitable recommendations to customers in the purchase, liquidation, and subsequent repurchase of the same mutual fund, resulting in unnecessary sales and commission charges totaling \$86,375.

Milson Carroll Raver, Jr. (Registered Representative, Sea Girt, New Jersey) was named as a respondent in an NASD complaint alleging that he misused customer funds and schemed to defraud by soliciting public customers to invest in a purported "Regulation D, Rule 504 Offering" for a company that he represented to be incorporated in New York, but which in actuality was never incorporated in New York State. The complaint alleges that, although Raver represented to the customers that their funds would be deposited into an escrow account and would be refundable, he instead deposited \$14,000 in customer funds into a corporate account which he established and used the account to pay for personal expenses.

The complaint also alleges that Raver received an additional \$1,000 from a public customer that was never deposited into the corporate account. The complaint alleges that the public customers requested that Raver return the investment, but no reimbursement was ever made, nor were shares ever delivered to them. The complaint also alleges that Raver failed to give his employer firm

notice of his participation in, and compensation received from, the alleged private securities transaction. Finally, the complaint alleges that Raver failed to respond to NASD requests for information.

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

Andover Securities, Inc., Kansas City, Missouri (May 26, 1998)

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Avatar Financial Group, LTD, Blue Bell, Pennsylvania (May 20, 1998)

Carlisle Investment Group, Chicago, Illinois (April 30, 1998)

Duke & Co., Inc., New York, New York (May 29, 1998)

Marsh, Block & Co., Inc., New York, New York (April 30, 1998)

Meyers Pollock Robbins, Inc., New York, New York (April 30, 1998)

Schuparra Securities Corporation, San Antonio, Texas (May 20, 1998)

Sierra Pacific Capital, Olympic Valley, California (April 30, 1998)

TBD Capital Markets Trust, Miami, Florida (May 29, 1998)

TSG B/D, Inc., New York, New York (April 30, 1998)

Unified Investments, Inc., Jackson, Mississippi (April 30, 1998)

Wall Street Markets Group, New York, New York (April 30, 1998)

Winston Rodgers & Otlvaro, Inc., New York, New York (April 30, 1998)

Wise Choice Discount, New York, New York (May 20, 1998)

WR Lazard, Laidlaw, Inc., New York, New York (May 20, 1998)

Firms Whose Registrations Were Suspended Pursuant To NASD Rule 9622 For Failure To Pay Arbitration Award

Andover Securities Inc., Kansas City, Missouri (June 17, 1998)

Bishop Allen, Inc., New York, New York (June 4, 1998)

Euro-Atlantic Securities, Inc., Boca Raton, Florida (June 1, 1998)

First Cambridge Securities Corp., New York, New York (June 4, 1998)

Global Strategies, Inc., New York, New York (June 12, 1998)

Greenway Capital Corp., n/k/a Cortlandt Capital Corp., New York, New York (June 4, 1998)

LaCroix Alexander Financial Corp., Newport Beach, California (May 26, 1998)

Meyers Pollock Robbins, Inc., New York, New York (June 11, 1998)

State Street Capital Markets Corp., New York, New York (June 1, 1998)

Sterling Foster & Company, Inc., Uniondale, New York (June 17, 1998)

T.L. Group, Inc., Fort Worth, Texas (June 11, 1998)

Suspensions Lifted

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

Avex Investments, Inc., Dallas, Texas (June 3, 1998)

Clemente Fund Management, Inc., New York, New York (May 20, 1998)

Euromax Financial Services, Inc., Daly City, California (May 20, 1998)

Plumwood Securities Corporation, Libertyville, Illinois (May 26, 1998)

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

Casady, Gregory A., Kansas City, Missouri (May 26, 1998)

Khan, Mohammed L., Altamonte Springs, Florida (June 9, 1998)

Sun, Zhen J., Brookline, Massachusetts (May 26, 1998)

Szymanski, Frank R., New Lenox, Illinois (May 26, 1998)

Individuals Whose Registrations Were Suspended Pursuant To NASD Rule 9622 For Failure To

Pay Arbitration Award

Corbett, Timothy, Havertown, Pennsylvania (June 4, 1998)

Forfia, Robert P., Ridgewood, New Jersey (June 9, 1998 to June 16, 1998)

Hauke, Thomas, West Orange, New Jersey (June 18, 1998)

Hiers, John, Corona, California (June 17, 1998)

Hosang, Ian Richard, Brooklyn, New York (June 17, 1998)

Ihm, Jeffrey Peter, Farmingdale, New York (June 11, 1998)

Knight, Michael E., Addison, Illinois (May 27, 1998)

McGavern, Terry J., Lee's Summit, Missouri (June 17, 1998)

Mellul, Elie, Great Neck, New York (June 4, 1998)

Mormando, Christopher, Staten Island, New York (June 17, 1998)

Roach, Donna, Murrieta, California (May 26, 1998)

Rotgers, Richard, Jr., West Babylon, New York (June 4, 1998)

NASD Regulation Sanctions 13 Former Stratton Oakmont Principals And Registered Representatives For Sales Practice Violations

NASD Regulation announced that 13 individuals, including two former managing directors and principals previously associated with Stratton Oakmont, Inc., have been censured, fined, and suspended or permanently barred from the securities industry. Stratton Oakmont Inc., a broker/dealer, was expelled from the NASD in

December 1996.

Jordan Shamah of North Hills, New York, a general securities principal and former managing director and partner in the firm, and Irving Stitsky of Brookville, New York, a general securities principal and former managing director and junior partner in the firm, have consented to be censured and permanently barred from the industry. In addition, Stitsky has been ordered to pay a fine of \$100,000. The allegations against them, which they neither admit nor deny, include engaging in fraudulent sales practices and failing to supervise others who engaged in such practices; fraudulently failing to make a bona fide public distribution during an offering; and violating a lock-up requirement in connection with a public offering. These findings result from three separate NASD Regulation disciplinary actions.

This brings to 13 the number of former principals and employees of Stratton Oakmont who have recently settled sales practice actions brought against them by NASD Regulation. The settlements are the result of an ongoing, stepped-up effort by NASD Regulation to hold not only brokerage firms accountable for sales practice violations, but also the individual brokers who commit them. Sanctions against these individuals range from suspensions of three months to permanent bars from the securities industry, and fines of up to \$100,000.

Former Stratton Oakmont employees sanctioned in conjunction with their actions while at the firm include:

- Chad Beanland of North Babylon, New York, general securities representative: censure, bar, and \$10,000 fine;
- Andrew Steven Friedman of Plainview, New York, general securities principal: censure, bar, and

\$50,000 fine;

- Howard Gelfand of Roslyn, New York, general securities principal: censure, six-month suspension, \$20,000 fine, and requirement to requalify by examination;
- Patrick Hayes of Valley Stream, New York, general securities principal: censure, six-month suspension, \$10,000 fine, and requirement to requalify by examination;
- David Heredia of Long Beach, New York, general securities representative: censure, bar, and \$100,000 fine;
- Lauren Lessard of Northport, New York, general securities representative: censure, three-month suspension, \$5,335 in restitution, \$15,000 fine, and requirement to requalify by examination;
- Richard Ringel of Roslyn, New York, general securities representative: censure, bar, and \$50,000 fine;
- Peter Rubenstein of Melville, New York, general securities representative: censure, three-year suspension, \$20,000 fine, and requirement to requalify by examination;
- Mark Slakter of Upper Saddle River, N.J., general securities representative: censure, 11-month suspension, and \$15,000 fine;
- Bonnie Vandenberg of Roslyn, New York, general securities representative: censure, six-month suspension, \$10,000 fine, and requirement to requalify by examination; and
- Samuel Weber of Dix Hills, New York, general securities representative: censure and bar.

In addition, disciplinary proceedings

are still pending against 25 individuals formerly associated with Stratton Oakmont.

Maidstone Financial Fined, Expelled; Four Brokers Settle Fraud Charges

NASD Regulation expelled Maidstone Financial Inc., from the NASD and sanctioned two of its senior executives—along with two more senior executives of HGI Inc. (formerly known as the Harriman Group)—in connection with fraud in the underwriting of three securities. Maidstone and the four individuals, all of whom were barred, were fined a total of \$14.8 million.

Nearly \$1 million has already been deposited by the four executives into an escrow account for disbursement to hundreds of defrauded investors from 15 states and three countries. Maidstone's Chief Executive Officer and Chairman, Marshall Bernstein, was barred, fined \$1.9 million, and censured; and its President, Stuart Litman, was barred, fined \$1.9 million, and censured. HGI's Vice President and Director, Brian Douglas Scanlon, was barred, fined \$5 million, and censured; and Secretary and Chairman Mark Arthur Hanna was barred, fined \$5 million, and censured. Maidstone was fined \$1 million and censured. The case against HGI remains pending.

Investors entitled to restitution need not contact the NASD directly, as they will be contacted in writing by a

consultant hired by Maidstone (and approved by NASD Regulation) shortly. Maidstone and the four individuals all neither admitted nor denied NASD Regulation's findings.

The complaint in this case, filed by NASD Regulation in December 1997, alleges that, as underwriters of three securities (Sims Communications, Inc., Natural Health Trends Corp., and International Cutlery, Ltd.), HGI and Maidstone made more than \$16.2 million in illicit profits, defrauding investors in the process. The two firms, working through the four individuals, illegally profited by purchasing stock at below-market prices to cover large short positions each firm had intentionally created in their inventories. In each offering, the firms purchased the covering shares from shareholders who had received their securities prior to the initial public offerings (IPOs) through private placements and bridge financing arrangements. In registration statements and amendments filed by the two firms with the SEC, the shares of these "selling shareholders" were restricted and therefore could not be sold for up to two years after the IPO, unless the lead underwriter granted permission.

The complaint also alleges that both firms entered into private transactions with the "selling shareholders" to purchase their shares to cover the short positions in their inventories. In addition, it is alleged that, acting through the four principals, the two firms engaged in fraud by failing to

disclose: the private transactions with the selling shareholders, the firms' plans to distribute the selling shareholders' securities to the public, and the receipt of excessive underwriting compensation.

HGI, according to the complaint, made \$12 million in excessive and undisclosed underwriting compensation, and Maidstone Financial, Inc., received more than \$4.2 million in excessive and undisclosed underwriting compensation.

This case was brought by NASD Regulation's District 10 office in New York with assistance from the Corporate Financing Department in Washington, D.C. Neither HGI, Inc., nor Maidstone currently operates a securities business. In September 1997, HGI, which was then based in Jericho, N.Y., withdrew from the NASD. Maidstone, formerly based in New York City, also withdrew from the NASD in November 1997.

Investors can obtain the disciplinary record of any NASD-registered broker or brokerage firm by calling (800) 289-9999, or by sending an e-mail through NASD Regulation's Web Site (www.nasdr.com).

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For Your Information

Members Reminded To Update PC FOCUS PINs

Members are reminded of their obligation to keep their PC FOCUS Personal Identification Number (PIN) information current. FOCUS filings that are submitted with the PIN of an individual who is no longer registered as a principal of the submitting firm are not considered complete filings.

Background

Each member designated to the National Association of Securities Dealers, Inc. (NASD[®]) for financial regulation is required to have at least one of its principals establish and register a PIN with NASD Regulation, Inc. (NASD RegulationSM). It might be advisable to have more than one. When the member prepares to transmit its FOCUS Report, it is prompted by the PC FOCUS application to input a PIN to effect the transmission of the data. The PIN constitutes the principal's signature and certifies that all information contained in the report is true, correct, and complete. The PIN is validated when the FOCUS Report is received by NASD Regulation.

PIN Requirements

The following are the terms and conditions for a valid PIN.

- Each principal whom the firm has authorized to approve and submit FOCUS filings must select his/her PIN consisting of four alphanumeric characters.
- Each PIN must be filed on a PIN registration form with NASD Regulation.
- A PIN must be assigned to a licensed, active principal with the submitting member. If a principal ceases to be employed with the member, or is no longer qualified or authorized to sign FOCUS Reports, the member must immediately con-

tact NASD Regulation to cancel the PIN for that principal.

- A member that uses a service bureau, accounting firm, or some other entity to file FOCUS Reports on its behalf must provide written notification to NASD Regulation that authorizes the designated entity to use the member's PIN. However, the PIN remains the principal's signature and the member is responsible for the filing.

Updating PIN Information

FOCUS filings that are submitted with an invalid or inactive PIN will be deemed incomplete. Members must then refile their reports with a valid PIN before NASD Regulation considers the reports as received. If an individual with a PIN leaves the firm or changes duties, it is the member's responsibility to notify the Business Program Support Help Desk so that accurate PIN information can be kept on file. Members may call the Help Desk at (800) 321-NASD, or write to the address given below, on company letterhead, advising of the status change and requesting that the individual's PIN be removed.

To register the replacement, members then must complete a new PIN registration form, which must be signed and notarized. Members may fax the form to NASD Regulation at (301) 590-6312, but also must send the original by mail to:

NASD Regulation, Inc.
Business Program Support
Attention: PIN Coordinator
15201 Diamondback Drive
Rockville, MD 20850-3389

Questions concerning PIN information may be directed to the Business Program Support Help Desk at (800) 321-6273.

SEC Issues No-Action Letter On Repos And Reverse Repos

On April 1, 1998, in response to a request from the Government Securities Clearing Corporation (GSCC), the SEC Division of Market Regulation issued a no-action letter concerning the appropriate net capital treatment for repurchase and reverse repurchase agreement transactions (repos) that have been netted and guaranteed through GSCC's netting system.

In its request letter, GSCC noted that its netting system totals and nets, on a daily basis, each netting member's buy and sell cash activity, Treasury auction purchases, and repos in a security to establish a single net position as long, short, or flat. After determining the netting member's net settlement positions, corresponding receive and deliver obligations are established, and GSCC becomes primarily obligated as the new counterparty for each transaction and guarantees settlement of all repos that enter its netting system.

GSCC also discussed its risk management procedures that require a daily mark-to-the-market and settlement process, which eliminates each netting member's deficits on repo contracts on a daily basis. Since these deficits are never outstanding for more than one business day, GSCC made its no-action request under paragraph (c)(2)(iv)(F) of SEC Rule 15c3-1, which requires a broker/dealer, when calculating its net capital, to deduct from its net worth certain deficits arising from repo activities. The rule provides that repo and reverse repo deficits may be reduced by "calls for margin, marks to the market, or other required deposits which are outstanding one business day or less."

Based on GSCC's representations, the SEC issued a no-action letter stating that, when computing net

capital, GSCC members that use its netting system are not required to deduct from their net worth deficits arising from repo and reverse repo agreements, outstanding one business day or less, that are netted and guaranteed by GSCC.

Questions concerning the letter may be directed to Diane Waller at (212) 412-8693 or dwaller@gsc.com, or Jeffrey Ingber at (212) 412-8637 or jingber@gsc.com at the GSCC.

Agent Fees Increase

All Central Registration Depository (CRDSM) participants, please be advised that the State of Pennsylvania Securities Commission has recently informed CRD that agent registration, transfer, and renewal fees will increase effective Wednesday, July 1, 1998. Agent registration and transfer fees will increase from \$77 to \$80. Agent renewal fees will increase from \$62 to \$65. There will be no change in broker/dealer registration or renewal fees.

Year 2000 Tips For Members

As the Year 2000 grows near, each NASD member firm should check its systems and facilities to be ready for the coming millennium. Important among these systems is checking an item you use and depend on every day—your personal computer (PC).

The following steps are suggested to determine if a PC will roll over to the year 2000 correctly.

The test presented here requires a bootable DOS floppy diskette. This is a safer method to test your PC's system clock because it leaves the data and programs on the PC's hard disk unaffected. If you boot to your C: drive, you may end up loading Windows[®] or Windows[®] 95 and other applications from your startup routine. Using a bootable diskette will

ensure the integrity of the data and programs on your PC's hard disks. The test script presented here will check your PC's ability to transition to the year 2000 and recognize it as a leap year.

Step 1: Create a bootable test diskette:

Insert a blank floppy diskette into the PC's A: drive. From a DOS prompt, type `FORMAT A:/S`. Or from Windows File Manager, click on `DISK/FORMAT` and check `MAKE SYSTEM DISK`.

Step 2: Shut down the PC:

With the bootable diskette created in Step 1 still in your PC's floppy drive, shut down your system (close Windows) and power off your PC. **DO NOT** use the reset button or warm-boot (`CTL-ALT-DEL`).

Step 3: Power on the PC:

Turn the power on your PC and allow the PC to boot from the diskette. After bootup, type `DATE` and press enter. DOS automatically shows the current date. Current date should be displayed.

Step 4: Enter new date and time:

At the Enter New Date (mm-dd-yy) prompt, type `12-31-1999`. After changing the date, the new date will be displayed. Type `TIME` and press enter. At the Enter New Time prompt, type `23:55:00`.

Step 5: Shut down the PC:

Turn the power off on your PC and wait at least 10 minutes. If you don't, DOS will appear to transition correctly to the year 2000 but your system may not be Year 2000 compliant.

Step 6: Power on the PC:

Turn the power back on and wait for the boot process to complete.

Step 7: Check the system date:

Type in Date at the Ready prompt. If Sat 01-01-2000 is displayed, your PC's BIOS passes the test.

Step 8: Test your system's ability to recognize the year 2000 as a leap year:

Repeat steps 3 and 4 using 02-28-2000 as the date and set the time to 23:55:00.

Step 9: Power off your PC:

Turn the power off on your PC and wait at least 10 minutes.

Step 10: Power on the PC:

Turn the power on the PC. Type in DATE at the Ready prompt. If Tue 02-29-2000 is displayed, your PC's BIOS passes the leap year test.

Step 11: Conclude Testing:

To conclude testing, repeat steps 3 and 4 to reset your PC to the current date and time. Enter the current date, *e.g.* 07-04-1997, and time, *e.g.* 06-:00:00. Remove the bootable

diskette from the floppy and power off your PC.

(Source: Based on information obtained from the Small Business Administration's Web Site—www.sba.gov.)

Clarification To May Notice To Members

The Andrew Friedman listed in the *May Notice to Members* is not the Andrew J. Friedman of New York, New York, employed by Prime Capital Services.

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Special NASD Notice to Members 98-61

NASD Members Face CRD Account Deduction Or Membership Cancellation For Non- payment Of Arbitration Fees

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Effective upon publication of this *Notice*, the National Association of Securities Dealers, Inc. (NASD[®]) will extend the practice of deducting delinquent (*i.e.*, greater than 90 days outstanding) arbitration fees from funds maintained in a member's Central Registration Depository (CRDSM) account to include fees originating **prior to January 1, 1998**.

Notice to Members 97-71 established the practice of deducting delinquent arbitration fees from member CRD accounts. However, this practice was limited to balances originating after January 1, 1998.

As previously outlined in *Notice to Members 97-71*, members will receive a final written notice that outstanding arbitration fees are due and payable. This notice will be sent as part of the normal billing and collections process after the balance has been outstanding for 30 days. If payment is received prior to the established deadline (*i.e.*, **60 days after final notice**), the NASD will not deduct funds from the member's CRD account. Members are responsible for replenishing the funds on deposit in their respective CRD accounts to ensure that no delays are experienced in processing registration applications or any other CRD-related obligation.

If after the 60-day period specified in the final notice, there are insufficient funds on deposit to cover the unpaid fees, the NASD will pursue the suspension or cancellation of the member's membership pursuant to Article VI, Section 3 of the NASD By-Laws. NASD, after a **15-day notice** in writing, may suspend or cancel the membership of any member that is delinquent in the payment of arbitration fees in cases where a party has not filed a motion to vacate or to modify an award pursuant to applicable law, or where a court has denied such a motion.

Questions regarding this *Notice* may be directed to Linda Fienberg, Executive Vice President, Office of Dispute Resolution, NASD Regulation Inc. at (212) 858-4400; Todd Diganci, Vice President and Corporate Controller, Finance Department, NASD at (301) 590-6203; or Elliott R Curzon, Assistant General Counsel, Office of General Counsel, NASD RegulationSM, at (202) 728-8451.

Background

The Office of Dispute Resolution has, and continues to have, a substantial and growing problem with unpaid member and associated person fees, such as member surcharges and forum fees, resulting from arbitration proceedings. Member surcharges are assessed to member firms when they are named in an arbitration proceeding or when an associated person employed by the firm is named in an arbitration proceeding. Forum fees are the fees assessed to a party by the arbitrators based on the number of hearing sessions that occurred in an arbitration case.

Member surcharge fees are assessed and become due and payable when an arbitration claim is served on the member. Forum fees are assessed by the Arbitration Panel and become payable when a case is completed and the statement of account is issued. When there is an arbitration award, the award specifies how much of the total forum fees must be paid by each party to the case.

Under the current invoicing and dunning procedures, NASD believes that members are given sufficient notice of their obligations in order for them to pay the resulting charge prior to deduction of funds from their CRD account. NASD will continue to provide written confirmation of each reallocation to the member's compliance officer.

Deduction From Member's CRD Account

Many members maintain funds on deposit with the NASD in order to expedite processing of employee registrations, examinations, and fingerprint card processing. Increasingly, however, members are asking that on-deposit funds be reallocated for payment of other NASD and NASD Regulation obligations such as advertising fees, gross income assessment fees, and NASD MediaSourceSM materials (e.g., fingerprint cards or other reference materials). For these reasons, the use of member on-deposit funds to cover other obligations owed to the NASD is appropriate.

Accordingly, for delinquent arbitration fees, the NASD will provide a **final written notice** that will give members **60 days from the date of the notice** to pay the outstanding obligations. If payment is not received by the end of that 60-day period, the

NASD will deduct the fees from the member's CRD account.

Joint And Several Cases

All parties against whom arbitration fees have been assessed jointly and severally are equally liable for the satisfaction of the entire obligation. Satisfaction of the fee releases all parties from the outstanding liability without any apportionment. Through its normal billing and collections process, the NASD will continue to expend significant efforts to collect the fees from all parties. If despite those efforts, the balance remains unpaid 90 days after the case has been closed, NASD will deduct funds from the CRD accounts of active member firms against which arbitrators have assessed fees jointly and severally.

Suspension/Cancellation Of Membership Or Registration

Members whose CRD account balances are insufficient to cover an unpaid debt, and who do not make other payment arrangements, may have their membership suspended or cancelled pursuant to Article VI, Section 3 of the NASD By-Laws. Associated persons who do not pay arbitration fees also are subject to suspension or termination of their registration pursuant to Article VI, Section 3 of the NASD By-Laws.

The NASD, after a 15-day notice in writing, may suspend or cancel the membership of any member that is delinquent in the payment of arbitration fees in cases where a party has not filed a motion to vacate or to modify an award pursuant to applicable law, or where a court has denied such motion.

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NASD Notices to Members (December 1996 to current) are also available on the Internet at www.nasdr.com.

Special NASD Notice to Members 98-62

District Committee And
District Nominating
Committee Election
Procedures And National
Adjudicatory Council
Nomination Procedures

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The purpose of this *Notice* is to advise members of the impending election to fill forthcoming vacancies on the District Committee and next year's District Nominating Committee and to communicate with all members the procedures to fill these vacancies. The procedures are described in detail in Exhibit A: 1998 District Election Procedures.

This *Notice* also serves to advise members of the nomination process for industry members to serve on the National Adjudicatory Council (NAC) next year. The procedures are described in detail in Exhibit B: 1998 Regional Nominating Committee Nomination Procedures.

Questions concerning these procedures may be directed to the member's District Director or Alden S. Adkins, General Counsel, NASD Regulation, Inc. (NASD RegulationSM), at (202) 728-8332, Joan C. Conley, Corporate Secretary, National Association of Securities Dealers, Inc. (NASD[®]), at (202) 728-8381, or Mary Dunbar, Assistant General Counsel, NASD Regulation, at (202) 728-8252.

District Nominating Committee And District Committee

The District Nominating Committee is comprised of five members who serve a one-year term of office. The function of the District Nominating Committee is to nominate a slate of candidates to fill the vacancies that occur annually on the District Committee and to replace the District Nominating Committee itself. In the past, the practice has been to allow one or two of the current members to succeed themselves; this practice provides some continuity from one year to the next.

Members of the District Committee serve as hearing panelists in disciplinary proceedings and the Committee serves as a policy advisor to the Board of Directors with respect to regulatory trends, issues, and concerns, including matters such as Sanction Guidelines, new rule initiatives, and preventive compliance. In selecting a slate of candidates for the District Committee, the Nominating Committee endeavors, as nearly as practicable, to secure appropriate and fair representation of the various sections of the District, and of all classes and types of firms engaged in the investment banking and securities business within the District.

National Adjudicatory Council

In 1999, the NAC will be a 12-member committee with half of the members representing industry and half representing non-industry. The industry members serve as volunteers, and five of the six industry members will be nominated by region (a map of the five regions is attached) and approved by the NASD's National Nominating Committee (NNC). One industry member will be nominated by the NNC as an at-large member. In 1999, half of the industry and non-industry members will be appointed for one-year terms, with the remaining members appointed for two-year terms. These one- and two-year term appointments will be determined by the NNC after the regional nomination and the at-large selection have been approved by the NNC. After 1999, all terms will be two-year terms, and service of two consecutive terms is permissible. The Chairman of the NAC will be elected by the incoming NAC members, and, in accordance with relevant By-Laws, has a seat on the NASD Regulation Board of Directors and NASD Board of Governors.

The NAC is the successor to the National Business Conduct Commit-

tee (NBCC). As such, it is responsible for the oversight of the disciplinary program of NASD Regulation, the most active of all securities industry self-regulatory programs. The NAC also is responsible for the development of regulatory and enforcement policy and rule changes relating to the business and sales practices of NASD members.

The NAC's mission is to assure fairness, expedition, and consistency in the disciplinary and regulatory actions for which it is responsible; to identify and address potential regulatory issues; and to enforce current and establish new disciplinary policy.

The NAC meets at least six times a year. It always meets every other month for a full day to decide appellate cases, rule on applications and exemption requests, and to address policy matters. It may transact addi-

tional business through supplementary telephone meetings. In preparation for these meetings, NAC members receive "kits" consisting of draft decisions on appellate cases and memoranda discussing proposed rules and other matters. The draft decisions range in number from 5 to 20 per kit, and in length up to 20 pages each. Required preparation time for each meeting is extensive, and is in addition to time required to travel to the meetings and the meetings' time. Most meetings are held in Washington D.C. or New York City, but this year the NAC also met in Denver and San Francisco in order to meet with District Committees to discuss issues of common interest.

NAC members also serve about every other month on two-person Hearing Panels designated to hear appeals or calls for review in disciplinary, membership, or financial and

operational limitation cases, as well as on Hearing Panels designated to conduct initial hearings in summary and non-summary suspension, eligibility, and statutory qualification cases. In addition, two to four NAC members also serve as members of the Review Subcommittee, which meets from one to four hours weekly by telephone to discuss and accept or reject proposed settlements in disciplinary actions, to review all non-default initial decisions in disciplinary and membership cases, and to rule on miscellaneous motions or requests. The members of the NAC are supported by the staff of the NASD Regulation Office of General Counsel in connection with the foregoing adjudicatory and policymaking responsibilities.

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**1998
DISTRICT
ELECTION PROCEDURES**

REGULAR ELECTION

1. Each NASD Regulation, Inc. (NASD RegulationSM) District shall maintain a District Nominating Committee in the manner specified in Article VIII of the By-Laws of NASD Regulation.
2. The Secretary of NASD Regulation (the Corporation) will notify in writing the Chairman of each District Committee of the upcoming vacancies on both the District Committee and the District Nominating Committee, and the procedures to follow to fill the vacancies.
3. The Chairman of the District Committee will advise the District Nominating Committee to proceed with its work of soliciting, identifying, and nominating candidates to fill open positions on the District Committee. The District Nominating Committee will be provided by Corporation staff with information considered relevant to the nominating process, including profiles of the NASD members in each District (the member).
4. The Secretary of NASD Regulation and the CRD/Public Disclosure Department will prepare a *Notice to Members* (NtM) reminding all members of their obligation to keep current and accurate the information in the Central Registration Depository (CRDSM) system pertaining to Executive Representatives and branch office addresses. This NtM will note that failure to keep this information accurate may jeopardize the member's ability to participate in District elections as well as other member votes.
5. Each member having a headquarters or branch office in a District will be eligible to cast one vote in a District election through its Executive Representative.
6. The District Committee Chairman will send notification of the forthcoming elections to the Executive Representative and each branch office of all members eligible to vote in that District. Members will be requested to submit names of candidates to the District Nominating Committee or the District Director.
7. The District Nominating Committee will review the background and qualifications of the proposed candidate and the profile information provided by Corporation staff, and will determine its slate of candidates for the election.
8. The District Nominating Committee will certify to the District Committee each candidate nominated by the District Nominating Committee.
9. Within five (5) calendar days after this certification, the District Committee will send to the Executive Representative, who will be eligible to cast one vote in the District, and each branch office in the District a copy of the certified District Nominating Committee document.
10. If an officer, director, or employee of an NASD member is interested in being considered as an additional candidate, he/she must indicate his/her interest to the District Director within fourteen (14) calendar days of the date of the District Nominating Committee document. The District Director will make a written record of the time and date of such notification.
11. A list of all the members eligible to vote in the District (the Executive Representatives) will be mailed to the additional candidate immediately following his/her notification of interest to the District Director.

12. Additional candidate(s) may be nominated if a petition signed by the Executive Representative of at least 10 percent of the members eligible to vote in the District is filed with the District Nominating Committee within 30 calendar days from the mailing date of the list of members eligible to vote (the Executive Representatives - see procedure #11), unless the Secretary of NASD Regulation grants additional time for good cause shown.

13. If no additional candidate(s) are nominated within the 30-calendar-day period then the candidate or candidates nominated by the District Nominating Committee shall be considered duly elected, and the District Committee shall certify the election to the Board of Directors of NASD Regulation.

14. If any additional candidate(s) are nominated, the procedures outlined in the Contested Election Procedures will apply.

CONTESTED ELECTION PROCEDURES

If any additional candidate or candidates are nominated by petition or by the District Nominating Committee, the election will be considered a contested election and the following procedures will apply:

1. The District Committee will send a notice to the Executive Representatives of the members eligible to vote in the District, announcing the contested election and outlining the procedures for such election.
2. The District Committee shall send notice to the Executive Representatives of the members eligible to vote, a reminder to review, and if needed, update their Executive Representative designation and address. Each member will be eligible to cast one vote through its designated Executive Representative.
3. The District Nominating Committee will prepare a ballot with the names of the District Nominating Committee's candidate(s) and the additional nominated candidate(s) for any contested position, which shall be sent to the Executive Representatives of all members eligible to vote in the District. A date before which ballots must be returned will be indicated on the ballot. Instructions will be included with the ballot requesting that the completed ballot be returned to an independent agent of the Corporation.
4. Eligibility for receipt of the ballot will be based upon the Corporation's membership records as of a date determined by the Secretary of NASD Regulation, which will be on a date not more than 30 days from which the ballots are mailed. This membership list will be used for vote qualification purposes. The list will be provided to all candidates.
5. The Corporation's independent agent will receive all of the ballots for the election.
6. The Corporation's independent agent will open all of the envelopes returned undelivered and will determine whether they were sent to the member's address of record. If incorrectly addressed, the agent will send the ballot to the address of record.
7. Following the election period, on a date or dates designated by the Secretary of NASD Regulation, the qualification and accounting of ballots will take place. Representatives of the candidates will be allowed to be in attendance. Representation for each candidate will be limited to two individuals.
8. Under the direction of the Secretary of NASD Regulation or an officer or employee of the Corporation chosen by the Secretary, an independent agent chosen by the Secretary of NASD Regulation will open and count the ballots, pursuant to the procedures described below in paragraph nine.
9. On the date designated by the Secretary of NASD Regulation, the representative of the independent agent will bring to the District Office all of the ballots received prior to the close of the election period and, in the presence of the candidates and/or their representative, will open the election ballots. For ballot qualification purposes, the representative will identify to the candidates each member firm ballot that has been received (including the name of the Executive Representative) and inform each candidate of the representative's determination of whether or not the ballot is

qualified for voting purposes. (Determination shall be based upon a comparison of ballots received against the list of members and their Executive Representatives eligible to vote.) The Secretary of NASD Regulation or his/her designee will make the final determination of the qualification. Upon the qualification of each ballot, the representative will then record the vote indicated on the ballot. (Neither the candidate nor his/her representative will be allowed to see the actual vote of any member firm).

10. Only ballots signed by the Executive Representative of a member eligible to vote shall be counted. The only exception is where a ballot has been received from a member eligible to vote and the member has noted on the ballot a change in Executive Representative and the reasons for such a change. All ballots received in this manner will be set aside, and if these ballots are determined to be material to the outcome of the election, the Secretary of NASD Regulation will contact the firm to confirm the reasons noted. Upon a determination by the Secretary of NASD Regulation that such an exception would be appropriate, the representative will then be asked to contact the new Executive Representative for his/her vote.

11. The following circumstances will each result in an invalid ballot, and therefore will not be counted:

- If a ballot is not signed by the Executive Representative.
- If a vote is not indicated on a ballot.
- If a vote for multiple candidates is indicated on the same ballot.

12. If two or more properly executed ballots are received from the same member firm, these ballots will be set aside. If these ballots are determined to be material to the outcome of the election, the representative will contact the Executive Representative at the member firm to obtain the firm's vote. (A list of firms that indicated their ballots were lost or not received and were provided with duplicate ballots will be provided to the independent agent.)

13. The independent agent will count the votes received for each candidate under the direction of the designated officer or employee. The candidate receiving the largest number of votes cast shall be declared elected. Certification of the election results will be made to the Board of Directors of NASD Regulation.

14. The roles of the parties involved in the contested election are defined as follows:

- The Corporation will provide a list of members eligible to vote as of the date of record to each candidate. Except as provided below, the Corporation will not provide other logistical or administrative support to candidates in the election.
- The Board of Directors of NASD Regulation, the District Nominating Committee, or any other committee acting in its official capacity may not openly communicate its support of any candidate(s) to the members of the Corporation eligible to vote. However, members of the Board, the District Nominating Committee, or any other committee members acting solely in their individual capacity may openly communicate support of any candidate(s) to the members of the Corporation eligible to vote.
- Any additional candidate and his/her representatives and supporters may openly communicate to the members of the Corporation in support of the additional candidate's candidacy.
- The District staff will provide administrative support to the candidates with the preparation of up to two mailings to the members eligible to vote. The Corporation will pay the postage for these mailings. The mailings will be prepared on the personal stationery provided by each candidate, and will state that the mailings represent the opinions of the candidates. The District Nominating Committee Candidate may identify himself/herself as such in his/her mailings. Additional mailings may be made by the candidates, but at their own expense.

- The District staff and Corporation staff will not take any position publicly, or with the membership, indicating a preference for a specific candidate during the contested election period.
- The administration of the contested election, other than as provided for in these Election Procedures, shall be as directed by the Secretary of NASD Regulation.

Additional information pertaining to the District Election Procedures can be found in Article VIII of the NASD Regulation By-Laws. The By-Laws can be found in the *NASD Manual* on-line at www.nasdr.com.

1998
REGIONAL NOMINATING COMMITTEE
NOMINATION PROCEDURES

REGULAR NOMINATIONS

1. Each NASD Regulation, Inc. (NASD RegulationSM) District shall maintain a District Nominating Committee in the manner specified in Article VIII of the By-Laws of NASD Regulation.
2. The Secretary of NASD Regulation (the Corporation) will notify in writing the Chairman of each District Nominating Committee and the District Director of the need to establish a Regional Nominating Committee for purposes of nominating industry members to serve on the National Adjudicatory Council (NAC), and the procedures to follow to fill the vacancies.
3. The District Director and the Chair of the District Nominating Committee will advise the District Nominating Committee to proceed with its work of electing two members from the District Committee to serve as members of the Regional Nominating Committee. Two members from each District Committee will serve for a two-year term on the Regional Nominating Committee. (If the region consists of one District, then the District Nominating Committee must elect four District Committee members to serve on the Regional Nominating Committee.) At the first meeting of the Regional Nominating Committee, a Chairman will be selected from among the members. The District Directors in the specified regions will work together to establish meeting dates, places, and agendas.
4. On or before August 1, 1998, the Secretary of NASD Regulation shall send written notice to the Chairman of the Regional Nominating Committee to advise the Regional Nominating Committee to initiate the process for nominating individuals to represent the region on the NAC for a period of one or two years. The Regional Nominating Committee will be provided by NASD Regulation staff with information considered relevant to the nominating process, including profiles of the NASD members in each region.
5. The Secretary of NASD Regulation and the CRD/Public Disclosure Department will prepare a *Notice to Members* (NtM) describing the nomination procedures and reminding all members of their obligation to keep current and accurate the information in the Central Registration Depository (CRDSM) system pertaining to Executive Representatives and branch office addresses. This NtM will note that failure to keep this information accurate may jeopardize the member's ability to participate in regional nominations as well as other member votes.
6. Each member having a headquarters or branch office in a specified region will be eligible to cast one vote in the NAC nominations through its Executive Representative.
7. The Regional Nominating Committee Chairman will send written notice of the upcoming nomination to the Executive Representative and each branch office of all members in the region eligible to vote in that region. Members will be requested to submit names of candidates to the Regional Nominating Committee or the Secretary of NASD Regulation.
8. The Regional Nominating Committee will review the background and qualifications of the proposed candidate and the description of the NASD membership provided by NASD Regulation staff, and shall propose one or more candidates for nomination to the National Nominating Committee for the election to the NAC from the region.
9. The Regional Nominating Committee will certify to the National Nominating Committee each candidate nominated by the Regional Nominating Committee.

10. Within five (5) calendar days after this certification, the NASD will send to the Executive Representative, who will be eligible to cast one vote in the region, and each branch office a notice of the Regional Nominating Committee's nominations.

11. If an officer, director, or employee of an NASD member is interested in being considered as an additional candidate, he/she must indicate his/her interest to the Secretary of NASD Regulation or the Regional Nominating Committee Chairman in the Region within fourteen (14) calendar days of the date of the Regional Nominating Committee document. The Secretary of NASD Regulation or the Regional Nominating Committee Chairman shall make a written record of the time and date of such notification.

12. A list of all the members and their specified Executive Representative eligible to vote in the region will be mailed to the additional candidate by the Secretary of NASD Regulation immediately following his/her notification of interest to the Secretary of NASD Regulation or the Regional Nominating Committee Chairman.

13. Additional candidate(s) may be nominated if a petition signed by the Executive Representative of at least 10 percent of the members eligible to vote in the region is filed with the Corporate Secretary of NASD Regulation within 30 calendar days from the mailing date of the list of members eligible to vote (the Executive Representatives - see procedure #11), unless the Corporate Secretary of NASD Regulation grants additional time for good cause shown.

14. If no additional candidate(s) are nominated within the 30-calendar-day period, then the candidate nominated by the Regional Nominating Committee shall be considered officially nominated, and the Regional Nominating Committee shall certify the nomination to the National Nominating Committee.

15. If any additional candidate(s) are nominated or the Regional Nominating Committee nominates more than one candidate, the procedures outlined in the Contested Nomination Procedures will apply.

CONTESTED NOMINATION PROCEDURES

If more than one candidate is nominated, the election will be considered a contested nomination and the following procedures will apply:

1. The Regional Nominating Committee will send a notice to the Executive Representatives of the members eligible to vote in the region, announcing the contested nomination and outlining the procedures for such nomination.

2. The Regional Nominating Committee will send notice to the Executive Representatives of the members eligible to vote, a reminder to review, and if needed, update their Executive Representative designation and address. Each member will be eligible to cast one vote through its designated Executive Representative.

3. The Regional Nominating Committee will prepare a ballot with the names of the Regional Nominating Committee's candidate(s) and the additional nominated candidate(s) for any contested position, which shall be sent to the Executive Representatives of all members eligible to vote in the District. A date before which ballots must be returned to be counted will be indicated on the ballot. Instructions will be included with the ballot requesting that the completed ballot be returned to an independent agent of the Corporation.

4. Eligibility for receipt of the ballot will be based upon the Corporation's membership records as of a date determined by the Secretary of NASD Regulation not more than 30 calendar days before the mailing of the ballot. This membership list will be used for vote qualification purposes. The list will be provided to all candidates.

5. The Corporation's independent agent will receive all of the ballots for the election.

6. The Corporation's independent agent will open all of the envelopes returned undelivered and will determine whether they were sent to the member's address of record. If incorrectly addressed, the agent will send the ballot to the address of record.

7. Following the election period, on a date or dates designated by the Secretary of the Corporation, the qualification and accounting of ballots will take place. Representatives of the candidates will be allowed to be in attendance. Representation for each candidate will be limited to two individuals.

8. Under the direction of the Secretary of NASD Regulation or an officer or employee of the Corporation chosen by the Secretary of NASD Regulation, an independent agent chosen by the Secretary of the Corporation will open and count the ballots, pursuant to the procedures described below in paragraph nine.

9. On the date designated by the Secretary of NASD Regulation, the representative of the independent agent will bring to the designated District Office all of the ballots received prior to the close of the election period and, in the presence of the candidates and/or their representative, will open the election ballots. A District Office will be designated by agreement between the Secretary of NASD Regulation and the additional candidate(s). For ballot qualification purposes, the representative will identify to the candidates each member firm ballot that has been received (including the name of the Executive Representative) and inform each candidate of the representative's determination of whether or not the ballot is qualified for voting purposes. (Determination shall be based upon a comparison of ballots received against the list of members and their Executive Representatives eligible to vote.) The Secretary of NASD Regulation or his/her designee will make the final determination of the qualification. Upon the qualification of each ballot, the representative will then record the vote indicated on the ballot. (Neither the candidate nor his/her representative will be allowed to see the actual vote of any member firm.)

10. Only ballots signed by the Executive Representative of a member eligible to vote shall be counted. The only exception is where a ballot has been received from a member eligible to vote and the member has noted on the ballot a change in Executive Representative and the reasons for such a change. All ballots received in this manner will be set aside, and if these ballots are determined to be material to the outcome of the election, the Secretary of NASD Regulation will contact the firm to confirm the reasons noted. Upon a determination by the Secretary of NASD Regulation that such an exception would be appropriate, the representative will then be asked to contact the new Executive Representative for his/her vote.

11. The following circumstances will each result in an invalid ballot, and therefore will not be counted:

- If a ballot is not signed by the Executive Representative.
- If a vote is not indicated on a ballot.
- If a vote for multiple candidates is indicated on the same ballot.

12. If two or more properly executed ballots are received from the same member firm, these ballots will be set aside. If these ballots are determined to be material to the outcome of the election, the representative will contact the Executive Representative at the member firm to obtain the firm's vote. (A list of firms that indicated their ballots were lost or not received and were provided with duplicate ballots will be provided to the independent agent.)

13. The independent agent will count the votes received for each candidate under the direction of the designated officer or employee. The candidate receiving the largest number of votes cast shall be declared the nominee. Certification of the nomination results will be made to the National Nominating Committee.

14. The roles of the parties involved in the contested election are defined as follows:

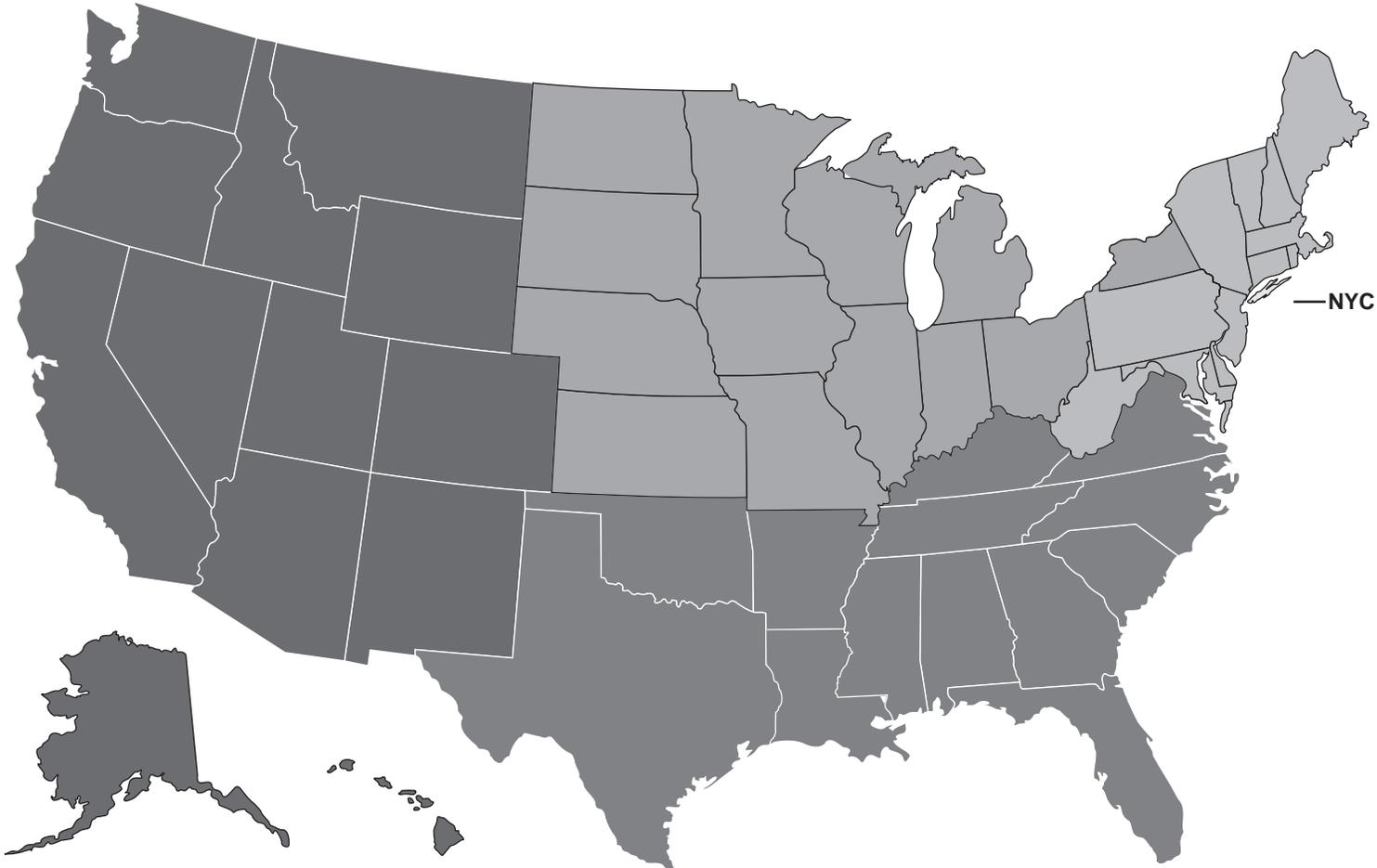
- The Corporation will provide a list of members eligible to vote as of the date of record to each candidate. Except as provided below, the Corporation will not provide other logistical or administrative support to candidates in the election.
- The Board of Directors of NASD Regulation, the Regional Nominating Committee, or any other committee acting in its official NASD capacity may not openly communicate its support of any candidate(s) to the members of the Corporation eligible to vote. However, members of the Board, the Regional Nominating Committee, or any

other committee members acting solely in their individual capacity may openly communicate support of any candidate(s) to the members of the Corporation eligible to vote.

- Any additional candidate and his/her representatives and supporters may openly communicate to the members of the Corporation in support of the additional candidate's candidacy.
- The District staff will provide administrative support to the candidates with the preparation of up to two mailings to the members eligible to vote. The Corporation will pay the postage for these mailings. The mailings will be prepared on the personal stationery provided by each candidate, and will state that the mailings represent the opinions of the candidates. The Regional Nominating Committee Candidate may identify himself/herself as such in his/her mailings. Additional mailings may be made by the candidates, but at their own expense.
- The District staff and Corporation staff will not take any position publicly, or with the membership, indicating a preference for a specific candidate during the contested election period.
- The administration of the contested election, other than as provided for in these Election Procedures, shall be as directed by the Secretary of NASD Regulation.

Additional information pertaining to the Regional Nominating procedures can be found in Article VI of the NASD Regulation By-Laws. The By-Laws and can be found in the *NASD Manual* on-line at www.nasdr.com.

Regional Map for National Adjudicatory Council Nominations



Region	Districts	No. Of Members
West	1, 2, 3a, 3b	1019
South	5, 6, 7	1117
Central	4, 8a, 8b	1040
North	9, 11	1182
New York City	10	1172

Special NASD Notice to Members 98-63

NASD Alerts Members
About SEC Rule
Amendment Requiring
Broker/Dealers To File Year
2000 Reports And Releases
Year 2000 Survey Results

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On July 2, 1998, the Securities and Exchange Commission (SEC or Commission) amended SEC Rule 17a-5 to require broker/dealers to complete reports regarding their readiness and activities to prepare their businesses to address Year 2000 challenges and risks. The Rule amendment was published in the *Federal Register*—63 FR 37667 on July 13, 1998. Complete Rule information is also available on the SEC Web Site (www.sec.gov). This *Notice* discusses the specifics of the SEC's Year 2000 amendment.

Furthermore, this *Notice* highlights survey results from the National Association of Securities Dealers, Inc. (NASD®) December 1997 Year 2000 Compliance Survey. The purpose of that survey was to assist the NASD in determining the status of its members' Year 2000 initiatives, and to ensure that member firms are moving forward in making their businesses and systems Year 2000 compliant. As of June 30, 1998, 99.9 percent of the membership had responded to the survey.

Questions or comments regarding this *Notice* may be directed to Lyn Kelly, NASD Year 2000 Program Director, via the Program Office toll-free number, (888) 227-1330, or via e-mail at y2k@nasd.com. Also, visit the NASD Web Site (www.nasd.com) and NASD Regulation, Inc. (NASD RegulationSM) Web Site (www.nasdr.com) for further Year 2000 information.

SEC Year 2000 Amendment

The amendment to SEC Rule 17a-5 requires all NASD members with FOCUS capital requirements on or after December 31, 1997 of \$5,000 or greater to file two reports with the SEC and the firm's designated examining authority (DEA). **The first report is due to the SEC and DEA**

on or before August 31, 1998. The second report is due April 30, 1999.

The SEC states that these reports will increase broker/dealer awareness to take specific steps now to prepare for the Year 2000; facilitate coordination with self-regulatory organizations of industry-wide testing, implementation, and contingency planning; supplement the Commission's examination module for Year 2000 issues and identify potential Year 2000 problems; and provide information regarding the securities industry's preparedness for the Year 2000. The reports will be available to the public and will enable broker/dealer counterparties and others to assess the risks of doing business with a broker/dealer that may not be Year 2000 compliant.

Summary Details For Report Submission

Each NASD member firm with a \$5,000 or greater net capital requirement is required to file reports to the SEC and DEA at specified times regarding its efforts to address Year 2000 problems. **Important Note:** Member firms that fail to provide required Year 2000 reports will be subject to disciplinary action for violation of NASD Rule 8210.

Each report contains two parts. Part I must be completed by all NASD members with a \$5,000 or greater net capital requirement. Part I is a check-box format. Part II, which requires narrative answers, must be completed in addition to Part I if the NASD member firm has a \$100,000 or greater net capital requirement. SEC Form BD-Y2K and detailed filing instructions are enclosed with this *Notice*.

Generally, the report requires each NASD member firm to discuss the steps it has taken to address Year 2000 problems. Each member,

among other things, is required to: 1) indicate whether its board of directors, or similar body, has approved and funded written Year 2000 remediation plans that address all mission-critical computer systems; 2) describe its Year 2000 staffing efforts; 3) discuss its progress on each stage of preparation for the Year 2000; 4) indicate if it has written contingency plans to deal with Year 2000 problems that may occur; and 5) identify what levels of management are responsible for Year 2000 remediation efforts.

Attestation Comment Period

The SEC is reopening the comment period with respect to its proposal that would have required broker/dealers to engage an independent public accountant to attest to specific assertions in these reports. **The SEC should receive comments on or before 30 days after the Rule amendment was published in the *Federal Register* (July 13, 1998) or August 12, 1998.**

Comment letters should refer to File No. S7-7-98 and be submitted in triplicate to:

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

Comments may also be submitted electronically to the following e-mail address: rule-comments@sec.gov. File No. S7-7-98 should be included on the subject line if e-mail is used.

Report Submission Question & Answer Sessions With The SEC

In response to the challenge presented by the coming millennium change, the NASD has been communicating to NASD members about

the Year 2000 issue on a regular basis. The NASD Regulation Year 2000 Program has, and will continue to, developed publications and workshops to help prepare and educate members on how to address the problem and to make members aware of their responsibility to analyze the readiness of their own business and computer systems, as well as other services and computer systems that each member relies upon.

In order to facilitate complete and accurate report submission, the NASD and SEC will be offering free question and answer sessions to assist members with their individual reports mandated by the recent SEC Year 2000 rule amendment. Two-hour long sessions have been scheduled for the following cities:

City	Date
Chicago	July 31
Dallas	Aug. 3
New York City	Aug. 3
Kansas City	Aug. 4
Atlanta	Aug. 5
Boston	Aug. 5
Los Angeles	Aug. 10
New York City	Aug. 10
Denver	Aug. 11
San Francisco	Aug. 12
Seattle	Aug. 13

Call the NASD Year 2000 Program Office at (888) 227-1330 for details and to make a reservation. Details on these sessions are available on the NASD Regulation Web Site Year 2000 Web Page (www.nasdr.com).

Books And Records Advisory

The SEC advises that a broker/dealer with Year 2000 computer problems may be deemed not to have accurate and current records and be in violation of SEC Rule 17a-3. Also, any broker/dealer that fails to make and keep current books and records would be required to notify the SEC under SEC Rule 17a-11.

NASD Survey Results

In December 1997, the NASD published *Special Notice to Members 97-96* requiring NASD member firms to complete a Year 2000 Compliance Survey. The purpose of the survey was to assist in determining the status of NASD members' Year 2000 initiatives, and to ensure that member firms are on a course to make their businesses and systems Year 2000 compliant. The NASD Year 2000 Program Office will be performing risk-based analysis using information gathered on member firms' Year 2000 readiness from the NASD survey; information from SEC Rule 17a-5 amendment reports due August 31, 1998, and April 30, 1999; and NASD analyst discussions with members.

The SEC requested a report from the NASD summarizing results from the member survey to use in preparation of the June SEC "Report to the Congress on the Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000." This report is available on the SEC Web Site at www.sec.gov. It presents the SEC staff's findings as to the current state of readiness, their position with respect to corporate disclosure as it relates to the Year 2000 issue, actions they intend to continue to take to reduce the risk associated with the Year 2000 problem, and the staff's plans to meet future reporting requirements. An SEC representative will discuss the SEC's report to Congress in an article appearing in the September issue of the NASD's *Regulatory & Compliance Alert*.

Survey Processing And Definitions

The initial survey was mailed to the NASD Executive Representative contact at each member firm. The mailing list for active NASD members contained approximately 5,500 firms as of December 15, 1997. The survey was sent as an *NASD Special Notice To Members* on December 17, 1997.

The survey was designed so that responses could be provided in a check-box format or by filling in blank spaces. If a firm did not complete a section, the response was considered to be "blank" rather than "not applicable." If the response was "blank," the data for that question is not included in the NASD's reporting of the total of firms responding to that question.

As of June 30, 1998, the NASD received responses from 99.9 percent or 5,160 member firms. Member firms are categorized based on self-reported classifications contained in the FOCUS Schedule 1 Filing in 1997. Based on the filing data,

NASD membership is composed of 62 percent "Introducing," 9 percent "Clearing," and 29 percent "Other Firms." Other Firms include Limited Partnerships (DPP), Insurance Companies, Investment Companies, Mergers and Acquisitions Companies, and other firms not specifically designated as Introducing or Clearing. A graphic breakdown of the results appear on the following pages.

Update On SEC Staff Legal Bulletin No. 5

The SEC will release an interpretive memo to the *Staff Legal Bulletin No. 5* describing the results of a recent analysis of company 10Q disclosure reports on Year 2000. The *Bulletin*, originally issued on October 8, 1997, and revised on January 12, 1998, reminds public operating companies, investment advisers, and investment companies to consider their disclosure obligations relating to anticipated costs, problems, and uncertainties associated with the Year 2000 issue. At a recent Securities Industry Association (SIA) meeting, the SEC discussed general

findings of their recent analysis. They found that public organizations are not adequately disclosing the potential risk Year 2000 poses to their organizations. They also found that the percentage of companies disclosing in the financial industry is less than in other sectors. As a result of this, they are enlisting the NASD, SIA, and other exchanges to help them communicate the importance of disclosure to the public issuers.

Every member firm relies upon external organizations for continued successful business operation. Whether a firm relies on services from utility companies or other business service providers, their Year 2000 readiness impacts the member firm. Because of this, it is imperative that every member firm check the disclosure statements of public companies with which it deals. And, if the member firm is a public company, it should be providing full disclosure on its own Year 2000 readiness. Members should also examine disclosure statements made by the issuers they trade.

NASD Year 2000 Member Survey Results

(January 31, 1998 - June 30, 1998)

SURVEY RESPONDENTS

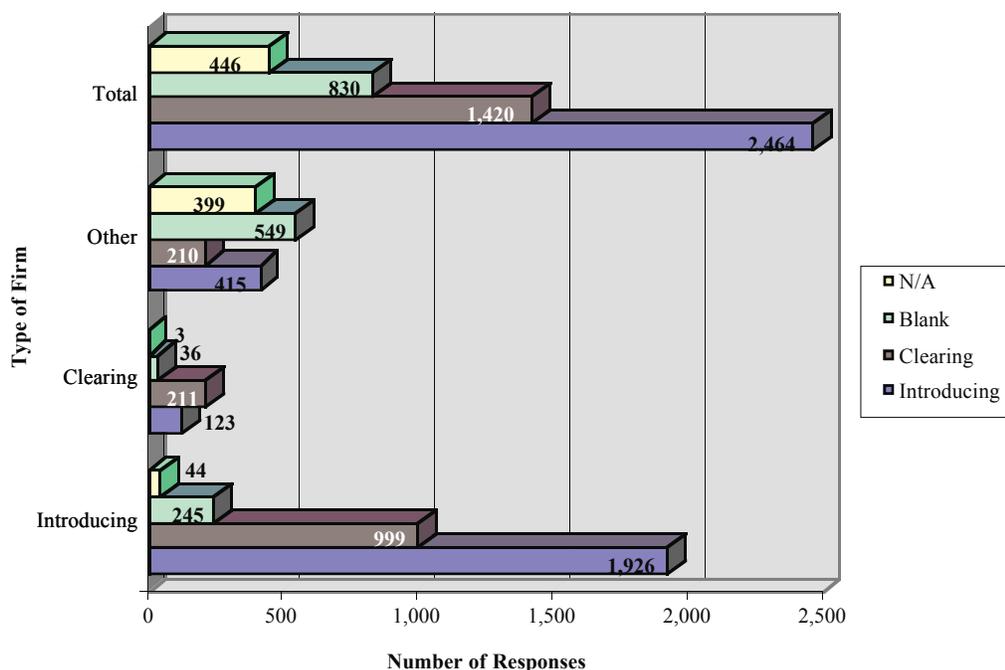
A representation of firm classification and survey response percentages is shown here:

Classification	NASD Members	Percent of Total	Joint NYSE Members	NASD Members Designated (DM)	NASD (DM) Survey Responses Received	Percent NASD (DM) Responses Received
Introducing	3,365	62%	145	3,220	3,214	99.8%
Clearing	505	9%	132	373	373	100.0%
Others	1,573	29%	0	1,573	1,573	100.0%
Total	5,443	100%	277	5,166	5,160	99.9%

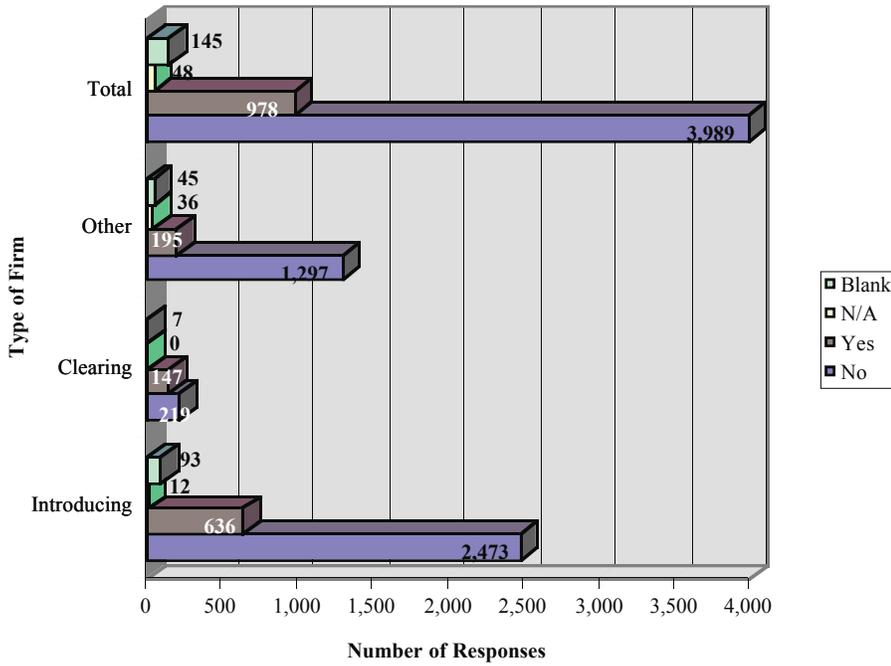
SURVEY RESPONSES

Question #1 - Is your firm an introducing or clearing firm?

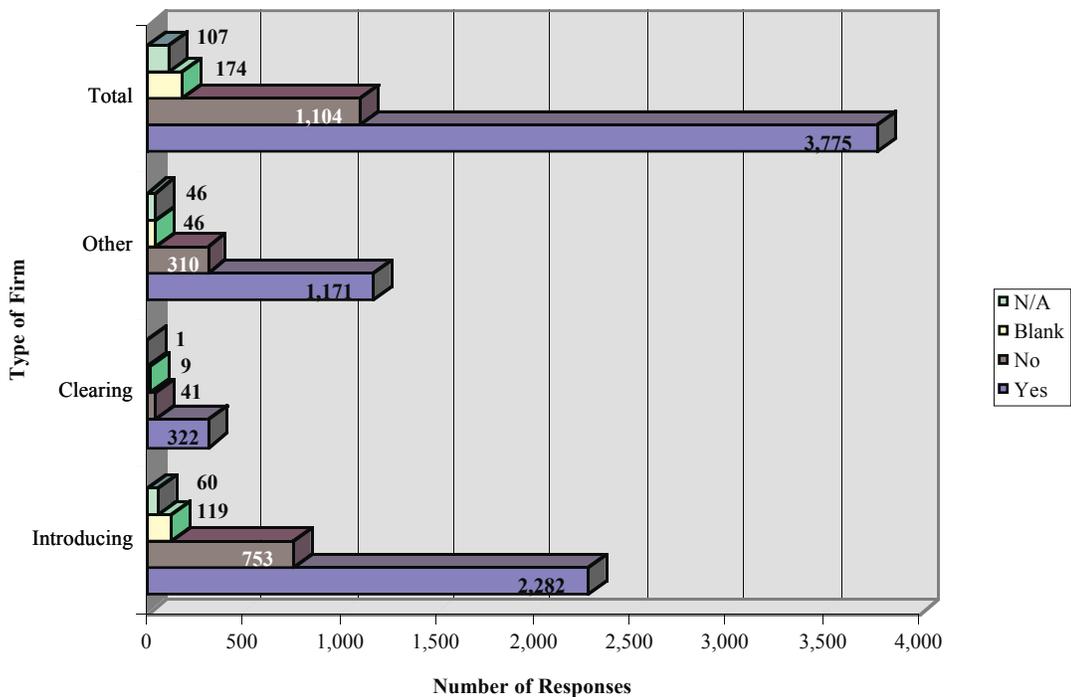
Eighty-four percent (84%) of the firms surveyed responded to this question.



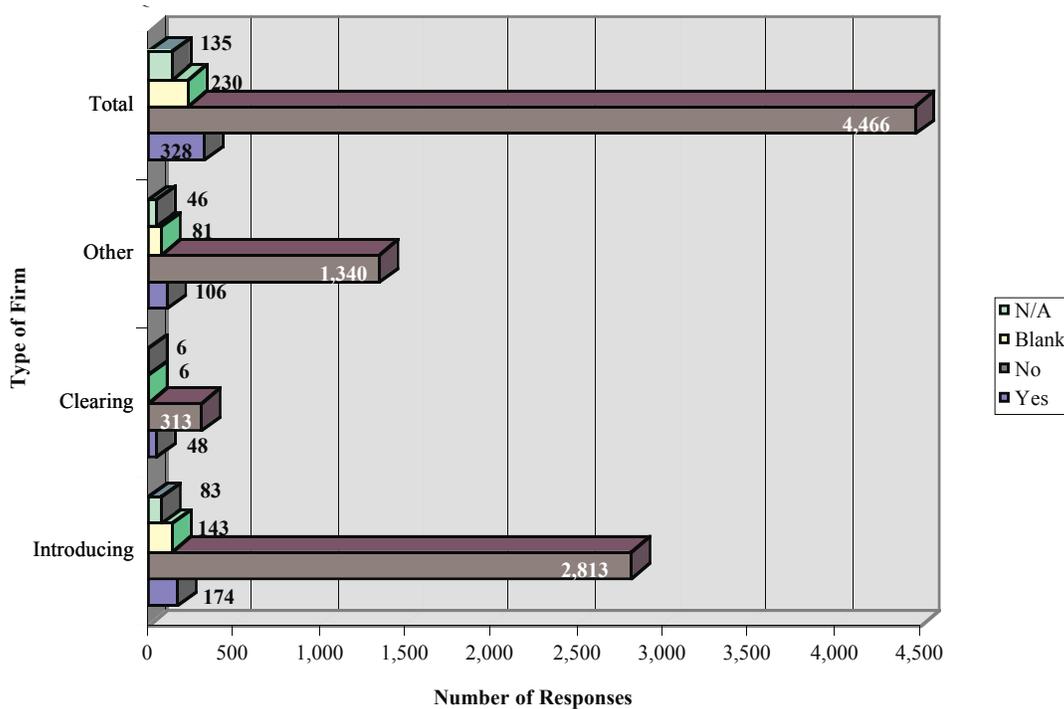
Question #2 - Does your firm use a service bureau for computer processing?
 Ninety-seven percent (97%) of the firms surveyed responded to this question.



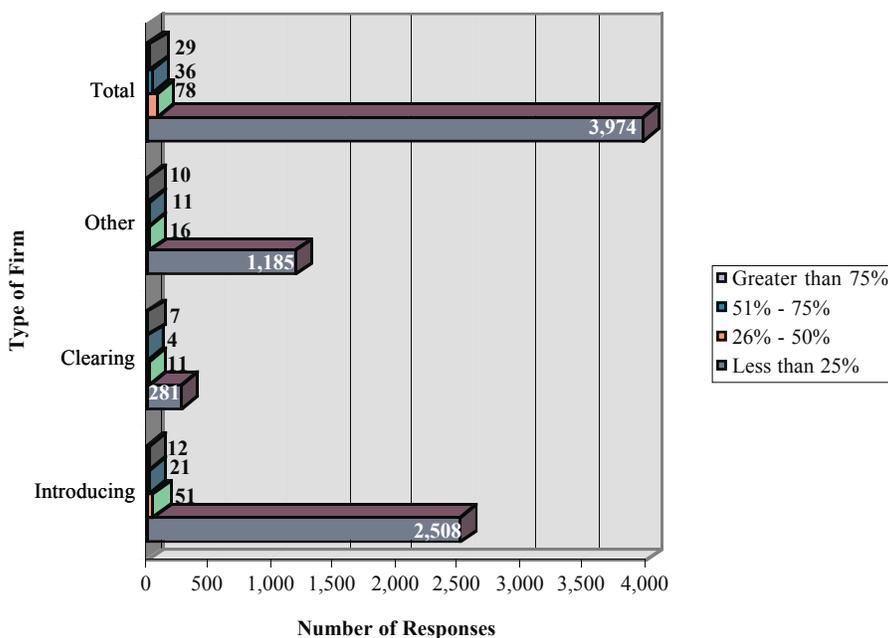
Question #3 - Has your firm prepared a Year 2000 Plan?
 Ninety-seven percent (97%) of the firms surveyed responded to this question.



Question #4a. - Is this a full-time position for your Year 2000 Project Coordinator?
 Ninety-six percent (96%) of the firms surveyed responded to this question.

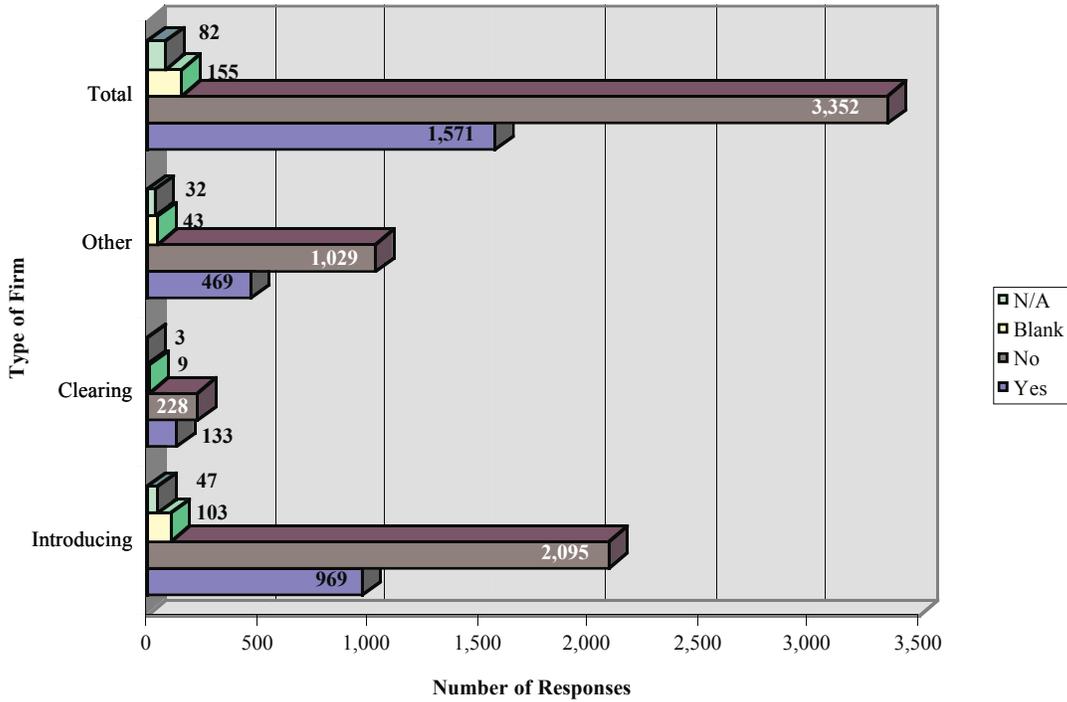


Question #4b. - If this is not a full-time position, what percentage of time is spent on the Year 2000 Project?
 Eighty percent (80%) of the firms surveyed responded to this question.



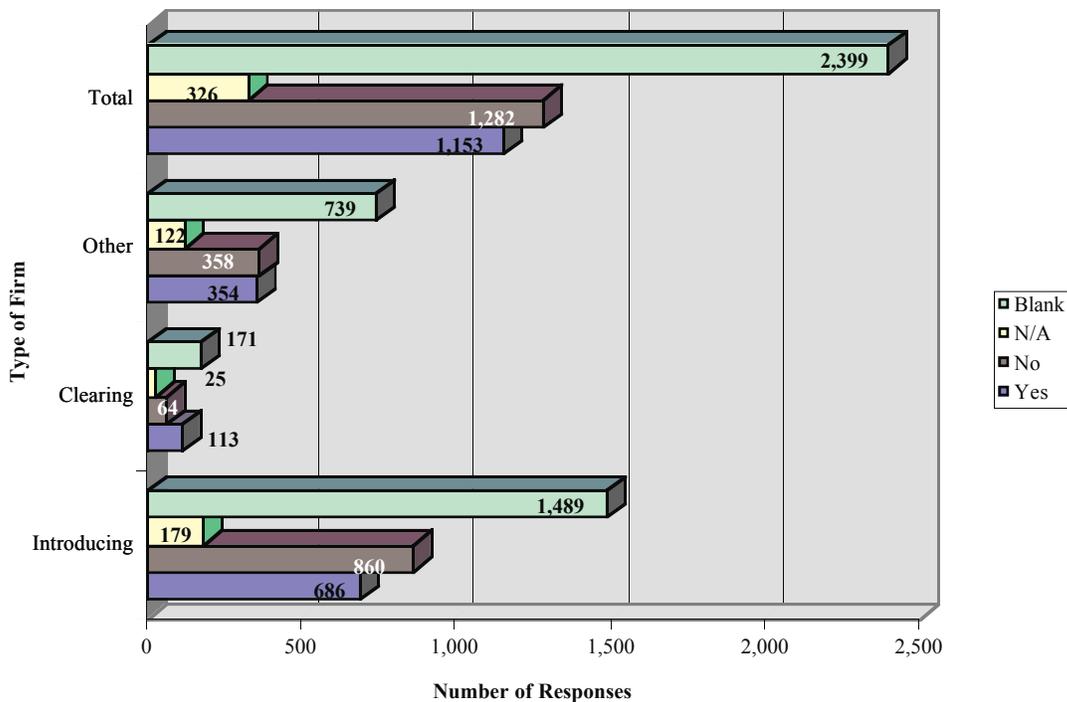
Question #5 - Does your firm plan to use an outside consultant?

Ninety-seven percent (97%) of the firms surveyed responded to this question.



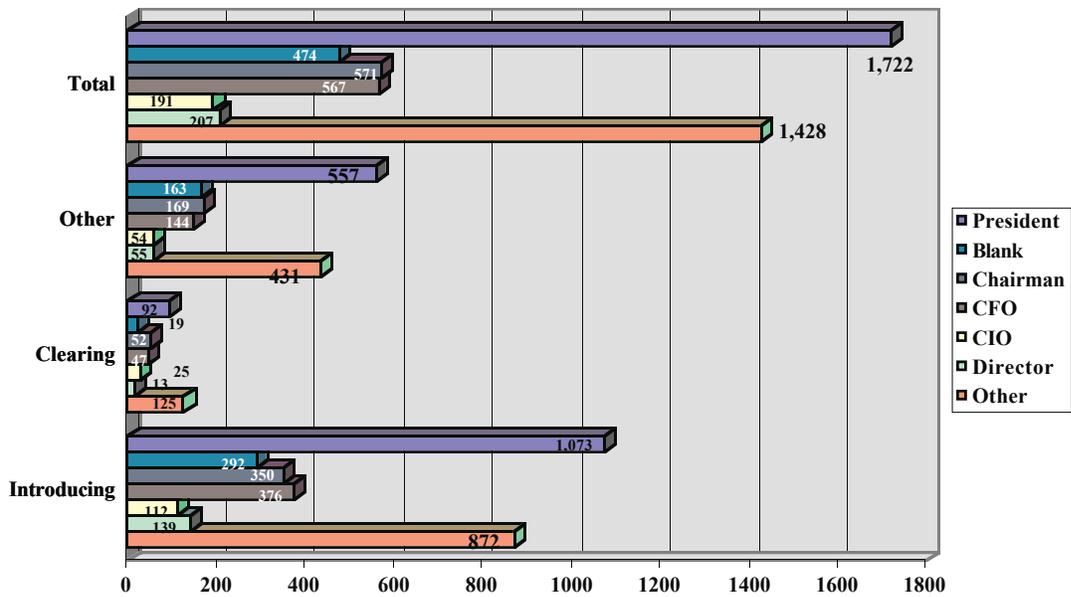
Question #5a. - If you are using an outside consultant, has the consultant been retained?

Fifty-four percent (54%) of the firms surveyed responded to this question.



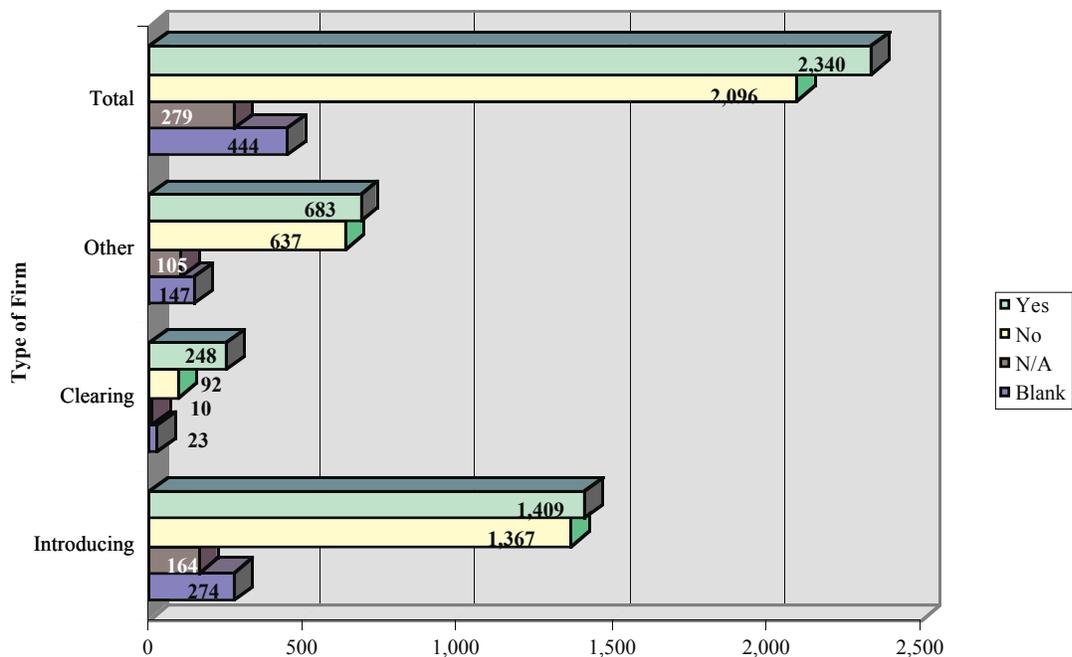
Question #6 - At what level of corporate management is your Year 2000 Project sponsored?

Ninety-one percent (91%) of the firms surveyed responded to this question.

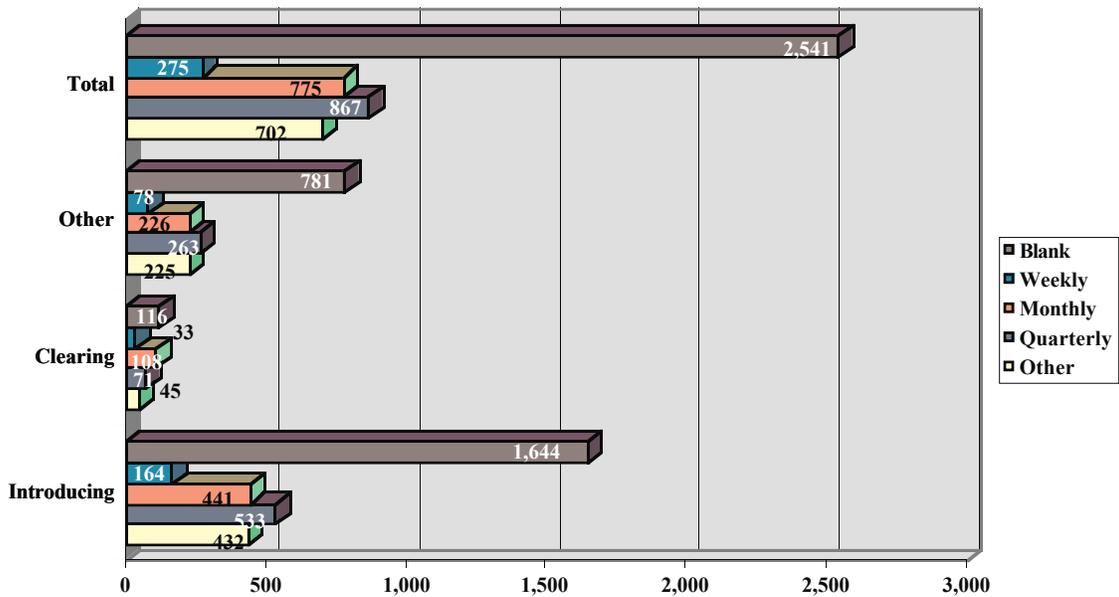


Question #7 - Are progress reports provided to the project sponsor and management?

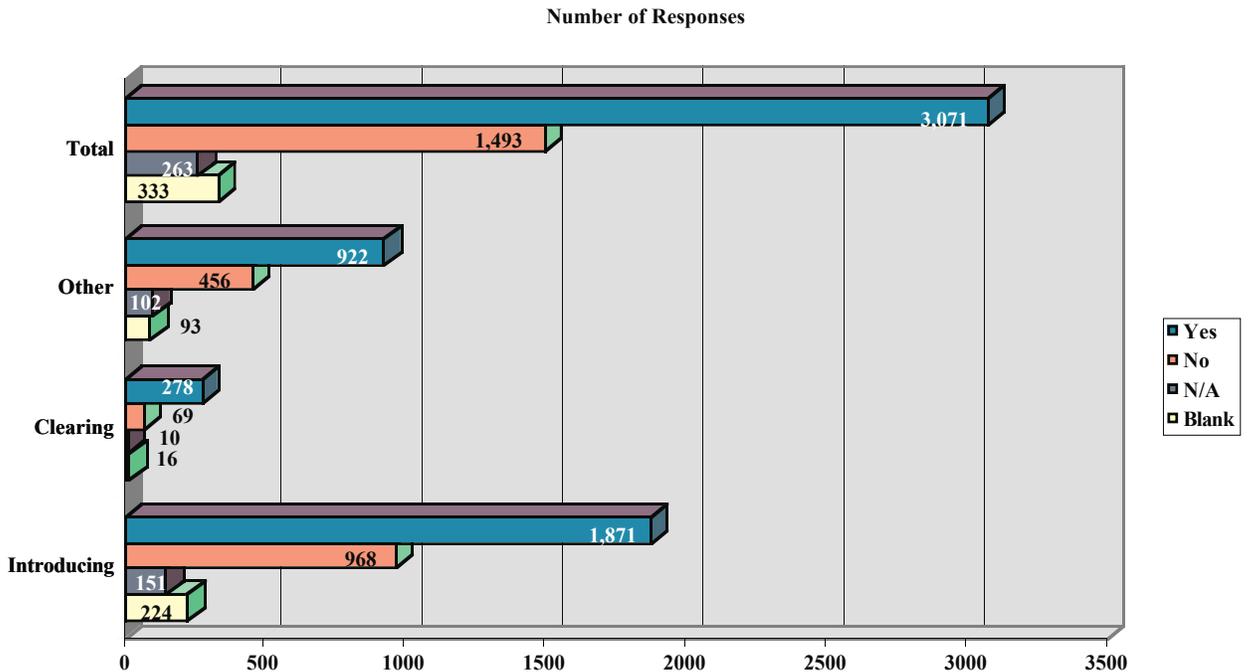
Ninety-one percent (91%) of the firms surveyed responded to this question.



Question #7a. - If progress reports are provided, how frequently?
 Fifty-one percent (51%) of the firms surveyed responded to this question.

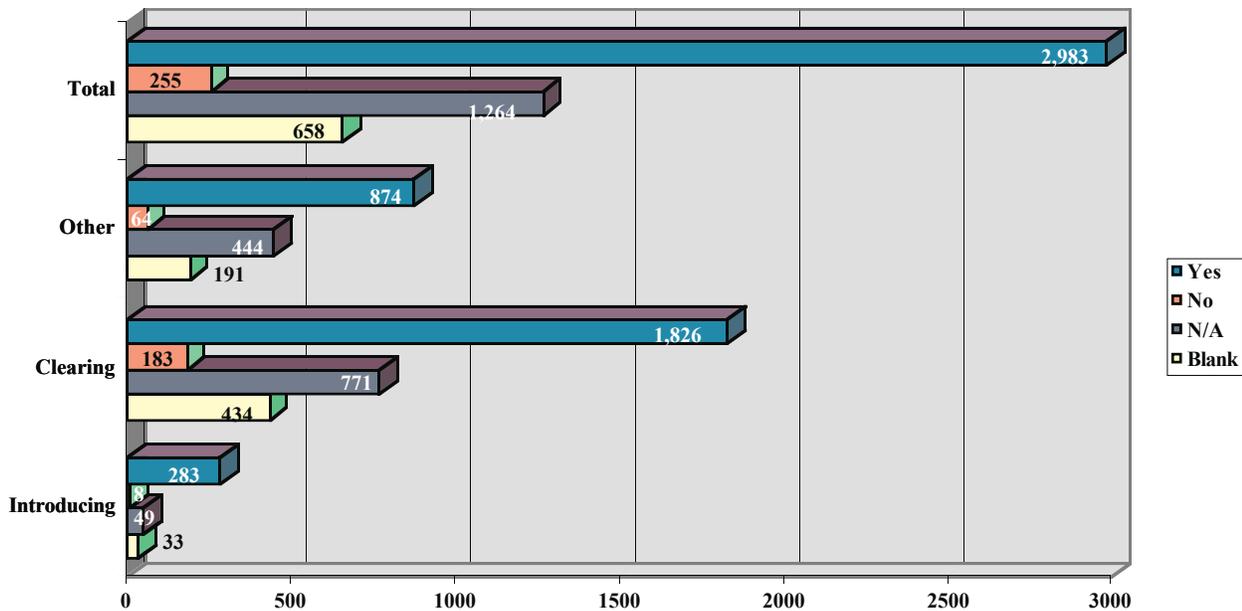


Question #8 - Does your firm's Year 2000 Project include an assessment phase to measure the scope and risk of the Year 2000 problem at your firm?
 Ninety-four percent (94%) of the firms surveyed responded to this question.



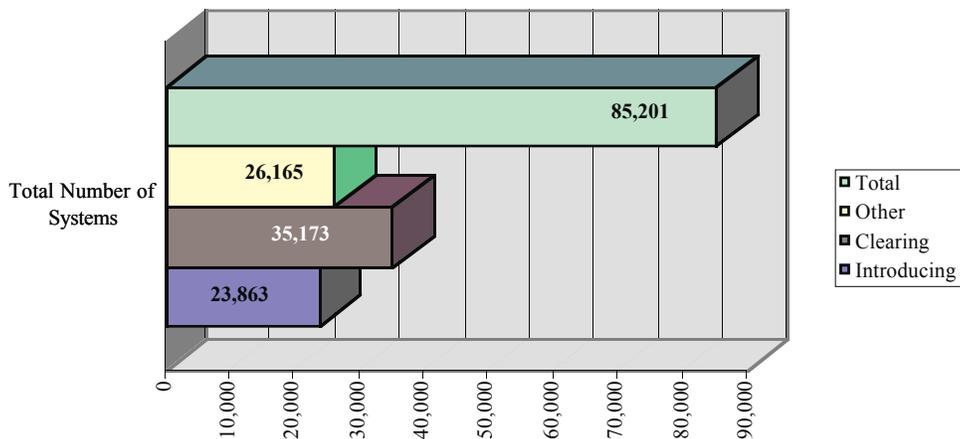
**Question #9 - Does the assessment phase include:
A. An inventory of all technology systems?**

Eighty-seven percent (87%) of the firms surveyed responded to this question.



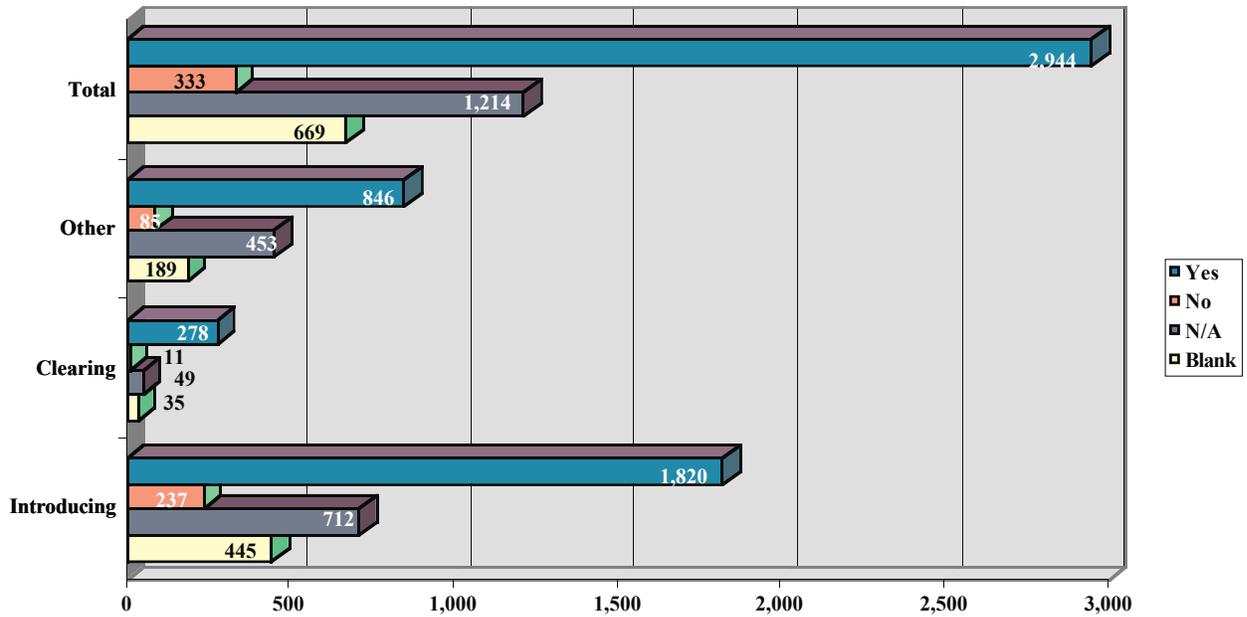
B. If an inventory is included, how many systems have been identified?

Eighty-seven percent (87%) of the firms surveyed responded to this question.



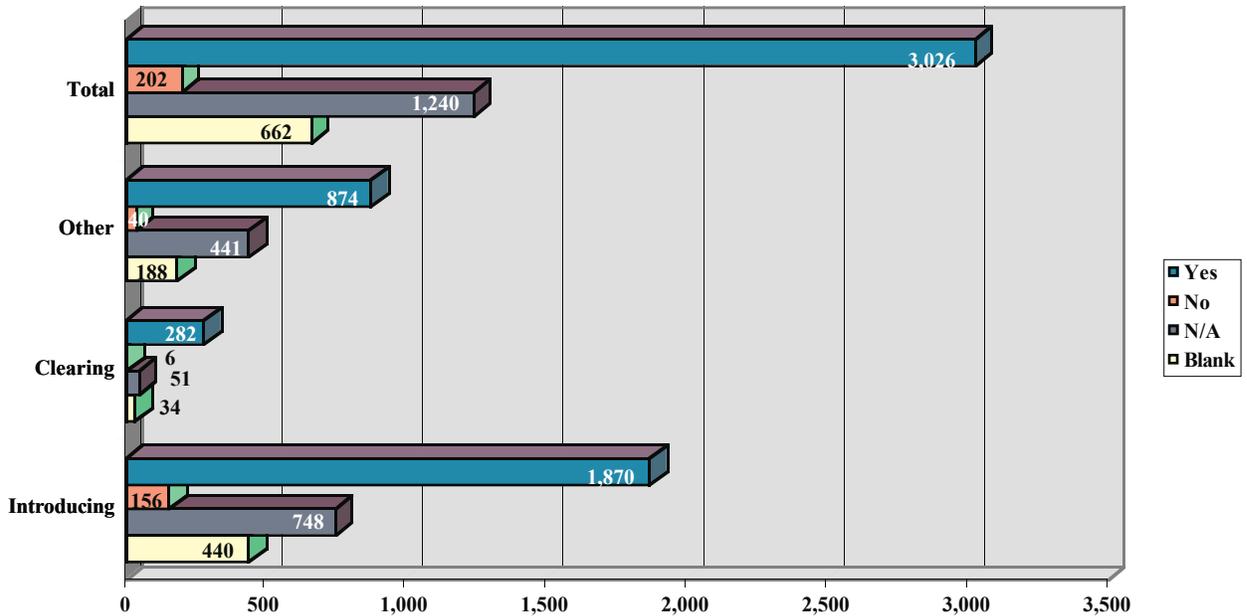
C. An analysis of all-third party vendor software and hardware products?

Eighty-seven percent (87%) of the firms surveyed responded to this question.



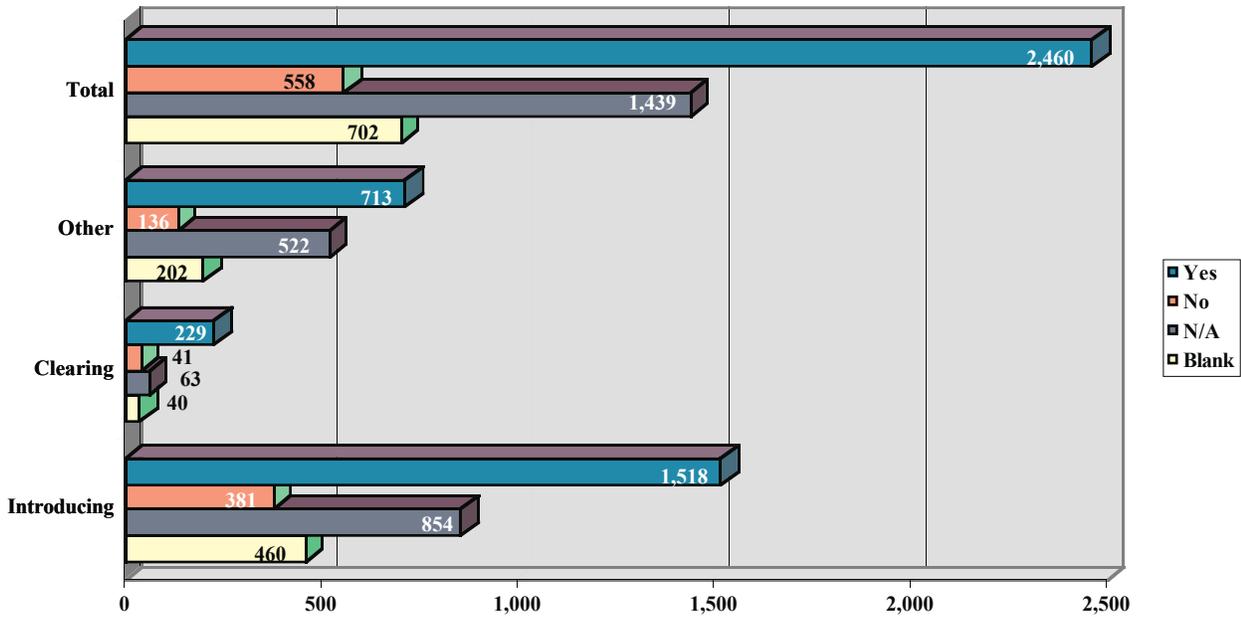
D. An analysis of all internal systems?

Eighty-seven percent (87%) of the firms surveyed responded to this question.



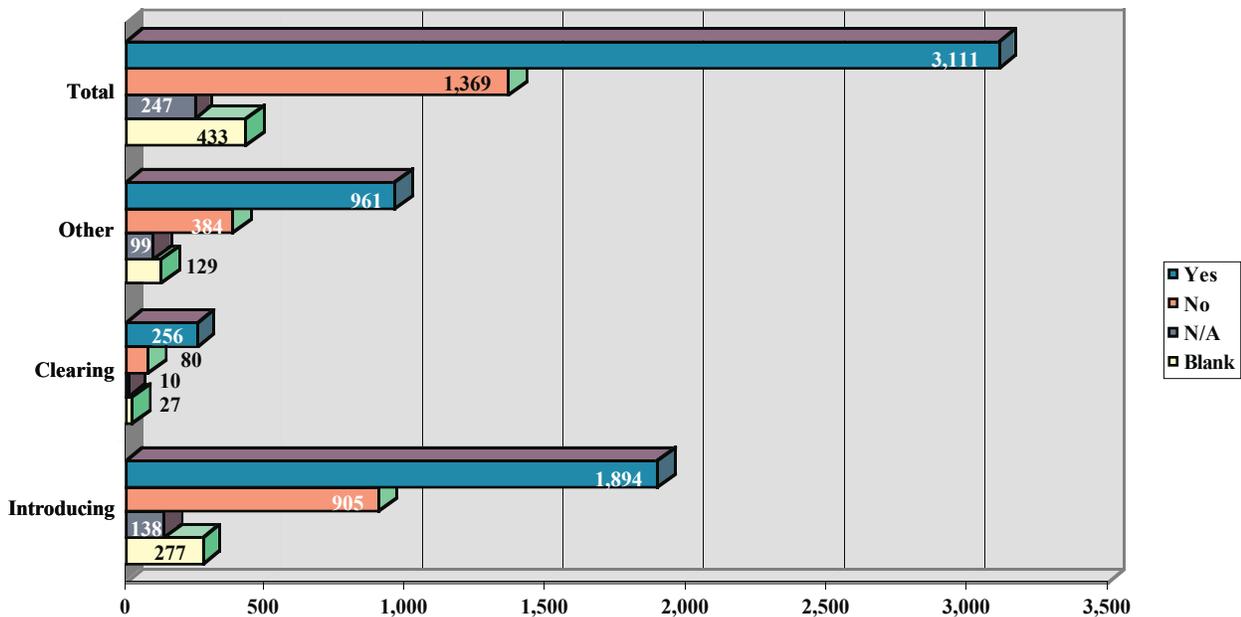
E. An analysis of facilities and communication systems?

Eighty-six percent (86%) of the firms surveyed responded to this question.



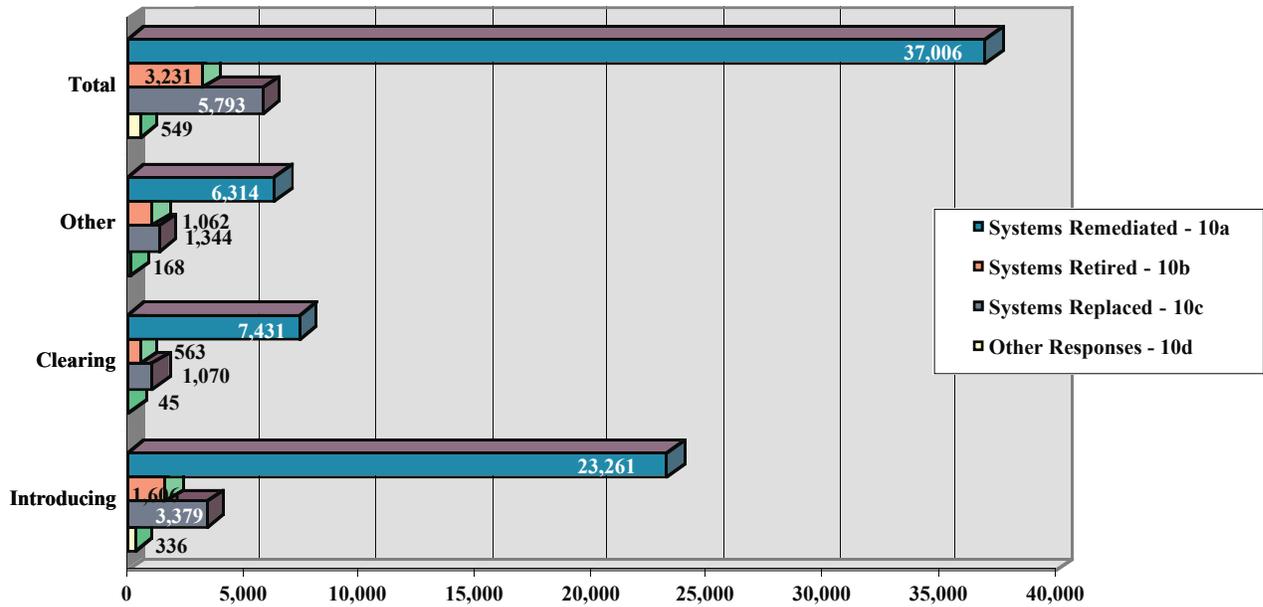
Question #10 - Has your firm determined the corrective action necessary to ensure the technology systems will be Year 2000 compliant?

Ninety-two percent (92%) of the firms surveyed responded to this question.



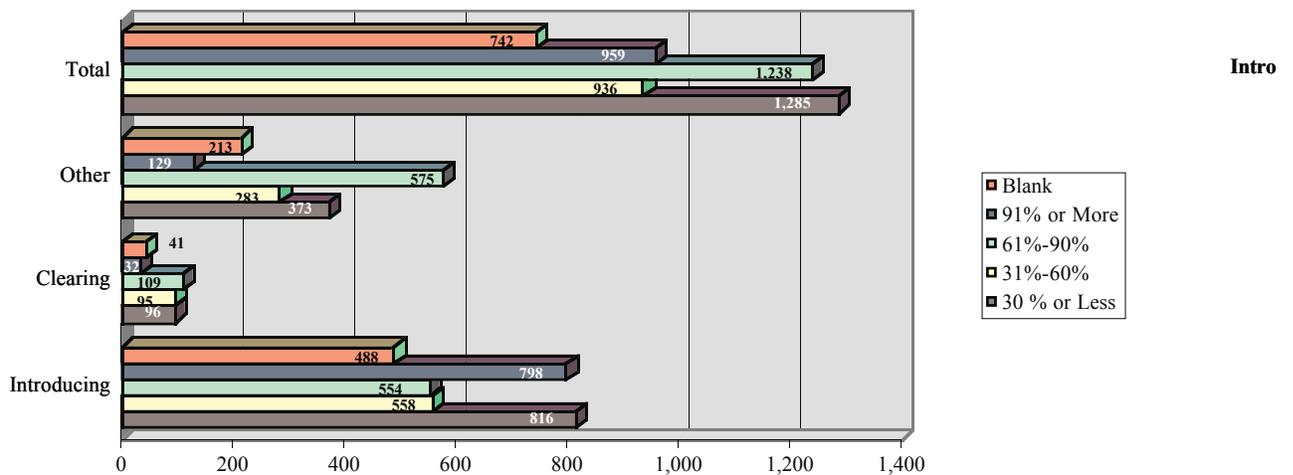
Question #10 (A-D) - If corrective action has been determined, how many systems will be (A) Remediated, (B) Retired, (C) Replaced and (D) Other?

Ninety-nine percent (99%) of the firms surveyed responded to this question.



Question #11 - What is the completion status of your firm's Year 2000 Project?

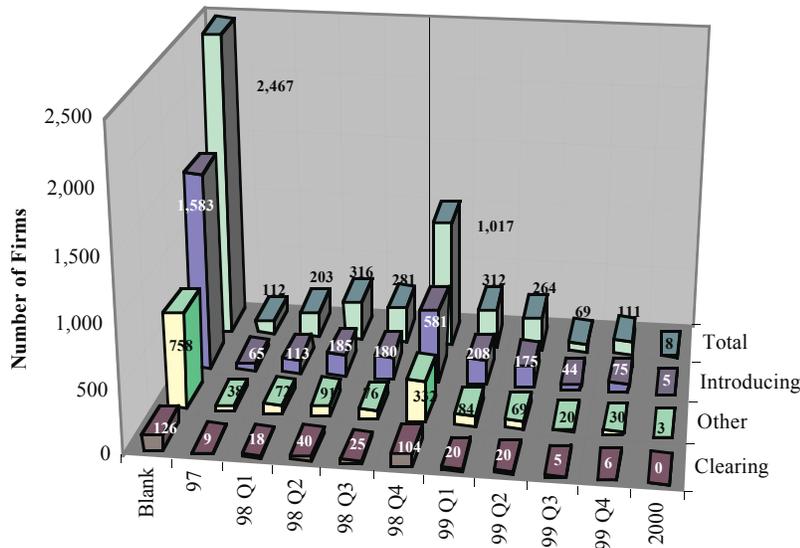
Eighty-six percent (86%) of the firms surveyed responded to this question.



Question #12 - When is your firm scheduled to complete the following major milestones:

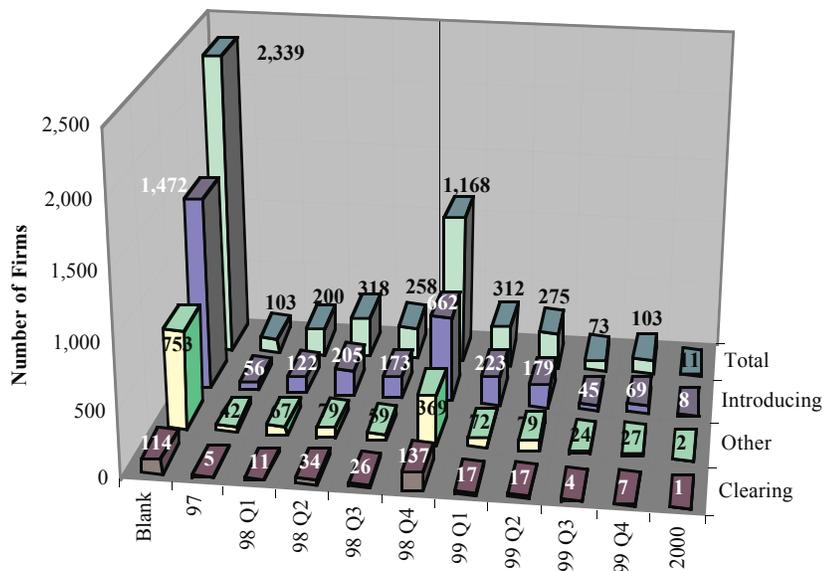
A. Remediation of firm systems.

Fifty-two percent (52%) of the firms surveyed responded to this question.



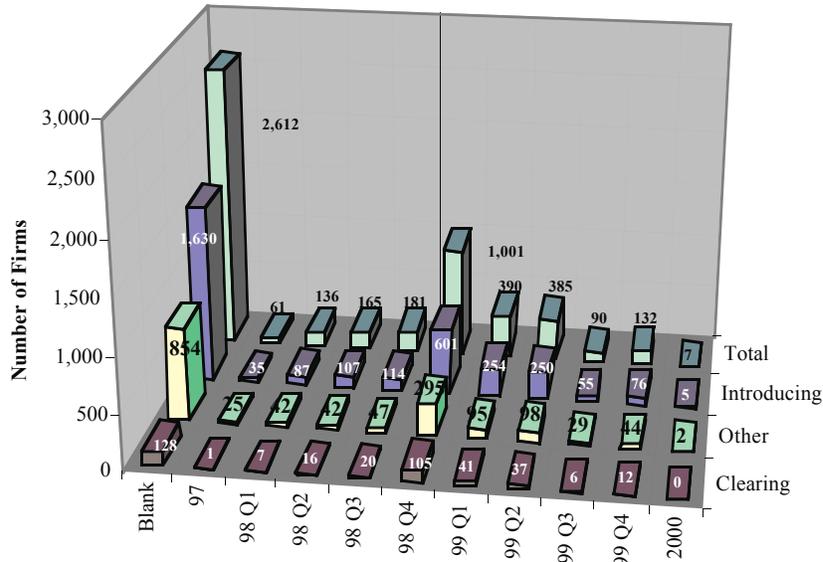
B. Verification that other systems used by the firm are Year 2000 compliant.

Fifty-five percent (55%) of the firms surveyed responded to this question.



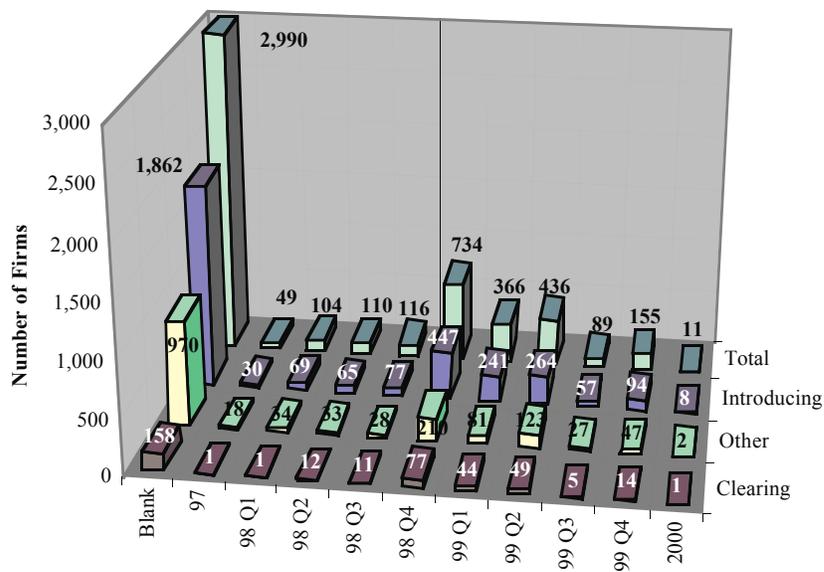
C. Testing of firm and other systems with other party systems.

Forty-nine percent (49%) of the firms surveyed responded to this question.

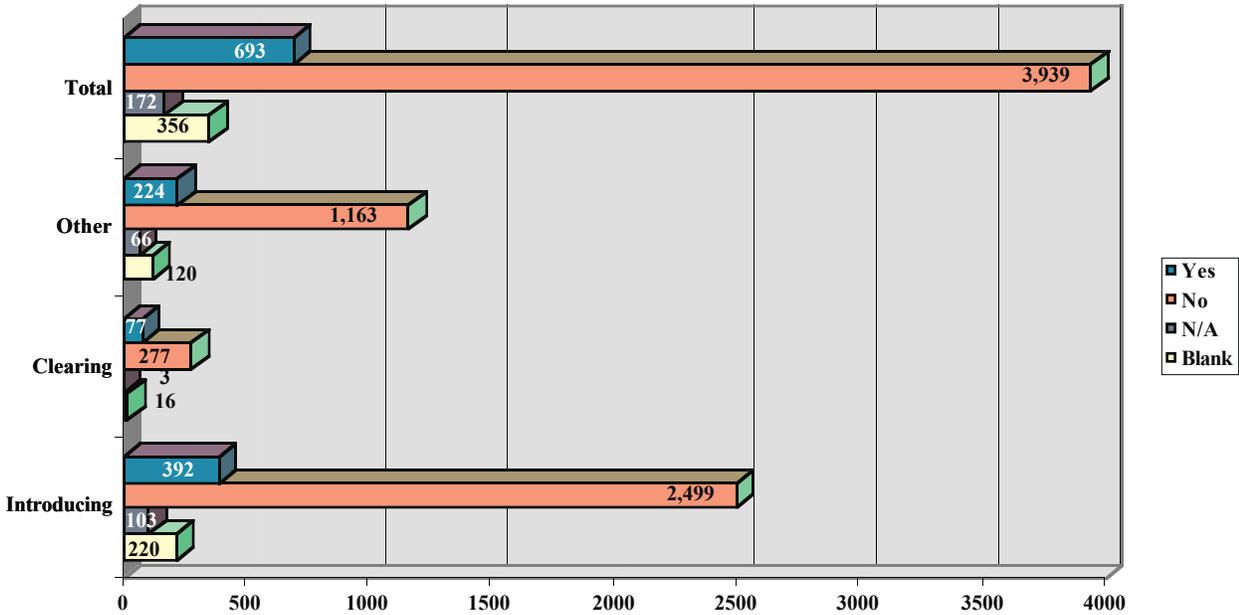


D. Industry-wide testing of firm and other systems.

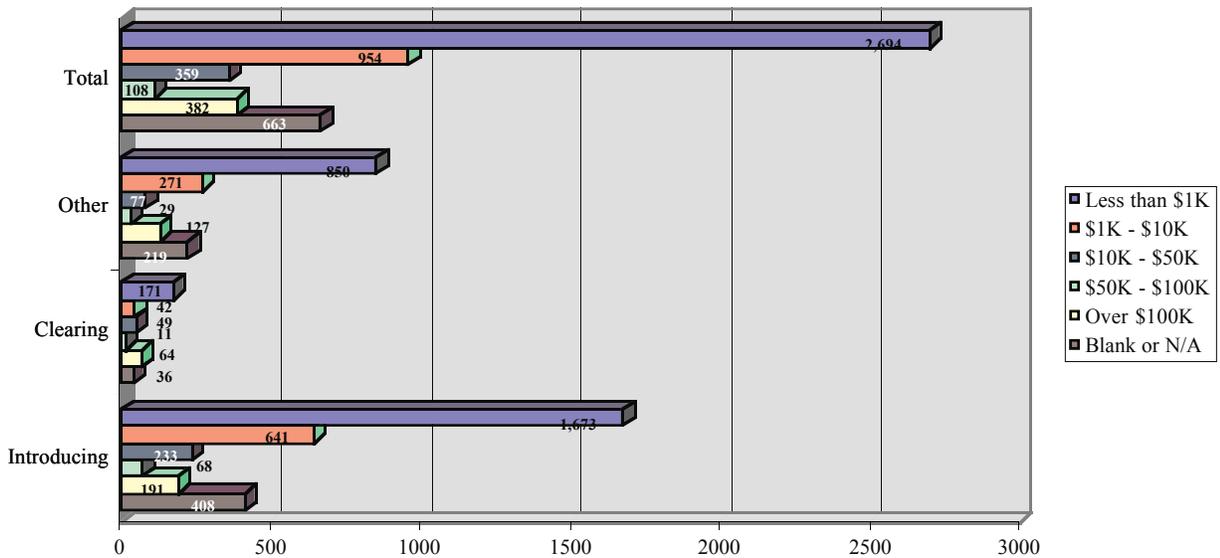
Forty-two percent (42%) of the firms surveyed responded to this question.



Question #13 - Has your firm dedicated a separate budget for your Year 2000 project?
 Ninety-three percent (93%) of the firms surveyed responded to this question.



Question #14 - What is the estimated total cost of your firm's Year 2000 Project?
 Eighty-seven percent (87%) of the firms surveyed responded to this question.



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NASD Notices to Members (December 1996 to current) are also available on the Internet at www.nasdr.com.

Special NASD Notice to Members 98-64

Mail Vote—NASD Solicits Member Vote On Amendments To NASD By-Laws To Reconfigure NASD Board; **Revised Last Voting Date: September 14, 1998**

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The National Association of Securities Dealers, Inc. (NASD® or Association) invites members to vote to approve the following amendments to the NASD By-Laws: reserve one NASD Board of Governors (Board) position for a person representing an NASD member firm having not more than 150 registered persons; reserve two Board positions for the Chief Executive Officer and one Floor Governor of New Amex LLC (the operating successor organization to the American Stock Exchange [Amex]); and other clarifying amendments. The last voting date is September 14, 1998. The text of the proposed amendments follows this *Notice*.

Questions concerning this *Notice* may be directed to T. Grant Callery, Senior Vice President and General Counsel, Office of General Counsel, NASD, at (202) 728-8285.

Background

The proposed amendments have two purposes. The first purpose is the reservation of a seat on the Board for a person representing a member firm having not more than 150 registered persons. In November 1997, the membership approved a substantial revision to the NASD By-Laws, which was part of a comprehensive revision of the Association's corporate structure. Those revisions were intended to streamline the decision-making process; to improve communication among Board members and the staff; and to enable the Association to act quickly and decisively when appropriate. While the restructuring has been effective in meeting these goals, there is still a need to provide NASD's smaller members (*i.e.*, firms with 150 or fewer registered persons) a more effective voice in matters affecting their business and their customers. To achieve this, the Board approved

the establishment of the Small Firm Advisory Board earlier this year. This Advisory Board acts to ensure that issues of particular interest and concern to smaller member firms, and the potential impact on smaller firms of regulatory and market structure initiatives, will be effectively communicated to and considered by the Board of Governors. To improve further the participation of smaller member firms in the governance of the NASD, the Board has approved a proposal to reserve a position on the Board for a person representing a firm with not more than 150 registered persons.

Another purpose of the amendments is to add the Chief Executive Officer and one Floor Governor of New Amex LLC to the Board, as required by the Transaction Agreement that will bring the Amex into the NASD family of companies. That agreement was approved by the Amex seatholders on June 25, 1998, and it is now necessary for the membership to approve the By-Law changes required for the implementation of the agreement.

The proposed By-Law changes are briefly described below, and the text of the proposed changes is attached as Exhibit A. In Exhibit A, proposed new language is underlined; proposed deletions are in brackets.

Amendments To The NASD By-Laws Article I. Definitions

New definitions have been added, and the terms Industry and Non-Industry "Director" "Governor" and "committee member" have been amended, to incorporate the inclusion of New Amex LLC within the family of companies.

**Article VII. Board of Governors
Composition and Qualifications of
the Board**

This section has been amended to provide that the NASD Board include the Chief Executive Officer and one Floor Governor of New Amex LLC and a representative of an NASD member firm having not more than 150 registered persons, and, in order to ensure some flexibility and maintenance of a majority Non-Industry Board, the maximum size of the Board has been increased to 35 Governors.

Term of Office of Governors

This section has been amended to provide term lengths for the New Amex Chief Executive Officer and Floor Governor, consistent with the Transaction Agreement and the Constitution of New Amex LLC.

Disqualification

A clarifying amendment has been made to this section to provide for the inclusion of the New Amex Chief Executive Officer and one Floor Governor on the Board.

**Article IX. Committees
Executive Committee**

This section has been amended to include a Governor of New Amex LLC on the Executive Committee.

**Article XV. Limitation of Powers
Conflicts of Interest**

This section has been amended to incorporate the inclusion of the Chief Executive Officer and one Floor Governor of New Amex LLC.

Proposed Changes to NASD By-Laws

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

Article I

Definitions

(n) "Industry Director" means a Director of the NASD Regulation Board or Nasdaq Board (excluding the Presidents) who: (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, [or] Nasdaq, or New Amex (and any predecessor), or has had any such relationship or provided any such services at any time within the prior three years;

(o) "Industry Governor" or "Industry committee member" means a Governor (excluding the Chief Executive Officer and Chief Operating Officer of the NASD, [and] the Presidents of NASD Regulation and Nasdaq, and the Chief Executive Officer of New Amex) or committee member who: (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; [or] (6) is a Floor Governor; or [(6)] (7) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, [or] Nasdaq, or New Amex (and any predecessor), or has had any such relationship or provided any such services at any time within the prior three years;

(cc) "Non-Industry Director" means a Director of the NASD Regulation Board or Nasdaq Board (excluding the Presidents of NASD Regulation and Nasdaq) who is: (1) a Public Director; (2) an officer or employee of an issuer of securities listed on Nasdaq or New Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director;

(dd) "Non-Industry Governor" or "Non-Industry committee member" means a Governor (excluding the Chief Executive Officer and Chief Operating Officer of the NASD, [and] the Presidents of NASD Regulation and Nasdaq, and any Floor Governor and the Chief Executive Officer of New Amex) or committee member who is: (1) a Public Governor or

committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or New Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Governor or committee member;

(jj) “Floor Governor” or “New Amex Floor Governor” means a Floor Governor of New Amex elected pursuant to Article II, Section .01(a) of the New Amex By-Laws;

(kk) “Holdco” means NASD Market Holding Company;

(ll) “New Amex” means New Amex LLC;

(mm) “New Amex Board” means the Board of Governors of New Amex;

Article VII

Board of Governors

Composition and Qualifications of the Board

Sec. 4. (a) The Board shall consist of the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents of NASD Regulation and Nasdaq, the Chair of the National Adjudicatory Council, the Chief Executive Officer of New Amex, and one Floor Governor, and no fewer than 16 and no more than [22] 28 Governors elected by the members of the NASD. The Governors elected by the members of the NASD shall include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, [and] a representative of a Nasdaq issuer, and a representative of an NASD member firm having not more than 150 registered persons. A majority of the Governors shall be Non-Industry Governors. If the Board consists of [21 to] 23 Governors, at least five shall be Public Governors. If the Board consists of 24 to 27 Governors, at least six shall be Public Governors. If the Board consists of 28 to 31 Governors, at least seven shall be Public Governors. If the Board consists of 32 to 35 Governors, at least eight shall be Public Governors.

Term of Office of Governors

Sec. 5. (a) The Chief Executive Officer and the Chief Operating Officer of the NASD, [and] the Presidents of NASD Regulation and Nasdaq, and the Chief Executive Officer of New Amex shall serve as Governors until a successor is elected, or until death, resignation, or removal.

(b) The Chair of the National Adjudicatory Council shall serve as a Governor for a term of one year, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Chair of the National Adjudicatory Council may not serve more than two consecutive one-year terms as a Governor, unless a Chair of the National Adjudicatory Council is appointed to fill a term of less than one year for such office. In such case, the Chair of the National Adjudicatory Council may serve that initial term as a Governor and up to two consecutive one-year terms as a Governor following the expiration of such initial term. After serving as a Chair of the National Adjudicatory Council, an individual may serve as a Governor elected by the members of the NASD.

(c) The New Amex Floor Governor shall serve as a Governor for a term of two years, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A New Amex Floor Governor may not serve more than three consecutive two-year terms as a Governor, unless such New Amex Floor Governor is appointed to fill a term of less than one year for such office. In such case, the New Amex Floor Governor may serve that initial term as a Governor and up to three consecutive two-year terms as a Governor following the expiration of the initial term.

(d) The Governors elected by the members of the NASD shall be divided into three classes and hold office for a term of no more than three years, such term to be fixed by the Board at the time of the nomination or certification of such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor elected by the members of the NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term. The term of office of Governors of the first class shall expire at the January 1999 Board meeting, of the second class one year thereafter, and of the third class two years thereafter. At each annual election, commencing January 1999, Governors shall be elected for a term of three years to replace those whose terms expire.

Disqualification

Sec. 6. Notwithstanding Section 5, the term of office of a Governor shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Governors, that: (a) the Governor no longer satisfies the classification [(Industry, Non-Industry, or Public Governor)] for which the Governor was elected; and (b) the Governor's continued service as such would violate the compositional requirements of the Board set forth in Section 4. If the term of office of a Governor terminates under this Section, and the remaining term of office of such Governor at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4 by virtue of such vacancy.

Article IX

Committees

Executive Committee

Sec. 4. (b) The Executive Committee shall consist of no fewer than [five] six and no more than nine Governors. The Executive Committee shall include the Chief Executive Officer of the NASD, at least one Director of NASD Regulation, at least one Director of Nasdaq, at least one Governor of New Amex, and at least two Governors who are not members of either the NASD Regulation Board, the Nasdaq Board, or the New Amex Board. The number of Directors of the NASD Regulation Board and the number of Directors of the Nasdaq Board serving on the Executive Committee shall be equal at all times. The Executive Committee shall have a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the whole Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the whole Board.

Article XV

Limitation of Powers

Conflicts of Interest

Sec. 4. (a) A Governor or a member of a committee shall not directly or indirectly participate in any adjudication of the interests of any party if such Governor or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Governor or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.

(b) No contract or transaction between the NASD and one or more of its Governors or officers, or between the NASD and any other corporation, partnership, association, or other organization in which one or more of its Governors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Governor's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Governors. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to any contract or transaction between the NASD and: NASD Regulation, Holdco, Nasdaq, or New Amex.

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NASD Notice to Members 98-65

NASD Reminds Members Of Obligations Relating To The Short- Sale Rule

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

In 1994, the National Association of Securities Dealers, Inc. (NASD[®]) Rule 3350 (Short-Sale Rule) was adopted to stop market-destabilizing speculative short sales in Nasdaq National Market[®] (NNM) securities. To prevent this conduct, the Short-Sale Rule prohibits member firms from executing customer short sales and non-Market Maker proprietary short sales in an NNM security at or below the current inside bid when the current inside bid is lower than the previous inside bid.

It has come to the attention of NASD Regulation, Inc. (NASD RegulationSM) that certain NASD members may be assisting customers in the circumvention of this Rule.

Specifically, these members are failing to net security positions of related accounts for customers who maintain accounts in their name and exercise control over a second related account, usually held in a family member's name. The failure to net these positions has permitted these customers, which operate the two accounts with a single investment strategy, to avoid application of the Short-Sale Rule.

Members are required to net all positions for accounts that are related or under common control in order to determine whether a sale is long or short and subject to the Short-Sale Rule requirements. NASD Regulation is committed to ensuring strict adherence to the Short-Sale Rule and will carefully review whether firms have engaged in the conduct described in this *Notice* in examinations and investigations. Violations of the Short-Sale Rule will be vigorously pursued.

Questions concerning this *Notice* should be directed to David Katz, Assistant Chief Counsel, Market Regulation, NASD Regulation, at (301) 208-3074.

Overview

The NASD adopted the Short-Sale Rule to prevent speculative short selling in NNM securities from accelerating a decline in the price of a security and to stop a form of manipulation known as "bear raiding" or "piling on." Piling on occurs when short sellers exert pressure on a stock's price, forcing the price to drop precipitously, frequently within a single trading day. The Short-Sale Rule prohibits member firms from executing customer short sales and non-Market Maker proprietary short sales in an NNM security at or below the current inside bid when the current inside bid is lower than the previous inside bid.¹

To determine whether a sale is long or short, members must adhere to the definition of a "short sale" contained in the Securities and Exchange Commission (SEC) Rule 3b-3, which is incorporated into the NASD's Short-Sale Rule. Under SEC Rule 3b-3 and NASD Rule 3350, the term "short sale" means any sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether the seller is long or short overall, the seller must net all positions in the security. This includes netting positions held in accounts that are related or under common control.

Rule Prohibits Circumvention

The Short-Sale Rule also prohibits a member from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of avoiding the rule.² With this *Notice*, the NASD wishes to clarify that a member would be deemed to be in violation of the Short-Sale Rule if the member or an associated person knowingly assists customers in

the following scheme:

- A customer maintains one account (a "long account") that is used to buy and sell various securities several times in a single day. The long account typically begins and ends each day with a long position of 1,000 shares in each security held in that account. The customer also cross guarantees for Regulation T and margin purposes a second account (a "short account"), usually held by a family member or related person. That account holds offsetting short positions of 1,000 shares in the same securities that are held in the long account. In contrast to the long account, the short account generally does not change positions in the securities. At the beginning and end of each day, the combined positions in both accounts for each of the securities is flat. During the trading

day, the customer buys and sells securities out of the long account, creating the false appearance of alternating long and flat positions in the securities in the long account. When the two accounts are appropriately combined and treated as one, short sales occur on a regular basis and often result in transactions occurring on downbids in violation of the NASD's Short-Sale Rule.

NASD Regulation will view trades in accounts like those described above as occurring in related or controlled accounts and must be netted for purposes of compliance with the Short-Sale Rule. Accounts will be deemed to be related or controlled if the customer exercises discretion over the account, cross guarantees the account for Regulation T or margin purposes, or has been granted a power of attorney to execute transactions in the account. NASD Regula-

tion will also consider other facts and circumstances such as whether the account belongs to a family member or related person and whether a similar pattern of activity is occurring in other customer accounts.

NASD Regulation will closely watch for the above described conduct and for similar schemes that attempt to circumvent application of the Rule. Members should instruct their associated persons not to accept orders for execution where customers are operating two accounts in order to avoid the Rule. A finding of such abuses will result in possible disciplinary action.

Endnotes

¹ NASD Rule 3350(a).

² NASD Rule 3350(e).

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NASD Notice to Members 98-66

NASD Clarifies Acceptable Customer Access To SelectNet And SOES

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

In response to several inquiries from National Association of Securities Dealers, Inc. (NASD[®]) members regarding their ability to provide electronic access to The Nasdaq Stock Market's[®] (Nasdaq[®]) SelectNetSM to non-member broker/dealers or customers, Nasdaq clarifies that, in the circumstances described below, members that are Nasdaq Workstation II[®] subscribers may choose to provide an electronic transmission of a non-member's order through their own system into SelectNet.

In addition, members have also raised questions regarding the ability of a Small Order Execution SystemSM (SOESSM) order entry firm to provide public customers electronic access to Nasdaq's SOES system. This *Notice* clarifies that, in the circumstances described below, members that are SOES order entry firms may choose to provide an electronic interface for public customer orders through their own SOES order entry system.

Questions regarding this *Notice* should be directed to Thomas Gira, Vice President, Market Regulation, NASD Regulation, Inc. (NASD RegulationSM), at (301) 590-6895 or Gene Lopez, Vice President, Trading and Market Services, Nasdaq, at (202) 728-6998.

Background - SelectNet And SOES

Nasdaq provides a service known as SelectNet that permits NASD member firms to enter buy or sell orders in Nasdaq securities into the system, directing those orders to a single Market Maker (directed orders) or broadcasting the order to market participants (broadcast orders). SelectNet facilitates the communication of trading interest between members, the negotiation of orders with the possibility of price improvement, and the dissemination

of last sale reports after execution of SelectNet orders. Trades executed through SelectNet are submitted for clearing as locked-in trades. SelectNet is available for execution of orders from 9 a.m. until 5:15 p.m., Eastern Time.

Nasdaq allows Nasdaq Workstation II subscribers to enter SelectNet orders from a Nasdaq Workstation or through an electronic means known as an Application Programming Interface (API). As mentioned above, there are two types of SelectNet orders: (1) directed orders; or (2) broadcast orders. SelectNet orders may be directed to a particular market participant displaying a quotation in the Nasdaq quote montage or the SelectNet order may be generally broadcast to all participants. Orders entered into SelectNet have a minimum life of 10 seconds; in other words, they cannot be canceled by the order entry firm until 10 seconds have elapsed. In the case of directed orders, the participant reviewing the order has up to three minutes to respond to the order, unless the party entering the order specified a longer time period. While directed orders generally have a lifespan of three minutes, directed orders sent to a participant at or up to the participant's quoted price and size impose liability on the recipient's part on receipt of the SelectNet order pursuant to the Securities and Exchange Commission's (SEC) firm quote rule, unless an exception to the rule applies.¹ Traditionally, SelectNet has been used by members, Market Makers, and order entry firms alike, to access the quotations of other Market Makers and electronic communication networks (ECNs).

Nasdaq also provides a service known as SOES that enables order entry firms and Market Makers to execute size-limited orders (agency and risk-less principal) in Nasdaq

securities on behalf of public customers. SOES enables participants, among other things, to lock in their trades with designated clearance and settlement instructions, thereby providing an automated execution system to public customers.

Only agency orders from public customers no larger than the maximum order size, as defined in NASD Rule 4710(g), may be entered by a SOES order entry firm into SOES for execution against an SOES Market Maker. Agency orders in excess of the maximum order size may not be divided into smaller parts for purposes of meeting the size requirements for SOES orders. The SOES rules currently contain a specific provision, NASD Rule 4770(c)(4), that requires SOES order entry firms to maintain the physical security of Nasdaq equipment located on the premises of the firm to prevent unauthorized entry of information into SOES. The NASD has, to date, interpreted this provision as barring firms from providing **direct** electronic entry to public customers.

Electronic Access To Nasdaq Systems

With the advent of enhanced software and telecommunications capabilities, members are able to provide their customers with efficient electronic access to Nasdaq's execution services, SelectNet and SOES. This *Notice* clarifies the NASD's interpretation of its rules and its contract and outlines the issues that members must be aware of in offering their customers electronic access to Nasdaq's execution services. Because each service is different, we have provided two separate discussions for each execution service, SelectNet and SOES.

Customer Access To SelectNet

Recently, several members have inquired about the permissibility under NASD rules and the Nasdaq Workstation II Subscriber Agreement (NWII Agreement) for a member to permit its customers to enter orders into the member's own electronic system and to re-transmit those orders directly and electronically, without the manual entry of such order by a person associated with the member, into the SelectNet system through an API arrangement. In other words, certain members that connect to Nasdaq through an API want to be able to build an electronic access link that the member provides to certain customers. The customer is then able to enter orders through this member-provided electronic entry point that flow through the member's network that electronically connects through the Nasdaq API to the Nasdaq SelectNet application. This *Notice* clarifies that such activity is permissible under NASD rules and the NWII Agreement, provided that the member undertakes measures to ensure that all relevant NASD rules and system protections are followed, as described below.

1. Notice to Nasdaq Acknowledging Responsibility for Orders:

Members providing a SelectNet electronic pass-through service to customers must provide a letter to Nasdaq that acknowledges that they are acting as agents for the non-member in submitting the order through their facilities and that they are responsible for the order sent through SelectNet. Any member providing this service must submit all such orders as an agent on behalf of the customer inputting the order. All orders submitted by customers into SelectNet will have the member's Market Participant Identifier (MPID) attached to them, and the member (Market Maker or ECN) receiving the

order through SelectNet will know only that another member has attempted to access its Nasdaq-published price.

Further, the member should provide a system description of its facility that allows non-members access to SelectNet. Such a system description must provide details on the manner in which orders are received and re-transmitted, including the security and capacity of the member's system, the manner in which the member's system connects to Nasdaq's service, and any internal system protocols designed to fulfill a member's "know your customer" obligations and other regulatory obligations. The letter and system description should be submitted to:

**Market Regulation
NASD Regulation, Inc.
9513 Key West Ave.
Rockville, MD 20850**

2. Compliance With NASD Rules:

Any member that chooses to offer this service to a customer must ensure that orders submitted through this member-provided service comply with SEC and NASD rules. For example, the member must ensure that rules related to the Short-Sale Rule, including the Affirmative Determination Rule, are complied with. Similarly, the member must ensure that any obligations regarding limit order protection and display and the ECN Rule are met. In particular, if customers use this mechanism to broadcast SelectNet orders, a Market Maker allowing customers to do so must be cognizant that SelectNet broadcast is an ECN that is not linked to Nasdaq's quote montage, and accordingly requires the Market Maker to reflect such price in its quote.

3. Internal System Controls Regarding a Member's Procedures for Supervision of Submission of Orders: Members that

provide non-members with SelectNet access should have in place adequate written procedures and controls that permit the member to effectively monitor and supervise the entry of electronic orders. Among the items that should be found in such written controls and procedures are: (1) the entry of unauthorized orders; (2) orders that exceed or attempt to exceed credit and other parameters, such as order size, that the member has established for a particular customer; (3) activity by a customer that could be considered manipulative or an attempt to improperly affect the price of the security or related products; (4) violations of the affirmative determination and Short-Sale Rules. Whenever possible, these controls should be automated and system driven.

A member providing SelectNet access to non-members should have a signed agreement with the non-member customer that outlines the responsibilities of the member and the customer with respect to the use of this means of access.

4. Acknowledgment of Responsibility for Orders: Any member that provides its customers with access to SelectNet should understand that the member remains responsible for honoring all executions that may occur. Consequently, any member that chooses to provide such service must make appropriate determinations under NASD rules prior to providing the service that the customer is capable of using the means of access being provided by the firm. In particular, the “know your customer rule” embedded in the NASD Conduct Rules requires that the member providing customer electronic access to SelectNet assess the ability of the customer to use such access. Further, a member’s customer agreement that permits the customer to access SelectNet should inform the customer that he or she is subject to

potential prosecution under the federal securities laws for illegal activity conducted and that the NASD will monitor all such trading activity so as to detect any such improper activity. Further, the member should inform the customer that if the NASD detects improper activity through the customer’s use of SelectNet, the member’s link to Nasdaq may be terminated if at any time, activity harmful to the integrity of The Nasdaq Stock Market or its system is detected.

5. Nasdaq’s Liability: In allowing members to provide their customers access to SelectNet, Nasdaq—pursuant to its NWII Agreement—assumes no liability for any order entered into the member’s system, or through the API, into Nasdaq’s system.

6. Nasdaq’s Right to Terminate: In the event that the member’s use of the API to allow the entry of SelectNet orders by non-members threatens the integrity of Nasdaq’s systems, Nasdaq continues to reserve the right under the NWII Agreement to unilaterally and immediately terminate the member’s access.

7. Right to Examine: The member acknowledges that, as a self-regulatory organization (SRO) responsible for examining the activity of a member, NASD Regulation may examine the member’s books, records, and facilities to determine whether a violation of NASD rules and/or federal securities laws, rules, and regulations may have occurred. Such examination may include an examination of the electronic system itself, as well as the member’s records regarding its customers and their activity.

8. Clearing Responsibility: The member providing the electronic

connection must be a member of a clearing agency registered with the SEC through which system-compared trades may be settled; or the member must have a correspondent clearing arrangement with a member that can do so. The member providing access must accept and settle each trade executed through this connection or, if settlement is to be made through another clearing member, the clearing member must guarantee the acceptance and settlement of such trades.

9. Fees for Execution of SelectNet Orders: All orders entered by customers into SelectNet are subject to the same fee schedule that Nasdaq has established for the entry of orders by members. For example, Nasdaq currently charges a member \$1 for each execution of a SelectNet order. As long as that fee is in place, Nasdaq will bill the member entering the customer pass-through order that amount for an execution that the customer receives. Similarly, if a customer using a member’s pass-through service enters a broadcast order that is executed, Nasdaq will bill the member \$2.50 for the execution. Under the SEC’s Order Handling Rules, the SEC has permitted ECNs the right to charge members that use SelectNet to access the ECN’s priced orders displayed in Nasdaq. Members should be aware that if they provide customers with SelectNet access and a customer accesses the order of an ECN that charges for such access, the ECN will bill the member for such access.

10. System Setup: Members providing an electronic pass-through of SelectNet orders must use the Nasdaq API between the member’s system and Nasdaq’s system. Members may use service bureaus to develop and operate the electronic access capability. All such API

connections must be set up on an eight presentation device to one service delivery platform ratio. If a member chooses to use a service bureau to develop the service, the member is nonetheless responsible for ensuring that all NASD rules and NWII Agreement requirements are complied with. No service bureau is permitted to operate a service on behalf of a member unless the service bureau has entered into an agreement with Nasdaq.

Public Customer Access To SOES

Members have inquired about the permissibility under NASD rules for an NASD SOES order entry firm to permit public customers to enter SOES agency orders into the member's electronic system that provides an electronic SOES interface. Such facilities allow the public customer to enter orders into a member-provided electronic entry device, which flows through the member's network into the member's own computer system and then, without manual intervention, into SOES. This *Notice* clarifies that such activity is permissible under the NASD rules, provided that the member undertakes measures to ensure that all relevant NASD rules and system protections are followed, as described below.

1. Compliance With NASD Rules, Including SOES Rules (NASD Rules 4710-4770): Any member that chooses to offer SOES access to a public customer must ensure that orders submitted through this member-provided service comply with SEC and NASD rules, including the SOES rules and its interpretations.² For example, the member must ensure that agency orders for public customers are within the maximum order size as required by NASD Rule 4730(c)(3). In addition, agency orders involving a single investment

decision in excess of the maximum order size may not be divided into smaller parts for purposes of meeting the size requirements for orders entered into SOES. Thus, any trades entered within any five-minute period in accounts controlled by an associated person or customer will be presumed to be based on a single investment decision. Furthermore, members must ensure that rules related to the Short-Sale Rule, including the Affirmative Determination Rule, are complied with. Finally, members must also be able to continue to meet their obligations to comply with the SEC's Confirmation Rule, Rule 10b-10.

2. Internal System Controls Regarding a Member's Procedures for Supervision of Submission of SOES Orders: NASD SOES order entry firms that provide public customers with SOES access should have in place at the time they offer such access to public customers adequate written procedures and controls that permit the member to effectively monitor and supervise the entry of electronic orders. Among the items that should be found in such written controls and procedures are controls to monitor for: (1) the entry of unauthorized orders; (2) orders that exceed or attempt to exceed credit or SOES order size and other parameters that the member has established for a particular public customer; (3) activity by a public customer that could be considered manipulative or an attempt to improperly affect the price of the security or related products; (4) violations of the Affirmative Determination and Short-Sale Rules. Wherever possible, such controls should be automated and system driven.

In addition, the firm's procedures must provide for the identification of locations where the firm makes SOES order entry devices available to its public customers and provides

ongoing technical support and maintenance. If such site does not qualify as a branch office or office of supervisory jurisdiction (OSJ) of the member under NASD rules, a member must still supervise such activity by providing for periodic visits to such locations to ensure that certain restrictions on activities are in place and that the site is not conducting a securities business at such locations. For guidance on what constitutes a branch office or OSJ in member off-site locations, please see the interpretive letter dated March 17, 1998, and listed under NASD Rule 3010 on the NASD Regulation Web Site (www.nasdr.com - from the Home Page, click on "Members Check Here," then click on "Interpretive Letters").

3. Acknowledgment of Responsibility for Orders: Any member that provides its public customers with access to SOES should understand that the member is responsible for honoring all executions that may occur. Consequently, any member that chooses to provide such service must make appropriate determinations under NASD rules, including the SOES rules, prior to providing the service to a particular public customer that the public customer is capable of using the means of access being provided by the firm. In particular, the "know your customer rule" embedded in the NASD Conduct Rules requires that the member providing customer electronic access to SOES assess the ability of the customer to use such access.

4. Right to Examine: The member acknowledges that, as an SRO responsible for examining the activity of a member, NASD Regulation may examine the member's books, records, and facilities to determine whether a violation of NASD rules and/or the federal securities laws, rules, and regulations may have occurred. Such examination may

include an examination of the electronic system itself, as well as the member's records regarding its public customers and their activity.

5. Fees for Execution of SOES

Orders: All orders entered by public customers into SOES are subject to the same fee schedule that Nasdaq has established for the entry of

orders by members. For example, Nasdaq currently charges 50 cents per order executed by the member entering a SOES order for a public customer. As long as that fee is in place, Nasdaq will bill the member entering the public customer pass-through order that amount for an execution that the public customer receives.

Endnotes

¹ SEC Rule 11Ac1-1(c).

² *NASD Notice to Members 88-61.*

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NASD Notice to Members 98-67

SEC Approves
Amendment To Rule On
Fidelity Bonding
Requirements; Effective
September 15, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On July 14, 1998, the Securities and Exchange Commission (SEC) approved an amendment to the National Association of Securities Dealers, Inc. (NASD[®]) Rule 3020 (the Rule) governing member fidelity bonding requirements. The amendment grants authority to NASD staff to adjust a member's fidelity bonding requirement under certain circumstances. The amendment will take effect on September 15, 1998.

Questions regarding this *Notice* may be directed to John M. Ramsay, Vice President and Deputy General Counsel, Office of General Counsel, NASD Regulation, Inc. (NASD RegulationSM), (202) 728-8159, or Elliott R. Curzon, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

Background

The Rule specifies that members are required to maintain fidelity bonds to insure against certain losses and the potential effect of such losses on firm capital. The Rule applies to all members with employees who are required to join the Securities Investor Protection Corporation and who are not covered by the fidelity bond requirements of a national securities exchange. The required amount of a member's coverage is linked to the member's required net capital under SEC Rule 15c3-1. Paragraph (c) of the Rule requires each member to review the adequacy of its fidelity bond coverage annually and maintain coverage that is adequate to cover its highest net capital requirement during the preceding 12 months. For example, if a self-clearing member changes its business to become a correspondent firm clearing through another member so that it no longer holds customer funds or securities, the Rule would still require the member to

maintain bond coverage at the level that applied during the preceding year.

The amendment to the Rule will permit the staff of NASD Regulation to adjust the fidelity bond requirements to reflect changes in a member's business and will allow members to be relieved from maintaining unnecessarily high fidelity bond coverage without compromising investor protection. Requests for exemption would be considered under recently adopted Procedures for Exemption in the 9600 Series of Rules in the NASD Code of Procedure. Under the Procedures, NASD Regulation staff will issue a written determination that is subject to review by the National Adjudicatory Council.

In considering an application, NASD Regulation will apply a "good cause" standard that will require a member to demonstrate that a modification from the bonding requirement is justified by the level of loss exposure that may be expected from the member. In addition, NASD Regulation will apply this authority only when it is clear that an exemption will not have any unintended impact on the insurance pool, and the modified coverage will adequately protect the member against potential losses. (The premiums for the insurance pool are changed from time to time to reflect changes in loss experience and to ensure that sufficient funds are available to pay any losses reported to the insurer.) In addition, NASD Regulation will include conditions in any exemption to ensure that any subsequent increase in capital requirements is accompanied by a corresponding increase in coverage.

Text of Amendment to Rule 3020

(Note: New language is underlined.)

3020. Fidelity Bonds

(a) - (b) No Change

(c) Annual Review of Coverage

(1) - (3) No Change

(4) Any member subject to the requirements of this paragraph (c) may apply for an exemption from the requirements of this paragraph (c). The application shall be made pursuant to Rule 9610 of the Code of Procedure. The exemption may be granted upon a showing of good cause, including a substantial change in the circumstances or nature of the member's business that results in a lower net capital require-

ment. The NASD may issue an exemption subject to any condition or limitation upon a member's bonding coverage that is deemed necessary to protect the public and serve the purposes of this Rule.

(d) - (e) No Change

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NASD Notice to Members 98-68

Update On The Securities Industry Continuing Education Program

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The Securities Industry/Regulatory Council on Continuing Education (the Council) includes 13 members representing a cross section of securities firms and six members from self-regulatory organizations.¹ Both the Securities and Exchange Commission and the North American Securities Administrators Association have appointed liaisons to the Council.

The Council's purpose is to facilitate cooperative industry/regulatory coordination of the administration and future development of the Continuing Education Program (Program) in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, and developing and updating information about the Program for industry-wide dissemination. The first *Status Report* was issued by the Council in March 1995 (see *NASD Special Notice To Members 95-13*), followed by a second *Status Report* in October 1996 (see *NASD Notice To Members 96-69*). Following this *Status Report* is a section devoted to frequently asked questions and answers about the Program. Members are advised that additional information about Continuing Education and copies of the Council publications *Guidelines For Firm Element Training*, the *Regulatory Element Content Outline*, and *Examples of Firm Element Practices and Council Commentary* are available on the Continuing Education Web Page of the NASD Regulation, Inc. (NASD RegulationSM) Web Site (www.nasdr.com).

Questions about this *Notice* may be directed to John Linnehan, Director, Continuing Education, NASD

Regulation, at (301) 208-2932, or Daniel M. Sibears, Vice President, District Oversight, NASD Regulation, at (202) 728-6911.

Endnote

¹ The American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

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The Securities Industry Continuing Education Program

Status Report On The Securities Industry Continuing Education Program

On behalf of the Securities Industry/Regulatory Council on Continuing Education¹ (Council), I am pleased to provide this *Status Report* on the Securities Industry Continuing Education Program (Program) and on the activities of the Council. The Program began its fourth year of operation on July 1, 1998, with some important changes and developments. First and foremost were the changes brought about by the revisions to the continuing education rules of the industry's self-regulatory organizations (SROs).

Revisions To The Regulatory Element Cycle

The time frames for registered persons to participate in the Regulatory Element have been revised to require ongoing participation in the Regulatory Element computer-based training by registered persons throughout their securities careers. Formerly, registered persons were required to complete the Regulatory Element on three occasions – within 120 days of the second, fifth, and 10th anniversaries of their initial securities registration (and also when they were the subject of a significant disciplinary action), with graduation from the Regulatory Element after completion of the 10th anniversary Regulatory Element session. Under the revised uniform SRO rules, registered persons must participate in the Regulatory Element within 120 days of the second anniversary of their initial securities registration and every three years thereafter (*i.e.*, the fifth, eighth, 11th, 14th, etc., anniversaries), with no graduation from the Regulatory Element. Incurring a significant disciplinary action still results in a requirement to complete the Regulatory Element within 120 days of the effective date of the significant disciplinary action. The cycle for participation in the Regulatory Element will then be adjusted to reflect the effective date of the significant disciplinary action rather than the initial securities registration date.

The revised SRO rules also allowed a one-time exemption from the Regulatory Element by providing for continued graduation of those persons who have been registered for more than 10 years as of July 1, 1998, and who have not been the subject of a significant disciplinary action. However, graduated persons registered in a principal/supervisor capacity for less than 10 years as of July 1, 1998, and those graduates who acquire their first principal/supervisor registration after July 1, 1998, re-enter the Regulatory Element regardless of the number of years they have been registered.

New Computer-Based Training Program For Principals/Supervisors

Another major change deals with the content of the Regulatory Element computer-based training. As originally adopted, the Regulatory Element program did not discern between registration categories. All registered persons took the same Regulatory Element program. The amended SRO rules allow the SROs to design

nate specific Regulatory Element Programs for specific registration categories. The first such specialized training will be the Supervisor Program. It is anticipated that this new Supervisor Program will commence later this year. More information regarding the Supervisor Program will be disseminated prior to introduction. Persons registered as principals/supervisors will continue to take the current Regulatory Element Program until implementation of the new Supervisor Program. In the future, additional specific training programs may be developed for other registration categories.

Changes To The Firm Element

The Firm Element was also revised. As you know, the Firm Element requires that each firm conduct an annual analysis of its business and related training needs. Firms must administer appropriate training to their registered persons who have direct contact with customers, and their immediate supervisors on an ongoing basis. The training must cover topics specifically related to their business, such as new products, sales practices, risk disclosure, and new regulatory requirements and concerns. The amended SRO rules require firms to focus specifically on supervisory training needs when conducting their Needs Analysis, and if it is determined that there is a specific need for such training, to address these needs in their training plans.

Attached to this Status Report are a number of frequently asked questions about both the Regulatory and Firm Elements of the Program.

Other Activities Of The Council

The Council conducted its first open meeting with broker/dealers on March 26, 1998, in New Orleans, Louisiana. The open meeting provided a forum for the Council and the firms to discuss various issues related to the Firm Element.

The open meeting allowed for positive interaction between the Council and firms on the subject of continuing education. Twenty-seven National Association of Securities Dealers, Inc. (NASD[®]), New York Stock Exchange, and/or Municipal Securities Rulemaking Board members based in and around New Orleans, attended the session. The companies, which employ anywhere between three and 300 registered representatives, represented various types of firms including bank broker/dealers, investment bankers, investment advisers who were also broker/dealers, introducing and carrying broker/dealers, retail-oriented firms, and municipal bond firms.

Topics discussed included:

- How firms measure the effectiveness of their Firm Element training.
- The value of the quarterly Regulatory Element Performance Reports sent by the Continuing Education Program.

- How firms handle registered representatives who refuse to participate in Firm Element training.
- Whether ethics should be included in continuing education.
- How helpful firms find Council publications.²
- Compliance examinations by the SROs.

Firms were offered the opportunity to meet Council members and express their views. Many of the firms also benefited from hearing others' experiences and sharing their own. The Council benefited from discussing with firms ways to make the Continuing Education Program more meaningful. The next open meeting will be held on Thursday, August 20, 1998, in Denver, Colorado.

What Lies Ahead

The Securities Industry Continuing Education Program has made great strides in the past three years, and the Council looks forward to enhancing the Program further. I would encourage all participants in the securities industry to engage in this improvement process by communicating their observations and ideas on continuing education to the Council members listed in this Update.

Robert H. Watts, Council Chairman
Senior Vice President & Chief Compliance Officer
John Hancock Mutual Life Insurance Co.
Boston, MA

Endnotes

¹The Council consists of 19 representatives: six from self-regulatory organizations (The American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.) and 13 from the industry. The industry representatives serve three-year terms and are selected through a nominating committee process designed to maintain representation from a broad cross section of broker/dealers. Liaisons from the Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA) also participate in Council activities. The Council's purpose is to facilitate cooperative industry/regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, and developing and updating information about the Program for industry-wide dissemination.

²Chief among the Council publications discussed at the meeting were *Guidelines For Firm Element Training* (1996), *Examples of Firm Element Practices and Council Commentary* (1997), and the annual *Firm Element Advisory*.

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Questions And Answers Regarding The Securities Industry Continuing Education Program

Background And General Description

1.

Q. *What is the Securities Industry Continuing Education Program?*

A. The Securities Industry Continuing Education Program (Program) is a two-part program. The Regulatory Element consists of periodic computer-based training on regulatory, compliance, ethical, and supervisory subjects. The Firm Element consists of annual, firm-developed and administered training programs designed to keep specified registered employees current regarding job- and product-related subjects.

2.

Q. *What is the Securities Industry/Regulatory Council on Continuing Education (Council) and what role does it play?*

A. The Council consists of 19 representatives, six from self-regulatory organizations (SROs)¹ and 13 from the industry. The industry representatives serve three-year terms and are selected through a nominating committee process designed to maintain representation from a broad cross section of broker/dealers. Liaisons from the Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA) also participate in Council matters. The Council's purpose is to facilitate cooperative industry/regulatory coord-

ination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, and developing and updating information about the Program for industry-wide dissemination.

3.

Q. *What are the most recent changes to the Continuing Education Program?*

A. On July 1, 1998, changes to the Continuing Education Rules of the SROs became effective. The changes state that:

- Registered persons are required to participate in an appropriate Regulatory Element on the second anniversary of their *initial securities registration* and every three years thereafter throughout their careers. Registered persons will no longer graduate from the program after their 10th registration anniversary.
- Persons registered for 10 years or more in their respective registrations as of July 1, 1998, will be grandfathered from the Regulatory Element.
- Member firms are required to specifically identify supervisory needs in conducting their annual Firm Element Needs Analysis and to address any identified needs in the annual training plan.

Regulatory Element The Regulatory Element— Who is Required to Participate?

4.

Q. *Who is required to participate in the Regulatory Element?*

A. The following registered persons are required to participate in the Regulatory Element:

1. persons registered 10 years or less as of July 1, 1998, as calculated from their initial securities registration date;
2. persons registered as a principal or supervisor 10 years or less as of July 1, 1998, regardless of the amount of time they have been a registered person; and
3. persons who weren't previously required to participate in the Regulatory Element, but who become the subject of a *significant disciplinary action* (see Question 16).

5.

Q. *What registration categories are covered by the Regulatory Element?*

A. Those who hold the following registrations are subject to the Regulatory Element requirements:

- 4 Registered Options Principal *
- 6 Investment Company Products/Variable Contracts Limited Representative
- 7 General Securities Representative
- 7 Securities Trader (New York Stock Exchange [NYSE])
- 7 Trading Supervisor (NYSE)

* Persons with these Principal/Supervisor registrations will receive the Principal/Supervisor Regulatory Element computer-based training module (the Supervisor Program).

- 7A Floor Members Engaged in Public Business with Professional Customers (NYSE)
- 7B Floor Clerks of Members Engaged in Public Business with Professional Customers (NYSE)
- 8 General Securities Sales Supervisor *
- 8 Branch Office Manager (NYSE) *
- 11 Assistant Representative—Order Processing
- 12 General Securities Sales Supervisor (NYSE) *
- 13 Allied Member (NYSE)
- 14 Compliance Official (NYSE) *
- 15 Foreign Currency Options
- 16 Supervisory Analyst (NYSE) *
- 17 Limited Registered Representative (United Kingdom)
- 22 Direct Participation Programs Limited Representative
- 24 General Securities Principal *
- 26 Investment Company Products/Variable Contracts Limited Principal *
- 27 Financial and Operations Principal *
- 28 Introducing Broker/Dealer Financial and Operations Principal *
- 37 Canada Module of the General Securities Representative Examination (Options included)
- 38 Canada Module of the General Securities Representative Examination (Options not included)
- 39 Direct Participation Programs Limited Principal *
- 47 Japan Module of the General Securities Representative Examination
- 52 Municipal Securities Representative
- 53 Municipal Securities Principal *
- 55 Equity Trader
- 62 Corporate Securities Limited Representative
- 72 • Government Securities Representative
 - Government Securities Principal *
 - Securities Lending Representative (NYSE)
 - Securities Lending Supervisor (NYSE)

6.

Q. *Is anyone exempt from the Regulatory Element of the Program?*

A. Exempt from the Regulatory Element are:

1. those registered persons whose activities are limited solely to the transaction of business with members or registered broker/dealers on an exchange trading floor;
2. persons approved by the NYSE with the *sole* status of officer of a member or member organization, pursuant to the requirements of Exchange Rule 345(b);
3. persons approved by the NYSE with the *sole* status of approved person;
4. persons holding only a commodities registration with the National Futures Association or state investment adviser registrations;
5. persons registered with the NASD solely as Foreign Associates; and
6. persons who have been grandfathered from the Regulatory Element of the Program (see Question 7).

7.

Q. *Who has been grandfathered from the Regulatory Element?*

A. On July 1, 1998, all persons currently graduated from the Regulatory Element were reviewed by the Central Registration Depository (CRDSM). All “graduates” who had been registered as principal/supervisors for less than 10 years as of July 1, 1998, were required to re-enter the Regulatory Element. All other “graduates” were grandfathered. They will re-enter the Regulatory Element only if they:

- become the subject of a significant disciplinary action (see Question 16), or

- are originally registered as a representative, then subsequently register as a principal/supervisor.

8.

Q. *Is it possible for a person to be covered under the Regulatory Element as a principal/supervisor yet be exempted at a later date?*

A. Yes; in certain circumstances a person covered under the Regulatory Element as a principal/supervisor could be graduated should such a person revert to non-principal/supervisor-only registration category. For example, a person who had been registered for 15 years as of July 1, 1998, would be grandfathered from the Regulatory Element if registered only as a registered representative, but would be covered in a principal/supervisor capacity if such principal/supervisor registration occurred during the past 10 years. By surrendering the principal/supervisor registration, the person would revert to grandfathered status in a registered representative capacity.

Note that if the person in this example decides to reactivate his or her principal/supervisor registration within two years of surrendering it, he or she would be covered by the Regulatory Element and would have to satisfy any outstanding Regulatory Element requirement that occurred during the period when the principal/supervisor registration had been surrendered. To reactivate a principal/supervisor registration that had been surrendered for over two years, a person must requalify for that registration by examination.

9.

Q. *What is the initial securities registration date?*

* Persons with these Principal/Supervisor registrations will receive the Principal/Supervisor Regulatory Element computer-based training module (the Supervisor Program).

A. The initial securities registration date is the first date a person became registered (*i.e.*, approved) with an SRO. The initial registration date is not the date the person completed and passed the registration qualification examination. The CRD uses the initial securities registration date as a *base date* from which to determine a person's Regulatory Element anniversaries (2nd, 5th, 8th, 11th, etc.).

10.

Q. *What if an individual has multiple registrations obtained in different years, such as a Series 6 in 1990 and a Series 7 in 1991? Which date determines when that person must participate in the Regulatory Element?*

A. The date of the initial registration (in this case 1990) applies, provided that the person has remained continuously registered since that time and has had no significant disciplinary action (see Question 16).

11.

Q. *What if an individual had a Series 65 (State Investment Adviser) registration in 1992 and a Series 6 (Investment Representative) in 1993? Which date determines when that person must participate in the Regulatory Element?*

A. The date of the Series 6 registration (1993) is the determining date, provided that the person has remained continuously registered since that time and has had no significant disciplinary action (see Question 16). The Series 65 State Investment Adviser registration would not cause a person to be covered by the Program because it is a state, not an SRO registration category.

12.

Q. *Certain municipal securities representatives and principals were registered with one or more bank regulators pursuant to Municipal Securities Rulemaking Board (MSRB) rules before becoming associated with an NASD member. What is their initial registration date and how do you measure the period of their continuous registration?*

A. The initial registration date is the date the person was first registered with the bank regulator. The period of continuous registration begins with this date and includes the period of bank registration. Because CRD does not contain the bank registration information, the CRD may reflect such persons as being registered less than 10 years. However, if in combination with the bank registration, the person has been continuously registered for more than 10 years, he or she is not required to participate in the Regulatory Element. If a firm receives a Continuing Education Advisory Message for such a person, it should advise the NASD Regulation Continuing Education Department in writing that the person has a registration history with a bank regulator. The letter must include the amount of time registered with a bank regulator before becoming associated with an NASD firm and the bank regulatory organization(s) with which the person was registered so that this information can be verified.

13.

Q. *What if a person's registration temporarily lapses?*

A. If a person ceases to be registered for less than two years, he or she will maintain the original registration date as the initial securities registration date, but will have to

participate in any Regulatory Element program that he or she may have missed during the lapsed period. For example, if a person's registration lapses at seven and a half years, and that person wishes to reactivate registration at what would be his or her nine-year anniversary, he or she must complete the eight-year Regulatory Element requirement before the registration can be reactivated.

14.

Q. *What if the person ceases to be registered for two or more years?*

A. A person who is not registered for two or more years begins the entire registration and qualification process anew. He or she must take the appropriate qualification examination(s) and begins the Regulatory Element as if entering the Program for the first time.

15.

Q. *What is the initial registration date of the person whose registration lapsed and who re-enters the securities business by waiver rather than by examination?*

A. For the purposes of the Continuing Education Rule, the initial registration date of that person is the waiver approval date.

Significant Disciplinary Actions

16.

Q. *What is a significant disciplinary action and what is its impact?*

A. A significant disciplinary action is defined in the SRO rules as:

- any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;
- a suspension, or the imposition of a

fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

- an order imposed as a sanction in a disciplinary action to re-enter the Continuing Education Program by any securities governmental agency or securities self-regulatory organization.

A significant disciplinary action causes those who are grandfathered from the Program to re-enter the Regulatory Element with an immediate session due within 120 days of the effective date of the significant disciplinary action, then on the second anniversary of this base date and every third year thereafter. The effective date is the 45th day after the *Date of Action* specified in the official disciplinary decision document.

A person who incurs a significant disciplinary action and is currently subject to the Regulatory Element will have the base date changed to the effective date of the significant disciplinary action. That person must participate in an immediate session within 120 days of this new base date, then on the second anniversary of the base date and every third year thereafter.

17.

Q. *If a significant disciplinary action is appealed, what will be that person's Regulatory Element requirement status?*

A. If an appeal is filed, the Regulatory Element requirement associated with that disciplinary action will be deferred, and the individual will retain the Regulatory Element status he or she had before the disciplinary action was taken. If the significant disci-

plinary action is sustained on appeal, the effective date would become the 45th day after the action was sustained. The person must participate in an immediate session within 120 days of this new base date, then on the second anniversary of the base date and every third year thereafter.

Notifications And Reports Issued By CRD To Firms

18.

Q. *What types of notifications and reports does CRD provide firms to help them track the status of their registered employees who are subject to the Regulatory Element?*

A. CRD issues Continuing Education Advisory Messages in the form of individual notifications and summary reports to firms whose registration records are maintained in the CRD. Firms whose registration records are not maintained on the CRD (e.g., NYSE-only members) and persons registered in registration categories not recorded in CRD (e.g., certain categories only recognized by the NYSE such as Series 7a or 7b) maintain responsibility for tracking their Regulatory Element Program requirements and completions. This may be supplemented by notices from the SROs with which such firms maintain membership and where such registration categories are carried.

Individual Notifications

- An *Initial Notice* is sent to the firm 30 days before a registered person's anniversary date to advise the firm of the registered person's approaching registration or disciplinary anniversary, and to inform the firm of the associated Program requirement (i.e., the General Program for registered persons who are not principals or supervisors, and the Supervisor Program for registered principals and supervisors). The notification

includes the beginning and ending dates of the 120-day window, as well as notice of authorization to schedule a training session for any available date in that window. The registered person must then make an appointment and take the computer-based training at any Sylvan Technology Center before the end of the 120-day period (see Scheduling And Administration Of Computer-Based Training Sessions At Sylvan Technology Centers).

- A *Second Notice* is sent when 30 days remain in the 120-day window. This *Notice* advises the firm of the registered person's status and includes a reminder of the consequences of not complying with the Regulatory Element requirements.

- A *Notice of Session Completion* is sent when the registered person satisfies the Regulatory Element requirement by completing a computer-based training session.

- A *Notice of Inactive Status* is sent to inform the firm of any registered person who fails to complete the Regulatory Element computer-based training within the required period. The notification states that the person's registration is no longer active and he or she may not perform, or be paid for, any activity that requires a securities registration. Such person remains inactive until the required Regulatory Element session is completed.

- A *Directed Sequence/Session Disciplinary Notice* is sent to inform the firm of a registered person who has become the subject of a significant disciplinary action. The *Directed Sequence Disciplinary Notice* is issued when a significant disciplinary action causes the person to either re-enter the Regulatory Element or begin participation utilizing a new base date (see Question 16). The *Directed Session Disciplinary Notice* is also issued if the person has been ordered by a regulator to take a single Regulatory Element session.

- A *CE Two Year Termination Warning Notice* is sent to the firm of any registered person who is approaching two years of inactive status for not completing the Regulatory Element computer-based training within the required period. The *Warning Notice* advises that the person's registration will be administratively terminated in 60 days unless the required Regulatory Element session is satisfied.
- A *CE Two Year Termination Notice* is sent to the firm of any registered person who has been inactive for two years. It advises that the person's registration has been administratively terminated and that the person must reapply for registration and requalify for registration by examination.

Summary Reports

In the middle of each month, CRD sends firms summary status reports. The *Requirement Summary* report shows registered persons who are in open 120-day windows, grouped as follows:

- persons who have begun their 120-day window;
- persons who have 90 days remaining in their 120-day window;
- persons who have 60 days remaining in their 120-day window; and/or
- persons who have 30 days remaining in their 120-day window.

Firms must carefully review the names on the *Requirement Summary* to identify any individual for whom the firm did not record or receive an *Initial Notification*. This will most often happen with individuals who have been hired by a firm when they are in an open window, or for individuals who have incurred a significant disciplinary action and must re-enter the Regulatory Element. Significant disciplinary actions are often reported to the CRD after the effective date of the action and an *Initial Notification* would not be sent to the firm.

Other summary reports show registered persons who have:

- completed their requirement within the past 40 days (*Completion Summary*);
- had their registration changed to inactive within the past 40 days (*Inactive Summary*);
- remained inactive for more than 30 days (*Previously Inactive Summary*); and/or
- had their registration status changed from inactive to another status within the past 40 days (*Previously Inactive/Satisfied Summary*).

Scheduling And Administration Of CBT Sessions At Sylvan Technology Centers

19.

Q. *Where can a person take the Regulatory Element computer-based training?*

A. The Regulatory Element must be taken at any of the approximately 250 Sylvan Technology Centers located throughout the United States and Canada. Outside of North America, NASD RegulationSM operates a Certification and Training Center in London, for the benefit of registered persons located in England, Scotland, or Wales.

20.

Q. *How does a person make an appointment to take the Regulatory Element computer-based training?*

A. For appointments at a Sylvan Technology Center in the United States or Canada, call Sylvan's National Registration Center at (800) 578-6273. For appointments in London, please phone the NASD at (0171) 374 2666 in the U.K., or 44 171 374 2666 outside the U.K.

When calling to make an appointment at either location, be prepared to provide:

- the candidate's name and Social Security number;
- the firm's name; and
- a telephone number where Sylvan can reach the candidate or the candidate's firm.

Individuals are strongly encouraged to schedule their appointments as soon as possible within their 120-day window.

21.

Q. *How long does the training session last?*

A. A participant will have up to three and a half hours to complete the training session. Persons with disabilities may be given additional time to complete the training if a request is made when scheduling the appointment. If a Regulatory Element session is not completed within the appointment time, the participant must retake the entire session at another appointment.

22.

Q. *What does it cost to take the computer-based training and how will firms be charged?*

A. The cost is \$75 for each computer-based training session taken at a Sylvan Technology Center which is charged to the firm's CRD account after the session is taken. "No-shows" and those who cancel within 48 hours of a scheduled appointment will be charged \$75. If a firm requests a session for an employee who has not received a notification from CRD that he or she is required to satisfy the Regulatory Element, the \$75 will be deducted from the firm's CRD account at the time the request is made, not after the session is completed.

23.

Q. *May a firm request a Regulatory Element computer-based training session for a registered person who is not otherwise required to complete a Regulatory Element session?*

A. Yes, to request a computer-based training session for a registered person not otherwise required to participate in the Regulatory Element, a firm 1) submits a request through the Firm Access Query System (FAQS) using the EXAMREQ command, or 2) sends page one of Form U-4 using the "Other" line to request a session. The firm's CRD account will be charged for the training session when the appointment is requested, rather than after the session is taken.

24.

Q. *If a person does not complete the Regulatory Element computer-based training within the three and a half hours allotted time, how long must he or she wait before rescheduling another appointment?*

A. The person must wait 48 hours to reschedule another appointment. To avoid becoming inactive for failing to satisfy the Regulatory Element training on the last day of the 120-day window, it is important that registered persons do not wait until the last minute to schedule an appointment. There will be another \$75 charge for the rescheduled session.

25.

Q. *Can a person schedule or reschedule the Regulatory Element computer-based training after his or her 120-day window closes?*

A. Yes. A person who is required to satisfy the Regulatory Element computer-based training can schedule an appointment in the normal manner at

a Sylvan Technology Center for up to two years after the close of the 120-day window. Remember, however, that the person whose 120-day window closes without satisfying the Regulatory Element requirement is deemed inactive. This means that the person may not conduct, or be paid for, any activities that require a securities registration. Furthermore, a person whose registration remains inactive for more than two years must requalify for his or her registration by examination and begin a new Regulatory Element cycle.

26.

Q. *Are there any provisions to accommodate people with disabilities at the Sylvan Technology Centers?*

A. Yes. Persons with disabilities or their firms should contact NASD Regulation's Field Support Services at (800) 999-6647 to make special arrangements for their Regulatory Element appointment at the Sylvan Technology Center.

27.

Q. *Are there any plans to enable delivery of the Regulatory Element computer-based training at sites provided by member firms?*

A. The subject of "in-house delivery," or delivery of the Regulatory Element on-site by industry firms, remains under review by the Council. The Council's concerns include the security of the content material, the integrity of the process (*i.e.*, positively identifying the person taking the training and verifying independent performance), and public perception as to the effectiveness of the program. The ultimate determination as to whether internal delivery will be possible depends to a large extent on the development of technology to satisfy these concerns at a reasonable cost.

28.

Q. *How can a registered person who resides outside North America satisfy his or her Regulatory Element requirement?*

A. Registered persons outside North America are still subject to the requirements of the Regulatory Element. With the exception of persons residing in England, Scotland, or Wales, who must use the NASD Regulation Certification and Training Center in London, persons outside the United States and Canada cannot currently participate in the computer-based training. These individuals may have their Regulatory Element requirement deferred until facilities are available. To obtain a deferral, a registered principal or supervisor of the firm must make the request in writing to the Continuing Education Department of NASD Regulation. The letter should contain the person's name, Social Security or CRD number, and the city and country in which the person resides. The CRD will defer that person's Regulatory Element requirement and notify the firm when delivery of the computer-based training is available. Of course, any registered person with a Regulatory Element deferral may satisfy his or her requirement at any Sylvan Technology Center in the United States and Canada, or the NASD Regulation Certification and Training Center in London, and is encouraged to do so.

Types Of Regulatory Element Training Programs

29.

Q. *How many different Regulatory Element computer-based training programs are there?*

A. There are currently two different Regulatory Element computer-based

training programs. The General Program is for persons who are not registered as principals or supervisors. The other is specifically for registered principals or supervisors. CRD tracks registered persons' registrations and anniversary dates and determines when and which training program the registered person must take (see Question 5).

Note: Until the Supervisor Program is available later this year, registered principals and supervisors will continue to satisfy their requirement by taking the General Program.

30.

Q. Does a registered principal or supervisor take one or two Regulatory Element training sessions?

A. Registered principals and supervisors take only one Regulatory Element computer-based training session — the Supervisor Program.

The following examples clarify the Regulatory Element training a registered person is required to take and when the training will occur. An “as of date” of July 1, 1998, is assumed in each example.

Example 1

Registered Person
Christian

Registration History
Series 6 Rep 8/18/88
Series 7 Rep 9/1/90

Required to Participate in the Regulatory Element?

Yes, because she has been registered less than 10 years as of 7/1/98.

Base Date
8/18/88

Next Anniversary/Required Regulatory Element Program
8/18/99. The General Program.

Example 2

Registered Person
Pat

Registration History
Series 7 Rep 9/1/86

Series 8 Sales Supervisor 4/1/90
Required to Participate in the Regulatory Element?

Yes, because she is a registered supervisor less than 10 years as of 7/1/98.

Base Date
9/1/86

Next Anniversary/Required Regulatory Element Program
9/1/2000. The Supervisor Program.

Example 3

Registered Person
Heather

Registration History
Series 6 Rep 10/1/85
Series 26 Principal 8/3/87

Required to Participate in the Regulatory Element? No. She has been registered as a principal for more than 10 years as of 7/1/98 and is grandfathered from the Regulatory Element.

Base Date
10/1/85

Next Anniversary/Required Regulatory Element Program
Not applicable.

Example 4

Registered Person
Lee

Registration History
Series 7 Rep 8/1/84
Financial/Ops Principal 11/1/99

Required to Participate in the Regulatory Element?

Not covered on 7/1/98 because he was registered over 10 years. Will be subsequently covered as of 11/1/99 upon registration as a principal.

Base Date
8/1/84

Next Anniversary/Required Regulatory Element Program
8/1/2001. The Supervisor Program.

Example 5

Registered Person
John

Registration History
Series 6 Rep 7/20/84

Incurs a significant disciplinary action effective 12/1/99

Required to Participate in the Regulatory Element?

Not covered on 7/1/98 because he was registered over 10 years. Will be subsequently covered as of 12/1/99 due to significant disciplinary action.

Base Date
12/1/99

Next Anniversary/Required Regulatory Element Program
12/1/99. The General Program.

Reentry of a grandfathered or graduated person into the Regulatory Element immediately creates a Regulatory Element requirement.

The Training Content And Method Of The Regulatory Element For Non-Principal/Supervisor Registrations - The General Program

31.

Q. What topics does the General Program cover?

A. The General Program comprises seven modules. The subject areas covered in each module are:

1. registration and reporting;
2. communications with the public;
3. suitability;
4. handling customer accounts;
5. business conduct;
6. customer accounts, trade and settlement practices; and
7. new and secondary offerings.

The General Program focuses on compliance, regulatory, ethical, and sales-practice standards as they apply in the context of the dealings registered persons have with investors. The content of the program has been recommended by participants in the industry, reviewed

by the Council, and approved by the SROs.

32.

Q. How is the training presented in each module?

A. Participants are led by an interactive computer program through “real-life” scenarios depicting situations faced by registered persons in the course of business. After reading the scenario, the participant must demonstrate his or her understanding of the issues by choosing the most appropriate response(s) to questions concerning the facts in the scenario. The participant must also answer general questions about the module topic by choosing the answer(s) from a list following the questions. The computer software then assesses the individual’s understanding of the topic. If the participant does not answer a sufficient number of questions correctly, the program delivers tutorials about the topics in the module, and the participant must try again with another scenario on the same general topic. Before the participant is permitted to move to the next module, one scenario with its associated “List Questions” must be successfully completed. As the person works through each subject, the computer program provides immediate feedback about each response made.

33.

Q. How should an individual prepare for the General Program?

A. The General Program does not necessarily require advance preparation. However, because the General Program is designed to evaluate the registered person’s overall understanding, it is beneficial for the registered person to be familiar with the *Regulatory Element Content Outline*, available from the NYSE or NASD

Regulation. This may be obtained by phoning Christian Billet (212) 656-2156, or Patricia DeVita (212) 656-2746 at the NYSE, or John Linnehan (301) 208-2932 at NASD Regulation.

Individual Feedback on the General Program Regulatory Element Computer-Based Training

34.

Q. Does the participant receive a grade or any other kind of feedback from the General Program?

A. There is no grade provided for the General Program. However, the training program provides immediate feedback as the participant works through the scenario questions. Also, as discussed above, the General Program administers remedial subject matter tutorials as the need arises.

35.

Q. What type of feedback do firms receive about their registered employees?

A. Firms receive performance reports for the General Program quarterly and annually. The reports show the firm:

1. the number of Regulatory Element sessions taken by the firm’s employees during the period;
2. the number of complete and incomplete sessions;
3. aggregate percentage performance and standard deviations by registration type (Series 6, Series 7, Principals [if any], and a grouping of all other registrations combined) for each of the seven subject modules; and
4. comparative industry information.

Firms must use this feedback to satisfy the Firm Element requirements of the Securities Industry Continuing Education Program, in conducting the annual Needs Analysis which is the basis for the firm’s written Firm

Element training plan. Material differences from industry performance in those areas that are pertinent to the firm’s business, and incomplete sessions which exceed industry averages should be addressed in Firm Element training (see the Firm Element).

The Training Content And Method Of The Regulatory Element For Principal And Supervisor Registrations - The Supervisor Program

36.

Q. What topics does the Regulatory Element Supervisor Program training cover?

A. The Regulatory Element Supervisor Program addresses issues such as suitability, hiring and interviewing, insider trading, market manipulation, money laundering, and other general supervisory topics. The Supervisor Program incorporates multimedia features which enable the participants to observe live situations, and view various documents such as account statements, portfolios, and industry forms, in order to solve the problems presented in the exercise.

37.

Q. How should an individual prepare for the Supervisor Program?

A. Because of the high degree of interactivity and subjectivity involved, specific preparation is not necessary.

Individual And Firm Feedback On The Supervisor Program Regulatory Element Computer-Based Training

38.

Q. Will the participant receive a grade or any other kind of feedback from the Supervisor Program?

A. The Supervisor Program is not graded. However, the interactive training provides immediate feedback as the participant works through the scenario questions. In addition, summaries of pertinent information from each subject area are presented at the conclusion of each scenario.

39.

Q. Will firms receive feedback about their employees who take the Supervisor Program training?

A. The Supervisor Program is not designed to provide quantifiable information from participants, therefore no quarterly or annual performance reports will be available.

Failure To Comply With Regulatory Element Requirements

40.

Q. Is each session of the computer-based training of the Regulatory Element recorded in CRD?

A. Yes.

41.

Q. What are the consequences of not complying with the Regulatory Element?

A. The registration of any person who does not satisfy the Regulatory Element requirements will be deemed inactive. This means that he or she may not engage in, or be paid for activities that require a securities registration. For example, a General Securities Registered Representative (Series 7) may not engage in any activities involving the solicitation and handling of securities transactions. Likewise, if a person is registered as a Financial and Operations Principal, the person may neither act in the capacity of a Financial and Opera-

tions Principal or in any other capacity that requires registration, nor receive compensation for activities requiring any registration.

Thus, it is important to schedule all Regulatory Element computer-based training appointments early in the 120-day window in the event that the person does not complete the required training on the first attempt and has to reschedule.

42.

Q. For how long may a registered person remain inactive before he or she must requalify for registration by examination?

A. A registered person can remain inactive for up to two years. A registration that is inactive for a period of two years will be administratively terminated, and the person must requalify for registration by examination.

43.

Q. Must the firm submit a Termination Notice (Form U-5) to report that a person's registration is inactive for failure to meet the Regulatory Element requirements?

A. No. However, if the person is subsequently terminated by the firm for any reason, including refusal to comply with the Continuing Education requirements, a Form U-5 must be filed.

44.

Q. When a person who is inactive for failing to satisfy the Regulatory Element requirements is later terminated by his or her firm, how long does the person have to become re-registered with another firm without having to requalify by examination?

A. It depends. Ordinarily, a person has a period of two years to re-regis-

ter without taking a registration examination. However, if the person is inactive for two years for failing to satisfy a Regulatory Element requirement, his or her registration will be administratively terminated regardless of the time elapsed since the person was terminated by his or her previous firm.

Example

Joan is registered with Firm A. She does not satisfy the Regulatory Element requirement due for her fifth anniversary and she becomes inactive on September 1, 1999. On November 1, 1999, Joan's firm files a Form U-5 to terminate her registration. Joan reapplies for registration with Firm B on October 1, 2001, but her registration had been administratively terminated on September 1, 2001, because she had been inactive in the Continuing Education Program for two years. Joan must requalify by examination even though it has been less than two years between the time when her Form U-5 was filed by Firm A and her Form U-4 was filed by Firm B.

45.

Q. If a registered person has both a principal/supervisor and non-principal/supervisor registration and becomes inactive for failing to satisfy the Regulatory Element requirements, does only one or all of his or her registrations become inactive?

A. All registrations are deemed inactive when that person does not satisfy the Regulatory Element requirements.

46.

Q. May a registered salesperson who is deemed inactive continue to receive trail or residual commissions?

A. Yes. Trail or residual commissions that are permitted under applicable

SRO rules for business completed before the inactive period commenced may be paid, if that is the policy of the person's firm.

Firm Element

47.

Q. *Who is required to participate in the Firm Element?*

A. The Firm Element requirements apply to all *covered persons* (*covered persons* include all registered persons that deal with customers including, but not limited to, registered salespersons, traders, sales assistants, investment company shareholder servicing agents, investment bankers, and others who have direct contact with customers in the conduct of a securities sales, trading, or investment banking business), and their immediate supervisors.

The term "customer" applies to retail, institutional, and investment banking customers, but does not apply to other broker/dealers.

48.

Q. *Can anyone be grandfathered or exempt?*

A. No *covered person* is grandfathered or exempt from the Firm Element.

49.

Q. *Are branch managers and supervisors/principals covered persons within the Firm Element?*

A. Yes, if they directly supervise registered *covered persons*. If a branch manager or supervisor/principal also has customer accounts, then his or her immediate supervisor is a *covered person* as well.

50.

Q. *Does the Program require specific review of Firm Element training needs for managers or supervisors?*

A. Yes. Effective July 1, 1998, firms are required to specifically address supervisory training needs in the annual analysis. Training for supervisors must be provided as determined by the firm to be necessary. In analyzing their Firm Element training needs for supervisors, firms should pay particular attention to the importance of supervisory responsibilities imposed by industry laws and regulations. Firms should include a review of the firm's internal supervisory policies, the effective use of internal monitoring or supervisory systems, and the sources of information or assistance available within the firm.

51.

Q. *Are registered research analysts covered persons within the Firm Element?*

A. Yes, if they participate in sales-oriented presentations to customers.

52.

Q. *Are registered sales assistants or registered investment company shareholder servicing agents, who handle service calls from customers, covered persons within the Firm Element?*

A. Yes, if their activities involve the conduct of a securities business in a sales context. The fact that the firm has decided to register such persons often suggests that there is likely to be customer contact of the type that requires registration.

53.

Q. *What should be the content of the Firm Element?*

A. It will vary. Each firm is required to analyze and evaluate its training needs at least annually. The firm's size, organizational structure, scope of business, types of products and services it offers, as well as regulatory developments and the Regulatory Element performance of its registered persons, will all need to be considered in determining training needs. Particular emphasis should be placed on changes to firm or industry demographics from the prior year. New products, new rules related to firm business, and problems the firm has experienced (such as complaints, regulatory or legal actions) are particularly important considerations. Once its needs are identified, the firm must devise a written training plan to address those needs and create training programs appropriate to its business.

Each firm must then administer its Continuing Education Program in accordance with its annual Needs Analysis and written plan, and must maintain records documenting the content of the Continuing Education Program and completion of it by *covered persons*.

54.

Q. *What is the required schedule for the Needs Analysis and written training plan?*

A. For most firms, the Firm Element will be a multi-tiered process. Each year, firms must complete/update an analysis of their training needs and revise or modify their annual written training plan accordingly. Because the plan must cover training to be conducted during the following calendar or fiscal year and must take into account matters such as budgeting, scheduling, and developing or securing the necessary educational materials, the Needs Analysis and the plan must be completed (and available for regulatory inspection) by the

end of each calendar or fiscal year. This does not suggest that work on either should be done only at year-end; in fact, a firm should remain flexible enough to modify its Needs Analysis and training plan throughout the year as circumstances dictate.

55.

Q. If a firm utilizes a survey in its Needs Analysis, must the survey be retaken in its entirety every year?

A. Although surveys are one way in which a Needs Analysis can be conducted, there are a variety of other techniques that can also be used either in place of, or in conjunction with surveys. The Council expected that a survey connected with a firm's initial Needs Analysis may by necessity be wide-ranging and therefore relatively more time consuming than surveys connected in conjunction with subsequent Needs Analysis. Subsequent surveys could be tailored and conducted with audiences within those areas of the firm where there had been changes. For example, a retail firm doing its first Needs Analysis survey might consider surveying each, or a representative sample of its retail representatives in addition to the compliance, marketing, and the other groups suggested in the *Guidelines for Firm Element Training* (see Question 64). In subsequent years, this firm might only survey new representatives or those retail representatives who had compliance problems, whose product lines changed, or who were involved in areas where there were changes to industry rules or company policies. A sample of the remaining retail population would generally suffice to validate what had been determined the year before.

56.

Q. When must training begin each year?

A. There is no single date on which training must begin. Firms must conduct training in keeping with their written training plans at various times throughout the calendar or fiscal year, depending on their own determination of needs and scheduling. For firms with limited products or small numbers of *covered persons*, it might be appropriate and sufficient to conduct training on only one or two occasions during the year. The primary responsibility that firms have is to ensure that coverage be adequate, and that information is transmitted in a timely manner.

57.

Q. If new training is added after completion of a specific year's training plan, must training originally specified be completed?

A. No, not if the change is appropriate and in keeping with the firm's changing needs and circumstances. A change would be logical if the new training improved on or replaced that originally planned, or if it were deemed necessary because changed circumstances suggested new training priorities. The annual training plan should be viewed as an evolving document that can be modified if circumstances warrant, and allow for deviation if experience or unanticipated developments suggest that changes are appropriate.

58.

Q. May insurance industry continuing education or training taken in conjunction with professional designation programs such as the Certified Financial Planner Program satisfy Firm Element requirements?

A. A firm may determine that participation in a program designed to meet the requirements of an educational or Continuing Education Program of another related industry,

such as that required for insurance-licensed personnel, or of a professional designation program in a field related to the securities industry meets all or part of an individual's or group of individuals' Firm Element requirements. Whether additional training is necessary for a specific individual or group will depend on whether the coverage of the training received through the other program is consistent with the firm's Needs Analysis and the scope of the individual's sales-related activities.

For example, if a *covered person's* sales-related activities are limited to insurance and insurance-related securities, training received through insurance industry continuing education might be sufficient. On the other hand, if the individual sells a wider range of securities products, participation in additional training would probably be necessary. For individuals participating in the initial or ongoing training related to a professional designation program, a firm might determine that the material adequately covered subjects planned for its own Firm Element. If not, the firm may require the individual to participate in segments of its own program.

If an external educational or Continuing Education Program is used to meet an individual's Firm Element training requirement, the firm must demonstrate the applicability of that program to the training plan.

59.

Q. How should firms use the quarterly report on Regulatory Element performance in planning the content of their Firm Element training programs?

A. The quarterly reports provided to firms reflect the aggregate performance of the firm's registered employees who participated in the

general Regulatory Element program training during the most recent quarter, rather than the performance of specific individuals. Accordingly, the data may be of greater benefit to firms having a significant number of employees participating in the Regulatory Element training than to firms with only a few. The purpose of the data is simply to highlight areas of emphasis to firms whose personnel show performance that is below the industry norm in a specific module. For example, if a firm's aggregate performance is below average in the "New and Secondary Offerings" module, and the firm participates in this type of business, it should evaluate the adequacy of coverage in this area in its Firm Element training.

60.

Q. *Must a firm's Needs Analysis be documented in writing as a part of its written training plan?*

A. Yes. A firm should describe the methodology it uses in conducting its Needs Analysis. It should identify the factors considered by the firm, the kinds of information reviewed, and the conclusions reached from the analysis.

The firm's documentation, however, does not necessarily have to include duplications of records or source documents otherwise reasonably available. It would be appropriate and helpful to include items such as samples of any formats used in conducting surveys or past training evaluations, disclosures of areas or business units surveyed for input, consideration of planned introductions of new products or services, assessments of the effectiveness of past training efforts, and other documentation of specific consideration.

61.

Q. *Does a firm that is a sole proprietorship have to prepare a Needs Analysis and written training plan, and how detailed does it have to be?*

A. Every firm must conduct a Needs Analysis and prepare a written training plan that is reasonable for its size and type of business it conducts or plans to conduct. The Needs Analysis of a sole proprietorship should contain a brief description of the firm's products and services and the sole proprietor's background and industry experience. The Needs Analysis and written training plan should address any pertinent recommendations from the *Firm Element Advisory* which is published annually by the Council, and should briefly describe the sole proprietor's training plans for the upcoming year.

62.

Q. *Is there a minimum or maximum number of hours of continuing education that each covered person must take in the Firm Element?*

A. There are no set schedules or required number of hours prescribed for the Firm Element, but coverage must be sufficient to meet the "reasonableness" criteria established by SRO rules. For example, it may or may not be necessary to include every *covered person* within each calendar year if the firm can demonstrate a reasonable allocation of resources in a well-conceived and executed plan. Firms may need to give priority for specific time periods to those areas of their business in which the identified needs are greatest.

63.

Q. *Must a firm make special provisions for employees newly hired from other firms in its Firm Element*

training? For example, does a covered person hired in September need to receive training already delivered earlier in the year?

A. The answer depends on an evaluation of the individual's experience, training, and areas of business relative to what the individual will do at the new firm. Firms should consider having an "orientation" period or program for registered persons hired from other firms to familiarize them with their own policies, products, and expectations—and to determine whether the new employees would benefit from additional training, including material previously covered in the new firm's Firm Element training.

In general, firms will probably be better served by addressing their training needs in terms of products or services offered by groups or categories of employees. In fact, appropriate training may vary widely between individuals or groups. Exceptions or unique circumstances may apply to small or specialized firms or to individuals with business limited to narrowly defined areas.

64.

Q. *How can firms obtain guidance on designing and implementing internal training plans and programs to meet Firm Element requirements?*

A. The Council has publications available to provide guidance on complying with the Firm Element. *Guidelines for Firm Element Training* offers direction to help firms devise appropriate programs consistent with their own unique needs, characteristics, and businesses. The *Guidelines* also addresses comments and questions brought to the attention of the Council from sources throughout the industry, including the observations of the SROs on their examination findings of firms.

The annual *Firm Element Advisory* lists pertinent topics that the Council identifies from a review of industry performance on the Regulatory Element and regulatory advisories issued by industry regulators. Firms should review the *Advisory* to determine whether the topics are relevant to their training needs.

Examples of Firm Element Practices and Council Commentary provides observations from the Council through its comments on the Needs Analysis and training plans of seven securities firms of various sizes and client orientations.

65.

Q. *May firms use training materials or presentations provided by outside entities? What sources are available?*

A. Training materials and presentations available through outside vendors may be used if they meet the standards of the Firm Element and are appropriate for a firm's needs as determined in the Needs Analysis process. Materials may also be available through regulators and industry trade and professional associations. In any event, firms that elect to use materials or presentations developed or provided by others maintain the ultimate responsibility for the content and the adequacy of their overall programs.

66.

Q. *Will SROs or the Council pre-approve training materials and/or programs developed by members or providers?*

A. Neither the SROs nor the Council will pre-approve training materials or training programs.

67.

Q. *Is the annual compliance meeting required under Rule 3010(a)(7) of the NASD Conduct Rules (previously Article III, Section 27(a)(7) of the NASD Rules of Fair Practice) adequate to demonstrate compliance with the requirements of the Firm Element?*

A. Probably not. Although it can certainly be used as an occasion to transmit information or conduct training, firms must address their own needs for sales practice and product training and carry out effective programs. In most instances, a significant expansion of material otherwise covered at the annual compliance meeting probably will be necessary. Also, it may be appropriate to conduct some training before the scheduled annual compliance meetings.

68.

Q. *Must each covered person meet personally with his or her supervisor to determine annual training requirements for that person?*

A. No. However, some firms may decide to meet to determine an individual's needs, or to discuss training needs during regular performance reviews.

Internal Policies And Documentation

69.

Q. *Must a firm develop supervisory procedures that address compliance with the Regulatory and Firm Elements of the Program?*

A. Yes. Firms must develop written supervisory procedures designed to reasonably ensure compliance with the SRO rules governing the Program. Firms should, among other

things:

- designate an appropriate officer or principal to oversee compliance with the Program;
- ensure no improper activities are undertaken by persons with inactive registrations; and
- develop processes for creating and implementing Firm Element programs.

70.

Q. *If a firm prescribes that a particular covered person take part in the Firm Element training, must the covered person do so?*

A. Yes. The SRO rules require firms to implement a training program and to maintain records that clearly demonstrate its content and its completion by each person or groups of persons identified in the firm's training plan. The rules also require *covered persons* to participate in training as prescribed by their firms. Failure to do so could result in disciplinary action against the registered person by his or her firm or by a regulatory authority.

71.

Q. *Can a firm arrange for a person to take the Regulatory Element computer-based training on a voluntary basis or as part of an internal disciplinary action?*

A. Yes. In addition to meeting the rule requirements, a firm may elect to use the Regulatory and/or Firm Element on a voluntary basis, or as a sanction in its own internal disciplinary actions. To request a special administration of the Regulatory Element, whether for internal disciplinary or training purposes, the firm should submit a request through FAQs using the EXAMREQ command or send page one of Form U-4 to the CRD/PD Department using the "Other" line to request a session. The

firm's CRD account will be charged for the training session when the appointment is requested.

SROs may also prescribe the Regulatory Element or special training under the Firm Element for individuals or firms as part of the sanctions or settlement terms in a formal disciplinary action.

Overall, the Program provides new flexibility to firms and regulatory organizations in taking both corrective and preventive compliance actions.

72.

Q. *What records will be needed to document Needs Analysis, training plans, program content, and registered person participation for regulatory examinations?*

A. See Question 60 for the documentation required for the Needs Analysis. The written training plan must be maintained, and it must accurately and adequately present the subject matter of the training, who will be trained, and where and how the training will take place. Written training plans and other applicable documentation (e.g., training results, feedback, and attendance records) must be retained for regulatory examination during routine SRO examinations or upon request. The subject matter covered in training presentations can be documented by retaining copies of any written materials used (i.e., texts, handouts, case studies, discussion points, outlines, notes, or check-off sheets for items covered) as well as any non-written material such as audio-visual tapes. It may not be possible to maintain

verbatim transcripts of all classroom sessions, conference calls, or presentations. In such cases, an outline or summary may be sufficient to satisfy document retention requirements. Documenting participation in such activities as conference calls and "squawk box" meetings may not be readily accomplished other than by participant sign-off or attestation. In addition, often written materials are disseminated such as internal memoranda, compliance alerts, regulatory bulletins, etc., which must be read as part of Firm Element training. Participant sign-off or attestation may be an acceptable method for demonstrating completion. Such items may be retained with respect to a specific presentation or retained centrally and identified as material used in multiple presentations. Unique materials or presentation methods can be documented in descriptive memoranda. Various methods are acceptable so long as they provide readily accessible and reasonable evidence as to the material covered, with whom, by whom, and when. The records are required to be maintained under SEC Rule 17a-4, which requires every broker or dealer to preserve records related to the conduct of their business for at least three years, with the first two years in an easily accessible place.

73.

Q. *Are firms required to measure and document the effectiveness of their training programs? Will this be expected in regulatory examinations?*

A. While evaluation of the effectiveness of training is recognized as an

inexact process, firms are required to document the particulars of who participated in what training, and when. To the extent that it can be done, an evaluation of prior training programs and materials can be beneficial to firms in identifying appropriate modifications to improve current programs and plan future programs. Methods used can range from administering post-training tests to obtaining suggestions and feedback on programs, presentations, and materials from participants and presenters as well as from comments or findings in periodic regulatory examinations. Any good program can benefit from a feedback mechanism to evaluate its effectiveness and from efforts to learn from past experiences in order to identify needed modifications and enhancements.

74.

Q. *Are firms that are members of two or more SROs subject to redundant inspections for compliance with the continuing education requirements?*

A. No. The SROs coordinate their field inspection efforts to avoid any unnecessary regulatory overlap for joint members. The SROs have developed a consistent approach to examining and enforcing both the Regulatory Element and the Firm Element requirements.

Endnote

¹The American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

NASD Notice to Members 98-69

Labor Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market[®] and the securities exchanges will be closed on Monday, September 7, 1998, 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. 31	Sept. 3	Sept. 8
Sept. 1	4	9
2	8	10
3	9	11
4	10	14
7	Markets Closed	—
8	11	15

Labor Day: Trade Date-Settlement Date Schedule

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

*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 five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

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NASD Notice to Members 98-70

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of June 24, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of June 24, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
ABAG.GA	Safety Componets Intl Inc	10.125	07/15/07
ALGX.GA	Allegiance Telecom Inc	11.750	02/15/08
AMH.GA	Amerus Life Hldgs Inc	6.950	06/15/05
BFSR.GB	Saul B F Real Estate Inv Trst	11.625	04/01/02
CBRN.GB	Canadaigua Brands Inc	8.750	12/15/03
CHCA.GC	Chancellor Media Corp LA	8.125	12/15/07
CNCX.GB	Concentric Network Corp Del	12.750	12/15/07
EGFM.GA	Eagle Family Foods Inc	8.750	01/23/98
EX.GC	Exide Corp	10.000	04/15/05
FMO.GB	Federal Mogul Corp	7.500	07/01/04
FMO.GC	Federal Mogul Corp	7.750	07/01/06
FMO.GD	Federal Mogul Corp	7.875	07/01/10
FTO.GA	Frontier Oil Corp	9.125	02/15/06
FXFW.GA	Fox Family Worldwide Inc	9.250	11/01/07
GND.GB	Grand Casinos Inc	9.000	10/15/04
IGRP.GB	ICG Holdings Inc	13.500	09/15/05
MARS.GA	Marsh Super Markets Inc	8.875	08/01/07
NIN.GA	Nine West Group Inc	8.375	08/15/05
NIN.GB	Nine West Group Inc	9.000	08/15/07
PANR.GB	Pantry Inc	10.250	10/15/07
PCKI.GA	Printpack Inc	9.875	08/15/04
PDAG.GA	Panda Global Energy Co	12.500	04/15/04
PDCU.GA	Poland Communications Inc	9.875	11/01/03
PGN.GA	Paragon Health Network Inc	10.500	11/01/07
PGTN.GA	Pagemart Nationwide Inc	12.250	02/01/05
PJMC.GA	Peters (J.M.) Co	12.750	05/01/02
PKD.GC	Parker Drilling Co	9.750	11/15/06
PKOH.GA	Park-Ohio Industries Inc	9.250	12/01/07
PKS.GD	Premier Parks Inc	12.000	08/15/03
PLTC.GB	Plastic Containers Inc	10.000	12/15/06
PLX.GA	Plain Resources Inc	10.250	03/15/06
PLX.GB	Plains Resources Inc	10.250	03/15/06
PNDF.GA	Panda Funding Corp	11.625	08/20/12
PNRA.GA	Pioneer Americas Acq. Corp	9.250	06/15/07
POAN.GA	Protection One Alarm Inc	13.625	06/30/05
PPP.GA	Pogo Producing Co	8.875	05/15/07
PRCG.GA	Prescise Technology Inc	11.125	06/16/07
PRGY.GA	Petsec Energy Inc	9.500	06/15/07
PTX.GB	Pillowtex Corp	9.000	12/15/07
PYX.GA	Playtex Products Inc	8.875	07/15/04
QWST.GB	Qwest Communications Intl Inc	10.875	04/01/07
RBXC.GA	RXC Corp	11.250	10/15/05
RCNC.GA	RCN Corp	9.8	02/15/08
RCNC.GB	RCN Corp	11.000	07/01/08
RDNH.GA	Radnor Holdings Inc	10.000	12/01/03
REGL.GA	Regal Cinemas Inc	8.500	10/01/07
RENC.GB	Renco Metals Inc	12.000	07/15/00
REXI.GA	Resource America Inc	12.000	08/01/04
RFPN.GA	Rifkin Acq Partners L.P.	11.125	01/15/06
RGCT.GA	Riggs Capital Trust	7.625	12/31/26

Symbol	Name	Coupon	Maturity
RHC.GA	Rio Hotel & Casino Inc	9.500	04/15/07
RIDL.GA	Riddell Sports Inc	10.500	07/15/07
RIV.GA	Riviera Holdings Corp	10.000	08/15/04
RLBD.GA	Reliant Building Product Inc	10.875	05/01/04
RMOC.GA	Rutherford-Moran Oil Corp	10.750	10/01/04
RNCC.GA	Renaissance Cosmetics Inc	11.750	02/15/04
ROV.GA	Rayovac Corp	10.250	11/01/06
RRI.GA	Red Roof Inns Inc	9.625	12/15/03
RSEH.GA	Rose Hills Co	9.500	11/15/04
RVSU.GF	Revlon Consumer Products Corp	8.625	02/01/08
RXIH.GA	RXI Holdings Inc	14.000	07/15/02
SACU.GA	Salem Communications Corp	9.500	10/01/07
SBGI.GD	Sinclair Broadcast Grp Inc	9.000	07/15/07
SCPR.GA	Sovereign Capital Trust I	9.000	04/01/27
SDW.GA	Southdown Inc	9.500	04/15/07
SELO.GA	Selmer Co	11.000	05/15/05
SFDS.GA	Smithfield Foods Inc	7.625	02/15/08
SGY.GA	Stone Energy Corp	8.750	09/15/07
SHST.GA	Sheffield Steel Corp	11.500	12/01/05
SHVC.GA	Shop Vac Corp	10.625	09/01/03
SLGC.GB	Sterling Chemicals Inc	11.75	08/15/06
SLGN.GC	Silgan Holdings Inc	9.000	06/01/09
SLNC.GA	Sabreliner Corp	12.500	04/15/03
SLTA.GA	Specialty Foods Acq Corp	13.000	08/15/05
SLTF.GA	Specialty Foods Corp	11.125	10/01/02
SLTF.GB	Specialty Foods Corp	10.250	08/15/01
SMMC.GA	Simmons Co	10.750	04/15/06
SPBR.GB	Spanish Broadcasting Inc	12.500	06/15/02
SRKT.GA	Star Markets Co	13.000	11/01/04
SROY.GA	Southwest Royalties	10.500	10/15/04
SUGR.GA	Sullivan Graphics Inc	12.750	08/01/05
SUWD.GA	Sun World Int'l Inc	11.250	04/15/04
SXFE.GA	Six Flags Theme Parks Inc	12.250	06/15/05
TEGY.GA	Transamer Energy Corp	11.500	06/15/02
TEGY.GB	Transamer Energy Corp	13.000	06/15/02
TETI.GA	Teletrac Inc	14.000	08/01/07
TGCP.GA	Triangle Capital Trust	9.375	06/01/27
TGRP.GA	Telegroup Inc	10.500	11/01/04
THWV.GA	Therma-Wave Inc	10.625	05/15/04
TKPX.GA	Tekni-Plex Inc	11.250	04/01/07
TLTH.GA	Talton Hldgs Inc	11.000	06/30/07
TLXU.GA	Telex Communications Inc	10.500	05/01/07
TMFD.GA	Tom's Foods Inc	10.500	11/01/04
TMWR.GA	Time Warner Telecom LLC/Inc	9.375	07/15/08
TOK.GB	Tokheim Corp	11.500	08/01/06
TRA.GA	Terra Indus Inc	10.500	06/15/05
TRHD.GA	Transtar Hldg L.P.	13.375	12/15/03
TRK.GA	Speedway Motor Sports Inc	8.500	08/15/07
TTX.GB	Tultex Corp	9.625	04/15/07
TVLC.GA	Travel Centers of America Inc	10.250	04/01/07
TWA.GB	Trans World Airlines Inc	12.000	04/01/02
TWNB.GA	Twin Laboratories Inc	10.250	05/15/06
TWSP.GA	Town Sports Int'l Inc	9.750	10/15/04

Symbol	Name	Coupon	Maturity
UDFS.GA	United Defense Indus Inc	8.750	11/15/07
UFIC.GA	Unifi Communications Inc	14.000	03/01/04
UIHA.GA	UIH Australia/Pacific Inc	14.000	05/15/06
UIHA.GB	UIH Australia/Pacific Inc	14.000	05/15/06
UIS.GI	Unisys Corp	12.000	04/15/03
UNCO.GA	Unicco Service Co	9.875	10/15/07
USMR.GA	United Stationers Supply Co	12.750	05/01/05
VDKP.GA	Van De Kamps Inc	12.000	09/15/05
VHT.GB	Venture Holdings Trust	9.500	07/01/05
VILG.GA	Vialog Corp	12.750	11/15/01
VOUT.GD	Universal Outdoor Inc	9.750	10/15/06
WALB.GB	Walbro Corp	10.125	12/15/07
WCII.GB	Winstar Communications Inc	14.500	10/15/05
WCII.GC	Winstar Communications Inc	15.000	03/01/07
WCTI.GA	Williams Scotsman Inc	9.875	06/01/07
WEQC.GA	Winstar Equip II Corp	12.500	03/15/04
WFGM.GA	Waterford Gaming LLC	12.750	11/15/03
WHLP.GA	Windy Hill Pet Foods Co	9.750	05/15/07
WHX.GA	WHX Corp	10.500	04/15/05
WLAL.GA	Wells Aluminum Corp	10.125	06/01/05
WLSN.GA	Wilson Leather Inc	11.250	08/15/04
WMHO.GA	Williamhouse Regency (Del) Inc	11.500	06/15/05
WRMD.GA	Wright Medical Tech Inc	11.750	07/01/00
WVTK.GA	Wavetek Corp	10.125	06/15/07
WZR.GA	Wiser Oil Co	9.500	05/15/07
YBTV.GC	Young Broadcasting Inc	8.750	06/15/07
YBTV.GD	Young Broadcasting Inc	9.000	01/15/06
YFM.GA	Big City Radio Inc	11.250	03/15/05
ZLC.GA	Zale Corp	8.500	10/01/07

As of June 24, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
ABKR.GA	Anchor Bancorp Inc	8.937	07/09/03
ADT.GA	ADT Operations Inc	8.250	08/01/00
ADT.GB	ADT Operations Inc	9.250	08/01/03
AFIN.GD	American Financial Corp	9.750	04/20/04
ALG.GA	Arkla Inc	8.9	12/15/06
ALG.GF	Arkla Inc	10.000	11/15/19
ALG.GG	Arkla Inc	8.875	07/15/99
ALIS.GA	Allied Supermarkets Inc	6.625	05/15/98
AME.GA	Ametek Inc	9.750	03/15/04
AMLH.GA	American Life Holdings Co	11.250	09/15/04
AMSD.GE	American Standard Inc	9.875	06/01/01
AMSD.GF	American Standard Inc	10.500	06/01/05
ARAG.GC	ARA Group	8.500	06/01/03
ARAS.GA	Ara Services Inc	10.625	08/01/00
ARTL.GB	Amer Continental Corp	14.750	04/15/95
ASRP.GA	Astor Corp	10.500	10/15/06
AVTR.GA	Avatar Holdings Inc	9.000	10/01/00
BKI.GA	Buckeye Cellulose Corp	10.250	05/15/01
BKSO.GA	Bank South Corp	10.200	06/01/99

Symbol	Name	Coupon	Maturity
BLT.GA	Blount Inc	9.000	06/15/03
BLYG.GA	Bally's Casino Holding	10.500	06/15/98
BOR.GA	Borg-Warner Security Corp	9.125	05/01/03
CAW.GA	Caesars World Inc	8.875	08/15/02
CBLV.GB	Cablevision Inds Corp	9.250	04/01/08
CCG.GA	Chelsea GCA Rlty Partnership L.P.	7.750	01/26/01
CCVS.GD	Contl Cablevision Inc	8.625	08/15/03
CCVS.GE	Contl Cablevision Inc	9.000	09/01/08
CCVS.GF	Contl Cablevision Inc	8.500	09/15/01
CCVS.GG	Contl Cablevision Inc	8.875	09/15/05
CCVS.GH	Contl Cablevision Inc	9.500	08/01/03
CFCB.GA	CF Cable TV Inc	11.625	02/15/05
CFDB.GA	Citfed Bancorp Inc	8.250	09/01/03
CGP.GC	Coastal Corp	10.250	10/15/04
CGP.GD	Coastal Corp	10.375	10/01/00
CGP.GE	Coastal Corp	10.750	10/01/10
CGP.GF	Coastal Corp	10.000	02/01/01
CGP.GG	Coastal Corp	9.750	08/01/03
CGP.GH	Coastal Corp	8.750	05/15/99
CGP.GI	Coastal Corp	9.625	05/15/12
CGP.GJ	Coastal Corp	8.125	09/15/02
CLNH.GB	CLN Holdings Inc	0.000	05/15/01
CNEW.GA	Community Newspaper Inc	13.000	07/01/97
CTP.GC	Central Maine Power Co	7.375	01/01/99
CTP.GD	Central Maine Power Co	7.05	03/01/08
CTP.GF	Central Maine Power Co	6.25	11/01/98
CVXP.GA	Cleveland Elec Illum Co	8.750	11/15/05
CVXP.GD	Cleveland Elec Illum Co	8.375	08/01/12
CWL.GA	Chartwell Re Corp	10.250	03/01/04
DAL.GD	Delta Air Lines Inc Del	10.125	05/15/10
DLFI.GA	Delphi Financial Group	8.000	10/01/03
ECK.GB	Eckerd Corp Del	9.250	02/15/04
EFGP.GA	Equitec Fin'l Group Inc	12.000	12/15/93
ENRG.GB	Dekalb Energy Co	9.875	07/15/00
EVI.GA	Eng Venture Inc	10.250	03/15/04
EWRL.GA	Evans Withycombe Res LP	7.500	04/15/04
FCMM.GA	1st Carolina Communications Inc	13.500	12/01/96
FD.GA	Federated Dept Stores Inc Del	10.000	02/15/01
FD.GB	Federated Dept Stores Inc Del	8.125	10/15/02
FD.GC	Federated Dept Stores Inc Del	8.500	06/15/03
FERL.GB	Ferrellgas LP/Finance Corp	8.625	08/01/01
FGGI.GB	Figgie Intl Inc Del	10.375	04/01/98
FLCN.GA	Falcon Drilling Co	8.875	03/15/03
FM.GA	Foodmaker Inc	4.250	05/15/98
FM.GC	Foodmaker Inc	9.250	03/01/99
FM.GD	Foodmaker Inc	9.750	06/01/02
FMO.GA	Federal-Mogul Co	7.500	01/15/98
FORT.GD	Fort Howard Corp	9.250	03/01/01
FORT.GF	Fort Howard Corp	9.000	02/01/06
FORT.GG	Fort Howard Corp	8.250	02/01/02
FUSA.GA	First USA Bank Wilmington Del	7.650	08/01/03
GAP.GA	Great Atlantic & Pacific Tea Inc	9.125	01/15/98
GAP.GB	Great Atlantic & Pacific Tea Inc	7.700	01/15/04

Symbol	Name	Coupon	Maturity
GASI.GA	Greenwich Air Service	10.500	06/01/06
GCR.GB	Gaylord Container Group	12.750	05/15/05
GLD.GA	Santa Fe Pacific Gold Corp	8.375	07/01/05
GRHD.GA	Greyhound Dial Corp	10.500	05/15/06
GSTS.GA	Gulf Sts Utils Co	9.720	07/01/98
HARC.GA	Harcor Energy Inc	14.875	07/15/02
HEMS.GA	Heritage Media Services Inc	11.000	06/15/02
HOME.GA	Homeside Inc	11.250	05/15/03
HRRA.GA	Harrahs Oper Inc	8.375	04/15/96
HSRB.GA	Health South Rehabilitation Co	9.500	04/01/01
IGL.GA	IMC Global Inc	9.450	12/15/11
IGL.GB	IMC Global Inc	9.250	10/01/00
IPR.GA	Inter-City Prods Corp	9.750	03/01/00
IPX.GA	Interpool Capital Trust	9.875	02/15/27
JCP.GA	Penny (JC) Inc	6.950	04/01/00
JOY.GA	Joy Technologies Inc	10.250	09/01/03
KR.GH	Kroger Co	8.500	06/15/03
KR.GI	Kroger Co	9.250	01/01/05
KR.GJ	Kroger Co	8.500	07/15/06
LD.GB	Louis Dreyfus Natural Gas	6.875	12/01/07
LIL.GE	Long Island Ltg Co	7.3	07/15/99
LIL.GF	Long Island Ltg Co	8.9	07/15/19
LIL.GG	Long Island Ltg Co	9.0	11/01/22
LIL.GH	Long Island Ltg Co	7.3	01/15/00
LIL.GI	Long Island Ltg Co	7.5	03/01/07
LIL.GJ	Long Island Ltg Co	7	03/01/04
LIL.GK	Long Island Ltg Co	7.05	03/15/03
LIL.GL	Long Island Ltg Co	8.2	03/15/23
LIL.GM	Long Island Ltg Co	7.125	06/01/05
LIL.GN	Long Island Ltg Co	6.25	07/15/01
LNES.GA	Lanesborough Corp	12.375	03/15/97
MCPN.GB	MCorp	11.500	12/15/89
MCPN.GC	MCorp	11.500	11/15/92
MCPN.GD	MCorp	10.625	05/01/93
MCU.GB	Magma Cooper Co	11.500	01/15/02
MCU.GC	Magma Cooper Co	8.700	05/15/05
MDEP.GA	McDermott Inc	9.375	03/15/02
MESA.GC	Mesa Capital Corp	12.750	06/30/98
MGAW.GA	McGaw Inc	10.375	04/01/99
MRO.GB	USX-Marathon Group	9.8	07/01/01
MRO.GC	USX-Marathon Group	9.625	08/15/03
MRO.GE	USX-Marathon Group	9.375	02/15/12
MRO.GF	USX-Marathon Group	9.375	05/15/22
MRO.GG	USX-Marathon Group	9.125	01/15/13
MRO.GH	USX-Marathon Group	8.500	03/01/23
MRO.GI	USX-Marathon Group	6.375	07/15/98
MRO.GJ	USX-Marathon Group	8.125	07/15/23
MRO.GK	USX-Marathon Group	7.200	02/15/04
MSEA.GA	Metropolitan Bancorp	8.500	07/31/03
MXS.GD	Maxus Energy Corp	9.875	10/15/02
MXS.GE	Maxus Energy Corp	9.500	02/15/03
MXS.GF	Maxus Energy Corp	9.375	11/01/03
MXS.GG	Maxus Energy Corp	9.375	11/01/03

Symbol	Name	Coupon	Maturity
NAE.GA	Noram Energy Corp	7.500	08/01/00
NCTY.GA	Newcity Communications Inc	11.375	11/01/03
NDCO.GB	Noble Drilling Corp	9.125	07/01/06
NGL.GA	Trident NGL Inc	10.250	04/15/03
NOWC.GA	Motor Wheel Corp	11.500	03/01/00
NXTL.GA	Nextel Communications Inc	11.500	09/01/03
OH.GA	Oakwood Homes Corp	9.125	06/01/07
OH.GB	Oakwood Homes Corp	9.000	06/01/07
OPII.GA	OPI International Inc	12.875	07/15/02
ORND.GA	Ornda Health Corp	12.250	05/15/02
ORSP.GA	Orchard Supply Hardware Corp	9.375	02/15/02
PAGE.GA	Paging Network Inc	11.750	05/15/02
PAPK.GA	Pay n Pak Stores Inc	13.500	06/01/98
PARI.GA	Parisian Inc	9.875	07/15/03
PCCO.GA	Penn Central Corp	9.750	08/01/99
PCCO.GB	Penn Central Corp	10.625	04/15/00
PCCO.GC	Penn Central Corp	10.875	05/01/11
PLTT.GA	Plitt Theaters Inc	10.875	06/15/04
PNET.GA	Pronet Inc	10.875	09/15/06
PNT.GA	Pennsylvania Enterprises Inc	10.125	06/15/99
PUL.GA	Publicker Inds Inc	13.000	12/15/96
PXRE.GA	Phoenix RE Corp	9.750	08/15/03
REVL.GA	Revlon Consumer Prod	10.875	07/15/10
RPCD.GA	Rap-American Corp	10.750	12/01/03
RPWI.GA	Repap Wisconsin Inc	9.250	02/01/02
RPWI.GB	Repap Wisconsin Inc	9.875	05/01/06
RSP.GA	Southern Pacific Rail Corp	9.375	08/15/05
RULE.GA	Rule Indust Inc	12.500	06/01/97
RVW.GD	Riverwood Intl Corp	11.250	06/15/02
SGO.GA	Seagull Energy Corp	7.875	08/01/03
SPK.GA	Spieker Properties LP	7.125	12/01/06
SPLS.GA	Staples Inc	7.125	08/15/07
SROM.GA	Storer Communications Inc Del	10.000	05/15/03
STLV.GD	SCI Television Inc	11.000	06/30/05
STO.GB	Stone Container Corp	11.500	09/01/99
STO.GG	Stone Container Corp	12.625	07/15/98
STO.GK	Stone Container Corp	12.125	09/15/01
SUMT.GA	Summit Comm Group Inc	10.500	04/15/05
SVN.GA	Spectravision Inc	11.500	10/01/01
SVN.GB	Spectravision Inc	11.65	12/01/02
SWY.GA	Safeway Inc	10.000	12/01/01
SWY.GB	Safeway Inc	9.650	01/15/04
SWY.GC	Safeway Inc	9.350	03/15/99
SWY.GE	Safeway Inc	9.875	03/15/07
SWY.GF	Safeway Inc	10.000	11/01/02
TALY.GA	Talley Mfg & Technology Inc	10.750	10/15/03
TBS.GB	Turner Broadcasting Sys Inc	8.375	07/01/13
TBS.GC	Turner Broadcasting Sys Inc	7.4	02/01/04
TBS.GD	Turner Broadcasting Sys Inc	8.4	02/01/24
TEDP.GB	Toledo Edison Co	7.500	08/01/02
TFYP.GB	Thrifty Payless Inc	12.250	04/15/04
TIPK.GA	Tiphook Financial Corp	7.125	05/01/98
TOS.GC	Tosco Corp	7.000	07/15/00

Symbol	Name	Coupon	Maturity
TOS.GD	Tosco Corp	7.625	05/15/06
TROC.GA	Trans Ocean Container Corp	12.25	07/01/04
TRTX.GB	Transtexas Gas Corp	11.500	06/15/02
TTJP.GB	Trump Plaza Funding Inc	10.875	06/15/01
TTJP.GC	Trump Plaza Funding Inc	11.35	11/15/99
TTRR.GC	Tracor Inc New	10.875	08/15/01
TWGI.GA	Westwood Group Inc	14.250	08/15/97
UAL.GF	United Airlines Inc	10.11	01/05/06
UAL.GG	United Airlines Inc	9.76	05/20/06
UAL.GH	United Airlines Inc	10.11	02/19/06
UAL.GI	United Airlines Inc	10.85	07/05/14
UAL.GJ	United Airlines Inc	10.85	02/19/15
UAL.GK	United Airlines Inc	9.76	05/13/06
UAL.GL	United Airlines Inc	9.76	05/27/06
UAL.GM	United Airlines Inc	10.36	11/27/12
UAL.GP	United Airlines Inc	10.36	11/13/12
UAL.GQ	United Airlines Inc	10.36	11/20/12
UC.GC	United Cos Finl Corp	7.000	07/15/98
UCIV.GB	UCC Investors Hldgs Inc	11.000	05/01/03
UCIV.GC	UCC Investors Holdings Inc	12.000	05/01/05
UHS.GA	Universal Health Svcs	8.750	08/15/05
UNC.GA	UNC Inc	9.125	07/15/03
USG.GB	USG Corp	8.750	03/01/17
USG.GH	USG Corp	9.250	09/15/01
USG.GI	USG Corp	8.500	08/01/05
UVTV.GA	Univision Television Group Inc	11.750	01/15/01
UVTV.GB	Univision Television Group Inc	11.750	01/15/01
VAGA.GB	VagaBond Hotels Inc	8.375	09/15/95
VDOH.GA	Videotron Holdings Plc	11.125	07/01/04
VOUT.GA	Universal Outdoor Inc	9.750	10/15/06
WAX.GB	Waxman Indust Inc	12.250	09/01/98
WHPC.GB	Wheeling-Pittsburgh Corp	9.375	11/15/03

As of June 24, 1998, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
CBRN.GA	WINE.GA	Canandaigua Brands Inc	8.750	12/15/03
OSI.GA	OSIA.GA	Outdoor Systems Inc	9.375	10/15/06
OSI.GB	OSIA.GB	Outdoor Systems Inc	8.875	06/15/07
QWST.GA	QSTC.GA	Qwest Communications Intl Inc	9.470	10/15/07
RVSU.GB	REVL.GE	Revlon Consumer Products Corp	8.125	02/01/06
RVSU.GC	REVL.GC	Revlon Consumer Products Corp	9.500	06/01/99
SLGN.GB	SIAN.GB	Silgan Holdings Corp	13.250	06/15/02
TUES.GB	TUES.GA	Tuesday Morning Corp	11.000	12/15/07
WHPC.G B	WHX.GB	Wheeling-Pittsburgh Corp	9.375	11/15/03
WHPC.GA	WHX.GA	Wheeling-Pittsburgh Corp	12.250	11/15/00
WHPC.GC	WHX.GC	Wheeling-Pittsburgh Corp	9.250	11/15/07

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation, Inc. (NASD RegulationSM), at (301) 590-6451. Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq[®] Market Operations, at (203) 385-6310.

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Disciplinary Actions

Disciplinary Actions Reported For August

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, August 17, 1998. The information relating to matters contained in this *Notice* is current as of the end of July 24.

Firms Expelled

Stratton Oakmont, Inc. (Lake Success, New York) submitted an Offer of Settlement pursuant to which the firm was expelled from membership in the NASD. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that, acting through its registered principals and registered representatives, the firm engaged in a practice of executing unauthorized transactions in the accounts of its customers when it did not have discretionary trading authority for any of these accounts. The findings also stated that the firm attempted to convince public customers to enter into transactions, and executed the transactions despite the customers' refusal to do so. Furthermore, the NASD determined that the firm executed trades without any communication with the customers and at times when its registered representatives knew that the customers were on vacation or were otherwise unavailable, and exceeded the authorized dollar or share amount in transactions authorized by the customers. In addition, the NASD found that the firm executed authorized sell orders but used the proceeds to buy other securities without, or contrary to, the customers' authorization or instructions.

Firms Fined, Individuals Sanctioned

Sunpoint Securities, Inc. (Longview, Texas) and **Mary Ellen Wilder (Registered Principal, Longview, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$50,000, jointly and severally. In addition, Wilder was suspended from association with any NASD member in the capacity of a financial and operations principal for 10 days and must requalify by examination prior to future association with any NASD member in the capacity of a financial and operations principal. Further, Sunpoint must engage for at least six months an independent consultant to review financial and operational matters, including but not limited to, matters involving internal controls, net capital computations, and reserve computations. Such consultant must be acceptable to the NASD and must provide the NASD with its analysis and findings on a quarterly basis, with such consultant being made available for discussions with NASD staff members in the event such request is made. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Wilder, effected transactions in securities when it failed to have and maintain sufficient net capital and failed to make a required deposit to its Reserve Bank Account in connection with its reserve computations.

Firms and Individuals Fined

J. B. Oxford & Co. (Beverly Hills, California) and **Kevin Michael Beadles (Registered Principal, Long Beach, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$20,000, jointly and severally. Without admitting or

denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Beadles, failed to disclose the difference in the price securities were purchased from and sold to customers and the firm's contemporaneous offsetting purchase or sale price to or from a Market Maker in contravention of Securities and Exchange Commission (SEC) Rule 10b-10(a)(2)(ii)(A). Specifically, the firm failed to send public customers the requisite written notification or confirmation in securities transactions that it was not a Market Maker in these securities.

PIM Financial Services, Inc. (San Diego, California), Jack Kendrick Heilbron (Registered Principal, Poway, California) and Mary Rose Limoges (Registered Principal, Poway, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Heilbron and Limoges, failed to transmit promptly \$285,000 in investor funds received in connection with a contingent offering of securities to a properly established bank escrow account.

Firms Fined

International Correspondent Trading, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. In addition, the firm must undertake to revise immediately its written supervisory procedures regarding short-sale rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale orders in securities and failed to maintain a

written record of the affirmative determination made for such orders. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with Short-Sale Rules.

Parker/Hunter Incorporated (Pittsburgh, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$29,707 and fined an additional \$1,000, jointly and severally, with an individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it acted as a junior co-managing underwriter in a negotiated offering of securities by an issuer with which it was precluded from engaging in a municipal securities business. The findings also stated that the firm failed to file quarterly reports timely and failed to include certain information on quarterly reports filed with the MSRB. Furthermore, the NASD determined that the firm failed to prepare and/or maintain the listing and records in the proper format and failed to implement certain of its established written policies and procedures to achieve compliance with MSRB Rules G-8(a)(xvi) and G-37.

Individuals Barred or Suspended

Alicia Allen (Registered Representative, Laurel, Maryland) submitted an Offer of Settlement pursuant to which she was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Allen consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information.

Gerard Joseph Arrigale, Jr. (Registered Representative, Middle Village, New York) was censured, fined \$20,000, suspended from association with any NASD member in any capacity for six months, ordered to requalify by exam as a corporate securities limited representative, and ordered to complete the Regulatory Element of the NASD's Continuing Education Program as a condition to his return to the securities industry following completion of the suspension. The sanctions were based on findings that Arrigale falsely represented himself to be another broker, and requested the execution of securities transactions under the account number of a public customer, without the customer's knowledge, authorization, or consent.

Walter Vance Bailey (Registered Principal, Brantley, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bailey consented to the described sanctions and to the entry of findings that he failed to timely update his Form U-4 to reflect findings by the U.S. District Court, Northern District of Florida, that he had made a false statement to the Department of Agriculture, whose findings subjected him to statutory disqualification.

Avin E. Bakal (Registered Representative, Brooklyn, New York) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bakal failed to respond to NASD requests for information concerning a customer complaint.

Donald J. Berg (Registered Representative, Broomall, Pennsylvania) was censured and barred from association with any NASD member in

any capacity. The sanctions were based on findings that Berg made unsuitable recommendations to public customers and engaged in excessive trading in their accounts, and presented one customer a document that purported to show that his securities account was worth substantially less than it was actually worth in order to deceive the customer. In numerous instances involving several customers without the respective customer's knowledge or authorization, Berg requested his member firm to issue a check to the customer, obtained possession of the check, and either caused the check to be deposited to the securities account of another customer or converted the funds to his own benefit. In several instances, Berg caused a check payable to a customer by a third party to be credited to the securities account of another customer without the knowledge or authorization of the customer to whom the check was payable. Moreover, Berg obtained possession of blank checks issued to a customer for writing checks against her money market fund, wrote checks payable to himself, and converted the funds to his own benefit. Berg also failed to respond to NASD requests for information.

Steven E. Blonde (Registered Principal, Ft. Lauderdale, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, barred from association with any NASD member in any capacity, required to pay \$38,000 plus interest in restitution to a public customer, and also required to pay restitution to another customer in accordance with a previous settlement agreement. Without admitting or denying the allegations, Blonde consented to the described sanctions and to the entry of findings that he sold securities to public customers outside the scope of his regular employment with his member firm

without giving prior notification to his member firm or receiving the firm's prior written approval.

Matthew L. Bloom (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for two years, and ordered to requalify by exam prior to becoming associated with any NASD member. Without admitting or denying the allegations, Bloom consented to the described sanctions and to the entry of findings that he failed to execute, refused to accept, or aggressively discouraged sell orders from public customers and engaged in unauthorized trading in customer accounts. The findings also stated that Bloom made baseless and improper price predictions pertaining to highly speculative securities and falsely promised to limit a customer's potential loss. Furthermore, Bloom promised to make up prior losses with new trading.

Kenneth Alan Brown (Registered Representative, Murrysville, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Eric D. Brumagin (Registered Representative, Winston-Salem, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, ordered to disgorge \$37,138 in commissions to public customers, and required to

requalify as a general securities representative by taking and passing the Series 7 exam. Without admitting or denying the allegations, Brumagin consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to request or receive permission to engage in these transactions from his member firm.

Samuel George Busada (Registered Principal, Saddle Brook, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$620,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Busada consented to the described sanctions and to the entry of findings that he misappropriated customer funds totaling \$123,853.83 for his own use. The findings also stated that Busada aided in the fraudulent assignment of a deceased public customer's partnership interest and allowed a \$1,500 check to be deposited into his account even though he knew it was an asset of the customer's estate.

Arthur A. Bykonen (Registered Representative, Charlottesville, Virginia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Bykonen consented to the described sanctions and to the entry of findings that he established a joint securities account in the name of a public customer and the customer's son, signed the customers' names on the account form, initialed the form with both their initials, falsely stated the son's birth date in order to conceal the fact that the son was a minor, and submitted the form without disclosing either that the signa-

ture and initials of the son were not authentic or that the date of birth was false. The findings also stated that Bykonen's signature guaranteed stock powers signed by the customer with his own name and that of his son while knowing that the purported signatures of the son were not authentic.

B. Alicia Campos (Associated Person, Northbrook, Illinois) was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that a member firm acting through Campos effected transactions in securities when it failed to maintain its minimum required net capital, prepared inaccurate trial balances and net capital computations, and filed inaccurate FOCUS Part I and IIA reports. In addition, Campos was associated with a member firm while failing to qualify and/or register in the appropriate capacity prior to engaging in such capacity. Campos also failed to respond fully to NASD requests for information.

John Melvin Davis (Registered Representative, Bellwood, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice or receive approval from his member firm of his intention to engage in such activities.

Glenn Mitchell Dobbs (Registered Principal, Chelan, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$42,700, and suspended from asso-

ciation with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Dobbs consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm describing in detail the proposed transactions and his proposed role therein, and stating whether he would receive selling compensation in connection with the transactions.

Debbie Ann Fairley (Registered Representative, Jackson, Mississippi) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fairley consented to the described sanctions and to the entry of findings that she established a credit card account by using the name and social security number of a co-worker's spouse, and charged approximately \$14,000 to the credit card for her own benefit without the co-worker's knowledge or consent.

Michael J. Falco (Registered Representative, Marshfield, Massachusetts) was censured, fined \$6,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as an investment company and variable contracts products representative. The sanctions were based on findings that Falco forged a public customer's signature on an insurance document without the customer's knowledge or consent. Falco also failed to respond to NASD requests for information.

Raymond Andrew Frias (Registered Representative, Merrick, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any

NASD member in any capacity for 10 days. Without admitting or denying the allegations, Frias consented to the described sanctions and to the entry of findings that he executed securities transactions in the account of a public customer without the customer's knowledge, authorization, or consent.

Darren Ginas (Registered Principal, Medford, New York) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for four months, required to requalify by exam as a general securities representative, and required to pay \$70,735 in restitution to public customers. Without admitting or denying the allegations, Ginas consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted material information, and made fraudulent price predictions in the offer and sale of securities.

Donald Cletus Girard (Registered Principal, Federal Way, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Girard consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm, describing in detail the proposed transactions, his proposed role therein, and stating whether he had received or might receive selling compensation.

Robert Walter Gleiche (Registered Principal, Timonium, Maryland) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$37,500, suspended from associa-

tion with any NASD member in any capacity for 10 business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Gleiche consented to the described sanctions and to the entry of findings that, on numerous occasions, he purchased shares of stock that traded at a premium in the immediate aftermarket, in contravention of the Board of Governors' Interpretation on Free-Riding and Withholding. The findings also stated that Gleiche failed to give written notice to his member firm that he opened accounts with other firms, and failed to provide written notification to the executing firms of his association with the member firm.

Eliezer Gurfel (Registered Representative, San Mateo, California) was censured and barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) affirmed the sanctions following appeal of a Washington D.C. District Business Conduct Committee decision. The sanctions were based on findings that Gurfel forged the endorsement of the president of his member firm on checks, negotiated each check, and converted the proceeds to his own use and benefit.

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

Henry A. Hale (Registered Principal, Marietta, Georgia) was censured, fined \$10,000 and suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. The sanctions were based on findings that Hale failed to supervise reasonably the sales activities of an individual in order to prevent and/or detect the unsuitable trading that occurred in the account of a public customer.

Mark Arthur Hanna (Registered Representative, Manhasset, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hanna consented to the described sanctions and to the entry of findings that he failed to respond completely to NASD requests for information.

Akiko L. Hasegawa (Registered Representative, Westminster, California) was censured, fined \$82,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hasegawa converted public customers' funds totaling \$16,500. Specifically, Hasegawa received personal checks from the customers for investment purposes. Instead of making the investments, Hasegawa deposited the checks in a bank account controlled by her, gave false confirmation statements indicating that the money had been invested, and used the funds for personal expenses. Hasegawa made no effort to make restitution until her firm discovered the conversion of a public customer's funds, and then, did not disclose the conversion of other customers' funds.

Frederick B. Hornick, Jr. (Registered Principal, Englewood, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hornick consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving his member firm prior written notice of his activities. Hornick also failed to respond to NASD requests for information.

Dale Fuller Jackson (Registered Principal, Wall, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Jackson consented to the described sanctions and to the entry of findings that he recommended and effected purchases of limited partnership units and/or shares by public customers without having a reasonable basis for believing the recommendations were suitable for these customers in light of their investment objectives, financial situations, and needs. The findings also stated that Jackson participated in private securities transactions without prior written notice to and acknowledgment from his member firm. According to the findings, Jackson breached his fiduciary duty with a public customer by behaving in a manipulative, deceptive, and intimidating manner during settlement discussions with the customer which was heightened by his superior knowledge of the securities industry and the customer's relative lack of knowledge, her age, and her reliance on and trust in Jackson.

Paul George Karkenny (Registered Representative, Amityville, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$283,008.13, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Karkenny consented to the described sanctions and to the entry of findings that he had an impostor take the Series 7 exam on his behalf. The findings also stated that Karkenny solicited an aftermarket purchase for shares of stock from a public customer prior to the effective registration date of the security by the SEC and failed to follow the customer's instructions regarding the purchase. Karkenny

also executed securities transactions in the account of public customers without the customers' prior knowledge, authorization, or consent.

Reynold Bradford Kern (Registered Representative, Scottsdale, Arizona) was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Kern participated in private securities transactions without providing prior written notification to his member firm.

Alan M. Kletchka (Registered Representative, Port Jefferson, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay \$327,180 in restitution to public customers. Without admitting or denying the allegations, Kletchka consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his recommendations of securities to public customers. The findings also stated that in connection with his recommendations of securities to public customers, Kletchka made fraudulent price predictions.

Paul Kevin Knutson (Registered Representative, Carmichael, California) submitted an Offer of Settlement pursuant to which he is censured, fined \$1,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Knutson consented to the described sanctions and to the entry of findings that he submitted a Form U-4 to a member firm that failed to disclose that he had been convicted of a felony.

Joseph Oscar Mader (Registered Representative, Lewiston, Idaho) was censured, fined \$10,000, suspended from association with any NASD member in any capacity for two years, and required to requalify as a general securities representative following the completion of the suspension. The sanctions were based on findings that Mader failed to respond fully to NASD requests for information.

Joseph Paul Malyszek (Registered Representative, Clarks Summit, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$3,000,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Malyszek consented to the described sanctions and to the entry of findings that he received approximately \$600,000 from public customers intended for investment purposes, failed to invest the funds as represented, and instead, converted the funds to his own use and benefit without the customers' knowledge or consent.

Michael McCormick (Registered Representative, Bethel, Connecticut) was censured, fined \$125,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that McCormick withheld and misappropriated at least \$23,052.35 from public customers and converted the funds to his own use and benefit. McCormick also failed to respond to NASD requests for information.

Paul Joseph Montessoro (Registered Representative, Boerne, Texas) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Montessoro failed to respond to NASD requests for information and to provide testimony.

William John Mooney (Registered Principal, Bayside, New York) was censured, fined \$20,000 and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Mooney failed to timely respond to NASD requests for information.

James M. Ortiz (Associated Person, Chicago, Illinois) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ortiz failed to respond to NASD requests for information.

Rafael Pinchas (Registered Representative, Hillcrest, New York) was censured, fined \$219,821, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a New York District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Pinchas made recommendations to and effected securities and options transactions in public customers' accounts including margin transactions that were excessive and unsuitable without having reasonable grounds to believe that the transactions were appropriate for the customers in light of their investment objectives, other security holdings, and financial situation and needs. In addition, Pinchas engaged in a scheme to misappropriate funds from the same customer's account by giving his member firm a letter of authorization purportedly signed by the customer authorizing the transfer of \$6,000 to the account of another customer. The funds were subsequently given to Pinchas without the customer's authorization.

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

Mark A. Reilly (Associated Person, Doylestown, Pennsylvania) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Reilly failed to respond to NASD requests for information.

Reaynaden Denina Relatores (Registered Representative, Huntington Beach, California) submitted an Offer of Settlement pursuant to which she was censured, and suspended from association with any NASD member in any capacity for five years, and ordered to requalify by exam in all capacities. The sanctions were based on findings that Relatores participated in private securities transactions without providing prior written notification to her member firm and without receiving prior written approval from her firm.

Robert Rondinella (Registered Representative, Brooklyn, New York) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rondinella failed to respond to NASD requests for information and to appear for an on-the-record interview.

Joseph Russo III (Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$202,990.97 to the NASD. Without admitting or denying the allegations, Russo consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf. Russo also failed to respond truthfully to the NASD during an on-the-record interview.

Benito Saucedo (Registered Principal, Denver, Colorado) and **Glenn Pellone (Registered Representative, Denver, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which Saucedo was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 15 business days, suspended from association with any NASD member in any principal capacity for an additional 15 business days, and required to requalify as a registered principal by passing the Series 24 exam. Pellone was censured, fined \$2,500, suspended from association with any NASD member in any capacity for 30 business days, and required to requalify as a registered representative by passing the Series 7 exam. In addition, Pellone was required to make rescission or restitution to public customers of stock purchases, jointly and severally, with a member firm. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Pellone solicited public customers and made recommendations to purchase securities without having reasonable grounds for believing that his recommendations were suitable for the customers based upon the facts disclosed by the customers as to their other security holdings, their financial situation, and needs. The findings also stated that Saucedo failed to supervise Pellone's activities properly by allowing him to make unsuitable recommendations and to effect unsuitable securities transactions. Furthermore, the NASD determined that Saucedo prepared new account forms, order tickets, and confirmations of sale that falsely reflected that he was the representative of record handling customers' accounts when, in reality, he had had no prior contact with the customers and it was Pellone who was actually the representative of record for such accounts.

Anthony Dennis Schiano (Registered Representative, Franklin Square, New York) was censured, fined \$7,500, suspended from association with any NASD member in any capacity for 30 days, and required to requalify in all capacities prior to functioning again in any capacity that requires requalification. The sanctions were based on findings that Schiano failed to comply with Regulation T of the Federal Reserve Board in that he purchased shares of stock in his own cash account at his member firm when he knew or should have known that he did not have sufficient funds in his account to pay for the purchase. Moreover, Schiano never had the intent to make full cash payment for the stocks in a prompt fashion or otherwise before selling them. In addition, Schiano wrote purchase order tickets and entered orders via computer or telephone for his personal securities account at a time when he knew he was not qualified to do so.

Larry R. Schlappi (Registered Representative, Orem, Utah) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$12,000, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Schlappi consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving his member firm prior written notice of his activities and his role therein.

Aleksandr Shvarts (Registered Principal, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for 10 business days, and suspended from association with any NASD member in any principal capacity for 30 business days. In

addition, Shvarts must requalify by exam as a general securities principal and will be suspended until he requalifies. Without admitting or denying the allegations, Shvarts consented to the described sanctions and to the entry of findings that he failed to timely execute customer orders to sell stock on either a principal or agency basis.

Josh I. Sisler (Registered Representative, Rocky Point, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$18,850, suspended from association with any NASD member in any capacity for 18 months, and required to pay \$33,148 in restitution to public customers. Without admitting or denying the allegations, Sisler consented to the described sanctions and to the entry of findings that, in connection with the solicitation of securities transactions, he made material misrepresentations and omitted to disclose material information concerning securities to public customers.

Lawrence Todd Smith (Registered Representative, Jericho, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam prior to becoming associated with any NASD member firm. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he made unauthorized trades in the account of a public customer and made baseless and improper price predictions as to speculative securities to customers. The findings also stated that Smith falsely promised to limit customer losses, induced a customer to purchase an unsuitably risky security, and falsely told the customer that the

security was not risky. Furthermore, the NASD determined that Smith failed to execute a customer sell order, made false representations to a customer as to an issuer's business prospects, and falsified the new account documentation of a customer to create the appearance that the customer could and wanted to invest in speculative securities. Smith also failed to testify truthfully to the NASD regarding its investigation of the matter.

Steven Edward Smith (Registered Representative, Bakersfield, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, barred from association with any NASD member in any capacity, and required to pay \$45,000 in restitution to a member firm. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that in order to induce public customers to invest in stock, Smith made untrue statements of material facts and omitted to state material facts necessary in order to make the statement not misleading.

Kevin Lee Spencer (Registered Principal, Castle Rock, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$20,000, and suspended from association with any NASD member in any principal capacity for three months. Without admitting or denying the allegations, Spencer consented to the described sanctions and to the entry of findings that he participated in a private placement offering subject to a minimum sales contingency and failed to deposit investor funds into an escrow account. The findings also stated that Spencer failed to return funds to investors when terms

of the contingency were not met and failed to supervise an individual properly.

Darryl Leon Strom (Registered Representative, Mill Creek, Washington) and **Irvin Nels Strom (Registered Representative, Auburn, Washington)** submitted Offers of Settlement pursuant to which Darryl Strom was censured, fined \$69,994, and barred from association with any NASD member in any capacity; Irvin Strom was censured, fined \$45,489, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they participated in private securities transactions and failed to provide their member firm prior written notice describing in detail the proposed transactions and their roles therein, and stating whether they would receive selling compensation in connection with the transactions. The findings also stated that Darryl Strom failed to respond to an NASD request for information.

Chichiang Tang (Registered Representative, Hollywood, Florida) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tang attempted to share in a customer account. Tang also failed to respond to NASD requests for information.

Wyder L. Tutiven (Registered Representative, Patchogue, New York) was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay \$102,322.57 in restitution to public customers. The sanctions were based on findings that, in soliciting customers to purchase securities, Tutiven misrepresented and failed to disclose material facts concerning securities and fraudulent-

ly predicted significant price increases for securities to induce public customers to purchase them. Tutiven also effected an unauthorized trade in a customer's account and failed to follow the customer's instructions to sell stock.

Emilio Fernando Valdes (Registered Representative, Holmdel, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Valdes consented to the described sanctions and to the entry of findings that he falsified records by signing transfer authorization forms causing the transfer of funds between public customers' accounts in order to win a sales contest sponsored by his member firm. The findings also stated that Valdes failed to respond fully to NASD requests for information.

Ronald L. Wallen (Registered Principal, Farmington, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$500,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wallen consented to the described sanctions and to the entry of findings that he obtained a total of \$201,673.85 from public customers with instructions to use the funds to purchase mutual funds and high interest mortgage loans. The findings stated that Wallen failed to follow the customers' instructions and used the funds for investments in other companies, to pay his firm's office expenses, to pay himself, and for purposes other than the benefit of the customers. Wallen also failed to respond fully to NASD requests for information.

Weese Roosevelt Alex Watson (Registered Representative, Kingwood, Texas) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Watson failed to respond to NASD requests for information.

Edward Lee Willis Sr. (Registered Principal, Southhampton, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$300,000, barred from association with any NASD member in any capacity, and ordered to pay \$143,500 in restitution to public customers. Without admitting or denying the allegations, Willis consented to the described sanctions and to the entry of findings that he received checks totaling \$143,500 from public customers for the purpose of purchasing franchises. The NASD determined that Willis never completed the purchases, and instead, converted the funds to his own use and benefit without the customers' knowledge or consent.

Michael Lee Yancey (Registered Representative, Lake Park, Georgia) was censured, fined \$1,000, suspended from association with any NASD member in any capacity for six months, and further suspended until he requalifies by exam as an investment company and variable contracts product representative. The NAC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Yancey received \$100 from a public customer in part to pay premiums due on insurance policies and to apply to an outstanding loan. Yancey deposited \$80 of those funds in his personal checking account.

Individuals Fined

Dale Buddington Dir (Registered Representative, Visalia, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$21,500. Without admitting or denying the allegations, Dir consented to the described sanctions and to the entry of findings that he opened a securities account at a member firm and failed to provide written notice to the firm of his registration status and failed to provide written notice to his employer member firm that he had a beneficial interest in this securities account at the time he opened the account. The findings also stated that Dir purchased shares of stock that traded at a premium in the immediate aftermarket in contravention of the Board of Governors Free-riding and Withholding Interpretation.

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of June 30, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Edward Golick (Registered Principal, Del Mar, California) was censured, fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Golick failed to respond to NASD requests to appear for an on-the-record interview.

Golick has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Stanley Alan Anderson, Jr. (Registered Representative, Cartersville, Georgia)

was named as a respondent in an NASD complaint alleging that he received a proceeds check from the redemption of a public customer's savings bonds in the amount of \$8,732.04 and converted \$5,709.00 of the funds to his own use and benefit. The complaint alleges that Anderson withdrew \$2,029.66 from the customer's savings account, sold the customer's securities for \$34,219.71, and used the funds and proceeds totaling \$36,249.37 to purchase shares of a government fund, all without the customer's knowledge or authorization. The complaint also alleges that Anderson effected unauthorized sales totaling \$15,224.61, made misrepresentations that the redemption checks were sent in error and that the funds were intended to be invested in another fund, asked the customer to endorse the checks, or forged the customer's endorsement in one instance, and converted the total amount by depositing it in his bank account. Additionally, the complaint alleges that Anderson redeemed the customer's Certificate of Deposit without her knowledge or authorization, forged the customer's endorsement on \$94,332.14 proceeds checks, of which \$48,983.14 he converted by cashing or depositing at his bank. Furthermore, the

complaint alleges that Anderson falsely stated to the customer that he was going to invest \$82,516.72 of the customer's funds, falsely represented himself in a telephone conversation with the customer as a fictitious representative of a firm in an attempt to discover what the customer had told the compliance department of the firm, and falsely told the customer and the compliance department of the firm that he had invested the customer's funds with a fictitious representative of another firm. The complaint also alleges that Anderson failed to respond to NASD requests for information.

Mark S. Balbirer (Registered Representative, Sunrise, Florida)

was named as a respondent in an NASD complaint alleging that he effected securities transactions in the account of a public customer without the customer's prior knowledge or authorization.

Biltmore Securities, Inc., (n/k/a Midas Investment Group, Inc., Fort Lauderdale, Florida), Elliott Akiva Loewenstern, (Registered Principal, Boca Raton, Florida) and Richard Bruce Bronson (Registered Principal, Golden Beach, Florida) were named as respondents in an NASD complaint alleging that Biltmore Securities, Inc., acting through Loewenstern and Bronson, recommended and sold to public customers units of an initial public offering and failed to disclose to the customers during the review period of the offering material facts that should have been disclosed by the firm to its customers, including the fact that the respondents had an adverse interest in the offering.

Arthur E. Cohen (Registered Representative, Pittsburgh, Pennsylvania) was named as a respondent in an NASD complaint alleging that he requested that a check in the

amount of \$15,000 be issued against the securities account of a public customer, physically obtained the check, endorsed it with the purported endorsement of the customer and his own endorsement, and deposited it in his own bank account, all without the authorization of the customer. The complaint also alleges that Cohen caused \$14,000 to be transferred from the securities account of one public customer to the bank account of another, without the prior authorization or consent of the first customer.

Robert Vance Manuel English (Registered Principal, San Diego, California)

was named as a respondent in an NASD complaint alleging that he received a check in the amount of \$20,571.69 from a public customer to be used for investment purposes and, without the customer's knowledge or consent, converted the funds to his own use and benefit by depositing the check in his firm's general operating bank account and writing checks on the account payable to himself and cash. The complaint also alleges that English provided the customer with fabricated statements to mislead the customer into believing that her funds had been safely invested and were accumulating interest, when in fact, no investments had been made on the customer's behalf and the accumulating interest never existed. The complaint also alleges that English failed to respond to NASD requests to provide information.

Raymond D. Eisenberg (Registered Representative, Bridgeton, New Jersey)

was named as a respondent in an NASD complaint alleging that he received \$23,803.71 from public customers as payment of insurance premiums, failed to submit these funds on the customers' behalf, and instead converted the funds to his own use and benefit, without the customers' knowledge or

consent. The complaint also alleges that Eisenberg failed to respond to NASD requests to provide information.

Carl J. Hagmaier (Registered Representative, San Luis Obispo, California) was named as a respondent in an NASD complaint alleging that he received \$70,000 from public customers for investment in mutual funds and, instead of investing the funds as instructed, deposited the checks into a bank account and misused the funds himself and/or permitted others to misuse the funds. The complaint alleges that in order to conceal the misconduct, Hagmaier prepared and sent a fabricated account statement to a public customer which falsely stated that her funds had been invested in a cash and stock fund as instructed. The complaint also alleges that Hagmaier sold a pension plan to a company to provide retirement benefits for its employees, represented that the periodic contributions to the plan by the company would be placed in life insurance policies, bonds, notes, and money market funds, then misused approximately \$110,951.91 of the plan's funds for unrelated business and personal expenses which did not benefit the plan. The complaint alleges that Hagmaier sold life insurance policies to public customers and a general partnership, had \$160,000.00 worth of loans taken on the value of the policies without the knowledge or consent of the customers or partnership, forged or caused to be forged the signatures of a customer and one of the general partners, and deposited the funds in an account. Neither the customers nor the partnership received any benefit from the \$160,000.00, which was never repaid. The complaint also alleges that Hagmaier failed to produce documents requested by the NASD.

John Vernon Hiers (Registered Representative, Canyon Lake, California) was named as a respondent in an NASD complaint alleging that he received \$7,500 from a public customer for deposit in a new trading account in the customer's name and authorization to execute in the customer's account a single day trade involving shares of securities. Hiers converted the funds to his own use and benefit by depositing the check into his own securities account without the customer's knowledge or consent. The complaint alleges that Hiers dissipated all but \$1,393.23 of the customer's funds through reckless and risky trading in the account. The complaint also alleges that in order to conceal the misconduct and to lull the customer into believing that a trading account existed in the customer's name, Hiers falsely represented to the customer that account statements reflecting the trade that the customer had authorized in his account would be forthcoming, when, contrary to these representations, no such statements were ever provided to the customer because no account was ever established in the customer's name.

Frank J. Hutton (Registered Representative, Raymond, Mississippi) was named as a respondent in an NASD complaint alleging that he effected securities transactions in the joint account of public customers without prior authorization from the customers. The complaint alleges that Hutton caused a check in the amount of \$29,972.71 to be issued from the joint account, which represented the proceeds from the unauthorized transactions, and converted the funds to his own use and benefit by forging the customers' signatures to the check and depositing the check into a bank account under his control. The complaint also alleges that, in an effort to conceal the transactions from the customers' account, Hutton prepared and mailed to the

customers a fictitious account statement that did not reflect the liquidation of certain stock, nor his withdrawal of funds in the amount of \$29,972.71. In addition, the complaint alleges that Hutton effected securities transactions totaling \$96,552.40 in a joint account of other public customers, without their prior written or oral authorization, and converted these funds to his own use and benefit by forging the customers' signatures on checks and maintaining possession of the funds, without the customers' knowledge or consent. Finally, the complaint alleges that Hutton failed to respond to NASD requests for information.

James Andrew Hyde (Registered Principal, Niwot, Colorado) was named as a respondent in an NASD complaint alleging that he effected the purchase of securities transactions in the account of a public customer without the prior authorization of the customer. The complaint also alleges that Hyde failed to respond to NASD requests to provide information.

Harold Lee Jenkins (Registered Representative, Bronx, New York) was named as a respondent in an NASD complaint alleging that he received tellers checks from public customers for investment in mutual funds and/or insurance products, and instead of investing the funds on their behalf, converted \$30,171.61 of those funds to his own use and benefit. The complaint also alleges that Jenkins failed to appear for an on-the-record interview requested by the NASD.

Robert J. Kendzierski (Registered Representative, Erie, Pennsylvania) was named as a respondent in an NASD complaint alleging that he converted \$6,000 in funds given to him by a public customer. The complaint alleges that Kendzierski received checks from the customer

to deposit in the customer's interest-bearing insurance policy, altered these checks by drawing a line through the payee's name and writing his name instead on the payee line of the checks, endorsed the checks in an attempt to conceal his conversion and deposited them in his personal bank account. The complaint further alleges that in an attempt to conceal his conversion, Kendzierski backdated a repayment check.

Keogler, Morgan & Co., Inc. (Atlanta, Georgia), Craig R. Smith (Registered Principal, Duluth, Georgia), Chris S. Guerin (Registered Principal, Marietta, Georgia), and Douglas A. Dyer (Registered Representative, Chattanooga, Tennessee) were named as respondents in an NASD complaint alleging that the firm, acting through Smith and Dyer, effected principal purchases of common stock from public customers of the firm with excessive mark-downs and at prices which were not fair taking into consideration all relevant circumstances. The complaint also alleges that the firm, acting through Smith, failed to report trades Smith effected on behalf of the firm, including a majority of the trades at issue in the mark-downs, failed to report trades within 90 seconds of execution without employing the requisite ".SLD" modifier, incorrectly reported wholesale trades as retail trades, and incorrectly reported the price on trades. The complaint alleges that Guerin failed to adequately supervise Smith's trading in common stock and, as a result, failed to detect that Smith and Dyer were purchasing stock from public customers subject to excessive mark-downs. The complaint alleges that Dyer effected securities transactions in the accounts of his public customers without the customers' prior knowledge or authorization.

Robert Joseph Kernweis (Registered Representative, Burbank, California), Glenn Peter Kernweis (Registered Representative, Deerfield Beach, Florida) and Greg Steven Sklar (Registered Representative, Los Angeles, California) were named as respondents in an NASD complaint alleging that Robert Kernweis recommended purchase and sale securities transactions to a public customer without having reasonable grounds for believing that they were suitable for the customer and the account in view of the size, frequency and nature of the recommended transactions and the facts disclosed by the customer as to his financial situation, objectives, circumstances and needs. The complaint alleges that the recommended trades constituted unsuitably excessive trading and that Robert Kernweis induced the transactions by means of manipulative, deceptive or other fraudulent devices or contrivances. The complaint also alleges that Robert Kernweis, Glenn Kernweis and Sklar conducted business as a group under one investment executive number, and, as members of the group, Glenn Kernweis and Sklar knew or should have known that the recommendations were unsuitable for the customer and that the account was excessively traded. The complaint alleges that Glenn Kernweis and Sklar failed to take appropriate action to prevent the violative activity and that they substantially benefited from the violative trading activity as equal participants who shared commissions equally from all activity of the group.

James Richard Mancuso (Registered Principal, Patchogue, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations to public customers and failed to disclose material facts to the customers in order to induce them to purchase securities. The complaint alleges

that Mancuso made fraudulent price predictions to public customers in connection with his recommendations.

John Joseph Viscogliosi (Registered Representative, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he executed discretion in the accounts of public customers and purchased securities without the knowledge or consent of the customers.

Firm Expelled For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations Murphey, Marseilles, Smith & Nammack, Inc., New York, New York (June 29, 1998)

Firms Suspended/Canceled

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Carlisle Investment Group, Chicago, Illinois (June 29, 1998)

Duke & Co., Inc., New York, New York (July 2, 1998)

TBD Capital Markets Trust, Miami, Florida (July 2, 1998)

Firms Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Award

Euro-Atlantic Securities, Inc., Boca Raton, Florida (June 26, 1998)

Investors Associates, Inc., Hackensack, New Jersey (July 14, 1998)

Jonathan Alan & Co., Inc., Katonah, New York (June 29, 1998)

J.S. Securities, Inc., Point Pleasant Beach, New Jersey (June 25, 1998)

Maidstone Financial, Inc., New York, New York (June 26, 1998)

Marsh Block & Co., Inc., New York, New York (July 14, 1998)

Printon, Kane Group, Inc., Wall Township, New Jersey (June 29, 1998)

State Street Capital Markets Corp., New York, New York (July 15, 1998)

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

Cooper, Theodore F., New Scabury, Massachusetts (June 29, 1998)

Frederick, Douglas Glen, Miami, Florida (July 16, 1998)

Roach, Donna R., Murrieta, California (June 29, 1998)

Shah, Ashvin, R., Elmhurst, Illinois (June 29, 1998)

Wallace, Robert L., Naples, Florida (June 29, 1998)

Winchester, James E., Metairie, Louisiana (June 29, 1998)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Award

Barnes, Milton R., Phoenix, Arizona (June 26, 1998)

Basile, Jack Robert, Brooklyn, New York (June 29, 1998)

Bent, Radcliff St. Aubyn, Colts Neck, New Jersey (July 16, 1998 - July 22, 1998)

Bronzino, Michael A., Princeton, New Jersey (June 29, 1998)

Caso, Michael, Brooklyn, New York (July 21, 1998)

Densing, Keith, Melville, New York (June 29, 1998 - July 13, 1998)

Donovan, Gale R., New York, New York (June 26, 1998)

Hosang, Ian, Brooklyn, New York (June 26, 1998)

Klotsman, Eugene a/k/a Gennady Ilya Klotsman, Brooklyn, New York (July 21, 1998)

Kohlhass, Neal, Novato, California (June 24, 1998)

Langer, Thomas Mark, Congers, New York (July 16, 1998)

Mahon, Kevin Michael, Manalapan New Jersey (July 14, 1998)

Mandile, Kenneth Alan, Staten Island, New York (June 26, 1998 - July 14, 1998)

McCartney, Peter Bernard, Middle Village, New York (July 14, 1998)

McKay, Jr., Edward Arthur, New York, New York (July 14, 1998)

Philip, Robert Colin, Baldwin, New York (June 29, 1998)

Seymour, Patricia Ann, Sandy Hook, Connecticut (June 29, 1998)

Sigrid, Daniel, Champlin, Minnesota (July 8, 1998)

Szur, Jeffrey S., Sea Bright, New Jersey (June 25, 1998)

Van Blarcom, Jeffrey, Mahwah, New Jersey (June 26, 1998)

Verola, Victor, Vero Beach, Florida (July 20, 1998)

NASD Regulation Sanctions Colorado Broker; Restitution Ordered

NASD Regulation announced that it barred Winston Carroll Dennis from the securities industry and fined him \$525,000 in connection with the theft of \$75,000 from a customer, and for other violations. Dennis, who was also censured, was ordered to make full restitution to the customer.

NASD Regulation found that Dennis twice forged the signature of his customer on an insurance policy loan application in September and October 1997. The insurance company subsequently issued the funds – which Dennis then converted to his own use.

Following a referral by the Colorado Division of Insurance, NASD Regulation found that Dennis had borrowed \$735,000 from 12 customers by issuing Promissory Notes to the investors. NASD rules forbid brokers from engaging in private securities transactions – such as issuing these types of Promissory Notes – without first notifying their employer.

NASD Regulation also found that in April 1998, Dennis told one investor that in order to collect a loan that had come due, an additional \$5,000 was required. Dennis later converted these funds to his own use as well.

Dennis also maintained personal brokerage accounts at 10 different brokerage firms and failed to disclose the existence of these accounts in violation of NASD rules.

At the time of these violations, Dennis maintained an office under the name of "Dennis Insurance and Investments" in Grand Junction, CO. He had clients across the state's Western Slope, in Grand Junction, Montrose, Austin, Naturita, Nucla, Leadville, Clifton, and Eckert.

This case was brought by NASD Regulation's District 3 Office in Denver. Dennis neither admitted nor denied NASD Regulation's findings.

NASD Regulation Fines Troster Singer For Intentional Late Trade Reporting; Six Brokers Also Sanctioned

NASD Regulation fined Troster Singer \$950,000 and censured the firm for fraud in connection with a series of 28 intentional trade reporting violations. Six Troster Singer employees were also sanctioned and fined a total of \$100,000.

Troster Singer, which neither admitted nor denied NASD Regulation's findings, was sanctioned for intentionally failing to report within 90 seconds Nasdaq Stock Market trades – many of which were made with large institutional customers. This conduct occurred between April and October 1994.

NASD rules require that every security's price – and the amount sold – be promptly displayed to the marketplace so that all market participants have equal access to the information. Troster Singer deliberately delayed reporting its trades in order to gain a competitive advantage by depriving other market participants of information regarding purchases and sales made by institutional and other investors.

Deliberately delaying trade reporting allows a brokerage firm to cover its positions while at a significant informational advantage over other market participants. NASD Regulation found that Troster Singer – knowing of these large unreported trades while the market did not – bought and sold shares from other dealers and customers in deceptive proprietary trading.

Troster Singer also was sanctioned for unintentionally reporting 18 other trades as late. When these 46 late trades were eventually reported, they were marked with an incorrect execution time, did not include the proper late designation, or both. In total, 16 securities were involved. Troster Singer's intentional late trade reporting practices were evidenced in conversations taped by the firm.

NASD Regulation found that Troster Singer's traders directed the firm's institutional sales representatives (who were assigned to specific institutional customers, and acted as liaisons between the institutional customers and the traders) to delay trade reports, or to falsely document that certain trades were stopped orders. In a stopped order, a brokerage firm agrees to execute the trade at a specific, or better, price.

NASD Regulation also found that while Troster Singer knew about and cautioned its traders to stop these late trade reporting practices, they nevertheless continued. As part of its agreement with NASD Regulation, Troster Singer will hire an independent consultant to review its trade reporting practices.

Six Troster Singer employees were sanctioned:

- Lowell Millar, trader, was fined \$25,000, suspended in all capacities for 25 days, and censured.
- Michael Ling, trader, was fined \$25,000, suspended in all capacities for 25 days, and censured.

- John Quigley, trader, was fined \$20,000, and censured.
- Lisa Bozzi Albanese, institutional sales representative, was fined \$10,000, and censured.
- Charles Esposito, institutional sales representative, was fined \$10,000, and censured.
- Steve Cline, institutional sales representative, was fined \$10,000, and censured.

NASD Regulation thanked the SEC for its substantial assistance in this case.

Over the last few years, NASD Regulation has developed and implemented a series of initiatives to protect investors and enhance compliance with market rules. These include:

- Order Audit Trail System - The first phase of the Order Audit Trail System (OATS) will begin collecting information on all electronic orders received by market makers and Electronic Communication Networks (ECNs) on March 1, 1999. This system will track orders from the time they are entered until final execution.
- Exam Program - Beginning in 1996, NASD Regulation's Market Regulation Department initiated a comprehensive program to examine Nasdaq Market Makers for compliance with trading and reporting rules.
- Advanced Detection System - The Advanced Detection System (ADS) began operation in July 1997. Using sophisticated data mining, artificial intelligence, statistical analysis, and visualization technologies, ADS detects and evaluates patterns in trading data to search for potential violations of NASD trade reporting, market integrity, and best execution rules. ADS processes about 800,000 quotes every day.
- Hot Lines - NASD Regulation's Market Regulation Department instituted toll-free hot lines for the reporting of potential market harassment and potential backing away violations.

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For Your Information

Year 2000 Tips For Members Will Your Fax Machine Work?

As the millennium approaches, one of the areas all businesses should assess for Year 2000 readiness is their internal office equipment. Last month, *Notices to Members* provided information on how to check a PC (personal computer), and this month's tip for members involves preparing your fax machine for 2000.

Firms should first contact the manufacturer of the fax machine. Most manufacturers should be able to furnish a list of fax machines that they consider to be Year 2000 compliant. If the fax machine was purchased through a local dealer, the dealer should either provide the phone number of the manufacturer or the manufacturer's documentation detailing the specific machines considered Year 2000 compliant.

However, firms may also attempt to conduct a "self test" of the fax. By setting the fax machine to January 1, 2000, firms can test in advance of the coming century and see how the machine would operate on that date. First set the date on the fax machine to 12/31/99 and the time to 11:57 p.m. (if the machine works on military time, set it to 23:57). After setting the date and time and letting the date flip to 1/1/2000, turn off the fax machine for five minutes. After waiting five minutes, turn the fax machine back on. Then try to send and receive a fax. If firms are able to perform these two tasks successfully, that fax machine is probably ready for 2000.

Although tests like these are likely to uncover most problems, it is still a good idea to check with the manufacturer. Manufacturers should have the most accurate information on how their particular machines will operate in 2000.

Year 2000 Checklist

Following is an inventory list of areas businesses should be checking for Year 2000 readiness.

Internal:

- Hardware—workstations, servers, other computer systems.
- Software—general ledgers, accounts payable, spreadsheets, word processing, macros.
- Automated/embedded systems—modems, fax machines, copiers.
- Interfaces between items.

External:

- Customers/clients.
- Suppliers—delivery methods, supplies, utilities, computer/Internet services providers.

Third Party:

- Information providers and processing facilities—data vendors, banks, accountants, clearing firms, payroll vendors, insurance vendors.

Infrastructure:

- Physical access—elevators, sprinkler systems, security systems, card readers, telephone systems.
- Environmental—air conditioning controls, power generators, heating systems, back-up power supplies.
- General equipment—clocks, calendars, payroll time clocks, time/date stamps, copiers, bar code equipment.

End-User:

- Desktop applications, macros, etc., developed by end-users.

Amendments To Rule Regarding Equity Trader Exam

On April 1, 1998, NASD Regulation, Inc. (NASD RegulationSM) implemented amendments to the NASD Registration Rules requiring representatives who trade equity securities in The Nasdaq Stock Market[®] (Nasdaq[®]) and/or over-the-counter (OTC) to register and pass

the Equity Trader Examination (Series 55). Persons functioning as equity traders on or before April 1, 1998, were allowed to continue to function as equity traders but were required to pass the Series 55 by May 1, 2000. To be eligible for this extended qualification period, equity traders had to submit their applications to NASD Regulation before May 1, 1998.

The NASD now has amended its Registration Rules to extend the filing period to **August 31, 1998**, for persons who were functioning as equity traders before May 1, 1998, and who missed that cut-off date for filing their applications for the Series 55 examination.

Members must submit a page one of the Form U-4 and a letter that states the applicant was functioning as an equity trader before May 1, 1998 to: NASD Regulation
Qualifications Department
1390 Piccard Drive, 2nd Floor
Rockville, MD 20850

Persons who request this registration during this extended filing period may continue to function as equity traders until May 1, 2000, but must pass the Series 55 examination by that date.

Equity traders who are eligible for the extended filing period, but who fail to file their applications by the August 31, 1998, deadline must cease trading in the Nasdaq or OTC markets until they satisfy the qualification requirements.

For more information regarding the registration and qualification requirements for Nasdaq or OTC equity traders, refer to *Notices to Members 98-17* and *98-60* as well as *Head Trader Alert 1998-32*.

Questions regarding these requirements may be directed to Carole B. Hartzog at (301) 590-6696, Elaine P. Warren at (301) 590-6315, or Eva E. Cichy at (301) 208-2789.

Announcement - Upcoming District 4 Seminar

District 4 is hosting an upcoming Compliance/Continuing Education seminar on September 29, 1998. The "Preventive Compliance/Continuing Education Membership Seminar," will feature discussions on Internet supervisory and compliance issues; current enforcement and regulatory topics; and a continuing education update.

The conference will be held at the Radisson Plaza Hotel in Minneapolis, Minnesota and the registration deadline is September 14, 1998. To register or for more information, call Cheryl Hackathorn, NASD Regulation, at (816) 421-5700.

Correction To Notice To Members 98-59

In the July 1998 issue of *Notices to Members*, on page 428, the second paragraph under subhead **New Program For Principals** should read:

For purposes of NASD rules, the following registrations will be included in the principal category: Series 4 (Registered Options Principal); Series 8 (General Securities Sales Supervisor); **Series 24 (General Securities Principal)**; Series 26 (Investment Company Products/Variable Contracts Limited Principal); Series 27 (Financial and Operations Principal); Series 28 (Introducing Broker-Dealer Financial and Operational Principal); Series 39 (Direct Participation Programs Principal); Series 53 (Municipal Securities Prin-

icipal Qualification); and the Government Securities Principal (no series number).

Correction To July Disciplinary Actions Regarding Jacques Pessah

The July 1998 *Notices to Members* Disciplinary Actions regarding Jacques V. Pessah erroneously stated that Pessah submitted a Letter of Acceptance, Waiver, and Consent (AWC) pursuant to which he was censured and fined \$10,000. In fact, Pessah submitted an AWC pursuant to which he was censured and fined \$2,500.

Correction To December Disciplinary Actions Regarding Michael Jawitz

The December 1997 issue of *Notices to Members* erroneously stated information relating to findings on which the sanctions against Michael B. Jawitz (Registered Representative, North Miami Beach, Florida) were based. The sanctions against Jawitz were based on findings that he: (1) engaged in serious misconduct which involved the entry of numerous fictitious non-bona-fide orders into his employer's order execution system over a significant period of time; (2) caused the execution of numerous fictitious transactions which were reported through ACT to Nasdaq and which prevented the execution of customer limit orders; and (3) violated NASD Conduct Rules 2110 and 3310, and IM-2110-2. All allegations against Jawitz that he violated NASD Conduct Rule 2120 or acted with intent to manipulate or defraud were dismissed.

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Special NASD Notice to Members 98-71

NASD Regulation Requests Comment On Whether To Modify The Public Disclosure Program To Limit The Period For Disclosure Of Certain Criminal Information; **Comment Period Expires September 30, 1998**

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Under the current interpretation governing the Public Disclosure Program, information on all felony offenses is disclosed indefinitely. NASD Regulation, Inc. (NASD Regulation) requests comment from members and other interested persons on whether to: (1) maintain the current interpretation; or (2) amend the interpretation to disclose indefinitely information concerning "investment-related" offenses, as described below, but limit to 10 years disclosure of information concerning all other felonies. Any such change would not affect the information required to be reported on Form U-4 and permanently made available to federal and state regulators, self-regulatory organizations (SROs), and prospective employers in the securities industry. In other words, such information would remain on an individual's record, but as proposed would not be disclosed publicly after 10 years.

NASD Regulation is seeking comment on this issue at this time for two principal reasons. First, associated persons have expressed the view that some aged felony charges or convictions do not bear any relationship to the securities industry or reflect on their capacity for fair dealing. Second, information disclosed under the Public Disclosure Program will soon be more easily and widely accessible via the NASD Regulation Web Site (www.nasdr.com). NASD Regulation will weigh the comments it receives in determining whether or not continued public disclosure of certain aged felony offenses through this widely accessible medium strikes the most appropriate balance between a public investor's interest in knowing relevant information about an associated person and such person's privacy and reputational interests.

Questions concerning this *Request For Comment* may be directed to Ann E. Bushey, Assistant Director,

CRD/Public Disclosure, NASD Regulation, at (301) 590-6389; Mary M. Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252; or Richard E. Pullano, Counsel, CRD/Public Disclosure, NASD Regulation, at (301) 212-3789.

Request For Comment

NASD Regulation encourages all interested parties to comment on the proposal. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500

or e-mailed to:
pubcom@nasd.com

Important Note: The only comments that will be considered are those submitted via e-mail or in writing.

Comments must be received by **September 30, 1998**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the National Association of Securities Dealers, Inc. (NASD[®]) Board of Governors, and must be approved by the Securities and Exchange Commission (SEC).

NASD Regulation Request For Comment 98-71

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Background And Discussion Current Interpretation On Disclosure

The securities industry and its regulators have established exceptionally stringent licensing and qualification requirements. Among other things, persons seeking registration to sell securities are required to file a Form U-4 with Central Registration Depository (CRD) that describes their employment and disciplinary history, including whether they have been charged with or convicted of any felony or certain misdemeanors. Form U-4 requires reporting of any charge or conviction of, or guilty and no contest plea to: (1) any felony or misdemeanor involving investments or investment-related business, fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses (hereinafter collectively referred to as "investment-related" offenses); and (2) any other felony (hereinafter referred to as "other felony" offenses).¹

Under NASD Regulation's current Public Disclosure Program (Program), all of this criminal history, as well as other employment and disciplinary information reported to the CRDSM system, is disclosed to the public in response to a written, telephonic, or electronic inquiry. The Program is governed by Interpretive Material 8310-2 of the NASD rules (Interpretation). The principal purpose of the Program is to help investors make informed choices

about the persons and firms with whom they may wish to do business. The securities industry is unique in providing this level of information about its licensed persons to the public.²

The NASD established the Program in 1988. At that time, investors were required to make their inquiries in writing. In 1990, Congress amended the Securities Exchange Act of 1934 (Exchange Act) to expand access to the Program by requiring the NASD to establish and maintain a toll-free telephone number to receive investor inquiries.³ Until 1998, the NASD responded to all inquiries by mailing a summary of the public disclosure information to the requester. In 1998, the Program was expanded to provide administrative data (e.g., employment history, registration statuses, etc.) via the Internet and to accept electronic mail requests for any remaining public disclosure information; NASD Regulation responds to such requests by electronic mail. In 1999, NASD Regulation will expand disclosure via the Internet further to provide any requester with on-line access to all information disclosed under the Program, including criminal history.

Proposed Change To Interpretation

In response to a variety of concerns raised by a number of associated persons, NASD Regulation is seeking comment on a policy change that would establish a 10-year time limit on disclosure of information on "other felonies."⁴ NASD Regulation believes it is appropriate to seek comment at this time because of the unique nature of the Program and the significant issues implicated by the current Interpretation. NASD Regulation presented this proposed policy change to a number of NASD Regulation district and standing committees and received mixed responses.

Some associated persons and others have argued that aged information on "other felony" offenses is unrelated to the securities business or to the person's capacity for fair dealing, and therefore such information is not relevant to an investor's decision to do business with a particular person. According to this view, public disclosure of such information through the Web Site for an indefinite period of time subjects associated persons to a continuing penalty that serves no remedial purpose, particularly if the criminal charge or conviction occurred many years ago and the person's disciplinary record is otherwise unsullied. In addition, there is some concern that the ease of Web access and the instantaneous provision of information will encourage persons other than investors (e.g., neighbors or competitors) to investigate the associated person's background and misuse the information. This concern extends not only to business and personal reputations, but also to the reputations of children, spouses, and other family members, particularly where the associated person and his or her family live in a small community.

The proposed policy change would address these concerns by limiting to 10 years the public disclosure of "other felony" offenses, which would include, among others, driving while intoxicated, possession or sale of controlled substances, and certain violent crimes. For example, if a 50-year-old registered person had been charged with, or convicted of, driving while intoxicated at age 25, and the offense in that particular state was a felony, then NASD Regulation could discontinue disclosure under the proposed policy change.

The 10-year time limit is consistent with other provisions of the law that concern the disclosure or probative value of criminal history information. For example, the 10-year limit would

ensure public disclosure of the "other felony" convictions that cause someone to be subject to a statutory disqualification under the provisions of the Exchange Act during the period that they are subject to disqualification. Such individuals may not apply to work or, if registered, continue to work in the securities industry without first seeking and obtaining appropriate regulatory approvals.⁵ A 10-year disclosure period for "other felony" offenses also is consistent with the 10-year time limitation for the reporting of all criminal events for member firms and their control affiliates on Form BD.⁶ Further, Rule 206(4) under the Investment Advisers Act of 1940, which specifies which financial and disciplinary information an investment adviser must disclose to a client, requires disclosure of convictions for specified offenses for a period of 10 years from the time of the event. Finally, the Federal Rules of Evidence place a low probative value on convictions that are more than 10 years old in determinations of admissibility for purposes of impeaching the credibility of a witness.⁷ These provisions of law suggest that the proposed 10-year limit on disclosure of certain felonies may be appropriate.

While some NASD Regulation district and standing committees expressed support for this proposal for the reasons set forth above, other committees expressed opposition to the proposal. Some committees expressed concern that non-disclosure of even aged criminal information could undercut the investor education and protection purposes of the Program. Some investors may believe any information concerning an associated person's ability to obey the law is relevant, even after 10 years; for such investors, criminal behavior may reflect on the associated person's moral character, which may affect the investor's ability to develop a trusting business relation-

ship.⁸ Some committees expressed concern that the proposal could have incongruous results, *i.e.*, indefinite disclosure of insignificant misdemeanor offenses but time-limited disclosure of serious felonies. To avoid such results, some committees suggested that violent crimes against a person, certain crimes against the government (including tax evasion), and offenses involving drug trafficking should always be disclosed, but that disclosure of certain misdemeanor convictions and criminal charges could be time-limited. Such misdemeanors could include, for example, a shoplifting offense involving an item of little value or an offense that could be characterized as a "youthful indiscretion."

In light of these concerns, NASD Regulation seeks comment as to whether an alternative proposal to that described in the Executive Summary would be appropriate. For example, the classes of aged felony offenses that would not be disclosed could be narrowed to specified categories, or the period of disclosure could be lengthened to 15 or 20 years, rather than 10 years. In providing comments about any alternative proposal, NASD Regulation asks that commenters keep in mind the technical and administrative limitations of the Public Disclosure Program. While the computer systems that support the Program could be programmed to limit disclosure by date of occurrence or general category of offense (*i.e.*, "investment-related" felony, "investment-related" misdemeanor, or "other felony"), any further refinements would require the review of individual criminal histories and manual settings to the computer system, which would be costly, time-consuming, and necessarily more subjective.

Conclusion

The Public Disclosure Program serves an important investor protection purpose and has been endorsed by Congress and the Securities and Exchange Commission (SEC). NASD Regulation believes that careful consideration should be given to balancing the interests of both the investing public and associated persons, particularly given the personal privacy interests implicated by permitting the public to obtain criminal information anonymously over the Internet, when such information otherwise would not be available to the public without considerable effort.⁹ Accordingly, NASD Regulation seeks comment from interested parties on what standard of disclosure strikes an appropriate balance between an investor's interest in relevant information and an associated person's privacy interest.

Request For Comment

NASD Regulation encourages all interested parties to comment on the proposal. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500

or e-mailed to:
pubcom@nasd.com

Important Note: The only comments that will be considered are those submitted via e-mail or in writing.

Comments must be received by **September 30, 1998**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

Endnotes

¹ Form U-4 has elicited information about all felony offenses since 1981. In 1990, with the passage of the International Securities Enforcement Cooperation Act of 1990, convictions less than 10 years old for any felony offense (not just those relating to investments, fraud, or theft) became the basis for a statutory disqualification under Section 3(a)(39) of the Exchange Act.

² NASD Regulation is not aware of any other profession that discloses on-line such comprehensive disciplinary and criminal history, even if such information is required to be reported for licensing purposes. Currently, 14 states provide information on-line about medical professionals, including physicians, physician's assistants, and nurses. See www.docboard.org. Like the current Public Disclosure Program on the Internet for brokers, most states provide the medical professional's name, status, work address, birth date, date of license and license expiration, education, and specialty. Twelve of the 14 states also include whether "disciplinary" information exists; if so, the Web sites do not provide details on-line but rather direct the person to contact the state medical board. Two states, California and Massachusetts, provide disciplinary information on-line. California releases certain hospital disciplinary actions, malpractice judgments, and arbitration awards. Massachusetts releases any of the following that occurred in the last 10 years: felony or serious misdemeanor convictions, malpractice actions, and disciplinary actions by a hospital or the state medical board.

³ Section 15A(i) of the Exchange Act provides, in pertinent part, "[a] registered securities association shall . . . establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and . . . promptly respond to such inquiries in writing." The legislative history indicates that the appropriate scope of disciplinary actions should be developed by the NASD, working with the SEC and state securities regulators. The toll-free number is (800) 289-9999. The NASD received over 137,000 requests for public disclosure summaries in 1997 via the toll-free number.

⁴ As under the current Interpretation, the "investment-related" offenses listed above would continue to be disclosed to the public indefinitely.

⁵ Under Section 3(a)(39)(F) of the Exchange Act, criminal convictions of felonies and certain enumerated misdemeanors that are more than 10 years

old do not cause a person to be subject to a statutory disqualification. The disqualification provisions in the Investment Company Act of 1940 (Section 9(a)(1)) and the Investment Advisers Act of 1940 (Section 203(e)) also contain 10-year limits for criminal convictions.

⁶ Form BD is the uniform form used by broker-dealers to apply for registration with the SEC, states, and SROs. The term "control affiliates" generally refers to owners, officers, and directors of the broker/dealer. A control affiliate is sometimes

required to file a Form U-4 as well, which, as described above, requires reporting of criminal history without time limitation.

⁷ Fed. R. Evid. 609.

⁸ Compare Jeffrey P. Donohue, Developing Issues Under the Massachusetts Physician Profile Act, 23 Am. J. Law & Medicine, 115, 120 (1997).

⁹ Although the criminal information at issue here generally is a matter of public record, the availabili-

ty of such information to the general public is usually limited or is difficult to access. NASD Regulation is not aware of any other organization or medium that would provide the general public with immediate access to this broad a range of criminal information in one centralized place.

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NASD Notices to Members (December 1996 to current) are also available on the Internet at www.nasdr.com.

Special NASD Notice to Members 98-72

Regional Nominating Committee Nominees For The National Adjudicatory Council

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The purpose of this *Notice* is to advise members of the Regional Nominating Committee Nominees for the 1999 National Adjudicatory Council (NAC). Pursuant to nomination procedures outlined in *Special Notice to Members 98-62*, nominees for NAC are presented to the membership. If an officer, director, or employee of a National Association of Securities Dealers, Inc. (NASD[®]) member is interested in being considered as an additional candidate, he/she must indicate his/her interest to the Secretary of NASD Regulation, Inc. (NASD RegulationSM) or the Regional Nominating Committee Chairman in the region (a map of the five regions is attached) within 14 calendar days of the date of the Regional Nominating Committee document. The Secretary of NASD Regulation or the Regional Nominating Committee Chairman shall make a written record of the time and date of such notification.

Questions concerning this procedure may be directed to the member's District Director or Alden S. Adkins, General Counsel, NASD Regulation, at (202) 728-8332; Joan C. Conley, Corporate Secretary, NASD, at (202) 728-8381; or Norman Sue, Jr., Associate General Counsel, NASD Regulation, at (202) 728-8117.

National Adjudicatory Council

In 1999, the NAC will be a 12-member committee with half of the members representing industry and half representing non-industry. The industry members serve as volunteers, and five of the six industry members will be nominated by region (a map of the five regions is attached) and approved by the NASD's National Nominating Committee (NNC). One industry member will be nominated by the NNC as an at-large member. In 1999, half of the industry and non-industry members will be appointed for one-year terms,

with the remaining members appointed for two-year terms. These one- and two-year term appointments will be determined by the NNC after the regional nomination and the at-large selection have been approved by the NNC. After 1999, all terms will be two-year terms, and service of two consecutive terms is permissible. The Chairman of the NAC will be elected by the incoming NAC members, and, in accordance with relevant By-Laws, has a seat on the NASD Regulation Board of Directors and NASD Board of Governors.

The NAC is the successor to the National Business Conduct Committee (NBCC). As such, it is responsible for the oversight of the disciplinary program of NASD Regulation, the most active of all securities industry self-regulatory programs. The NAC also is responsible for the development of regulatory and enforcement policy and rule changes relating to the business and sales practices of NASD members.

The NAC's mission is to assure fairness, expedition, and consistency in the disciplinary and regulatory actions for which it is responsible; to identify and address potential regulatory issues; and to enforce current and establish new disciplinary policy.

The NAC meets at least six times a year. It always meets every other month for a full day to decide appellate cases, rule on applications and exemption requests, and to address policy matters. It may transact additional business through supplementary telephone meetings. In preparation for these meetings, NAC members receive "kits" consisting of draft decisions on appellate cases and memoranda discussing proposed rules and other matters. The draft decisions range in number from 5 to 20 per kit, and in length up to 20 pages each. Required preparation time for each meeting is extensive,

and is in addition to time required to travel to the meetings and the meetings' time. Most meetings are held in Washington D.C. or New York City, but this year the NAC also met in Denver and San Francisco in order to meet with District Committees to discuss issues of common interest.

NAC members also serve about every other month on two-person Hearing Panels designated to hear appeals or calls for review in disci-

plinary, membership, or financial and operational limitation cases, as well as on Hearing Panels designated to conduct initial hearings in summary and non-summary suspension, eligibility, and statutory qualification cases. In addition, two to four NAC members also serve as members of the Review Subcommittee, which meets from one to four hours weekly by telephone to discuss and accept or reject proposed settlements in disciplinary actions, to review all non-

default initial decisions in disciplinary and membership cases, and to rule on miscellaneous motions or requests. The members of the NAC are supported by the staff of the NASD Regulation Office of General Counsel in connection with the foregoing adjudicatory and policymaking responsibilities.

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1999 National Adjudicatory Council Nominees

West Region (Districts 1, 2, 3a, and 3b)

Nominee: Nicholas C. Cochran
American Investors Company
Hayward, California

Nicholas C. Cochran is Chairman of American Investors Company in Hayward, California. He started that firm in 1992. Prior to that time, he was with Foothill Securities, Inc. and Equity Engineering, Inc. Mr. Cochran is a former member of the NASD District 1 Committee (1994 to 1996) and a current member of the National Adjudicatory Council.

South Region (Districts 5, 6, and 7)

Nominee: Raymond E. Wooldridge
Southwest Securities
Dallas, Texas

Raymond E. Wooldridge is Vice Chairman of Southwest Securities, Inc.; having joined the firm in 1986. Prior to that time, he held various positions at the firm of Eppler, Guerin & Turner, Inc., including Chief Executive Officer. Mr. Wooldridge is a former member of the NASD Board of Governors (1994 to 1996) and the NASD District 6 Committee (1974 to 1976). He holds a B.A. in Economics from Washington & Lee University.

Central Region (Districts 4, 8a, and 8b)

Nominee: Ronald D. Brooks
Banc One Capital Markets
Columbus, Ohio

Ronald D. Brooks is Chairman and Chief Executive Officer of Banc One Capital Corporation in Columbus, Ohio. He joined Banc One Capital in 1984. Prior to that time, he was with The Ohio Company. Mr. Brooks is a former member of the NASD District 8 Committee (1994 to 1996) and has served on several disciplinary panels. He holds a B.A. in International Studies from Ohio State University.

North Region (Districts 9 and 11)

Nominee: Richard J. DeAgazio
Boston Capital Services
Boston, Massachusetts

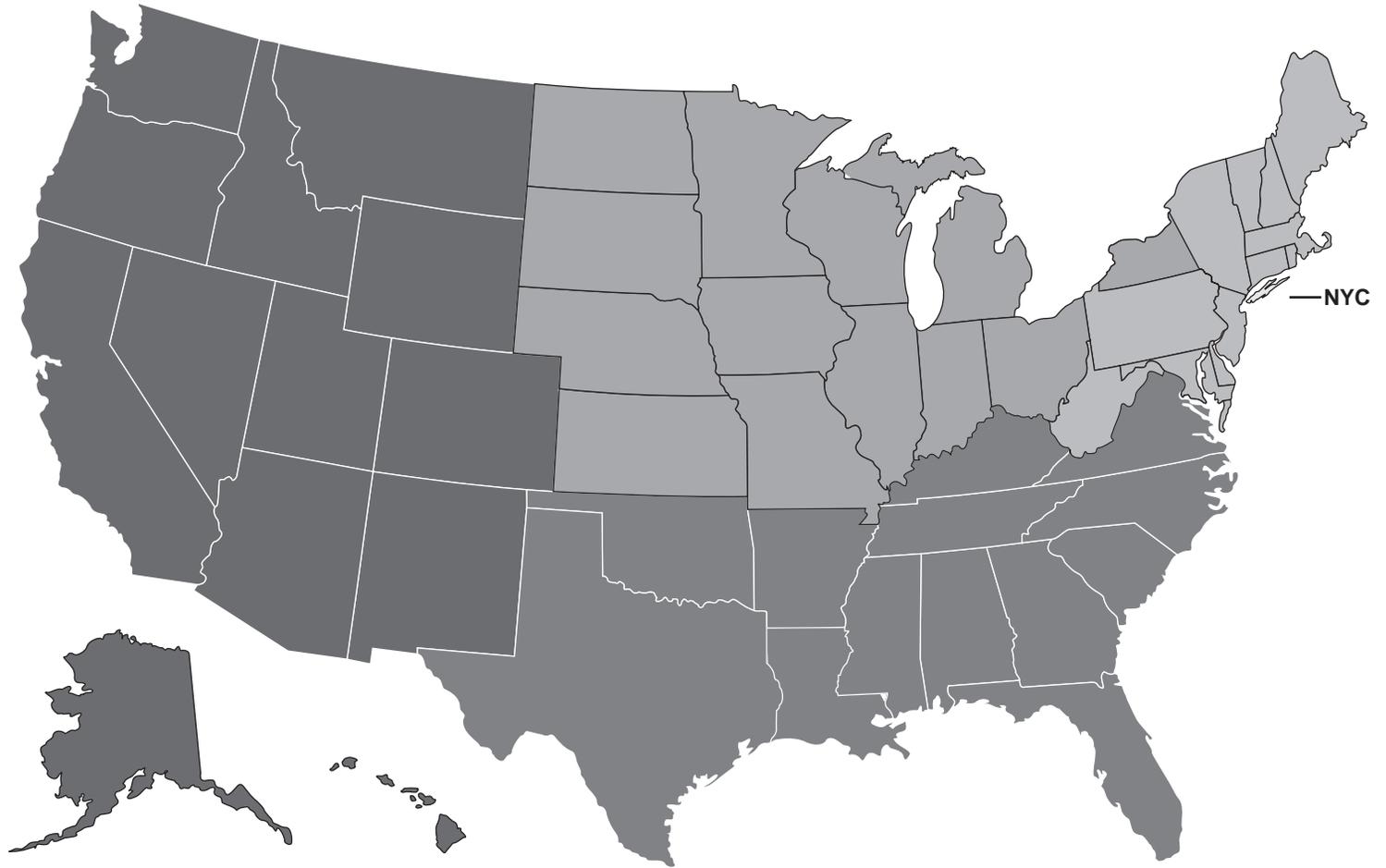
Richard J. DeAgazio is President of Boston Capital Services, Inc., and Executive Vice President of Boston Capital Corporation in Boston, Massachusetts. Mr. DeAgazio joined Boston Capital in 1982. Prior to that time, he was a Senior Vice President and Director of Exchange Securities, Inc. Mr. DeAgazio has served on several NASD committees and is a former member of the NASD Board of Governors (1992 to 1995). He holds a B.S./B.A. in Finance from Northeastern University.

New York (District 10)

Nominee: David A. DeMuro
Lehman Brothers
New York, New York

David A. DeMuro is Senior Vice President and Senior Counsel at Lehman Brothers, Inc. Mr. DeMuro joined Lehman Brothers in 1984. Prior to that time, he held various positions with the Securities and Exchange Commission in Detroit, Chicago, Los Angeles, and Washington, D.C. Mr. DeMuro is a current member of the NASD Membership Committee. He holds a B.A. from the University of Michigan and a J.D. from the University of Notre Dame.

Regional Map for National Adjudicatory Council Nominations



Region	Districts	No. Of Members
West	1, 2, 3a, 3b	1019
South	5, 6, 7	1117
Central	4, 8a, 8b	1040
North	9, 11	1182
New York City	10	1172

NASD Notice to Members 98-73

Firms Required To Register For Order Audit Trail System; Amendments To OATS Rules

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

In March 1998, the Securities and Exchange Commission (SEC) approved new National Association of Securities Dealers, Inc. (NASD[®]) Rules 6950 through 6957—the Order Audit Trail System (OATSSM) Rules. The effective dates for the OATS Rules vary according to the following schedule:

- Phase 1: By March 1, 1999, electronic orders received by Market Makers and Electronic Communication Networks (ECNs) must be reported.
- Phase 2: By August 1, 1999, all electronic orders must be reported.
- Phase 3: By July 31, 2000, all non-electronic, or manual, orders must be reported.

(See *Notice to Members 98-33* for a complete description of the OATS Rules.)

In accordance with the OATS Rules, the NASD is now requiring all NASD member firms that make markets in Nasdaq[®] securities and ECNs to register for OATS using the newly developed Subscriber Initiation and Registration Form (see the following Form). Market Makers and ECNs that are required to record and report order information to OATS under the OATS Rules must complete and return this Form to the NASD by **September 14, 1998**, regardless of whether they are scheduled to report in Phase 1 or by Phase 3 (July 31, 2000).¹ Members that fail to complete and return the Form will be unable to report OATS data to the NASD; failure to report order information is a violation of NASD Rules 6955 and 2110.

In addition, all third parties that intend to submit data on a member's behalf during Phase 1 also must submit a copy of the Form by **September 14, 1998**.

The Form should be mailed to:
NASD Regulation, Inc.
Business Program Support
15201 Diamondback Drive
Rockville, MD 20850

Or faxed to: (888) 345-6275 or (301) 590-6504.

Questions regarding OATS or the Form may be directed to the NASD via phone at (888) 700-OATS or (301) 590-6503, or via e-mail at oatssc@nasd.com. Information about OATS is available on the NASD RegulationSM Web Site (www.nasdr.com).

Also, on July 31, 1998, the SEC approved amendments to OATS Rules 6954 and 6957 and NASD Rule 3110 (the Books and Records Rule).² The amendments clarify the recording and recordkeeping requirements associated with the OATS Rules.

Discussion Registration For OATS Reporting

Information requested on the Form is necessary to register members and non-member third parties to report order information to OATS. The Form requires member firms and non-member third parties to identify contacts for administrative, technical, and compliance issues; organizations that will be reporting OATS information on their behalf; organizations on whose behalf they are reporting; and the transport method that they will use for reporting, such as file transfer protocol (FTP) or e-mail.

The NASD will use the information furnished on the Form to schedule the installation of network circuits for firms reporting via FTP and provide Subscriber Packets. These Subscriber Packets will supply instructions about requesting a circuit from the network provider; deadlines for

circuit installation; user IDs and passwords for accessing OATS; assigned reporting dates within the phase; and a *Subscriber Manual* describing procedures for transmitting data to OATS, performing self-administration, and using OATS applications on the Web.

All firms that handle or execute orders for Nasdaq securities will be required to complete a Form before they can begin reporting to OATS. In January 1999, a version of the Form and the *Subscriber Manual* will be available for firms and third parties that will begin reporting in Phase 2 (August 1, 1999) or Phase 3. Firms will be able to download the Form and the Manual from the OATS Web Pages or request them from the NASD.

Amendments To OATS Rules

OATS Rule 6954(c) sets forth the order information that must be recorded when an order is transmitted, either from one department to another within a member firm or to another member. This Rule has been amended by adding a new paragraph that will now require members to record certain information when an order is transmitted to a non-member, such as to a foreign

broker/dealer or to a foreign exchange. NASD members will be required to report this information to OATS pursuant to OATS Rule 6955.

OATS Rule 6954(a)(4) and the Books and Records Rule, which require members to record and maintain specified information related to OATS, have been revised to set forth specific recordkeeping requirements. In particular, both rules have been amended to specifically reference the period of time for retaining records specified in SEC Rule 17a-4(b) and the conditions set forth in SEC Rule 17a-4(f) for reproducing records on micrographic media or by means of electronic storage media.

The Books and Records Rule also has been amended to require members to record and maintain information relevant to the OATS data recording and reporting requirements only with respect to an "order" in Nasdaq equity securities, as defined by OATS Rule 6951(j). Finally, OATS Rule 6957(d) has been revised to indicate the effective dates for compliance with the amendments to the Books and Records Rule. The OATS Rules, revised to reflect these amendments, can be found on the NASD Regulation Web Site (www.nasdr.com).

The effective dates for compliance with the amended rules are:

- Rule 3110(h)(1)(A) and (B):
March 1, 1999
- Rule 3110(h)(1)(C):
July 31, 2000
- Rule 3110(h)(2) and (3):
March 1, 1999
- Rule 6954(a)(4):
March 1, 1999
- Rule 6954(c)(6):
August 1, 1999, for electronic orders;
July 31, 2000, for manual orders.

Endnotes

¹ Members previously received notice of this requirement through a posting on the NASD Regulation Web Site on September 2, 1998. Firms that make markets in Nasdaq securities and ECNs received this Form via mail in early September.

² Securities Exchange Act Release No. 40286 (July 31, 1998), 63 FR 42088 (August 6, 1998).

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OATS Subscriber Initiation And Registration Form

Please complete and return this Order Audit Trail SystemSM (OATSSM) Subscriber Initiation and Registration Form to the National Association of Securities Dealers, Inc. (NASD[®]).

Completion of this Form by September 14, 1998 is mandatory if you are an Electronic Communication Network (ECN) or market maker and are required to record and report order data to OATS. NASD member firms that fail to complete and return this Form will not be able to report OATS data to the NASD; failure to report order information by the specified OATS implementation date is in violation of NASD Rules 6955 and 2110.

If you have any questions regarding OATS or this Form, please contact the NASD via phone at (888) 700-OATS or (301) 590-6503, or via e-mail at oatsscsc@nasd.com. Information about OATS and copies of this Form is also available via the NASD Regulation Web Site at www.nasdr.com.

This Form may be mailed or faxed to:

NASD Regulation, Inc.
Business Program Support
15201 Diamondback Dr.
Rockville, MD 20850
Fax: 888-345-6275 or 301-590-6504

Section 1: Organization Data

Section 1 Organization Information

If you are an NASD member firm please provide or update the preprinted information below. If you are not an NASD member firm, only provide or update your organization's name.

Organization Name: _____

Market Participant ID: _____

Section 2: OATS Reporting Phase

Section 2-A OATS Reporting Phase of Member Firms

If you are an NASD member firm, indicate the phase your organization is required to begin reporting OATS data, based on Rule 6957. If you are not a member, skip this section.

- Phase 1: All Market Makers and ECNs must report electronic orders by March 1, 1999
- Phase 2: All member firms must report electronic orders by August 1, 1999
- Phase 3: All member firms must report all manual orders by July 31, 2000.

Select one: Phase 1 Phase 2 Phase 3

If your organization is not required to report OATS data in Phase 1, do not complete the remainder of the Form. Regardless, please return this form to the NASD by September 14, 1998.

Section 2-B OATS Reporting Phase of Non-Member Firms

If you are not a member firm and are transmitting order data to the NASD, indicate the Phase during which you will begin reporting.

Select one: Phase 1 Phase 2 Phase 3

If your organization will not begin reporting OATS data in Phase 1, do not complete the remainder of the Form. Regardless, please return this Form to the NASD by September 14, 1998.

Section 3: Contacts

Section 3 OATS Contacts

Please provide the following contact information or update any preprinted information that is incorrect. The contact roles are defined below.

Order Sending Organization Administrator: Will be the primary contact for the OATS program. This contact will receive all OATS-related mailings directed to the organization. Additionally, this contact will manage User IDs and Passwords, update organization data, and disseminate OATS information throughout the organization.

Technical: Will assist the NASD in resolving OATS-related technical difficulties.

Compliance: Will assist the NASD in resolving OATS-related compliance issues.

Order Sending Organization Administrator

Name: _____

Title: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

Mail Address 1: _____

Mail Address 2: _____

City, State, Zip: _____

Technical Contact

Name: _____

Title: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

Section 3 (cont.) OATS Contacts

Compliance Contact

Name: _____

Title: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

Section 4: Reporting Relationships

Check All That Apply:

Other organizations will report order data to OATS on my organization's behalf. *(Complete Section 4-A and skip to Section 6.)*

My organization will send order data directly to OATS. *(Complete Section 4-B.)*

Section 4-A Information About Organizations Transmitting on Your Behalf

If other organizations will be reporting order data to OATS on your behalf, please identify them by name, below. Include Market Participant Identifier (MPID), if available.

MPID (if known)	Organization Name
MPID (if known)	Organization Name
MPID (if known)	Organization Name

Section 4-B Information About Organizations for Which You Are Transmitting

If your organization is transmitting order data on behalf of NASD member firms, please identify by name, below. Include Market Participant Identifier (MPID), if available. Attach additional sheets if necessary.

_____ MPID (if known)	_____ Organization Name
_____ MPID (if known)	_____ Organization Name
_____ MPID (if known)	_____ Organization Name
_____ MPID (if known)	_____ Organization Name
_____ MPID (if known)	_____ Organization Name

Section 5: Reporting Mechanism

This section should only be completed by organizations that will transmit data to OATS.

Check All That Apply

My organization will report via File Transfer Protocol (FTP). Because FTP requires a private network, please provide area code and prefix of circuit locations for use in installation scheduling:

Area Code _____ and Prefix _____

Area Code _____ and Prefix _____.

My organization will report via e-mail.

Section 6: Submitter Information

_____ Printed Name of Submitter	() _____ Submitter's Phone Number	_____ Date
---------------------------------	------------------------------------	------------

Please return this Form to the NASD via mail or fax by September 14, 1998 to NASD Regulation, Inc., Business Program Support, 15201 Diamondback Dr., Rockville, MD 20850 Fax: 888-345-6275 or 301-590-6504

NASD Notice to Members 98-74

SEC Approves Rule Amendment Relating To Hearings On Suspensions And Cancellations For Failure To Comply With Arbitration Awards

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On May 26, 1998, the Securities and Exchange Commission (SEC) approved an amendment to National Association of Securities Dealers, Inc. (NASD[®]) Rule 9514 authorizing hearing officers from the NASD Regulation, Inc. (NASD RegulationSM) Office of Hearing Officers to preside over non-summary proceedings involving cancellations and suspensions related to failure to comply with an NASD-imposed arbitration award or settlement agreement. The amendment became effective on May 26, 1998.

Questions regarding this *Notice* may be directed to Joseph Furey, Vice President, Office of Hearing Officers, NASD Regulation, at (202) 728-8008, or Mary Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252.

Background And Description Of Amendment

This amendment changes the composition of the hearing panels used for non-summary proceedings in which the NASD seeks to suspend or cancel the membership of a member firm or the registration of an associated person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. Previously, a hearing panel composed of one current NASD Regulation director plus at least one other current or former NASD or NASD Regulation board member heard these non-summary suspension proceedings. Pursuant to the amendment, a single member of the Office of Hearing Officers, appointed by the Chief Hearing Officer, will preside over these non-summary proceedings.

The Office of Hearing Officers is an independent office within NASD

Regulation whose purpose is to provide a group of independent and professional hearing officers (comprised of attorneys with appropriate experience and training) to preside over formal NASD disciplinary proceedings under the NASD Rule 9200 Series.

NASD Regulation determined that board members were not required for these non-summary proceedings because the issues involved are narrow and largely administrative. Designating a single hearing officer to preside over these non-summary proceedings also provides administrative efficiencies in conducting the hearings and rendering decisions. The amendment does not alter the ability of member firms and their associated persons to request a hearing concerning a failure to pay an arbitration award; it merely alters the composition of the hearing panel. The members of the Office of Hearing Officers are well-suited to resolve the issues presented in these types of hearings due to the training and experience gained in oversight of the NASD's disciplinary proceedings.

Text Of Amendment

(Note: New text is underlined; deletions are bracketed.)

Rule 9514. Hearing and Decision

(a) and (c)-(f) No Change

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 9512 or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 9512(a) or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party [, and the NASD Regulation Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members]. For proceedings initiated under Rule

9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 9512(a) or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed

of two or more members; [One] one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on [the] a Hearing Panel.

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NASD Notice to Members 98-75

SEC Approves Rule Change Relating To Non- Cash Compensation For Mutual Funds And Variable Products

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On July 15, 1998, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD[®]) Rules 2820 (Variable Contracts Rule) and 2830 (Investment Company Rule) that regulate non-cash compensation arrangements for the sale and distribution of variable contracts and investment company securities. Generally, the amendments adopt new definitions, impose recordkeeping requirements, and limit the manner in which members can pay or accept non-cash compensation. The amendments are effective January 1, 1999, under the implementation plan described below.

Questions concerning this *Notice* may be directed to R. Clark Hooper, Executive Vice President, Office of Disclosure and Investor Protection, NASD Regulation, Inc. (NASD RegulationSM), at (202) 728-8325, and Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Discussion Background

The amendments are the latest in a series of NASD Regulation proposals designed to control the use of non-cash compensation in connection with a public offering of securities. Previous rule amendments established restrictions on non-cash compensation in connection with transactions in direct participation program securities (DPPs), real estate investment trusts (REITs), and corporate debt and equity offerings.

The amendments are the final product of a process that began over 10 years ago and involved several versions of the rules published in various *Notices to Members* and submitted to the SEC. In developing

the amendments, the staff and NASD Regulation's Investment Companies Committee, the Independent Dealer/Insurance Affiliate Committee, and the Variable Insurance Products Committee considered the current environment in which investment company and variable contract securities are sold.

NASD Regulation believes that the increased use of non-cash compensation for the sale of variable contracts and investment company securities heightens the potential for loss of supervisory control over sales practices and increases the perception of inappropriate practices, which may result in a loss of investor confidence. NASD Regulation also believes that the increased use of non-cash compensation creates significant point-of-sale incentives that may compromise the requirement to match the investment needs of the customer with the most appropriate investment product. NASD is continuing to examine and develop an approach to the payment of certain types of cash compensation that may raise similar issues.¹

Description

Prior to the amendments, the Variable Contracts Rule did not contain provisions regarding non-cash compensation and the Investment Company Rule generally required disclosure in the prospectus of non-cash compensation arrangements. Thus, the amendments establish new requirements in the Variable Contracts Rule and modify current Investment Company Rule requirements.

Definitions

Affiliated Member: The term "affiliated member" has been adopted for both the Variable Contracts and Investment Company Rules to include a member that, directly or

indirectly, controls, is controlled by, or is under common control with a non-member company. The term reflects a common type of relationship existing in the variable contracts and investment company industries whereby a non-member is affiliated through ownership or control with one or more broker/dealer member firms used for underwriting and/or wholesale and retail distribution services.

Compensation: For ease of reference in appropriate paragraphs of the amendments, a new definition of "compensation" has been included to mean "cash compensation and non-cash compensation."

Cash Compensation: For both the Variable Contracts and Investment Company Rules, this term is defined to include any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of investment company and variable contract securities. The new term also includes cash employee benefits to make clear that certain payments of ordinary employee benefits as part of an overall compensation package are not included in the definition of non-cash compensation or governed under the non-cash provisions.

Non-Cash Compensation: This term is identical in applicability in both the Variable Contracts and Investment Company Rules and encompasses any form of compensation received by a member in connection with the sale and distribution of variable contracts and investment company securities that is not cash compensation, including, but not limited to, merchandise, gifts and prizes, travel expenses, meals, and lodging.

Offeror: The term "offeror" in the Variable Contracts Rule is defined as an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate account, a fund administrator, an underwriter and any affiliated person of such entities, and in the Investment Company Rule as an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person of such entities. The term "affiliated person" in the definition of "offeror" is defined in accordance with Section 2(a)(3) of the Investment Company Act of 1940 (1940 Act). The term "underwriter" is defined in Section 2(a)(40) of the 1940 Act and is intended to reference the underwriter through which the investment or insurance company distributes securities to participating dealers for sale to the investor.

Regulation Of Cash And Non-Cash Compensation Arrangements

Introduction: The amendments adopt as paragraph (h) of the Variable Contracts Rule and paragraph (l) of the Investment Company Rule (replacing the current provisions of that section) new provisions governing the payment and receipt of non-cash compensation by members and associated persons of members. Under the Variable Contracts Rule, the amendments apply to the sale and distribution of both variable annuity and variable life products; under the Investment Company Rule the amendments apply to the sale and distribution of investment company securities registered under the 1940 Act.

Subparagraphs (h)(1) and (l)(1): Limitation on Receipt of Compensation by Associated Persons,

and Exception from Limitations: Subparagraph (h)(1) of the Variable Contracts Rule and (l)(1) of the Investment Company Rule prohibit a person associated with a member from accepting any compensation from any person other than the member with which the person is associated.

An exception from this general prohibition permits the receipt of compensation by an associated person from a non-member company if the member agrees to the arrangement, the receipt is treated as compensation received by the member for purposes of NASD rules, the recordkeeping requirement in the proposed rule change is satisfied, and, the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or applicable "no-action" letter issued by the SEC or its staff that applies to the specific fact situation of the arrangement.

The exception reflects the view of the SEC as expressed in Securities Exchange Act Rel. No. 34-8389 (August 29, 1968) that, under certain circumstances, such commission payments to associated persons may be made by a life insurance company acting on behalf of a subsidiary broker/dealer.² The SEC has issued a number of "no-action" letters permitting, among other things, associated persons of members to receive compensation for the sale of variable contract products from a licensed corporate insurance agent acting on behalf of one or more insurance companies.³ The Investment Company Rule includes the same exception in order to recognize SEC no-action letters that permit an insurance company to establish a commission account as a ministerial service to make payments of commission overrides for sales of insurance and investment company securities products.⁴

Subparagraphs (h)(2) and (l)(2): Securities as Compensation: New subparagraphs (h)(2) of the Variable Contracts Rule and (l)(2) of the Investment Company Rule prohibit members and associated persons of members from receiving compensation in the form of securities of any kind. This prohibition is similar to a prior requirement in the Investment Company Rule.

Subparagraphs (h)(3) and (l)(3): Recordkeeping Requirement: New subparagraphs (h)(3) of the Variable Contracts Rule and (l)(3) of the Investment Company Rule require that members maintain records of all compensation, cash and non-cash, received from offerors. The records must include the names of the offerors, the names of the associated persons, and the amount of cash and the nature and, if known, the value of non-cash compensation received.

NASD Regulation expects records regarding the "nature" of non-cash compensation received to disclose whether the non-cash compensation was received in connection with a sales incentive program or a training and education meeting. Thus, for example, records for a training and education meeting should include information demonstrating that the requirements of a training and education meeting were complied with, including the date and location of the meeting, the fact that attendance at the meeting is not conditioned on the achievement of a previously specified sales target, the fact that the payment is not applied to the expenses of guests of associated persons of the member, and any other information required to enable NASD Regulation to determine compliance with the rule.

The recordkeeping requirement does not apply to two types of de minimis non-cash compensation allowable under subparagraphs (h)(4)(A) and

(B) of the Variable Contracts Rule and (l)(5)(A) and (B) of the Investment Company Rule, discussed more fully below under the exceptions to the prohibition on non-cash compensation.

Subparagraph (l)(4): Prospectus Disclosure of Cash Compensation: New subparagraph (l)(4) in the Investment Company Rule prohibits members from accepting cash compensation from offerors unless such compensation is disclosed in a prospectus. In the case where special cash compensation arrangements are made available by an offeror to a member, which arrangements are not made available on the same terms to all members to distribute the securities, the disclosure must include the name of the recipient member and the details of the special arrangements. This requirement is similar to the prior requirement in subparagraph (l)(1)(C) of the Investment Company Rule to disclose all compensation in the prospectus, but has been modified to reference only "cash compensation" because non-cash compensation is prohibited in a manner that would obviate the need for disclosure of any such non-cash compensation.

Subparagraphs (l)(4)(A) and (B) provide an exception from disclosure for compensation arrangements between: (1) principal underwriters of the same security; and (2) the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment. By their terms, these provisions describe arrangements that would not trigger the proposed recordkeeping requirements.

Subparagraphs (h)(4) and (l)(5): Prohibition on Non-Cash Compensation: New subparagraphs (h)(4) of the Variable Contracts Rule and (l)(5) of the Investment Compa-

ny Rule generally prohibit, with certain exceptions, a member or person associated with a member from directly or indirectly accepting or making payments or offers of payments of any non-cash compensation. There are several exceptions to the general prohibition that permit certain non-cash arrangements.

Subparagraphs (h)(4)(A) and (B) and (l)(5)(A) and (B): These provisions permit the payment and acceptance of gifts that do not exceed an annual amount, currently \$100 per person, and an occasional meal, ticket to a sporting event or the theater, or comparable entertainment for persons associated with a member and, if appropriate, their guests, which is neither so frequent nor so extensive as to raise any question of propriety. Since such gifts and entertainment are considered non-cash items, they are not required to be disclosed in the prospectus. In addition, these two forms of non-cash compensation are specifically excepted from the recordkeeping requirement of the proposed rules.

The provisions also require that the acceptance or payment of such non-cash items not be preconditioned on the achievement of a sales target. Thus, gifts and entertainment are permitted to be provided as recognition for past sales or as encouragement for future sales, but not as part of an incentive program or plan which requires that the recipient reach a specific sales goal as a prior condition to receive the entertainment or gift. These exceptions permit the continuation of long-established, normal business practices, involving benefits with relatively small value such that they are unlikely to impact overall compensation incentives.

Subparagraphs (h)(4)(C) and (l)(5)(C): These exceptions permit, under certain conditions, payment or

reimbursement by offerors in connection with meetings held by the offeror or by a member for the purpose of training or education of associated persons of a member. It is not unusual for offerors to pay for such meetings in order to discuss their products and to reimburse certain expenses related to meetings held by members in exchange for the opportunity to make a presentation to the associated persons of the member on a particular training or education topic. Since investment company and variable contract products are continuously offered, it is particularly important that associated persons receive education opportunities, updates on any portfolio changes or structural changes to a current product, and explanations of new products.

Payments for training or education meetings are subject to the record-keeping requirement in subparagraph (h)(3) of the Variable Contracts Rule and subparagraph (l)(3) of the Investment Company Rule. This provision ensures that information on such payments and reimbursements is maintained in the records of the member and, therefore, capable of examination and regulatory oversight by NASD Regulation.

Associated persons must obtain the member's prior approval to attend the meeting and the member may not base attendance on the achievement of a sales target or other incentives. Members should establish a procedure so that their records reflect that appropriate approval has been provided to associated persons in connection with such meetings. Although a member may not condition attendance at the meeting on the achievement of a sales target, this is not intended to prevent a member from designating persons to attend a meeting to recognize past performance or encourage future performance.

The location of the meeting must be appropriate to its purpose. A showing of appropriate purpose is demonstrated where the location is the office of the offeror or the member, or a facility located in the vicinity of such office. In order to address meetings where the attendees are from a number of offices in a region of the country, the meeting location may be in a regional location.

The payment or reimbursement by an offeror must not be applied to the expenses of guests of the associated person.

Finally, the payment or reimbursement by the offeror must not be conditioned by the offeror on the achievement of a sales target or any other incentive. This requirement is intended to ensure that the offeror making the payment or reimbursement does not participate in any manner in a member's decision as to which associated persons will attend a member's or offeror's meeting.

Subparagraphs (h)(4)(D) and (l)(5)(D): These provisions permit non-cash compensation arrangements between a member and its associated persons, and between a non-member company and its sales personnel who are associated persons of an affiliated member. In permitting such arrangements, NASD Regulation recognizes that in the life insurance industry, for example, non-member insurance companies may hold non-cash sales incentive programs for their sales personnel who are also associated persons of the non-member's affiliated broker/dealer and are licensed to sell both variable contract securities and non-securities insurance products. As a practical matter, an insurance company or investment company affiliated with a broker/dealer is in a position to contribute to and affect the structure of its affiliated broker/dealer's in-house incentive compensation program.

The permissible non-cash arrangements are subject to four conditions: (1) the non-cash compensation arrangement must be based on the total production of associated persons with respect to all investment company or variable product securities distributed by that member, (2) the credit received for each investment company or variable contract security must be equally weighted, (3) no unaffiliated non-member company or other unaffiliated member may directly or indirectly participate in the member's or non-member's organization of a permissible non-cash compensation arrangement, and (4) the recordkeeping requirements must be satisfied.

The total production and equal weighting requirements address the danger that non-cash incentive programs may motivate salespersons at the point-of-sale to recommend a specific product on the basis of the incentive rather than a desire to meet the investment needs of the customer. The total production and equal weighting requirements are intended to limit the impact of non-cash sales incentives at point-of-sale.

Regarding the condition for equal weighting, NASD Regulation recognizes that methods for determining compensation credits could vary, including measurements based on gross production to the firm or net commissions to the associated person. Either practice, as well as other arrangements, such as new accounts opened or assets under management, would be acceptable so long as the concept of "equal weighting" is met and not skewed by disparate commission, payout, or reallowance structures for individual products.

Because of the substantial differences in design, purpose, cost structure, commission payouts, and target audience for variable annuity and

variable life products, NASD Regulation has determined that the total production and equal weighting requirements may apply separately to variable annuity and variable life products, and they do not need to be combined in the same incentive arrangement.

Regarding the third condition, NASD Regulation recognizes that non-cash arrangements are sometimes structured directly between offerors and salespersons, away from the supervisory purview of the broker/dealer. Thus, under the third condition, the non-cash compensation arrangement is subject to the restriction that no unaffiliated non-member entity (usually an offeror) or another member can participate directly or indirectly in the member's or its affiliate's organization of a permissible non-cash sales incentive program. This provision is intended to ensure that third-party offerors or other broker/dealers do not influence, or in effect control, the organization of a permissible non-cash sales incentive program. This restriction is not, however, intended to prevent third-party offerors or other members from making a presentation on its products at a member's or its affiliate's in-house sales incentive meeting.

Finally, under the fourth condition, payments or non-cash sales incentives are subject to the recordkeeping requirements.

Subparagraphs (l)(5)(E) and (h)(4)(E): These provisions permit a non-member entity (usually an offeror) or another member to contribute to a member's in-house non-cash sales incentive program, and a member to contribute to a non-cash arrangement of a non-member, subject to the same four conditions identified above. These provisions are intended to permit third-party offerors and other members to contribute to the non-cash incentive program of a

member involving variable contracts or investment company securities in order to benefit the associated persons of the member that sell the securities. These provisions also permit members to contribute to non-cash compensation programs of non-members, such as banks, for example, involving variable contracts or investment company securities.

Proposed Implementation Of New Rules

The amendments to the Variable Contracts and Investment Company Rules are implemented in the following manner. The amendments are effective on January 1, 1999. As of that date, members' new sales incentive programs must comply with the amendments. Existing sales incentive programs that are ongoing as of January 1, 1999, may continue under previous rules for a period not to exceed six months following January 1, 1999. Thus, during the six-month implementation period, sales could be applied to existing incentive programs under previous rules, and new incentive programs as limited by the new amendments could commence. Finally, non-cash sales incentives or awards earned by registered representatives under existing programs would be permitted to be received by the registered representative for a period not to exceed 12 months following the expiration of the six-month implementation period.

Text Of Amendments To Rules 2820 And 2830

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

Rule 2820. Variable Contracts of an Insurance Company

(a) No change

(b) Definitions

(1) - (2) No change

(3) The terms "affiliated member," "compensation," "cash compensation," "non-cash compensation" and "offeror" as used in paragraph (h) of this Section shall have the following meanings:

"Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company.

"Compensation" shall mean cash compensation and non-cash compensation.

"Cash compensation" shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override, or cash employee benefit received in connection with the sale and distribution of variable contracts.

"Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of variable contracts that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

"Offeror" shall mean an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate account, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

(c) - (g) No change

(h) Member Compensation

In connection with the sale and distribution of variable contracts:

(1) Except as described below, no associated person of a member shall accept any compensation from any one other than the member with which the person is associated. This requirement will not prohibit arrangements where a non-member company pays compensation directly to associated persons of the member, provided that:

(A) the arrangement is agreed to by the member;

(B) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no-action" letter issued by the Securities and Exchange Commission that applies to the specific fact situation of the arrangement;

(C) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of NASD rules; and

(D) the recordkeeping requirement in subparagraph (h)(3) is satisfied.

(2) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(3) Except for items as described in subparagraphs (h)(4)(A) and (B), a member shall maintain records of all compensation received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received.

(4) No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Notwithstanding the provisions of subparagraph (h)(1), the following non-cash compensation arrangements are permitted:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors* and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the recordkeeping requirement in subparagraph (h)(3) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by subparagraph (h)(4)(D);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by subparagraph (h)(4)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's non-cash compensation arrangement, if it includes variable contracts, is based on the total production of associated persons with respect to all variable contracts distributed by the member;

(ii) the non-cash compensation arrangement requires that the credit received for each variable contract is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(iv) the recordkeeping requirement in subparagraph (h)(3) is satisfied.

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, or contributions by a member to a non-cash compensation arrangement of a non-member, provided that the arrangement meets the criteria in subparagraph (h)(4)(D).

*The current annual amount fixed by the Board of Governors is \$100.

2830. Investment Company Securities

(a) No change

(b) Definitions

(1) ["Associated person of an underwriter," as used in paragraph (1), shall include an issuer for which an underwriter is the sponsor or a principal underwriter, any investment adviser to such issuer, or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such underwriter, issuer, or investment adviser.] The terms "affiliated member," "compensation," "cash compensation," "non-cash compensation" and "offeror" as used in paragraph (l) of this section shall have the following meanings:

"Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company.

"Compensation" shall mean cash compensation and non-cash compensation.

"Cash compensation" shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of investment company securities.

"Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of investment company securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

"Offeror" shall mean an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated per-

son (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

(2)- (10) No change

(c) - (k) No change

(l) [Dealer Concessions] Member Compensation

[(1) No underwriter or associated person of an underwriter shall offer, pay or arrange for the offer or payment to any other member in connection with retail sales or distribution of investment company securities, any discount, concession, fee or commission (hereinafter referred to as "concession") which:]

[(A) is in the form of securities of any kind, including stock, warrants or options;]

[(B) is in a form other than cash (e.g., merchandise or trips), unless the member earning the concession may elect to receive cash at the equivalent of no less than the underwriter's cost of providing the non-cash concession: or]

[(C) is not disclosed in the prospectus of the investment company. If the concessions are not uniformly paid to all dealers purchasing the same dollar amounts of securities from the underwriter, the disclosure shall include a description of the circumstances of any general variations from the standard schedule of concessions. If special compensation arrangements have been made with individual dealers, which arrangements are not generally available to all dealers, the details of the arrangements, and the identities of the dealers, shall also be disclosed.]

[(2) No underwriter or associated person of an underwriter shall offer or pay any concession to an associated person of another member, but

shall make such payment only to the member.]

[(3)(A) In connection with retail sales or distribution of investment company shares, no underwriter or associated person of an underwriter shall offer or pay to any member or associated person, anything of material value, and no member or associated person shall solicit or accept anything of material value, in addition to the concessions disclosed in the prospectus.]

[(B) For purposes of this paragraph (1)(3), items of material value shall include but not be limited to:]

[(i) gifts amounting in value to more than \$50 per person per year.]

[(ii) gifts or payments of any kind which are conditioned on the sale of investment company securities.]

[(iii) loans made or guaranteed to a non-controlled member or person associated with a member.]

[(iv) wholesale overrides (commissions) granted to a member on its own retail sales unless the arrangement, as well as the identity of the member, is set forth in the prospectus of the investment company.]

[(v) payment or reimbursement of travel expenses, including overnight lodging, in excess of \$50 per person per year unless such payment or reimbursement is in connection with a business meeting, conference or seminar held by an underwriter for informational purposes relative to the fund or funds of its sponsorship and is not conditioned on sales of shares of an investment company. A meeting, conference or seminar shall not be deemed to be of a business nature unless: the person to whom payment or reimbursement is made is personally present at, or is en route to or from, such meeting in each of the

days for which payment or reimbursement is made; the person on whose behalf payment or reimbursement is made is engaged in the securities business; and the location and facilities provided are appropriate to the purpose, which would ordinarily mean the sponsor's office.]

[(C) For purposes of this paragraph (l)(3), items of material value shall not include:]

[(i) an occasional dinner, a ticket to a sporting event or the theater, or comparable entertainment of one or more registered representatives which is not conditioned on sales of shares of an investment company and is neither so frequent nor so extensive as to raise any question of propriety.]

[(ii) a breakfast, luncheon, dinner, reception or cocktail party given for a group of registered representatives in conjunction with a bona fide business or sales meeting, whether at the headquarters of a fund or its underwriter or in some other city.]

[(iii) an unconditional gift of a typical item of reminder advertising such as a ballpoint pen with the name of the advertiser inscribed, a calendar pad, or other gifts amounting in value to not more than \$50 per person per year.]

[(4) The provisions of this subsection (1) shall not apply to:]

[(A) Contracts between principal underwriters of the same security.]

[(B) Contracts between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.]

[(C) Compensation arrangements of an underwriter or sponsor with its own sales personnel.]

In connection with the sale and distribution of investment company securities:

(1) Except as described below, no associated person of a member shall accept any compensation from any one other than the member with which the person is associated. This requirement will not prohibit arrangements where a non-member company pays compensation directly to associated persons of the member, provided that:

(A) the arrangement is agreed to by the member;

(B) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no-action" letter issued by the Securities and Exchange Commission or its staff that applies to the specific fact situation of the arrangement;

(C) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of NASD rules; and

(D) the recordkeeping requirement in subparagraph (l)(3) is satisfied.

(2) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(3) Except for items described in subparagraphs (l)(5)(A) and (B), a member shall maintain records of all compensation received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received.

(4) No member shall accept any cash compensation from an offeror

unless such compensation is described in a current prospectus of the investment company. When special cash compensation arrangements are made available by an offeror to a member, which arrangements are not made available on the same terms to all members who distribute the investment company securities of the offeror, a member shall not enter into such arrangements unless the name of the member and the details of the arrangements are disclosed in the prospectus. Prospectus disclosure requirements shall not apply to cash compensation arrangements between:

(A) principal underwriters of the same security; and

(B) the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.

(5) No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Notwithstanding the provisions of subparagraph (l)(1), the following non-cash compensation arrangements are permitted:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors* and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

*The current annual amount fixed by the Board of Governors is \$100.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the recordkeeping requirement in subparagraph (l)(3) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by subparagraph (l)(5)(D);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by subparagraph (l)(5)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's non-cash compensation arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member;

(ii) the non-cash compensation arrangement requires that the credit received for each investment company security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(iv) the recordkeeping requirement in subparagraph (l)(3) is satisfied.

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, or contributions by a member to a non-cash compensation arrangement of a non-member, provided that the arrangement meets the criteria in subparagraph (l)(5)(D).

Endnotes

¹ See *NASD Notice to Members 97-50* (August 1997).

² In Securities Exchange Act Rel. No. 34-8389, the SEC stated that no question will be raised by the staff regarding an arrangement where a life insurance company makes commission payments directly to its life insurance agents who are also persons associated with the insurance company's subsidiary broker/dealer, so long as: (1) such payments are made as a purely ministerial service and properly reflected on the books and records of the broker/dealer; (2) a binding agreement exists between the insurance company and the broker/dealer that all books and records are maintained by the insurance company as agent on behalf of the broker/dealer and are preserved in conformity with the requirements of Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934; (3) all such books and records are subject to inspection by the Commission in accordance with Section 17(a) of the Exchange Act; and (4) the subsidiary broker/dealer has assumed full responsibility for the securities activities of all persons engaged directly or indirectly in the variable annuity operation.

³ See *Traditional Equinet* (Pub. Avail. January 8, 1992); and *Mariner Financial Services* (Pub. Avail. December 16, 1988), which include references to other SEC no-action letters in the in-coming letters requesting the SEC no-action position.

⁴ See *The Mutual Benefit Life Insurance Company* (Pub. Avail. January 21, 1985) and other SEC no-action letters cited therein.

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NASD Notice to Members 98-76

Maximum SOES Order
Sizes Set To Change
October 1, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Effective October 1, 1998, the maximum Small Order Execution SystemSM (SOESSM) order sizes for 488 Nasdaq National Market[®] (NNM) securities will be revised in accordance with National Association of Securities Dealers, Inc. (NASD[®]) Rule 4710(g).

For more information, please contact Nasdaq[®] Market Operations at (203) 378-0284.

Description

Under Rule 4710, the maximum SOES order size for an NNM security is 1,000, 500, or 200 shares, depending on the trading characteristics of the security. The Nasdaq Workstation II[®] (NWII) indicates the maximum SOES order size for each NNM security. The indicator "NM10," "NM5," or "NM2" displayed in NWII corresponds to a maximum SOES order size of 1,000, 500, or 200 shares, respectively.¹

The criteria for establishing maximum SOES order sizes are as follows:

- (1) a 1,000-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to \$100, and three or more Market Makers;
- (2) a 500-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to \$150, and two or more Market Makers; and
- (3) a 200-share maximum order size shall apply to NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price of less than or equal to

\$250, and two or more Market Makers.

In accordance with Rule 4710, Nasdaq periodically reviews the maximum SOES order size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant an adjustment. Such a review was conducted using data as of June 30, 1998, pursuant to the aforementioned standards. The maximum SOES order-size changes called for by this review are being implemented with three exceptions.

- First, issues were not permitted to move more than one size level. For example, if an issue was previously categorized in the 1,000-share level, it would not be permitted to move to the 200-share level, even if the formula calculated that such a move was warranted. The issue could move only one level to the 500-share level as a result of any single review.
- Second, for securities priced below \$1 where the reranking called for a reduction in the level, the maximum SOES order size was not reduced.
- Third, for the top 50 Nasdaq securities based on market capitalization, the maximum SOES order sizes were not reduced, regardless of whether the reranking called for a reduction.

In addition, with respect to initial public offerings (IPOs), the SOES order-size reranking procedures provide that a security must first be traded on Nasdaq for at least 45 days before it is eligible to be reclassified.

Thus, IPOs listed on Nasdaq within the 45 days prior to June 30, 1998, were not subject to SOES order-size reranking procedures.

Following is a listing of the 488 NNM issues that will have the maximum SOES order size changed on October 1, 1998.

Endnote

¹ Previously, Nasdaq Market Makers were required to maintain a minimum quotation

size for an NNM security in an amount equal to the maximum SOES order size for that security. See generally, NASD Rule 4613(a)(1) - (2). On July 15, 1998, the Securities and Exchange Commission approved an amendment to NASD Rule 4613(a)(1)(C), which reduced the minimum quotation size for all Nasdaq securities to one normal trad-

ing unit when a Market Maker is not displaying a limit order, and which thus eliminated the requirement that Market Makers quote a size equal to the maximum SOES order size.

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Maximum SOES Order Size Changes In NNM Securities All Issues In Alphabetical Order By Security Name (Effective October 1, 1998)

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
CTAC	1-800 CONTACTS INC	500	1000	ARTI	ARTISAN COMPONENTS	500	1000
				ASAM	ASAHI/AMERICA INC	1000	500
				ASPC	ASPEC TECH INC	200	500
				SIDE	ASSOC MATERIALS	200	500
				APWR	ASTROPOWER INC	500	1000
				ATGC	ATG INC	200	500
				ATPC	ATHEY PRODUCTS CP	500	1000
				AIII	AUTOLOGIC INFO INT	1000	500
				AXHM	AXIOHM TRANS SOL	500	200
A				B			
ACMTA	A C M A T CP CL A	500	200	BTBTY	B T SHIP SPONSOR ADR	500	200
ABRI	ABRAMS INDS INC	500	200	BPAO	BALDWIN PIANO ORGA	500	1000
ACSY	ACSYS INC	500	1000	BLDPF	BALLARD POWER SYST	500	1000
ADECY	ADECCO SA ADR	1000	500	BFOH	BANCFIRST OHIO CP	500	1000
DINE	ADVANTICA RES	500	1000	BARI	BANK RHODE ISLAND	200	500
DINEW	ADVANTICA WTS	500	1000	BWFC	BANK WEST FIN CORP	1000	500
AFED	AFSALA BANCORP INC	500	1000	BKUNZ	BANKUNITED CAP II	1000	500
ASII	AIRPORT SYS INTL I	500	1000	BBHF	BARBERS HAIRSTYLIN	1000	500
ASTI	ALLERGAN SPEC WI	200	500	BFSB	BEDFORD BCSHS INC	1000	500
ALYD	ALYDAAR SOFTWARE	500	1000	BASI	BIOANALYTICAL SYST	500	1000
AMBC	AMER BNCP OHIO	500	1000	BIORY	BIORA AB ADR	500	1000
AMCE	AMER CLAIMS EVALUA	500	1000	BDMS	BIRNER DENTAL	500	1000
ALGI	AMER LOCKER GROUP	500	1000	BONS	BMJ MEDICAL MGMT	500	1000
ANAT	AMER NATL INS CO	1000	500	BNCM	BNC MORTGAGE INC	200	500
ABFI	AMERICAN BUS FIN S	1000	500	BEYE	BOLLE INC	200	500
ADPI	AMERICAN DENTAL	200	500	XTRM	BRASS EAGLE INC	500	1000
APPM	AMERICAN PHYS PART	500	1000	BRZS	BRAZOS SPORTSWEAR	500	1000
AMSFF	AMERICAN SAFETY	500	1000	BRID	BRIDGFORD FOODS CP	1000	500
AMESW	AMES DEPT ST WT C	1000	500	BTSR	BRIGHTSTAR INFO	200	500
AMKR	AMKOR TECHNOLOGY	200	500	BRYO	BRIO TECHNOLOGY	200	500
AMCT	AMRESCO CAP TRUST	200	500	BRCM	BROADCOM CORP CL A	200	500
AMSGA	AMSURG CORP CL A	500	1000	BRKL	BROOKLINE BANCORP	200	500
AMSGB	AMSURG CORP CL B	500	1000	MILK	BROUGHTON FOODS	500	1000
ANCOW	ANACOMP INC WTS	200	500	BRGP	BUSINESS RESOURCE	1000	500
ANDR	ANDERSEN GROUP INC	500	1000				
ALREF	ANNUITY AND LIFE	200	500				
APSOP	APPLE SOUTH FIN PFD	500	200				
ACTC	APPLIED CELLULAR T	500	1000				
AFCO	APPLIED FILMS CORP	500	1000				
AMCC	APPLIED MICRO	500	1000				
ARMHY	ARM HLDGS ADS	200	500				
ARTW	ART S WAY MFG CO I	500	200				

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
C				D			
COLTY	C O L T TELECOM AD	1000	500	DNFCP	D & N CAP CORP PFD	500	200
CLBR	CALIBER LEARN NTWK	200	500	DACG	DA CONSULTING GRP	200	500
CIBN	CALIFORNIA IND BNC	200	500	DECAF	DECOMA CL A	200	500
CNTBY	CANTAB PHARM	200	500	HERBL	DECS TRUST III	200	500
CARS	CAPITAL AUTO SBI	500	1000	DCBI	DELPHOS CITIZENS B	1000	500
CSWC	CAPITAL SOUTHWEST	200	500	DNLI	DENALI INC	500	1000
CASA	CASA OLE' RESTRS I	1000	500	DCBK	DESERT COMMUNITY B	500	200
CASS	CASS COMMERCIAL CO	1000	500	DTRX	DETREX CP	1000	500
CAVB	CAVALRY BANCORP	200	500	DEVC	DEVCON INTL CP	500	1000
CWCOF	CAYMAN WATER ORD	500	1000	DCPI	DICK CLARK PROD IN	200	500
CDNW	CDNOW INC	500	1000	DMSC	DISPATCH MGMT SVCS	500	1000
CNDSP	CELLNET FNDG PFD	200	500	DOCC	DOCUCORP INTL	200	500
CEBK	CENTRAL CO OP BANK	1000	500	DIIBF	DOREL INDS CL B	200	500
CFAC	CENTRAL FIN ACCEPT	1000	500	DCLK	DOUBLECLICK INC	200	500
CVBK	CENTRAL VA BKSHS I	500	200	DRRAP	DURA AUTO CAP TR	200	500
CHANF	CHANDLER INS CO LTD	1000	500	DXPE	DXP ENTERPRISE	500	200
CRAI	CHARLES RIVER	200	500				
CHAS	CHASTAIN CAP CORP	200	500	E			
CNBA	CHESTER BANCORP IN	1000	500	ESREF	E S G RE LTD	500	1000
CINS	CIRCLE INCOME SHAR	500	1000	ERTH	EARTHSHELL CORP	200	500
CTBP	COAST BANCORP	1000	500	EDBR	EDISON BROS STORES	500	1000
CCPRZ	COAST FED LIT CPR	200	500	ECTLW	ELCOTEL INC WTS	500	1000
CBMD	COLUMBIA BANCORP M	1000	500	EBSC	ELDER-BEERMAN ST	200	500
CFKY	COLUMBIA FIN KY	200	500	ELIX	ELECTRIC LIGHTWAV	500	1000
COLM	COLUMBIA SPRTSWR	200	500	EPIQ	ELECTRONIC PROCESS	500	1000
CCHM	COMBICHEM INC	200	500	ESCP	ELECTROSCOPE INC	500	1000
CCBP	COMM BANCORP INC	500	200	ELRWF	ELRON ELEC INDS WTS	200	500
CMND	COMMAND SYSTEMS	200	500	EMLD	EMERALD FINANCIAL	500	1000
CLBK	COMMERCIAL BANKSHR	500	1000	ENGSY	ENERGIS ADS	500	1000
CNAF	COMMERCIAL NATL FI	200	500	ENSI	ENERGYSOUTH INC	1000	500
CELS	COMMNET CELL	500	1000	ETRC	EQUITRAC CP	1000	500
CBIV	COMMUNITY BANCSHAR	1000	500	ECGC	ESSEX COUNTY GAS C	1000	500
CFGI	COMMUNITY FIN GP INC	500	1000	EVOL	EVOLVING SYSTEMS	200	500
CFBC	COMMUNITY FIRST BN	1000	500	EXDS	EXODUS COMMUN	200	500
CMPS	COMPASS INTL SVCS	200	500	XTND	EXTENDED SYSTEMS	200	500
CLTDF	COMPUTALOG LTD	500	200				
CNDR	CONDOR TECH SOLU	500	1000	F			
CNNG	CONNING CORP	500	1000	FCNB	F C N B CP	1000	500
BUYR	CONS CAPITAL CORP	500	1000	FMCO	F M S FINANCIAL CP	200	500
CNGL	CONTL NATURAL GAS	500	1000	FTMTF	FANTOM TECHS INC	1000	500
COOP	COOPERATIVE BKSHS	1000	500	FAMCK	FEDERAL AGRIC MORT C	500	1000
CSCQW	CORRECTIONAL SVCS	500	1000	FFFLP	FIDELITY CAP TR I	500	1000
CRRC	COURIER CP	500	1000	FFOH	FIDELITY FIN OF OH	1000	500
CVOL	COVOL TECHS INC	200	500	FBNC	FIRST BANCP TROY N	500	200
CWLZ	COWLITZ BANCORPN	200	500	FBCG	FIRST BKG CO SE GA	500	200
CKEYF	CROSSKEYS SYS	500	1000	FCTR	FIRST CHARTER CP	500	1000
CRSB	CRUSADER HLDG CORP	500	1000	FCNCA	FIRST CITIZENS A	500	1000
CAWW	CULTURALACCESS WW	500	1000	FCFCP	FIRST CITY FINL PFD	500	200
CGII	CUNNINGHAM GRAPHIC	200	500	FTCG	FIRST COLONIAL GP	200	500
CRGN	CURAGEN CORP	200	500				
CYSP	CYBERSHOP INTL	500	1000				

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
FCGI	FIRST CONSULTING	500	1000	H			
THFF	FIRST FIN CP (IN)	500	1000	HACH	HACH CO	500	1000
FFIN	FIRST FINL BKSHS I	500	1000	HKID	HAPPY KIDS INC	200	500
FFHS	FIRST FRANKLIN CP	200	500	HFGI	HARRINGTON FIN GRP	1000	500
FKFS	FIRST KEYSTONE FIN	1000	500	HFFB	HARRODSBURG FIRST	1000	500
FOBBA	FIRST OAK BROOK CL A	1000	500	HPAC	HAWKER PACIFC AERO	500	1000
FSTH	FIRST SO BCSSHS INC	500	200	HAYZ	HAYES CORP	500	1000
FSLB	FIRST STERLING BKS	1000	500	HDLD	HEADLANDS MTG CO	500	1000
FVCX	FIRST VIRTUAL CP	200	500	HSDC	HEALTH SYS DESIGN	500	1000
FCFCO	FIRSTCITY SPCL PFD	500	200	HWLD	HEALTHWORLD CORP	500	1000
FLGSP	FLAGSTAR CAP PFD A	200	500	ARCAF	HEIDEMIJ N.V.	1000	500
FAME	FLAMEMASTER CP THE	1000	500	HBSC	HERITAGE BNCP (DE)	200	500
FLCHF	FLETCHER'S FINE FOOD	500	200	HFWA	HERITAGE FINL CP	500	1000
FLXI	FLEXIINTL SOFTWARE	500	1000	HRLYW	HERLEY INDS WTS	500	1000
FNBF	FNB FINANCIAL SVC	500	1000	HIFS	HINGHAM INSTI SAVI	500	200
FOCL	FOCAL INC	500	1000	HOLT	HOLT'S CIGAR HLDGS	500	1000
FMAX	FRANCHISE MORTGAGE	500	1000	HLFC	HOME LOAN FINL CP	200	500
FKKY	FRANKFORT FRST	500	1000	HPBC	HOME PORT BNCP INC	1000	500
FELE	FRANKLIN ELEC INC	500	1000	HFBC	HOPFED BANCORP INC	500	1000
FREEY	FREEPAGES GR PLC ADR	200	500	HZWW	HORIZON BNCP INC	500	1000
FTBK	FRONTIER FIN CORP	200	500	HOFF	HORIZON OFFSHORE	200	500
FFHH	FSF FINANCIAL CP	500	1000	HHLAF	HURRICANE HYDROCAR	500	1000
FNDTF	FUNDTECH LTD	200	500	HYPT	HYPERION TELECOMM	200	500
G				I			
GZEA	G Z A GEOENVIRON	1000	500	IPPIF	I P L ENERGY INC	500	200
GMTC	GAMETECH INTL INC	500	1000	ISSX	I S S GROUP INC	200	500
GRTS	GART SPORTS CO	500	1000	ISAC	IC ISAACS & CO	500	1000
GBNK	GASTON FED BANCNP	200	500	ICLRY	ICON PLC ADS	200	500
GBBKP	GBB CAP I CUM TR PFD	500	200	IVISF	ICOS VISION SYST	500	1000
GMCC	GEN MAGNAPLATE CP	1000	500	IMAG	IMAGEMAX INC	500	1000
GLGC	GENE LOGIC INC	500	1000	IGPFF	IMPERIAL GINSENG PRO	1000	500
GEND	GENESIS DIRECT INC	200	500	INDBP	INDEP CAP TR I PFD	500	200
GNSSF	GENESIS MICROCHIP	200	500	ICBC	INDEPENDENCE COMM	200	500
GABC	GERMAN AMER BANCOR	500	200	IAABY	INDIGO AVIATIO ADS	200	500
GETY	GETTY IMAGES INC	500	1000	IHIIZ	INDUSTRIAL HLDG WT	1000	500
GICOF	GILAT COMMUN LTD	500	1000	IHIIW	INDUSTRIAL WTS D	500	1000
GTSG	GLOBAL TELESYSTEMS	500	1000	IAIC	INFO ANALYSIS INC	500	1000
GSDNZ	GOLDEN LIT WTS	200	500	IACO	INFORMATION ADVANT	500	1000
GNCNF	GORAN CAPITAL INC	1000	500	INOC	INNOTRAC CORP	200	500
GCLI	GRAND COURT LIFE	200	500	IDEA	INNOVASIVE DEVICES	1000	500
GBTVP	GRANITE BRDCT CP PFD	1000	500	ISNR	INTEGRATED SENS SL	200	500
PEDE	GREAT PEE DEE BCP	500	1000	IVBK	INTERVISUAL BOOKS	1000	500
GSBC	GREAT SOUTHERN BNC	500	1000	ITVU	INTERVU INC	500	1000
GBCOB	GREIF BROS CP CL B	500	200	INTT	INTEST CORPORATION	1000	500
GRIF	GRIFFIN LAND NURS	200	500	IBOC	INTL BANCSHS CP	200	500
GSOF	GROUP I SOFTWARE	200	500	IROQ	IROQUOIS BNCP	500	1000
GSTX	GST TELECOMMUN INC	200	500	IRWNP	IRWIN FIN CUM TR P	1000	500
GSLC	GUARANTY FIN CP	1000	500	IYCOY	ITO YOKADO CO ADR	200	500
GWBK	GULF WEST BANKS	200	500	IUBCP	IUB CAP TRUST PFD	500	1000

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
J				METFP	METROPOLITAN CAP	200	500
JEFFP	J B I CAPITAL TR PFD	200	500	MGCX	MGC COMMUN INC	200	500
JAMSP	JAMESON INNS PFD	200	500	MUSE	MICROMUSE INC	500	1000
JPST	JPS TEXTILE GRP	500	1000	MSEX	MIDDLESEX WATER CO	500	1000
K				MDWY	MIDWAY AIRLINES CP	500	1000
KTII	K TRON INTL INC	500	1000	MBHI	MIDWEST BANC HLDG	200	500
KTIC	KAYNAR TECHS INC	500	1000	MBSI	MILLER BUILDING SY	500	1000
KEQU	KEWAUNEE SCIENTIFI	500	1000	MEXP	MILLER EXPLORATION	500	1000
KOSS	KOSS CP	500	1000	MFFC	MILTON FED FINL CP	1000	500
L				MSPG	MINDSPRING ENTER I	1000	500
LCLD	LACLEDE STEEL CO	1000	500	MNES	MINE SAFETY APPLS	500	1000
LKFNP	LAKELAND FINL TR PFD	1000	500	MOBI	MOBIUS MGMT SYST	200	500
LARK	LANDMARK BSCHS INC	200	500	MCRI	MONARCH CASINO	1000	500
LDMK	LANDMARK SYSTEMS	500	1000	MBBC	MONTEREY BAY BANCO	1000	500
LFED	LEEDS FED SAV BANK	200	500	MHCO	MOORE HANDLEY INC	500	1000
LTCW	LET'S TALK CELL	500	1000	MWRK	MOTHERS WORK INC	500	1000
LVLTL	LEVEL 3 COMM INC	200	500	CRGO	MOTOR CARGO INDS	500	1000
LIHRY	LIHIR GOLD LTD ADR	500	1000	MOTR	MOTOR CLUB OF AMER	500	1000
LNDL	LINDAL CEDAR HOMES	500	1000	MPWG	MPW INDUSTRIAL SVS	500	1000
MALT	LION BREWERY INC T	500	1000	LABL	MULTI COLOR CP	1000	500
JADEF	LJ INTL INC	200	500	MYST	MYSTIC FINANCIAL	500	1000
JADWF	LJ INTL WTS 4/2002	200	500	N			
LJLB	LJL BIOSYSTEMS	200	500	NTAWF	NAM TAI ELEC WTS	500	1000
LGCB	LONG ISLAND COMM	500	1000	NGEN	NANOGEN INC	200	500
LOILY	LUNDIN OIL GDS	500	1000	NANX	NANOPHASE TECHS CP	500	1000
LYNX	LYNX THERAPEUTICS	500	1000	NARA	NARA BANK N A	500	1000
M				NBAK	NATL BNCP ALASKA	200	500
MBLF	M B L A FINL CORP	500	200	NHHC	NATL HOME HLTH CAR	1000	500
MFBC	M F B CORP	500	200	NIRTS	NATL INC RLTY TR	500	1000
MKFCF	MACKENZIE FIN CP	200	500	NCBEP	NCBE CAP TR I PFD	200	500
MTMS	MADE2MANAGE SYS	500	1000	NERAY	NERA AS ADR	1000	500
MGNB	MAHONING NATL BCP	500	1000	NECSY	NETCOM SYSTEMS ADR	500	1000
MBNK	MAIN STREET BNCP	200	500	NHTB	NEW HAMPSHIRE THRI	1000	500
MANH	MANHATTAN ASSOC	200	500	NHCH	NEWMARK HOMES CORP	200	500
MARN	MARION CAP HLDGS I	500	1000	NSBC	NEWSOUTH BANCORP I	1000	500
MARSB	MARSH SUPERMARKETS B	1000	500	NBCP	NIAGARA BANCORP	200	500
MSDX	MASON-DIXON BCSHS	1000	500	NOLD	NOLAND CO	500	200
MSDXO	MASON-DIXON TR II	200	500	NRTI	NOONEY REALTY TRUS	200	500
MOIL	MAYNARD OIL CO	1000	500	NASI	NORTH AMERN SCI	500	1000
MCCL	MCCLAIN INDUSTRIES	1000	500	NBSI	NORTH BSCHS INC	1000	500
MBIA	MERCHANTS BNCP IL	1000	500	NOVB	NORTH VALLEY BNCP	200	500
MRCY	MERCURY COMP SYS	500	1000	NRIM	NORTHRIM BANK	500	1000
MIGI	MERIDIAN INS GP IN	500	1000	NSCF	NORTHSTAR COMPUTER	500	1000
MRET	MERIT HOLDING CP	1000	500	NWFL	NORWOOD FIN CORP	200	500
METNF	METRONET NON-VTG B	500	1000	NOVI	NOVITRON INTL INC	1000	500
				NUTR	NUTRACEUTICAL INTL	200	500
				NYMXF	NYMOX PHARM CORP	500	1000

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
O				R			
OCENY	OCE ADR	200	500	RDGE	READING ENT INC	500	1000
ODFL	OLD DOMINION FREIG	1000	500	RLCO	REALCO INC	500	200
OWWI	OMEGA WORLDWIDE	200	500	RNWK	REALNETWORKS INC	500	1000
OMNI	OMNI ENERGY SVCS	500	1000	REFN	REGENCY BANCORP	200	500
OXGNW	OXIGENE INC WTS	500	1000	RBCF	REPUBLIC BKG CP FL	500	1000
OYOG	OYO GEOPSPACE CP	500	1000	RESR	RESEARCH INC	500	1000
P				RTROW	RETROSPETTIVA WTS	1000	500
PVCC	P V C CONTAINER CP	500	1000	RCBK	RICHMOND COUNTY	200	500
PBSF	PACIFIC BANK NATL	500	1000	RIDG	RIDGEVIEW INC	500	1000
PWHS	PAPER WAREHOUSE	500	1000	RTST	RIGHT START INC	1000	500
PBOC	PBOC HOLDINGS INC	200	500	RGCO	ROANOKE GAS CO	1000	500
PCCC	PC CONNECTION INC	200	500	RCCK	ROCK FINANCIAL CP	200	500
PDSFW	PDS FINANCIAL WTS	200	500	ROCLF	ROYAL OLYMPIC CRU	500	1000
PMFRA	PENNSYLVANIA MAN	500	1000	S			
PSFC	PEOPLES-SIDNEY FIN	500	1000	SJNB	S J N B FINANCIAL	500	1000
PFDC	PEOPLES BANCORP	200	500	STVI	S T V GROUP INC	500	1000
PEBK	PEOPLES BANK	200	500	SNDS	SANDS REGENT THE	1000	500
PPLS	PEOPLES BK CP OF I	200	500	SABB	SANTA BARBARA BCP	500	1000
PBKBP	PEOPLES CAP TR PFD	500	200	SCNYA	SAUCONY INC	1000	500
SBAN	PERPETUAL BK FSB	500	1000	OKSBO	SBI CAP TR PFD	500	200
PETR	PETROCORP INC	1000	500	SCHR	SCHERER HEALTHCARE	500	1000
PHLYL	PHIL CONS GR PRIDE	200	500	STIZ	SCIENTIFIC TECH IN	1000	500
PHLYZ	PHIL CONS IN PRIDE	200	500	SENEB	SENECA FOODS CP B	500	200
PGLD	PHOENIX GOLD INTL	500	1000	SEVN	SEVENSON ENVIRONME	500	1000
PTRN	PHOTRAN CORP	200	500	SFXE	SFX ENT CL A	200	500
PHFC	PITTSBURGH HOME FI	1000	500	SHPGY	SHIRE PHARM	200	500
PFSL	POCAHONTAS BNCP	500	1000	SHOE	SHOE PAVILION INC	200	500
BPOPP	POPULAR INC PFD A	1000	500	SHBK	SHORE BANK	500	200
POWI	POWER INTEGRATN	500	1000	SGNS	SIGNATURE INNS INC	1000	500
PRFN	PRESTIGE FIN CP	1000	500	SBGIP	SINCLAIR BRD PFD SE	1000	500
PTVL	PREVIEW TRAVEL INC	500	1000	SKAN	SKANEATELES BANCP	1000	500
PNBC	PRINCETON NATL BNC	500	1000	SMEDF	SMED INTL INC	500	1000
PVII	PRINCETON VIDEO	500	1000	SOMR	SOMERSET GP INC TH	500	200
PRTW	PRINTWARE INC	1000	500	SONO	SONOSIGHT INC	200	500
PGNX	PROGENICS PHARM	500	1000	SORC	SOURCE INFO S2S3	500	1000
PGENW	PROGENITOR INC WTS	500	1000	UMPQ	SOUTH UMPQUA BANK	200	500
POVT	PROVANT INC	200	500	SFFB	SOUTHERN FIN BNCP	1000	500
PRHC	PROVINCE HEALTHCR	500	1000	SMBC	SOUTHERN MO BNCP I	1000	500
PRTG	PRT GROUP	500	1000	SBSI	SOUTHSIDE BANCSHS	200	500
Q				SBSIP	SOUTHSIDE CAP TR	200	500
QCFB	Q C F BANCORP INC	200	500	SPLI	SPECTRA-PHYSICS	500	1000
QGLY	QUIGLEY CORP THE	500	1000	SDCOZ	SPIROS DEV CP UTS	500	1000
				SGDE	SPORTSMEN'S GUIDE	500	1000
				STMT	STARMET CORP	500	1000
				SFSW	STATE FINL SVCS CL	1000	500
				SLFI	STERLING FINL CP	500	1000
				WINS	STEVEN MYERS ASSOC	500	1000
				SCBHF	STIRLING COOKE BRN	500	1000

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
SXNBP	SUCCESS CAP TR I	200	500	CLEC	US L E C CP	200	500
SUBK	SUFFOLK BNCP	500	1000	USWB	US WEB CORPORATION	500	1000
SBGA	SUMMIT BANK CORP	1000	500	UBANP	USBANCORP CAP TR	200	500
SRDX	SURMODICS INC	200	500				
SMPX	SYMPHONIX DEVICES	500	1000				
SYBBF	SYNSORB BIOTCH INC	200	500	V			
				VIBC	V I B CORP	500	1000
				VSEC	V S E CP	200	500
T				VALN	VALLEN CP	500	1000
TAVA	T A V A TECH	500	1000	VALU	VALUE LINE INC	500	1000
TPNZ	TAPPAN ZEE FIN	1000	500	VTRAO	VBC CAPITAL I CAP	500	200
TGNT	TELIGENT INC	500	1000	VENT	VENTURIAN CP	500	1000
TSCP	TELSCAPE INTL INC	500	1000	VRIO	VERIO INC	200	500
THRNY	THORN PLC ADR	500	1000	VRSN	VERISIGN INC	500	1000
TIER	TIER TECHS CL B	500	1000	VIAX	VIAGRAFIX CORP	200	500
TSBK	TIMBERLAND BANCORP	500	1000	VBNJ	VISTA BANCORP INC	1000	500
TRNI	TRANS INDS INC	1000	500	VNWK	VISUAL NETWORKS	500	1000
TRGNY	TRANSGENE SA ADR	200	500	VTNAF	VITRAN CP INC	500	200
TRED	TREADCO INC	1000	500	VYSI	VYSIS INC	500	1000
TREVV	TREEV INC WTS	500	200				
TSSS	TRIPLE S PLASTICS	500	1000	W			
TFCO	TUFCO TECHS INC	1000	500	WSBI	WARWICK COMMUN	500	1000
				WSCI	WASHINGTON SCI INDS	500	1000
U				WASH	WASHINGTON TRUST	500	1000
UFPT	U F P TECH INC	500	1000	WBSTP	WEBSTER PFD CAP B	1000	500
USHG	U S HOME & GRDN IN	500	1000	WEFC	WELLS FINANCIAL CP	500	1000
USNC	U S N COMM INC	500	1000	WEYS	WEYCO GP INC	200	500
USVI	U S VISION INC	500	1000	WMSI	WILLIAMS INDS INC	200	500
UCBC	UNION COMM BANCORP	500	1000	WREI	WILSHIRE R E INV	200	500
UBCD	UNIONBANCORP INC	500	1000	WMFG	WMF GROUP LTD	500	1000
UTCIW	UNIROYAL TECH CP WTS	200	500	WYNT	WYANT CORP	1000	500
UIRT	UNITED INVST RLTY	200	500				
UPFC	UNITED PANAM FIN	200	500	Y			
URSI	UNITED ROAD SVCS	200	500	YDNT	YOUNG INNOVATIONS	500	1000
UTCC	URSUS TELECOM CP	200	500				

NASD Notice to Members 98-77

Executive Representatives
Must Maintain Internet
Electronic Mail Account By
January 1, 1999;
Complimentary Hard Copy
Distribution Of Key
Publications To End
January 1, 1999

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The National Association of Securities Dealers, Inc. (NASD[®]) By-Laws were recently amended to require members' Executive Representatives to maintain electronic mail accounts for the purpose of updating firm contact information electronically by **no later than January 1, 1999**.

Once established, member Internet access and e-mail will open up many options for timely communications with members and associated cost savings. It also will assist members with timely internal distribution of NASD information, notices, and publications. Thus, effective January 1, 1999, the primary distribution method for *NASD Notices to Members* and *Regulatory & Compliance Alert* will be via the NASD Regulation, Inc. (NASD RegulationSM) Web Site (www.nasdr.com). Members that elect not to use the Web Site versions will have the option of subscribing to hard-copy versions at cost.

Questions regarding this *Notice* may be directed to Jay Cummings, Director, Internet and Investor Education, NASD Regulation, at (301) 590-6070.

Background And Discussion Amendment To Article IIV, Section 3

NASD Regulation established a Web Site that has been operating since August 1996. A significant effort is being made to provide meaningful content for the benefit of member firms and the investing public. Development of Internet technology presents an alternative method to distribute information of interest to industry participants, as well as to collect and update member firm information.

On August 5, 1997, the Membership Committee recommended the adoption of an amendment to the NASD

By-Laws to require each Executive Representative, beginning no later than January 1, 1999, to maintain an Internet e-mail account for communication with the NASD and to update firm contact information via the NASD Regulation Web Site (www.nasdr.com).

Pursuant to *Special NASD Notice to Members 97-97*, the NASD membership approved an amendment to the NASD By-Laws to require members to update information electronically and maintain e-mail accounts beginning no later than January 1, 1999. This amendment was subsequently approved by the NASD Board of Governors (Board) and the Securities and Exchange Commission (SEC).

The NASD must have current and accurate records of the names of members' Executive Representatives and other individuals who hold positions of significant responsibility within member firms. This information is used by the Corporate Secretary for member balloting, by NASD Regulation's Member Regulation Department for compliance purposes, and by Corporate Communications in identifying key individuals for use in targeted mailings. The current method for acquiring this information is through the filing of an NASD form entitled "NASD Member Firm Contact Questionnaire" (Questionnaire).

The recent By-Law change will improve the data collection process by requiring each Executive Representative to access his/her firm's Questionnaire via the NASD Regulation Web Site and update it on a periodic basis. (Each Executive Representative will be able to access only his/her own firm's Questionnaire; the information will be password-protected to prevent any public access.) The information then

will be linked to the internal NASD Regulation systems that require this data. Further, the By-Law change requires each member to maintain an Internet e-mail address on behalf of its Executive Representative. This e-mail address will be used proactively to send messages reminding the Executive Representative to review and update his/her firm's contact information and to provide notification of important publications and information that have been added to the NASD Regulation Web Site. Firms that do not wish to acquire e-mail capability solely for their purposes may choose to designate an address in care of a vendor that would be responsible for forwarding information delivered electronically.

As part of the process to implement password protection for each Executive Representative, and in order to issue user identifications and passwords, NASD Regulation will send a simple information access contract to each firm's Executive Representative in November. Each Executive Representative will be asked to sign the contract on behalf of his/her firm and to verify his/her status as the firm's Executive Representative and his/her Internet e-mail address. Each firm will have the option to designate a second individual who would be able to access the Questionnaire on behalf of the Executive Representative.

Once the information access contract is signed and returned, NASD Regulation will issue a password and user identification to the Executive

Representative and his/her designee, as appropriate. Receipt of a password and user identification will enable the Executive Representative and his/her designee to access the NASD Regulation Web Site, to update the firm's Questionnaire, and to receive e-mail from NASD Regulation concerning new information or publications that have been posted to its Web Site.

Complimentary Hard Copy Distribution Of Key Publications To End

Effective January 1, 1999, complimentary distribution of hard-copy *NASD Notices to Members* and *Regulatory & Compliance Alert* will be discontinued. The January 1, 1999, implementation date was selected to coincide with the requirement that each Executive Representative, beginning not later than January 1, 1999, maintain an Internet e-mail account for communication with the NASD and to update firm contact information via the NASD Regulation Web Site. NASD Regulation believes that it is sensible to link the implementation dates of these two proposals so that members that currently do not have an e-mail account and Internet access can arrange to obtain them at the same time and have time to do so.

In *NASD Notice to Members 97-92*, NASD Regulation requested member comment on the proposal to discontinue complimentary hard-copy distribution of *Notices to Members* and *Regulatory & Compliance Alert*. The chief concern expressed by commenters was the inconvenience

of having to check the NASD Regulation Web Site periodically to determine if new information had been posted. In response to this concern, the Board and the NASD Regulation Board of Directors approved the discontinuation of the complimentary hard-copy distribution of *Notices to Members* and *Regulatory & Compliance Alert* with the understanding that NASD Regulation will proactively alert Executive Representatives via their e-mail addresses of the posting of new *Notices to Members* and *Regulatory & Compliance Alerts* to the NASD Regulation Web Site.

Members that elect not to use the Web Site as the source for *Notices to Members* and *Regulatory & Compliance Alert* will have the option of subscribing to hard-copy versions. Each Executive Representative will be eligible for one subscription to *Notices to Members* at cost, *i.e.*, \$15 per year. Each branch office will be eligible for one subscription to *Regulatory & Compliance Alert* at cost, also \$15 per year. Additional subscriptions will be available at the current charge of \$225 per year for each additional *Notices to Members* subscription and \$80 per year for each additional subscription to *Regulatory & Compliance Alert*.

Subscriptions may be placed through NASD MediaSourceSM at (301) 590-6142.

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NASD Notice to Members 98-78

NASD Clarifies Operation Of The Limit Order Protection Rule During Unusual Market Conditions

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The National Association of Securities Dealers, Inc. (NASD[®] or Association) is issuing this *Notice* to clarify the application of the Association's Limit Order Protection Rule (Conduct Rule IM-2110-2) in instances where the market for a given security is experiencing "abnormal" market conditions. Specifically, consistent with pronouncements by the Securities and Exchange Commission (SEC) concerning the obligations of Market Makers to display customer limit orders during unusual market conditions, the NASD is modifying its interpretation of the Limit Order Protection Rule that was previously set forth in *Notice to Members 95-67*, to provide that, under appropriate circumstances, limit orders need not be filled within one minute if activated during unusual market conditions and if all reasonable steps are taken to execute the transaction as soon as possible following activation. In such instances, which often occur at the opening or upon the commencement of trading following a trading halt or an initial public offering (IPO), members are required to execute customer limit orders as soon as possible under the circumstances.

Questions concerning this *Notice* may be directed to the Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8294, or the Market Regulation Department Legal Section, at (301) 590-6410.

Discussion

The Limit Order Protection Interpretation, IM-2110-2, provides that:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or the customer of another member firm) in a Nasdaq security and that continues to trade the subject

security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110[.]

In *Notice to Members 95-67*, the Association provided guidance as to the obligation of member firms that execute a transaction at a price that would satisfy a customer's limit order (*i.e.*, at a price equal to or better than that of the customer limit order). Specifically, in Question 5, the Association stated the following:

Q5: Once a member is obligated to execute a limit order, how quickly must it execute the limit order?

A: If a member trades through a limit order that it has accepted, the Interpretation provides that it must contemporaneously execute such limit order. To meet this obligation, a member must execute the limit order as quickly as possible. Absent reasonable justification that is adequately documented by the member firm, a limit order must at least be executed within a general time parameter of one minute after it has been activated.

Subsequent to the issuance of this one-minute requirement to fill activated limit orders, the SEC adopted its Order Handling Rules in August 1996. Specifically, among other things, the SEC amended the Firm Quote Rule (SEC Rule 11Ac1-1) and adopted a new rule governing the public display of customer limit orders, the Display Rule (SEC Rule 11Ac1-4). The Display Rule requires Market Makers to display the full price and size of qualifying customer

limit orders in their quotes, subject to certain enumerated exceptions. Once a customer limit order is obligated to be publicly displayed in accordance with the Display Rule, the Display Rule requires that such customer limit order be displayed "immediately," unless a specific exception to the rule applies. In the release accompanying the adoption of the Order Handling Rules, the SEC gave the following guidance as to what it meant by "immediately display":

Assuming that a specialist or OTC market maker does not rely on one of the exceptions to the Display Rule, . . . such specialist or OTC market maker must display the order as soon as practicable after receipt which, under normal market conditions, would require display no later than 30 seconds after receipt.

Subsequent to the adoption of the Order Handling Rules, the SEC's Division of Market Regulation (the Division) clarified in two letters to the NASD, dated November 22, 1996, and January 3, 1997, what the SEC meant by "30 seconds after receipt" and "normal market conditions." In the November 22, 1996 letter, the Division stated that the "30 second time period [for the display of a customer limit order] begins when the order is received by the specialist or trader that will display the order (or the firm's automated display system)." As for when market conditions are not "normal," such that OTC Market Makers would not be required to display limit orders within

30 seconds of receipt, the Division also stated in the November 22 letter that "OTC market openings should not currently be viewed as 'normal market conditions' for purposes of the Limit Order Display Rule." In such cases, during OTC market openings, the Division stated that "limit orders held at the opening must be displayed as soon as practicable under the circumstances."

In its January 3, 1997 letter to the NASD, the Division stated that "normal market conditions" do not exist for the purposes of strict compliance with the Display Rule's "30 seconds after receipt" requirement in an additional two situations: reopening of trading after a trading halt; and the commencement of trading in an IPO. In this letter, the Division also gave guidance on how a Market Maker is to determine when market conditions have returned to "normal," such that customer limit orders are required to be publicly displayed within 30 seconds: "The Division believes that market makers must make an independent assessment, based on the trading conditions of the stock, as to when trading and quoting in the stock has returned to normal market conditions. This time frame could be one minute for some stocks and longer for others; moreover, the time frame for a stock to return to normal market conditions could vary from day to day."

In light of the Division's statements regarding the application of the Display Rule in the circumstance where there are not normal market

conditions, the NASD has likewise determined to apply this same rationale to the application of the one-minute reasonableness parameter in the context of obligations under the Limit Order Protection Interpretation. Accordingly, to the extent that unusual market conditions exist for a particular Nasdaq[®] security (*i.e.*, "not normal") and a member executes a transaction that activates a limit order during this time period, such member would not be presumptively deemed in violation of the Limit Order Protection Rule if it failed to execute the limit order within a one-minute period, provided the member executed the order as soon as possible under the circumstances. In this connection, as fully consistent with the SEC's interpretation of the Display Rule, "normal market conditions" potentially do not include OTC market openings for specific securities, the resumption of trading after a trading halt, and the commencement of trading after an IPO. In every case where normal market conditions do not exist, Market Makers must make an independent assessment, based on the trading conditions of the specific security, as to when trading and quoting in the stock has returned to normal market conditions. This time frame could be one minute for some stocks and longer for others; moreover, the time frame for a stock to return to normal market conditions could vary from day to day.

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NASD Notice to Members 98-79

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of July 23, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of July 23, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
ACCC.GA	Advanced Accessory Corp	9.750	10/01/07
ACF.GB	Amercredit Corp	9.250	02/01/04
ACHD.GA	Amscan Holdings Inc	9.875	12/15/07
ACHT.GA	Amer Architectural Prods Corp	11.750	12/01/07
ADLA.GK	Adelphia Communications Corp	8.375	02/01/08
AEPI.GB	AEP Industries Inc.	9.875	11/15/07
AGLS.GB	Anchor Glass Container Corp	9.875	03/15/08
AGLS.GC	Anchor Glass Container Corp	11.250	04/01/05
ALYM.GA	Amer Lawyer Media Hldgs Inc	12.250	12/15/08
ALYW.GA	Amer Lawyer Media Inc	9.750	12/15/07
AMAA.GA	AMSC Acquisition Co Inc	10.250	04/01/08
AMI.GC	Acme Metals Inc	10.000	12/15/07
AOR.GC	Aurora Foods Inc	8.750	07/01/08
BEC.GD	Beckman Instruments Inc	7.100	03/04/03
BEC.GE	Beckman Instruments Inc	7.450	03/04/08
BKEI.GB	Burke Industries Inc	9.687	08/15/07
BKI.GA	Buckeye Technologies Inc	8.000	10/15/10
BVCC.GA	Bay View Capital Corp	9.125	08/15/07
BXG.GA	Bluegreen Corp	10.500	04/01/08
CBS.GA	CBS Corp	7.150	05/20/05
CDIG.GH	CSC Holdings Inc	7.250	07/15/08
CDIG.GI	CSC Holdings Inc	7.625	07/15/18
CFS.GA	Comforce Corp	15.000	12/01/09
CGXE.GA	Cogentrix Energy Inc	8.100	03/15/04
COF.GA	Capital One Financial Corp	7.125	08/01/08
COSE.GB	Costilla Energy Inc	10.250	10/01/06
CREQ.GA	Crescent Real Estate Equities Ltd	6.625	09/15/02
CREQ.GB	Crescent Real Estate Equities Ltd	7.125	09/15/07
CVXP.GM	Cleveland Electric Illum Co	7.880	11/01/17
CWAL.GA	Commonwealth Aluminum Corp	10.750	10/01/06
DAYI.GB	Day Intl Group Inc	9.500	03/15/08
DKCL.GA	Doskocil Mfg Co Inc	10.125	09/15/07
DSIN.GA	Desa International Inc	9.875	12/15/07
EGFM.GA	Eagle Family Foods Inc	8.750	01/23/98
EPHO.GB	Econophone Inc	11.000	02/15/08
EPIH.GC	Eagle-Picher Industries Inc	9.000	11/29/99
ESA.GA	Extended Stay Amer Inc	9.150	03/15/08
FCLT.GA	Facilicom Intl Inc	10.500	01/15/08
FERP.GA	Ferrellgas Partners L.P.	9.375	06/15/06
FJ.GA	Fort James Corp	9.000	02/01/06
FM.GA	Foodmaker Inc	8.375	04/15/08
FMNI.GA	FM 1993A Corp	9.750	11/01/03
FOMX.GE	Foamex LP/Foamexcap Corp	13.500	08/15/05
FRAG.GA	French Fragrance Inc	10.375	05/15/07
FWTN.GA	FWT Inc	9.875	11/15/07
FXFW.GB	Fox Family Worldwide Inc	10.250	11/01/07
GBTV.GC	Granite Broadcasting Corp	8.875	05/15/08
GCR.GF	Gaylord Container Corp	9.375	06/15/07
GCR.GG	Gaylord Container Corp	9.875	02/15/08

Symbol	Name	Coupon	Maturity
GOTH.GB	Gothic Energy Corp	14.125	05/01/06
HMHP.GC	HMH Properties Inc	7.875	08/01/05
HMHP.GD	HMH Properties Inc	7.875	08/01/08
HVCP.GA	Haven Capital Trust I	10.46	02/01/27
ICFC.GA	Icon Fitness Corp	14.000	11/15/06
ICOG.GA	ICO Global Communication Hldgs	15.00	08/01/05
IGL.GA	IMC Global Inc	9.450	12/12/11
IGRP.GC	ICG Holding Inc	11.625	03/15/07
IKN.GA	Ikon Office Solutions Inc	7.300	11/01/27
ITCD.GB	ITC Delta Com Inc	8.875	03/01/08
KES.GA	Keystone Consolidated Ind Inc	9.625	08/01/07
KMCP.GA	Kmart Corp	9.78	01/05/20
KMCP.GB	Kmart Corp	9.35	01/02/20
KMCP.GC	Kmart Corp	8.99	07/05/10
KMFD.GA	Kmart Funding Corp	9.44	07/01/18
KMFD.GB	Kmart Funding Corp	8.80	07/01/10
KMFD.GC	Kmart Funding Corp	7.56	01/01/99
LAAC.GA	La Petite Academy Inc	10.00	05/15/08
LBPB.GA	Liberty Group Pub Inc	11.625	02/01/09
LVLT.GA	Level 3 Communications Inc	9.125	05/01/08
MCNC.GA	MCMS Inc	9.750	03/01/08
MPTR.GA	ML Cap Tr I	9.875	03/01/27
NAFC.GA	Nash Finch Co	8.500	05/01/08
NOPT.GA	Northeast Optic Network Inc	12.75	08/15/08
NUMA.GA	Numatics Inc	9.625	04/01/08
NXTL.GG	NexTel Communication Inc	11.500	09/01/03
OLYM.GC	Olympic Financial Ltd	10.125	03/15/01
PENN.GA	Penn National Gaming Inc	10.625	12/15/04
PNM.GH	Public Service Co New Mex	7.50	08/01/18
PNM.GI	Public Service Co New Mex	7.1	08/01/05
PRLU.GA	Price Communications Cellular Hldg	11.25	08/15/08
PUCR.GA	Production Resources Group LLC	11.500	01/15/08
SFHP.GA	SF Holdings Group Inc	12.750	03/15/08
TDHC.GA	Thermadyne Holdings Corp	12.500	06/01/98
TMWR.GA	Time Warner Telecom LLC/Inc	9.750	07/15/08
TWA.GC	Trans World Airlines Inc	11.375	04/15/03
WDMR.GA	Windmer-Durable Hldgs Inc	10.000	07/31/08

As of July 23, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
ACNI.GD	American Medical Intl Inc	13.500	08/15/01
AMI.GB	American Medical Intl Inc	11.375	02/01/95
AXAI.GA	Axia Inc	11.000	03/15/01
BYX.GA	Bayou Steel Corp LA Place	10.250	03/01/01
CLNH.GA	CLN Holdings Inc	0.00	05/15/01
DOSK.GA	Doskocit Cos Inc	9.750	07/15/00
ENGL.GA	Engle Homes Inc	11.750	12/15/00
FITZ.GA	Fitzgerald Gaming Corp New	13.000	12/31/02
FLM.GC	Fleming Cos Inc	9.500	04/01/16

Symbol	Name	Coupon	Maturity
FOMX.GC	Foamex L.P./Cap Corp	9.500	06/01/00
GOTH.GA	Gothic Energy Corp	12.250	09/01/04
IKN.GA	Ikon Office Solutions Inc	7.300	11/01/27
MMG.GB	Metromedia Intl Group Inc	9.5	08/01/98
NXTL.GG	Nextel Communications Inc	11.500	09/01/03
PKBR.GA	Park Broadcasting Inc	11.750	05/15/04
RYDR.GA	Ryder Trust Inc	10.000	12/01/06
STVN.GA	Stevens J P & Co Inc	9.000	03/01/17
U.GB	U.S. Air Inc	10.000	07/01/03
UTCI.GA	Uniroyal Tech Corp	11.750	06/01/03

As of July 23, 1998, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
ACNI.GD	AMI.GD	American Medical Intl Inc	13.500	08/15/01
ACNI.GE	AMI.GE	American Medical Intl Inc	11.000	10/15/00
AMI.GA	ACME.GA	Acme Metals Inc	12.500	08/01/02
AMI.GB	ACME.GB	Acme Metals Inc	13.500	08/01/04
AOR.GA	AURO.GA	Aurora Foods Inc	9.875	02/15/07
AOR.GB	AURO.GB	Aurora Foods Inc	9.875	02/15/07
BUCL.GB	BKI.GB	Buckeye Cellulose Inc	8.500	12/15/05
BUCL.GC	BKI.GC	Buckeye Cellulose Inc	9.250	09/15/08
CYYS.GA	CTYS.GA	Cityscape Financial Corp	12.750	06/01/04
MPN.GA	PGN.GA	Mariner Post-Acute Network Inc	10.50	11/01/07

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASDR Market Regulation, at (301) 590-6451.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq[®] Market Operations, at (203) 385-6310.

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Disciplinary Actions

Disciplinary Actions Reported For September

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, September 21, 1998. The information relating to matters contained in this *Notice* is current as of the end of August 24.

Firm Expelled

Stratton Oakmont, Inc. (Lake Success, New York) submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it arranged sales of large quantities of securities in initial public offerings (IPOs) with pre-arrangement that the purchasers of the securities would sell or “flip” the securities back to the firm at a predetermined price in the immediate aftermarket. The findings also stated that the firm bid for or purchased securities for its own account prior to its completion of a public distribution and pre-sold securities in the aftermarket prior to the close of certain offerings. Furthermore, the NASD determined that the firm required customers to buy securities in the aftermarket as a condition of obtaining securities in IPOs, manipulated the price of a security, and charged excessive markups. Moreover, the firm violated the NASD’s Free-Riding and Withholding Interpretation and failed to supervise its trading activities.

Firm Fined, Individual Sanctioned

Investors Associates, Inc. (Hackensack, New Jersey) and **Herman Epstein (Registered Principal, Franklin Lakes, New Jersey)** submitted an Offer of Settlement pursuant to which they were censured and fined \$20,000, jointly and severally, and Epstein was suspended from association with any NASD member as a general securities principal for six months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Epstein, failed to file customer complaint statistics and failed to establish written procedures to supervise the activities of its associated persons reasonably designed to achieve compliance with the NASD reporting requirements.

Firms and Individuals Fined

Atlanta-One, Inc. n/k/a K. Michael & Company (Irvine, California), Kevin Michael McCarthy (Registered Principal, Irvine, California), and Thomas William Blodgett (Registered Principal, Irvine, California). The firm was fined \$25,000 and ordered to reimburse customers for commissions charged in excess of eight percent on a principal amount in excess of \$500 for restitutions totaling \$291,546.02. In addition, the firm was ordered to reimburse a customer for a commission in excess of 20 percent on a principal amount less than \$500. McCarthy was censured and fined \$10,000, and Blodgett was censured and fined \$10,000. The Los Angeles District Business Conduct Committee (DBCC) imposed the sanctions following a remand of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that the firm, acting through McCarthy and Blodgett, charged public customers excessive and

unfair commissions on transactions in foreign currency options.

Mischler Financial Group, Inc. (Corona Del Mar, California) and Walter Michael Mischler (Registered Principal, Huntington Beach, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$12,500, jointly and severally, with two other individuals. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Mischler, participated in a private placement contingency offering and failed to forward investor funds to a properly established bank escrow account. Instead, these funds were deposited into a bank account maintained by a non-bank agent and commingled with other funds entrusted to the agent until the contingency was met. The findings also stated that the firm, acting under the direction and control of Mischler, failed to have and maintain sufficient minimum net capital in contravention of the Securities and Exchange Commission (SEC) Rule 15c3-1.

Firms Fined

Bear, Stearns & Company, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$33,500, and required to pay restitution and interest totaling \$1,084 to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to Automated Confirmation Transaction Service (ACT) in violation of applicable securities laws and regulations regarding trade reporting and customer limit orders. Furthermore, the NASD determined that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to

achieve compliance with the applicable securities laws and regulations regarding trade reporting, best execution, the Limit Order Protection Interpretation, firm quote obligations, and the reporting of options positions to the NASD.

CFS Brokerage Corporation (Minnetonka, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$69,622. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted individuals to conduct a securities business and to act in a registered capacity when each individual's registration had lapsed for non-compliance with the Regulatory Element of the Continuing Education requirements.

Herzog, Heine, Geduld, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. The firm must also undertake to revise its written supervisory procedures relating to firm quote compliance. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders and thereby failed to honor its published quotation.

Johnson Rice & Company, L.L.C. (New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. The firm also consented to a compliance conference. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations,

and with NASD rules concerning front running. The findings also stated that the firm failed to enforce its written supervisory procedures concerning transactions for or by associated persons that required an associated person to obtain prior written approval of the manager before purchasing or selling any securities for his or her account.

Mayer & Schweitzer, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders and thereby failed to honor its published quotation.

M. H. Meyerson & Co., Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders and thereby failed to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations concerning the SEC's Firm Quote Rule and other related rules of the NASD.

Piper Jaffray, Inc. (Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders and thereby failed to honor its published quotation. The findings also stated

that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations concerning the SEC's Firm Quote Rule and other related rules.

Robertson, Stephens & Company (San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders and thereby failed to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations concerning the SEC's Firm Quote Rule and other related rules.

Individuals Barred or Suspended

Robert C. Abrahamson, Jr. (Registered Representative, Hicksville, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$42,775, suspended from association with any NASD member in any capacity for 80 business days, and required to pay \$46,646 in restitution to public customers. Without admitting or denying the allegations, Abrahamson consented to the described sanctions and to the entry of findings that he made material misrepresentations and omissions to public customers in connection with the purchase of stock and executed unauthorized transactions in a customer's account. The findings also stated that Abrahamson failed to execute a sell order or failed to execute it in a timely manner, made fraudulent and/or negligent price pro-

jections to customers, and made unsuitable recommendations to a public customer.

James A. Bahl (Registered Representative, Moline, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$12,646, barred from association with any NASD member in any capacity, and ordered to pay \$2,529.22 in restitution to customers. Without admitting or denying the allegations, Bahl consented to the described sanctions and to the entry of findings that he took cash payments for insurance from public customers and used the proceeds for some purpose other than for the benefit of the customers, without their knowledge or consent. Furthermore, the NASD found that Bahl then made the payments those customers intended be made with the cash payments from checks he received from other customers who had given him the checks to make insurance premium payments and to pay back a loan they had taken on one of their insurance policies. The NASD determined that Bahl took a total of \$2,529.22 from these customers' checks in this manner without their knowledge or consent.

Donald James Blumer (Registered Representative, Sioux Falls, South Dakota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$49,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Blumer consented to the described sanctions and to the entry of findings that he deposited a \$9,800 check from public customers into a bank account he controlled, and converted the funds to his own use and benefit without the knowledge or consent of the customers.

Scott David Bobrow (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Bobrow consented to the described sanctions and to the entry of findings that, in order to reach his sales quota, Bobrow altered the records of public customers, enrolled them in a financial planning service program, and changed their mailing addresses in order to conceal the charges to be assessed against their accounts, all without the customers' knowledge or authorization.

Bobrow's suspension commenced with the opening of business on August 12, 1998, and concludes at the close of business September 25, 1998.

Thomas Franklin Bridgman (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for eight months, and required to undertake a three-year period of enhanced supervision upon completion of the suspension. Without admitting or denying the allegations, Bridgman consented to the described sanctions and to the entry of findings that, in an effort to conceal a net short position he incurred in his member firm's proprietary account, he entered a fictitious buy order for treasury notes in his firm's computerized trading blotter. In an effort to conceal unrealized trading losses he incurred from the previous day's trading activities, he entered fictitious profitable trades on his firm's books and records to offset the losses.

Bridgman's suspension commenced with the opening of business on

September 1, 1997, and concluded at the close of business April 30, 1998, and is deemed served.

Lawrence Paul Bruno, Jr. (Registered Representative, Brooklyn, New York) was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$678,067 in commissions. The NAC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Bruno arranged to have an impostor take the Series 7 exam on his behalf.

Santino A. Carnemolla (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$51,400, barred from association with any NASD member in any capacity, and ordered to pay \$13,471.89 in restitution to customers. Without admitting or denying the allegations, Carnemolla consented to the described sanctions and to the entry of findings that he executed securities transactions in the accounts of public customers without the knowledge, consent, or authorization of the customers. The findings also stated that Carnemolla failed to respond to NASD requests for information.

Jeffrey Elmer Clark (Registered Representative, Mesa, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for 15 days, ordered to disgorge \$2,500 in commissions, and required to requalify by exam as a registered representative. Without admitting or denying the allegations, Clark consented to the described sanctions and to the entry of findings that he entered inaccurate informa-

tion concerning the financial circumstances of purchasers in a private placement offering thereby causing his member firm's records to be inaccurate. Moreover, the NASD determined that Clark negligently made certain representations regarding the merits and potential appreciation of the debt securities being offered that were inaccurate and misleading, omitted to disclose certain information that was material to the decision to invest in these securities, and did not provide a private placement memorandum to unaccredited investors in advance of their purchases. In addition, Clark effected the purchase of bonds in a customer account without the customer's prior authorization and consent.

Guy Weiland Courtney (Registered Principal, Barrington, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Courtney consented to the described sanctions and to the entry of findings that he failed to respond fully to NASD requests for information.

Charles G. Cowden (Registered Principal, Sanford, Florida) was censured, fined \$10,000, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by exam before acting in any capacity requiring registration. The sanctions were based on findings that Cowden participated in private securities transactions with investors without giving prior written notice to or receiving written approval from his member firm of his proposed participation in said transactions.

Daniel Frederick Cox (Registered Representative, Burlington, Iowa) submitted a Letter of Acceptance,

Waiver and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cox consented to the described sanctions and to the entry of findings that he received a blank check in the amount of \$2,000 from a public customer and blank money orders totaling \$2,000 from another customer intended for deposit into each of the customer's money market accounts. Instead, Cox cashed the checks and money orders, and converted the funds to his own use and benefit, without the customers' knowledge or consent.

Paul Joseph Digangi (Registered Representative, Cheshire, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Digangi consented to the described sanctions and to the entry of findings that he misappropriated to his own use and benefit a total of \$7,850 from a public customer in connection with a life insurance policy and a variable investment plan. In connection with the misappropriations, Digangi forged the signature of the customer on checks, a disbursement request, and fund withdrawal forms.

Jeffrey Lynn Elliott (Registered Representative, Jacksonville, Florida) was censured, fined \$7,500, suspended from association with any NASD member in any capacity for two years, and ordered to requalify before again associating with a member of the NASD. The sanctions were based on findings that Elliott obtained \$452.60 from a public customer intended as insurance policy premium payments and failed to process them through his office where they could have been tracked.

Instead, Elliott mishandled the funds and took no steps to ensure that they were applied as requested. The findings also stated that Elliott failed to respond to NASD requests for information in a timely manner.

James Patrick Felton, Jr. (Registered Representative, Random Lake, Wisconsin) was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on finding that Felton failed to respond to NASD requests for information.

Adam Craig Friedland (Registered Principal, Woodbury, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Friedland consented to the described sanctions and to the entry of findings that he induced a public customer to purchase a speculative security by extolling the merits and potential investment performance of the security without discussing the risks and predicting that the market price of the security would experience a substantial increase in value within a specific period of time without an adequate or reasonable basis in fact. Friedland also aggressively discouraged a customer's unsolicited sell order without a reasonable basis for doing so and without regard to the best interests of the customer, thereby causing the customer to incur additional monetary losses. In addition, the findings stated that Friedland predicted that the market price of a speculative security would experience a substantial price increase without having an adequate, accurate, or reasonable basis for such prediction.

Russell D. Goldner (Registered Representative, Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,633.16, suspended from association with any NASD member in any capacity for two weeks, and required to requalify as a general securities representative by taking the Series 7 exam. If Goldner fails to complete and pass the exam, he shall be suspended from acting in any capacity until such time as he does complete and pass the exam. Without admitting or denying the allegations, Goldner consented to the described sanctions and to the entry of findings that he induced a public customer to purchase securities by misrepresenting to the customer that he possessed insider information. The findings also stated that Goldner provided a public customer with sales materials marked "for internal use only" without obtaining prior approval to distribute the materials from his member firm.

Richard Timothy Greene (Registered Representative, Pittsboro, North Carolina) was censured, fined \$10,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following its call for review of an Atlanta DBCC decision. The sanctions were based on findings that Greene forged the signature of a public customer on annuity-related documents.

Kevin Joseph Guarino (Registered Representative, Garden City, New York) was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Guarino failed to respond to NASD requests to appear for an on-the-record interview.

Michael Andrew Harrington (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Harrington consented to the described sanctions and to the entry of findings that he failed to appear for testimony before the NASD.

Gary John Kircher (Registered Representative, Dallas, Texas) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Kircher consented to the described sanctions and to the entry of findings that he exercised discretion to effect transactions in the accounts of public customers without obtaining prior written authorization from the customers. The findings also stated that Kircher recommended and effected unsuitable option transactions for a customer and made false and misleading statements to customers in connection with index option transactions.

Duane Joseph Koerner (Registered Representative, Denver, Colorado) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,600, suspended from association with any NASD member in any capacity for 15 business days, and required to pay \$1,150 in restitution to a public customer. Without admitting or denying the allegations, Koerner consented to the described sanctions and to the entry of findings that he entered orders to effect securities transactions in the account of a public customer without the customer's prior authorization. The findings also stated that Koerner made false and misleading statements to a customer

that were related to the status of the customer's account.

Ernest O. Kraemer, Jr. (Registered Representative, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Kraemer consented to the described sanctions and to the entry of findings that he recommended and engaged in a strategy of trading options and the purchase of a commodities pool limited partnership in the joint accounts of public customers, when he did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their age, financial situation, investment objectives, and needs. The findings also stated that Kraemer provided inaccurate information regarding the investment experience of public customers on the new account documents and options agreements relating to their joint account held at his member firm.

Emmanuel Alexander Lagpacan (Registered Representative, Lafayette, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$350,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lagpacan consented to the described sanctions and to the entry of findings that he engaged in fraudulent acts, practices, or courses of business by which he solicited public customers to invest funds totaling \$254,310.79 in securities offered in a firm he held out to be his own advisory business. According to the findings, while representing to the customers that they were investing in mutual funds, annuities, government securities, and other low risk securi-

ties, Lagpacan actually used their funds to purchase real estate in the name of a corporation he controlled and to pay the corporation's expenses. The findings also stated that Lagpacan sold for \$40,000 to a public customer fictitious certificates of deposit purportedly issued by a firm and misappropriated the proceeds to other uses. Lagpacan also failed to respond to NASD requests for information.

Edward Bartlett Leach (Registered Representative, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Leach consented to the described sanctions and to the entry of findings that he recommended and effected the purchase and sale of stock options for the accounts of public customers without having a reasonable basis for believing that the recommendations were suitable for the customers based upon the facts known to him concerning the nature of the securities purchases for the customers' accounts, their investment objectives, financial situation and needs.

Robert Lee Lent (Registered Representative, Brownsville, Pennsylvania) was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lent failed to respond to NASD requests for information.

Anthony Littles (Registered Representative, Sanford, Florida) was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Littles failed to respond to NASD requests for information.

Michael Joseph Markowski (Registered Principal, Miami Beach, Florida) and **Joseph F. Riccio (Registered Representative, Palm Harbor, Florida)**. Markowski was censured, fined \$300,000, and barred from association with any NASD member in any capacity, and Riccio was censured, fined \$250,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Markowski and Riccio effected numerous transactions in an underwritten security and induced others to purchase and sell such securities at artificial prices by means of manipulative, deceptive, and other fraudulent devices and contrivances. In addition, the respondents published quoted prices for the security which they knew or should have known were not bona fide and were published for manipulative, deceptive, and fraudulent purposes. Furthermore, Markowski was responsible for not taking appropriate action to address his member firm's violations of certain terms in its restriction agreement with the NASD and failed to respond timely to NASD requests to appear for an on-the-record interview.

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

John M. Martello (Registered Representative, Staten Island, New York) was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Martello executed an unauthorized transaction in the account of a public customer. Martello then made threats and misrepresentations to the customer to force the customer to

agree to and to pay for a trade he did not want. Martello also failed to respond to NASD requests to appear for an on-the-record interview.

Frank Rocky Mazzei (Registered Representative, Oceanport, New Jersey) was censured, fined \$24,087, suspended from association with any NASD member in any capacity for two to six months, ordered to pay \$41,974.89, plus interest in restitution to a public customer, and required to requalify by exam before acting in any capacity that requires qualification. If Mazzei pays the full amount of restitution to the customer within the first two months of his suspension then his six-month suspension will be deemed to be satisfied. However, if he fails to make full restitution within this two-month period, then he must serve the complete six-month suspension. The sanctions were based on findings that Mazzei made unsuitable recommendations to a public customer without having a reasonable basis to believe that his recommendations were suitable for the customer in light of the customer's age, financial situation and needs, and stated investment objectives. Mazzei also churned the customer's account by engaging in excessive trading for the purpose of generating commissions and in disregard of the customer's interest. In addition, Mazzei made misrepresentations and omissions as to the nature and meaning of an activity letter sent to the customer by Mazzei's member firm, induced the customer to sign it, and never informed the customer of the losses sustained in his account.

Garey Neil Mitchell (Registered Representative, Sturgis, Kentucky) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$125,000, barred from association with any NASD member in any capacity, and required to pay full

restitution to the appropriate parties. Without admitting or denying the allegations, Mitchell consented to the described sanctions and to the entry of findings that he received checks totaling \$14,150 from public customers for the purpose of investing in securities, failed and neglected to purchase the securities, and instead, converted the funds to his own use and benefit by endorsing the checks and either depositing them into his personal bank account or cashing them, without the customers' knowledge or consent. The findings also stated that Mitchell settled a customer complaint away from his member firm by executing a promissory note in favor of a public customer to settle a dispute regarding monies converted from the customer. Furthermore, the NASD determined that Mitchell received \$3,000 cash from a public customer intended for investment purposes and failed to apply the funds as directed by such customer. Moreover, Mitchell received a \$13,000 check from a public customer for investment purposes, failed to execute the purchase of securities on the customer's behalf, and instead, misused the funds by depositing the funds into the account of other public customers. Mitchell also failed to fully and completely respond to NASD requests for information.

Steven J. Napoli (Registered Representative, Belle Mead, New Jersey) submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Napoli consented to the described sanctions and to the entry of findings that he received \$10,000 in cash from a public customer intended for paying premiums on an individual variable life insurance policy. The NASD determined that Napoli remitted \$7,300 of the funds, commingled the remaining

\$2,700 received from the customer with his personal funds, and converted the funds to his own use and benefit without the customer's knowledge, authorization, or consent. Napoli also failed to respond to NASD requests for information.

Gary Lee Niebling (Registered Representative, Florissant, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Niebling consented to the described sanctions and to the entry of findings that he effected withdrawals from annuities for a public customer totaling \$96,518.06 without the knowledge or consent of the customer and deposited all withdrawn funds into financial accounts under his control and converted the funds to his own use and benefit.

Barrington Lloyd Nugent (Registered Representative, Houston, Texas) was censured, fined \$60,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nugent made improper use of a customer's funds by receiving a \$4,310 check from a public customer intended for the purchase of stock. Contrary to representations he made to the customer, Nugent caused the customer to write a check made payable to him for the purchase, subsequently endorsed and cashed the check, and failed to purchase the stock. Nugent also failed to respond to NASD requests for information.

David M. Pessa (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to disgorge

\$919,459.10 in commissions. Without admitting or denying the allegations, Pesso consented to the described sanctions and to the entry of findings that he caused units of stock to be purchased in the account of a public customer without the customer's knowledge, authorization, or consent. The findings also stated that Pesso arranged to have an impostor take the Series 7 exam on his behalf and failed to respond to NASD requests for information and to appear for an on-the-record interview.

Thomas Petropoulos (Registered Principal, Forest Hills, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$58,650, suspended from association with any NASD member in any capacity for 12 months, and required to pay \$44,150 in restitution to customers. Without admitting or denying the allegations, Petropoulos consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the accounts of public customers and failed to follow a customer's order to sell securities. The findings also stated that Petropoulos made material misrepresentations and omitted to disclose material information concerning securities purchased by a customer on his recommendation. Petropoulos also predicted the future price of a security to customers without a basis for such prediction.

Francisco A. Pimentel (Registered Representative, Brentwood, New York) was censured, fined \$100,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pimentel made material misrepresentations and fraudulent price predictions in an attempt to induce a customer to purchase warrants. Pimentel also failed to provide truthful testimony to the NASD during an on-the-record interview.

Darryl W. Platt (Registered Principal, Biloxi, Mississippi) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$350,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to the appropriate parties. Without admitting or denying the allegations, Platt consented to the described sanctions and to the entry of findings that he received \$23,000 in funds from public customers for the purpose of investing in securities and mutual funds, failed to execute the purchases on the customers' behalf, and instead converted the funds to his own use and benefit without the customers' knowledge or consent. The findings also stated that Platt issued checks to himself in the total amount of \$18,700 out of the checking account of a public customer and cashed these checks by forging the customer's endorsement, thereby converting the \$18,700 to his own use and benefit without the customer's knowledge or consent. Furthermore, the NASD determined that Platt received \$9,989.99 in the form of a loan proceeds check made payable to a public customer, forged the customer's endorsement and converted the funds to his own use and benefit by placing the funds in an account that he controlled, without the customer's knowledge or consent.

Daniel Mark Porush (Registered Principal, Oyster Bay Cove, New York), Paul Joseph Greco (Registered Representative, Syosset, New York), Frank Riccui, Jr. (Registered Representative, Long Beach, New York), and Clifford Bryan Olshaker (Registered Representative, Brooklyn, New York) submitted Offers of Settlement pursuant to which Porush was censured, fined \$500,000, and barred from association with any NASD member in any capacity. Greco was

censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam prior to becoming associated with any member firm. Riccui was censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, and ordered to requalify by taking the Series 7 exam before again acting in that capacity, and Olshaker was censured, fined \$2,500, suspended from association with any NASD member in any capacity for two months, and required to requalify by exam prior to becoming associated with any member firm. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Porush failed to exercise his supervisory responsibilities by allowing registered representatives under his supervision to engage in widespread fraudulent sales practices and other egregious misconduct. The findings also stated that Greco and Riccui, engaged in baseless and improper price predictions as to speculative securities and engaged in unauthorized trading in customer accounts. Riccui made false promises to limit customers' losses, made a misrepresentation as to a specific issuer, and mislead customers as to the risk of investing in specific securities. Also, the NASD determined that Greco required at least one customer to purchase aftermarket stock in order to receive units in an IPO, and induced a customer to purchase a security by promising that it would make up for prior losses. The NASD also found that Olshaker created sales scripts for use by his firm's retail sales force that were not fair, complete, and balanced presentations because they included only positive information about the issuers and securities and failed to present any risk factors or negative information.

Glen McKinley Richards, III (Registered Representative, Delray Beach, Florida) was censured, fined \$1,500, and suspended from association with any NASD member in any capacity for five business days. The NAC affirmed the sanctions following its call for review of a San Francisco DBCC decision. The sanctions were based on findings that Richards failed to pay a \$5,500 arbitration award in a timely manner.

Bryant W. Robertson (Registered Representative, Littleton, Colorado) was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Robertson failed to respond to NASD requests to provide testimony in connection with an investigation regarding his conduct while he was associated with NASD member firms.

Jim Richard Rogers (Registered Principal, Gilbert, Arizona) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 60 days and ordered to requalify by exam in any capacity for which registration is required before functioning in such capacity in the future. Without admitting or denying the allegations, Rogers consented to the described sanctions and to the entry of findings that he recommended and effected transactions in accounts of public customers that were excessive in size and number. The findings also stated that Rogers made recommendations, on margin, to customers that were unsuitable because the security was unduly speculative, the accounts were unduly concentrated in a speculative security after the transactions and the use of margin exposed the customers to excessive risk of loss.

John Gregory Schaefer, Jr. (Registered Principal, Fountain Hills, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for three months, and ordered to disgorge \$2,400 in commissions. Without admitting or denying the allegations, Schaefer consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and outside business activities without giving prior written notification to his member firm.

Randall J. Schultz (Registered Principal, Lowell, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$475,000, barred from association with any NASD member in any capacity, and required to pay \$95,000 in restitution to a member firm. Without admitting or denying the allegations, Schultz consented to the described sanctions and to the entry of findings that he obtained a total of \$95,000 from public customers by making representations about the use of the funds, failed to follow said representations, and used the funds for a corporation that he owned or for some purposes other than for the benefit of the customers.

Richard Vandervoort Singer, II (Registered Principal, Roslyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Singer consented to the described sanctions and to the entry of findings that he executed the purchases of warrants and shares of preferred stock in the account of a public customer without the customer's knowledge, authorization, or consent. Singer also

failed to appear for an on-the-record interview.

Kimberly Ann Souza (Registered Representative, Malakoff, Texas) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Souza failed to respond to NASD requests for information.

Robert Louis Stevens (Registered Principal, Denver, Colorado) was censured, fined \$25,565, suspended from association with any NASD member in any capacity for 60 business days, and ordered to pay \$12,308 plus interest in restitution to a public customer. The NAC affirmed the sanction following its call for review of a Denver DBCC decision. The sanctions were based on findings that Stevens recommended to public customers the purchase of securities that were unsuitable for the customers. Stevens also prepared and submitted to his member firm a new account card for the trust account in which certain information concerning the customer was stated inaccurately causing his member firm's books and records to be inaccurate with respect to this account.

Brian Thomas Stone (Registered Representative, Bedford, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stone consented to the described sanctions and to the entry of findings that he made entries to the general ledger of his member firm totaling \$750 when he had no basis for making these entries in order to effect the transfer of these funds to a public customer's account. According to the findings, Stone effected these transfers to pay a personal debt he owed to the customer.

James P. Tarone (Registered Representative, Whitehall, Pennsylvania) was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tarone failed to respond to NASD requests for information.

Deanna Lee Williams (Registered Representative, North Wales, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that she impersonated another individual and took the Pennsylvania Life Insurance Agent Exam for her. The findings also stated that Williams failed to timely respond to NASD requests for information.

Bobby J. Withrow (Registered Representative, Livermore, Kentucky) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$300,000, barred from association with any NASD member in any capacity, and required to pay \$60,000 in restitution. Without admitting or denying the allegations, Withrow consented to the described sanctions and to the entry of findings that he received approximately \$60,000 from public customers for the purpose of investment in a business venture, failed and neglected to properly account for these funds, and converted at least a portion of the funds by endorsing checks and depositing them into his personal checking account, without the individuals' knowledge or consent. The findings also stated that Withrow made a recommendation to a public customer that the customer liquidate a variable annuity and invest the proceeds in a business venture without

having reasonable grounds for believing that the recommendations and transactions were suitable for the customer on the basis of her financial situation, investment objectives, and needs. Furthermore, Withrow engaged in outside business activities while employed by a member firm without prior written notice to his member firm.

Aaron Jones Yorke, IV (Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Yorke consented to the described sanctions and to the entry of findings that he terminated without justification an IPO after five days of after-market trading on the Nasdaq SmallCapSM Market.

Yorke's suspension commenced with the opening of business on August 10, 1998, and will conclude at the close of business October 8, 1998.

Individuals Fined

Donald James Jackson (Registered Principal, New York, New York) and **George Peter Lucaci (Registered Principal, Summit, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$101,775, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that a former member firm, acting through Jackson and Lucaci, solicited and sold interests in a contingency offering before the firm was registered with the NASD. The findings also stated that Jackson and Lucaci received investor funds in connection with the offering and failed to forward the funds to a properly established

bank escrow account during the contingency period, and held the funds on the firm's premises even after the contingency was met.

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of August 14, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Maximo Justo Guevara (Registered Representative, Philadelphia, Pennsylvania) was censured, fined \$33,992, barred from association with any NASD member in any capacity, and ordered to pay restitution of \$78,000, plus interest. The sanctions were based on findings that Guevara recommended the purchase of securities when he had no reasonable basis to believe that such recommendations were suitable for the customers based upon the information disclosed to him by the customers about their personal situations, financial circumstances, investment objectives, and other matters. Guevara also participated in private securities transactions without providing his member firm prompt written notice of his participation in such activities.

Guevara has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Robin Bruce McNabb (Registered Principal, San Jose, California) was censured, fined \$100,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings

that McNabb participated in private securities transactions without giving prior written notification to his member firm. McNabb also recommended to public customers the purchase of securities without having reasonable grounds for believing that such recommendations were suitable in light of the facts disclosed by the customers as to their other security holdings and as to their financial situation and needs.

McNabb has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Kevin Lee Otto (Registered Representative, Milwaukee, Wisconsin)

was censured, fined \$110,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Otto received \$22,000 from a public customer for investment purposes and, without the customer's knowledge or consent, invested the funds in corporations or business entities which Otto operated and/or controlled and deposited the funds in a bank account or bank accounts which he controlled or had an interest, and used the funds for some purpose other than for the benefit of the customer until he returned the customer's funds at a later date.

Otto has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

William Francis Palla (Registered Principal, Haverford, Pennsylvania)

was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that he failed to respond to NASD requests for information.

Palla has appealed this action to the NAC and the sanctions are not in

effect pending consideration of the appeal.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Michael William Adams (Registered Representative, Rowland Heights, California)

was named as a respondent in an NASD complaint alleging that he recommended purchase and sales transactions to public customers without having reasonable grounds for believing they were suitable for the customers and accounts in view of the size, frequency, and nature of the recommended transactions and the facts disclosed by the customers as to their financial situation, objectives, circumstances, and needs. The complaint also alleges that Adams induced these purchase and sales transactions by means of manipulative, deceptive, or other fraudulent devices or contrivances.

Percy Barr (Registered Representative, Greenwood, Mississippi)

was named as a respondent in an NASD complaint alleging that he received checks totaling \$49,700 from public customers for the purchase of, and as payment on, annuities and mutual funds. The complaint alleges that Barr failed to submit these funds to his member firm on the customers' behalf, and instead converted the funds to his own use and benefit, without the cus-

tomers' knowledge or consent. The complaint also alleges that Barr failed to respond and to timely respond to NASD requests for information.

J. Barrett Bryant (Registered Representative, Collierville, Tennessee)

was named as a respondent in an NASD complaint alleging that he received cash in the amount of \$1,000 from a public customer for the purpose of investing in the customer's variable universal life policy account, failed, and neglected to invest the funds in the account and, instead, retained possession of the funds until a later date, without the customer's knowledge or consent. The complaint also alleges that Bryant sent correspondence to the customer that was misleading in that it overstated the funds maintained by the customer in the variable universal life insurance account.

Eugene Joseph Cordano (Registered Principal, Brooklyn, New York)

was named as a respondent in an NASD complaint alleging that he executed transactions in the accounts of public customers without the customers' prior knowledge, authorization or consent. The complaint also alleges that Cordano provided false information to the NASD during the course of its investigation.

Robert Lee Davis, Jr. (Registered Representative, Sacramento, California)

was named as a respondent in an NASD complaint alleging that he received \$8,500 from a public customer to purchase real property for investment purposes, failed to place the funds in an escrow account, did not use the funds to purchase real property, and did not return the funds to the customer. The complaint alleges that Davis used the \$8,500 to pay his business and personal living expenses without the knowledge or consent of the customer. The complaint also alleges

that Davis failed to respond to NASD requests for information.

John Philip DiGiacomo (Registered Representative, New York, New York) was named as a respondent in an NASD complaint alleging that he created and submitted fictitious buy order tickets in an effort to conceal substantial net short positions in his trading account as a proprietary trader for his member firm.

Peter Lawrence Greenberg (Registered Representative, Princeton, New Jersey) was named as a respondent in an NASD complaint alleging that he executed securities transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Greenberg failed to respond to NASD requests for information.

Michael Wayne Hawkins (Registered Representative, Atlanta, Georgia) was named as a respondent in an NASD complaint alleging that he executed written guarantees that he would indemnify and reimburse a public customer for any losses sustained on investments, plus interest, should losses occur in order to induce the customer to make those purchases. The complaint also alleges that the aforementioned investments were made outside of the regular course or scope of Hawkins' employment with his member firm and that he failed to provide the firm with written notice of these private securities transactions or to obtain approval from the firm, while receiving compensation for his involvement in these private securities transactions.

Edward A. McGilly, Jr. (Registered Principal, Saint James, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted to disclose material

information concerning solicitations and recommendations to purchase securities made to public customers. The complaint alleges that McGilly projected the future price of securities to public customers without a reasonable basis for these representations. The complaint also alleges that McGilly effected transactions in the accounts of public customers, without the prior authorization and consent of the customers.

Timothy E. McKeon (Registered Principal, Holbrook, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations and failed to disclose material facts to public customers in order to induce them to purchase securities. The complaint alleges that McKeon made fraudulent price predictions to public customers in connection with his recommendations to purchase securities. The complaint also alleges that McKeon effected transactions in a public customer's account without the prior authorization of the customer. The complaint alleges that McKeon also failed to follow customer instructions to sell all the positions in the customer's account, send him the proceeds, and close the account.

Russell Wayne Millard (Registered Representative, Hemet, California) and **Gregory G. Livingston (Registered Representative, Laguna Hills, California)** were named as respondents in an NASD complaint alleging that they offered and sold investments in contingent offerings to public customers and failed to deposit and retain customer funds in separate escrow accounts until the minimum number of units had been sold. The complaint alleges that Millard and Livingston intentionally transmitted the funds directly to bank accounts and commingled with funds from other sources before the minimum number of units had been sold,

with such funds used to cover, among other things, operating costs of the affiliates and interest payments to investors of other private placements.

Jeffrey M. Schuler (Registered Principal, Delray Beach, Florida) was named as a respondent in an NASD complaint alleging that he made unsuitable recommendations to public customers, based on the facts the customers disclosed as to their tax status, investment objective, and financial situation and needs.

Luis Rafael Torres (Registered Representative, Miami, Florida) was named as a respondent in an NASD complaint alleging that he made false representations to public customers concerning investment opportunities that, in fact, did not exist. The complaint alleges that Torres received \$63,450 from the customers for investment purposes, failed to invest these funds, and converted the customers' funds to his own use. The complaint also alleges that Torres failed to respond to NASD requests for information.

Firms Expelled For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations Global Equities Group, Inc., New York, New York (August 5, 1998)

Greenway Capital Corp. n/k/a Cortlandt Capital Corp., New York, New York (August 5, 1998)

Landmark International Equities, Inc., Syosset, New York (July 31, 1998)

Meyers Pollock Robbins, Inc., New York, New York (August 5, 1998)

Murphey, Marseilles, Smith & Nammack, Inc., New York, New York (August 5, 1998)

Rickel & Associates, Inc., New York, New York (July 31, 1998)

Firms Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Award

Cortlandt Capital Corp. f/k/a Greenway Capital Corp., New York, New York (July 21, 1998)

Investors Associates, Inc., Hackensack, New Jersey (July 21, 1998)

Sterling Foster & Company, Inc., Uniondale, New York (July 21, 1998)

Taj Global Equities, Inc., Tampa, Florida (August 10, 1998)

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

Baginski, Brian E., Boca Raton, Florida (August 5, 1998)

Baquero, Jr., Jairo A., Staten Island, New York (August 5, 1998)

Basani, Vijay R., Nashua, New Hampshire (August 5, 1998)

Bruzzese, John, Manalapan, New Jersey (August 5, 1998)

Calkins, Jr., Timothy R., Tobyhanna, Pennsylvania (August 5, 1998)

Curry, Jr., Patrick E., Staten Island, New York (August 5, 1998)

Daniels, Paul A., Las Cruces, New Mexico (August 5, 1998)

DeCola, Frank, J., Brooklyn, New York (August 5, 1998)

Delliquanti, James L., Laguna Hills, California (August 5, 1998)

DeLuca, Glen E., Staten Island, New York (August 5, 1998)

DiMarco, Jr., Robert B., Boca Raton, Florida (August 5, 1998)

Dorsi, Gary J., Marlboro, New Jersey (August 5, 1998)

Epstein, Herman, Franklin Lakes, New Jersey (August 5, 1998)

Flanagan, Sean T., Bellaire, Ohio (August 5, 1998)

Fulcher, Richard J., Moseley, Virginia (August 5, 1998)

Gosney, Tarlton S., Ridgefield, Washington (August 5, 1998)

Green, James L., Oldsmar, Florida (August 5, 1998)

Hadaway, Stephen C., South Lake Tahoe, California (August 5, 1998)

Jacobs, Thomas, Dyer, Indiana (August 5, 1998)

MacRunnels, James A., Elburn, Illinois (August 5, 1998)

Padulo, Jr., Vincent A., New York, New York (August 5, 1998)

Perkins, Thomas J., Union City, California (August 5, 1998)

Ruffler, Keith P., Spotswood, New Jersey (August 5, 1998)

Russo, Janice D., Van Nuys, California (August 5, 1998)

Schaler, Joseph S., Lafayette, Indiana (August 5, 1998)

Tuzzolino, Jr., Fred J., Brooklyn, New York (August 5, 1998)

Vogel, Paul L., Suwanee, Georgia (August 5, 1998)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Award

Aiello, Andrew S., Saratoga Springs, New York (August 13, 1998)

Denton, Donald Jay, Columbus, Ohio (August 13, 1998)

Guchone, John Victor, Rochester, New York (July 21, 1998)

Jurdine, Wilber C., Tampa, Florida (August 10, 1998)

Lieberman, Adam Richard, Roslyn Heights, New York (July 21, 1998)

Matthews, Timothy J., Nissequogue, New York (August 3, 1998)

McMurray, Rusty W., Tulsa, Oklahoma (August 3, 1998)

Molnar, Charles Francis, Roswell, Georgia (July 21, 1998)

Murray, Michael Patrick, Long Beach, New York (July 21, 1998)

Payne, Michael Joseph, Staten Island, New York (August 17, 1998)

Posculli, Jr., Gil Michael, E. Northport, New York (July 24, 1998)

Salice, Lawrence Joseph, Greenlawn, New York (July 24, 1998)

Sposato, Michael Degnan, Purchase, New York (August 17, 1998)

Trocchio, Michael S., Staten Island, New York (August 6, 1998)

Van Blarcom, Jeffrey Allen, Mahwah, New Jersey (August 6, 1998)

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For Your Information

Year 2000 Update Reminder To Members About SEC Filing Requirements

The Securities and Exchange Commission (SEC) recently amended its Rule 17a-5 to require all broker/dealers to file two reports concerning Year 2000, using Form BD-Y2K (Form). All members received this information available through *NASD Special Notice to Members 98-63*.

The new reports relate to each member's readiness and activities to prepare its businesses to address Year 2000 challenges and risks. The amendment requires all National Association of Securities Dealers, Inc. (NASD[®]) members with FOCUS capital requirements of \$5,000 or greater on or after December 31, 1997 to file the two reports with the SEC and the firm's designated examining authority (DEA). The first report was due to the SEC and DEA on or before August 31, 1998. The second report will be due April 30, 1999. The results of these reports will be made public.

Each of the two reports has two parts. Part I must be completed by each NASD member with a \$5,000 or greater net capital requirement. A member must also complete Part II (in addition to Part I) if it has a \$100,000 or greater net capital requirement.

NASD Regulation, Inc. (NASD RegulationSM) examiners will be determining whether the reports are completed in accordance with SEC Rule 17a-5; if they are not, NASD Regulation will begin disciplinary actions and ensure that the reports are obtained during any routine exam.

Any questions or comments may be directed to the NASD Year 2000 Program Office at (888) 227-1330. To obtain a copy of the Form, please go to the NASD Regulation Web Site (www.nasdr.com) and look for *Spe-*

cial NASD Notice to Members 98-63, Attachment 2, on the *Notices to Members Web Page*.

Industry Beta Test

The Securities Industry Association (SIA) indicated that its first beta testing effort within the securities industry was a successful endeavor. During this test securities firms and markets—including The Nasdaq Stock Market[®]—were able to operate in a simulated Year 2000 environment. Testing began on July 13, 1998, and was completed on July 22, 1998.

As part of the overall industry effort, the NASD and Nasdaq[®] Test Centers successfully operated to support this beta test. These test centers are available to test with external constituents. Members should call (888) 227-1330 to schedule Year 2000 testing.

Announcement - Upcoming District 2 Compliance Seminars

District 2 will host "Compliance Check-Up" seminars this fall that will feature panel discussions on branch office supervision and compliance issues; continuing education; new Forms U-4 and U-5; and recent regulatory developments. There will also be an on-line demonstration of the NASD Regulation Web Site (www.nasdr.com).

The seminars will be held in the three following areas:

- Los Angeles on September 17
- San Diego on September 24
- Orange County on October 1

To register or for more information, call Ianthe Philips, NASD Regulation, at (213) 627-2122. The registration form and additional information about the seminars are also available from the NASD Regulation Web Site (www.nasdr.com).

Correction To Notice to Members 98-66

In the August 1998 issue of *Notices to Members*, on page 497, the third sentence in the last paragraph under subhead **Background - SelectNet And SOES** should read:

The SOES rules currently contain a specific provision, NASD Rule **4720(c)(4)**, that requires SOES order entry firms to maintain the physical security of Nasdaq equipment located on the premises of the firm to prevent unauthorized entry of information into SOES.

Misrepresentation Of Certificates

It has come to the attention of NASD Regulation that private vendors may be offering commemorative certificates to persons who pass NASD-offered qualification examinations. NASD Regulation is concerned that these certificates could be misused by registered persons or may be misinterpreted by customers and cause general confusion about what the certificates may represent. Passing a qualification exam is just one step in the registration process; customers may erroneously assume that it is

the only step. Furthermore, registration status may change; a registration may be suspended, canceled, or voluntarily terminated, but the presence of a certificate commemorating the passage of a qualification examination may erroneously suggest otherwise. For these reasons, the staff believes that display of such certificates at any business location may violate NASD Rule 2110.

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Special NASD Notice to Members 98-80

Nominees For NASD Board Of Governors

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

National Association of Securities Dealers, Inc. Notice Of Nominees

The Annual Meeting of members of the National Association of Securities Dealers, Inc. (NASD®) will be held on December 21, 1998. A notice of meeting, including the precise date, time, and location of the Annual Meeting, will follow on or about November 16, 1998.

The individuals nominated by the NASD National Nominating Committee for election on the NASD Board of Governors are identified in this document. Pursuant to Section 10 of Article VII of the NASD By-Laws, a person who has not been so nominated for election to the Board of Governors may be included on the ballot for the election of Governors if (a) within 45 days of the date of this *Notice* such person presents to the Secretary of the NASD petitions in support of such nomination duly executed by at least three percent of the members of the NASD (as of the date of this *Notice* the NASD has 5,575 members, the applicable three percent threshold is therefore 167 members), and (b) the Secretary certifies that such petitions have been duly executed by the Executive Representatives of the requisite number of members of the NASD and the person being nominated satisfies the classification of the governorship to be filled based on the information provided by the person as is reasonably necessary for the Secretary to make the certification.

Questions regarding this *Notice* may be directed to:

Joan C. Conley
Corporate Secretary
National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1500
(202) 728-8381

or

T. Grant Callery
Senior Vice President and General Counsel
National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1500
(202) 728-8285

The following persons (see attached profiles) have been nominated by the National Nominating Committee¹ to serve on the Board of Governors of the NASD for a term noted or until their successors are duly elected or qualified. Terms of office run from January to January.

INDUSTRY

Name	Term
E. David Coolidge, III Chief Executive Officer William Blair & Company, L.L.C.	1999-2002
James Dimon President, COO and Director of Travelers Group Chairman & Co-Chief Executive Officer of Salomon Smith Barney	1999-2002
Richard C. Romano ² President Romano Brothers & Company	1999-2002

NON-INDUSTRY

H. Furlong Baldwin Chairman Mercantile Bankshares Corporation	1999-2002
Eugene M. Isenberg Chairman and Chief Executive Officer Nabors Industries, Inc.	1999-2002
Arthur Rock Principal Arthur Rock & Co.	1999-2002
James F. Rothenberg President Capital Research and Management Company	1999-2002

Footnotes

¹ NASD National Nominating Committee—Committee Chair: Daniel P. Tully, Merrill Lynch & Co. Members: H. Furlong Baldwin, Mercantile Bankshares Corporation, Thomas Hale Boggs, Jr., Patton Boggs, L.L.P., John S. Chalsty, Donaldson, Lufkin & Jenrette, Inc., Alfred E. Osborne, Jr., UCLA, Richard C. Romano, Romano Brothers & Company. Committee members Romano and Baldwin did not participate in the committee deliberations concerning their nominations.

² An amendment to the NASD By-Laws reserving a position on the NASD Board of Governors (the Board) for a person associated with a firm having not more than 150 registered persons was approved by the members on September 14, 1998. That amendment is now pending approval by the Securities and Exchange Commission (SEC). The nomination of Mr. Romano to the Small Firm position on the Board anticipates but is not dependent on the SEC's approval. The NASD National Nominating Committee has determined that in the event SEC approval is not obtained by the time the proxy must be mailed to the membership, Mr. Romano will remain on the ballot as a candidate for one of the vacant Industry positions on the Board.

PUBLIC

Gerald R. Ford 38th President of the United States	1999-2000
Elaine L. Chao Distinguished Fellow The Heritage Foundation	1999-2002
Kenneth M. Duberstein Chairman and Chief Executive Officer The Duberstein Group	1999-2002
Donald J. Kirk Executive-in-Residence Columbia University	1999-2002
John D. Markese President American Assoc. of Individual Investors	1999-2002

* * * *

National Association of Securities Dealers, Inc.

Profiles Of Board Nominees

Nominees For Industry Governors

E. David Coolidge, III is Chief Executive Officer of William Blair & Company, L.L.C. Mr. Coolidge joined William Blair & Company in 1969 and was elected Chief Executive Officer of the firm in 1995. Mr. Coolidge currently serves on the Board of the Pittway Corporation, the Kellogg Graduate School of Management at Northwestern University, the University of Chicago, the Rush-Presbyterian-St. Luke's Medical Center, the Rush North Shore Medical Center, and the Better Government Association. Mr. Coolidge holds a B.A. from Williams College and an M.B.A. from the Harvard Graduate School of Business. Mr. Coolidge currently serves on the NASD Board of Governors (1996 to present) and is a member of the NASD Audit Committee.

James (Jamie) Dimon is President, Chief Operating Officer and Director of Travelers Group, and Chairman and Co-Chief Executive Officer of Salomon Smith Barney. Mr. Dimon joined the firm in 1986. He was appointed President of Travelers Group in 1991 and became Chief Operating Officer in 1993. He was named Chairman and Chief Executive Officer of Smith Barney in 1996. Mr. Dimon is on the Board of Trustees of New York University Medical Center, the Board of Directors of the Center on Addiction and Substance Abuse, the Board of Directors of Tricon Global Restaurants, Inc., and the Board of Directors of the Welfare to Work Partnership. Mr. Dimon holds a B.A. from Tufts University and an M.B.A. from Harvard University Graduate School of Business. He currently serves on the NASD Board of Governors (1996 to present) and is Chairman of the NASD Management Compensation Committee.

Richard C. Romano is President, Romano Brothers & Company, having joined the firm in 1964. Mr. Romano has served on the Industry/Regulatory Council for Continuing Education, the NASD District Committee and the NASD Board of Governors (1985 to 1988). Mr. Romano currently serves on the NASD National Nominating Committee and is Vice Chairman of the NASD Small Firm Advisory Board. He holds a B.S. from the University of Illinois and an M.S. and Ph.D. from the University of Delaware.

National Association of Securities Dealers, Inc.

Profiles Of Board Nominees

Nominees For Non-Industry Governors

H. Furlong Baldwin is Chairman of the Mercantile Bankshares Corporation; he was elected as Chairman in 1984. Mr. Baldwin joined Mercantile-Safe Deposit & Trust Company in 1956 and was elected President in 1970 of Mercantile-Safe Deposit & Trust Company and Mercantile Bankshares Corporation. Mr. Baldwin serves on the Boards of Baltimore Gas & Electric Company, Constellation Holdings, Inc., GRC International, Inc., Offitbank, Wills Group, and The St. Paul Companies. Mr. Baldwin graduated from Princeton University and served on active duty with the U.S. Marine Corps. Mr. Baldwin currently serves on the NASD National Nominating Committee (1998 to present).

Eugene M. Isenberg is Chairman and Chief Executive Officer of Nabors Industries, Inc., a position he has held since 1987. He serves as a Director of the American Stock Exchange and also Danielson Holding Corporation, an insurance holding company. From 1969 to 1982, Mr. Isenberg was Chairman of the Board and principal shareholder of Genimar, Inc., a steel trading and building products manufacturing company, which was sold in 1982. From 1955 to 1968, Mr. Isenberg was employed in various management capacities with the Exxon Corporation. Mr. Isenberg is the founder and principal sponsor of the Parkside School for children with learning disabilities and has established the Eugene M. Isenberg Scholarships at the University of Massachusetts where the School of Management is named after him. He was an instructor at Princeton University from 1951 to 1952 and served as an officer in the U.S. Navy from 1952 to 1955. Mr. Isenberg holds a B.A. from the University of Massachusetts and an M.A. from Princeton University in 1952. Mr. Isenberg completed the program for Senior Executives at M.I.T.

Arthur Rock is Principal of Arthur Rock & Co., a venture capital firm in San Francisco, California. Mr. Rock founded the firm in 1969. Prior to that time, he spent seven years as a general partner at Davis & Rock. He served as Chairman of the Board of Directors of Scientific Data Systems, Inc. from 1962 to 1969 (when they merged with Xerox Corporation); he was a Director of Xerox Corporation from 1969 to 1972; a member of the Executive Committee and Director of Teledyne, Inc. from 1961 to 1994; a Director of Apple Computer, Inc. from 1980 to 1993; and he is Founder, Past Chairman of the Board of Directors, Chairman of the Executive Committee and Lead Director of Intel Corporation. Mr. Rock serves on the Boards for Echelon and Air Touch Communications. He has been a member of the visiting committee at Harvard Business School and is a member of the Board of Trustees of the California Institute of Technology. Mr. Rock is involved in many cultural and civic organizations in the San Francisco area. He holds a B.S. from Syracuse University and an M.B.A. from Harvard University. Mr. Rock currently serves on the NASD Board of Governors (1998 to present).

James F. Rothenberg is President of Capital Research and Management Company. Mr. Rothenberg assumed the position of President and Director of Capital Research and Management Company in 1994, having joined the company in 1970. Mr. Rothenberg serves on the Boards of the Huntington Memorial Hospital, KCET (Public Television for Southern and Central California), and the Westridge School. Mr. Rothenberg holds a B.A. in English from Harvard College and an M.B.A. from Harvard Graduate School of Business. He currently serves on the NASD Board of Governors (1996 to present), The Nasdaq Stock Market[®] Board of Directors, the Nasdaq Listing Subcommittee, and the Management Compensation and Finance Committee.

National Association of Securities Dealers, Inc.

Profiles Of Board Nominees

Nominees For Public Governors

Gerald R. Ford served as 38th President of the United States. Before entering the Presidency in 1974, President Ford served as Vice President for nine months under President Richard Nixon. Prior to this, President Ford served in the U.S. House of Representatives for 25 and one-half years. Since leaving the White House in 1977, President Ford has lectured at many colleges and universities and participated in public policy forums and conferences. President Ford serves as an Advisor to the Board of the American Express Company and is a member of the Board of The Travelers Group. President Ford holds a B.A. from the University of Michigan and an LL.B. from Yale University Law School.

Elaine L. Chao was appointed a Distinguished Fellow at The Heritage Foundation in 1996. Prior to this, she was President and Chief Executive Officer of the United Way of America, Director of the Peace Corps, and Deputy Secretary of the U.S. Department of Transportation. She was also Vice President, Syndications, at Bank America Capital Markets Group. Ms. Chao is currently a Director of Dole Food Company, Inc., Vencor, Inc., and Protective Life Corporation. Ms. Chao holds an A.B. from Mt. Holyoke College and an M.B.A. from Harvard University Business School. Ms. Chao currently serves on the NASD Board of Governors (1996 to present) and the NASD Audit Committee.

Kenneth M. Duberstein is Chairman and Chief Executive Officer of The Duberstein Group. Prior to this, Mr. Duberstein served as Chief of Staff to President Ronald Reagan from 1988 to 1989. During President Reagan's two terms in office, Mr. Duberstein also served in the White House as Deputy Chief of Staff (1987), as well as both the Assistant and the Deputy Assistant to the President for Legislative Affairs (1981 to 1983). Mr. Duberstein currently serves on the Board of Governors of the American Stock Exchange and on the Board of Directors at the Boeing Company, Cingery Corporation, Federal National Mortgage Association, and The St. Paul Companies, Inc. He is Vice Chairman of the Kennedy Center for the Performing Arts. Mr. Duberstein holds an A.B. from Franklin and Marshall College and an M.A. from American University.

Donald J. Kirk is Executive-in-Residence at Columbia University, Graduate School of Business. Mr. Kirk became a Professor of Accounting at Columbia University in 1987 and served in that capacity until 1995 when he became an Executive-in-Residence at the school. Mr. Kirk served as a member of the Financial Accounting Standards Board from 1973 to 1987, serving as Chairman from 1978 to 1987. Mr. Kirk currently serves as a Director of General Re Corporation, as a Trustee of the Fidelity Group of Mutual Funds, and is a member of the Public Oversight Board of the American Institute of CPAs. Mr. Kirk is Chairman of the Board of Trustees of Greenwich Hospital and a Director of Yale-New Haven Health Services Corp. Mr. Kirk holds a B.A. from Yale University and an M.B.A. from New York University. Mr. Kirk currently serves on the NASD Board of Governors (1996 to present) and as the Chairman of the NASD Audit Committee.

John D. Markese is President of the American Association of Individual Investors. Mr. Markese holds a doctorate in Finance from the University of Illinois. Mr. Markese currently serves on the NASD Board of Governors (1996 to present), The Nasdaq Stock Market Board of Directors, and the Nasdaq Listing Subcommittee.

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Members of NASD Board of Governors with Terms Not Expiring in January 1999

Governors with Terms Expiring January 2000

Industry

Jon S. Corzine
Chairman and Chief Executive Officer
Goldman, Sachs & Co.

Kenneth J. Wessels
Senior Executive Vice President
Dain Rauscher Incorporated

Non-Industry

Arvind Sodhani
Vice President and Treasurer
Intel Corporation

Public

Nancy Kassebaum Baker
Retired United States Senator

Robert R. Glauber
Adjunct Lecturer
John F. Kennedy School
of Government
Harvard University

Governors with Terms Expiring January 2001

Industry

Herbert M. Allison
President and Chief Operating Officer
Merrill Lynch & Co., Inc

Frank E. Baxter
Chairman and Chief Executive Officer
Jefferies Group, Inc.

Donald B. Marron
Chairman and Chief Executive Officer
PaineWebber Group, Inc.

Todd A. Robinson
Chairman and Chief Executive Officer
LPL Financial Services

Non-Industry

Michael W. Brown
Retired Chief Financial Officer
Microsoft Corporation

Harry P. Kamen
Retired Chairman of the Board and
Chief Executive Officer
Metropolitan Life Insurance
Company

James S. Riepe
Vice Chairman
T. Rowe Price Associates, Inc.

Howard Schultz
Chairman and Chief Executive Officer
Starbucks Coffee Company

Public

Paul H. O'Neill
Chairman and Chief Executive
Officer
ALCOA

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NASD Notices to Members (December 1996 to current) are also available on the Internet at www.nasdr.com.

YEAR 2000 UPDATE

SEC Reporting Requirement

In July of this year, the National Association of Securities Dealers, Inc. (NASD®) issued *Special Notice to Members 98-63* alerting members to a new reporting requirement imposed by an amendment to Securities and Exchange Commission (SEC) Rule 17a-5. The SEC rule amendment requires broker/dealers to file two Year 2000 reports using the new BD-Y2K Form. The first report was due to the SEC and designated examining authority (DEA) on or before August 31, 1998. The second report is due April 30, 1999.

The SEC and the NASD are working closely with all the self-regulatory organizations as well as the Securities Industry Association (SIA) to improve their ability to identify potential Year 2000 failures. Much of this work will be accomplished through careful analysis of the two reports required by the SEC of both broker/dealers and transfer agents.

The NASD strongly encourages those member firms that did not meet the August 31 deadline to submit the Year 2000 report immediately. The NASD sent out over 1,500 letters notifying NASD member firms that failed to comply with the SEC Year 2000 reporting requirement that the NASD and SEC will file disciplinary actions as appropriate. As of September 22, 195 firms were still delinquent in filing the Form BD-Y2K. The NASD and the SEC will be taking appropriate disciplinary action against these firms.

Broker/Dealer Contingency Plans

As the NASD and its member firms prepare their systems and applications to operate successfully in the face of the Year 2000 challenge, contingency planning is an essential step that should not be neglected. Contingency planning for Year 2000 occurs at different levels for member firms. Each broker/dealer is responsible for developing a written plan that ensures business continuity through the Year 2000.

Currently, contingency plans are being developed by industry associations like the Federal Reserve Board and SIA. The SIA has formed a policy-level contingency planning committee of experts to examine contingencies that might arise should computer programs and other automated systems not correctly recognize the century date change. The committee will focus on (1) developing steps to cushion the pressures on financial markets, financial institutions, and clearance and settlement systems that arise the last couple of weeks leading up to 2000 and first couple of weeks into 2000, and (2) developing contingency arrangements for maintaining business continuity during the century date change.

According to industry guidelines, organizations should begin constructing their contingency plans by the end of 1998 and spend 1999 detailing results and preparing business operations where needed. If you are not sure what a contingency plan is or when it would be useful, it is similar to Murphy's Law—be prepared for anything that could go wrong. For example, what will you do if you rely on public transportation, and it doesn't work on January 1, 2000? Or, if you rely on satellite feeds for clock synchronization, and they don't operate? Or, if your local telecommunications company were unable to function, how would you notify your customers? Lastly, how would you manage an orderly shutdown of your business?

The following column displays a high-level outline of the contents of a sample contingency plan. We share this with NASD member firms solely as an example.

Year 2000 contingency plans should include:

- 1 *The objective of the plan (e.g., continue normal operations, continue in a degraded mode, abort the function as quickly and safely possible, etc.)*
- 2 *Criteria for invoking the plan (e.g., missing a renovation milestone, reaching a Year 2000-related failure date, experiencing serious system failures, inability of a vendor to provide required service, etc.).*
- 3 *Schedule of activities, dependencies, and resources required from triggering events.*
- 4 *Expected life of the events (How long can operations continue in contingency operating mode?).*
- 5 *Roles, responsibilities, and authority.*
- 6 *Procedures for invoking contingency mode.*
- 7 *Procedures for operating in contingency mode.*
- 8 *Resource plan for operating in contingency mode (e.g., staffing, scheduling, materials, supplies, facilities, temporary hardware and software, communications, etc.).*
- 9 *Criteria for returning to normal operating mode.*
- 10 *Procedures for returning to normal operating mode.*
- 11 *Procedures for recovering lost business events or data.*

To find out more about contingency planning and legal issues surrounding the Year 2000 challenge, attend the Year 2000 Legal Seminars being held October 13 (Chicago), October 20 (Atlanta), and November 3 (New York City). This Year 2000 legal seminar will also be featured at the annual NASD Regulation Fall Securities Conference being held November 4-6 in San Francisco.

For more information on required Year 2000 reporting, help in developing a member firm Year 2000 contingency planning, and/or details about Year 2000 workshops, contact the NASD Year 2000 Program Office by e-mail at y2k@nasd.com or by calling its toll-free number, at (888) 227-1330.

YEAR 2000 UPDATE

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NASD Notice to Members 98-81

NASD Regulation Requests Comment On Whether Some Rules Should Be Repealed As Obsolete Or Amended To Provide Institutional Customer Exception; **Comment Period Expires November 30, 1998**

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) is requesting comment from members and other interested persons as to whether any National Association of Securities Dealers, Inc. (NASD[®]) rules or By-Laws should be repealed because they are now obsolete or whether particular rules should distinguish between retail and institutional customers in their application.

Questions concerning this *Request For Comment* may be directed to Mary M. Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252; or Eric Moss, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8982.

Request For Comment

NASD Regulation encourages all interested parties to comment on the proposal. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500

or e-mailed to:
pubcom@nasd.com

Important Note: The only comments that will be considered are those submitted via e-mail or in writing.

Comments must be received by **November 30, 1998**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission.

NASD Regulation Request For Comment 98-81

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) is requesting comment from members and other interested persons as to whether any National Association of Securities Dealers, Inc. (NASD[®]) rules or By-Laws should be repealed because they are now obsolete or whether particular rules should distinguish between retail and institutional customers in their application.

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Background And Discussion

The NASD Regulation Office of General Counsel is undertaking a review of the NASD rules and By-Laws for the following purposes: (1) to determine if there are obsolete or otherwise unnecessary rules that could be repealed or that should be modernized in light of technological or industry developments; or (2) to determine if particular rules should distinguish between retail and institutional customers in their application. The overarching principles in this review will be to ensure that NASD rules promote balanced and effective self-regulation of the securities industry in order to protect investors and ensure market integrity, taking into account

costs and technological advances. NASD Regulation invites members and other interested parties to submit suggestions for its review. Members will be notified of any rule changes that are proposed as a result of this review.

Request For Comment

NASD Regulation encourages all interested parties to comment on the proposal. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500

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Important Note: The only comments that will be considered are those submitted via e-mail or in writing.

Comments must be received by **November 30, 1998**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission.

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NASD Notice to Members 98-82

SEC Approves Amendments To Automated Confirmation Transaction Service And Transaction Reporting Rules

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On September 14, 1998, the Securities and Exchange Commission (SEC) approved rule amendments that are designed to integrate transaction information reported to the Automated Confirmation Transaction ServiceSM (ACTSM) operated by The Nasdaq Stock Market, Inc. (Nasdaq[®]) with order information reported to the newly approved Order Audit Trail SystemSM (OATSSM).¹

Questions regarding the rule changes may be directed to the National Association of Securities Dealers, Inc. (NASD[®]) via phone at (888) 700-OATS or (301) 590-6503, or via e-mail at oatscsc@nasd.com.

Discussion

In March 1998, the SEC approved new NASD Rules 6950 through 6957 (the OATS Rules²). OATS is designed to provide NASD Regulation, Inc. (NASD RegulationSM) with the ability to reconstruct markets promptly, conduct efficient surveillance, and enforce NASD and SEC rules. The SEC has directed that OATS must provide an accurate, time-sequenced record of orders and transactions from the receipt of an order through its execution.³ To accomplish this, NASD Regulation will combine information submitted to OATS with transaction data reported by members through ACT and quotation information disseminated by Nasdaq.⁴

The SEC has approved amendments to the NASD transaction reporting and ACT rules to require members to submit transaction data to ACT that will be integrated with order information reported to OATS.⁵ The amended rules affect Nasdaq National Market[®], Nasdaq

SmallCapSM, and Nasdaq Convertible Debt Securities. The ACT trade data and the OATS order information will be used to construct an integrated audit trail. Under the amended rules, all trade reports for OATS-eligible securities entered into Nasdaq's ACT system will be required to have a time of execution expressed in hours, minutes, and seconds. The trade reports also will be required to have a unique order identifier sufficient to allow a comparison of the information contained in the trade report with data submitted to OATS. In addition, the rule amendments codify the requirement that all ACT participants, including those that use third parties to submit trade report information to Nasdaq, must obtain and use a unique Market Participant Symbol for trade reporting and audit trail purposes.

The rule amendments will be implemented in tandem with the effective dates for implementation of the OATS Rules. The OATS Rules will become effective according to the following schedule:

- Phase 1: By March 1, 1999, electronic orders received by Market Makers and Electronic Communication Networks (ECNs) must be reported.
- Phase 2: By August 1, 1999, all electronic orders must be reported.
- Phase 3: By July 31, 2000, all non-electronic, or manual, orders must be reported.

The text of the rule changes as well as other information about OATS is available on the NASD Regulation Web Site (www.nasdr.com).

Endnotes

¹See Securities Exchange Act Release No. 40437 (September 14, 1998), 63 FR 50272 (September 21, 1998) (File No. SR-NASD-98-60).

²See *Notice to Members 98-33* for a complete description of the OATS Rules.

³See In the Matter of National Association of Securities Dealers, Inc., Securities Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3-905, at 7-8.

⁴ACT is an automated system owned and operated by Nasdaq that captures transaction information in real-time.

⁵The amended rules are Marketplace Rules 4632, 4642, 4652, 6120, and 6130.

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NASD Notice to Members 98-83

SEC Approves Rule
Change Relating To
Standards For Individual
Correspondence; Effective
November 16, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On August 26, 1998, the Securities and Exchange Commission (SEC) approved amendments to the National Association of Securities Dealers, Inc. (NASD[®]) Rule 2210 to require that written or electronic communications prepared for a single customer be subject to the general standards and those specific standards of NASD Rule 2210 that prohibit misleading statements, but not to the specific standards of the rule that prescribe specific disclosure nor the filing and review requirements. The amendments will take effect on November 16, 1998.

Questions concerning this *Notice* may be directed to Thomas A. Pappas, Director, Advertising Regulation, NASD Regulation, Inc. (NASD RegulationSM), at (202) 728-8330, and Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Discussion Background

NASD Rule 2210 imposes various requirements on member communications with the public, designed to ensure that those communications are fair, balanced, and not misleading. Rule 2210 does not expressly apply to the content of correspondence (*i.e.*, a communication to only one person). In addition, there is no definition of correspondence in the NASD rules, even though members are required to supervise the use of correspondence by their associated persons under Rule 3010.

NASD Regulation has taken the position that a document prepared for use with a single customer, and not for dissemination to the general public, is not "sales literature" as that term is defined in NASD Rule 2210. However, NASD Regulation believes that applying particular standards in Rule 2210 to correspondence is

appropriate and would enable the staff to bring enforcement actions on the basis of clear violations of certain proscribed behavior.

Discussion

NASD Regulation believes that certain statements pose similar dangers regardless of whether they are communicated to one person or many persons. NASD Regulation recognizes that correspondence is highly individualized in nature and that much correspondence (unlike advertising and sales literature) is directed by registered representatives (RRs) to customers with whom RRs already have an established relationship. At the same time, NASD Regulation believes that clarifying how Rule 2210 applies to correspondence would provide better guidance to the membership and help to assure that investors are adequately protected with respect to the communications they receive individually. The amendments therefore subject correspondence to the general standards and those specific standards of Rule 2210 that prohibit misleading statements, but not to the standards of the rule that prescribe specific disclosure. Members will not have to file correspondence with the NASD for review.

The amendments create a category defined as "communications with the public" to include the current definitions of "advertisement" and "sales literature," and a new definition of "correspondence." "Correspondence" is defined as "...any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public." In determining when a written or electronic communication is prepared for delivery to a single current or prospective customer, members should consider, and the staff of NASD Regulation will

examine, among other things, the form and content of the communication. Thus, a written or electronic communication addressed to a single current or prospective customer, the content of which is substantially identical to that of written or electronic communications sent to one or more other current or prospective customers, is a form letter, not "correspondence." Because form letters are considered "sales literature" under Rule 2210, they would be subject to all of the general and specific standards of Rule 2210.

The amendments subject individual correspondence to the general standards under subparagraph (d)(1) and the following specific standards under subparagraph (d)(2) of Rule 2210:

- subparagraph (d)(2)(C), which prohibits exaggerated, unwarranted, or certain other specific claims or opinions;
- subparagraph (d)(2)(E), which prohibits certain offers of free services;
- subparagraph (d)(2)(F), which prohibits certain claims for research services;
- subparagraph (d)(2)(G), which prohibits certain hedge clauses;
- subparagraph (d)(2)(J), which prohibits the implication of endorsement or approval by regulatory organizations;
- the provision of subparagraph (d)(2)(L) that prohibits the characterization of income or investment returns as tax exempt or tax free in certain circumstances; and
- subparagraph (d)(2)(N), which prohibits predictions and projections of investment results. All of these specific provisions derive from members' general obligations not to make

statements that are misleading or without a reasonable basis in fact.

Individual correspondence **will not** be subject to the following specific standards of Rule 2210:

- subparagraph (d)(2)(A), which requires the inclusion of certain information regarding members' names;
- subparagraph (d)(2)(B), which requires that a member disclose specified information to the customer when making a recommendation;
- subparagraph (d)(2)(D), which requires the inclusion of certain statements regarding testimonials;
- subparagraph (d)(2)(H), which applies to advertisements for the recruitment of sales personnel;
- subparagraph (d)(2)(I), which requires certain disclosures regarding periodic investment plans;
- subparagraph (d)(2)(K), which requires the identification and disclosure of sources other than the member for certain statistical tables, charts, graphs, or other illustrations;
- the provisions of subparagraph (d)(2)(L) that require the inclusion of clarifying information regarding claims of tax free or tax exempt returns; and
- subparagraph (d)(2)(M), which requires the inclusion of certain information when making comparisons of investment alternatives.

The amendments do not change the current application of Rule IM-2210-1. Therefore paragraph (a) of that rule (interpretation regarding collateralized mortgage obligations) has been amended to clarify that only advertisements and sales literature are covered by the interpretation.

Finally, the amendments also incorporate several minor technical changes that are non-substantive in nature.

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

Rule 2210. Communications with the Public

(a) Definitions - Communications with the public shall include:

(1) Advertisement--For purposes of this Rule and any interpretation thereof, "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, video-tape display, signs or billboards, motion pictures, telephone directories (other than routine listings), electronic or other public media.

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

(3) Correspondence--For purposes of this Rule and any interpretation thereof, "correspondence" means any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public.

Cross Reference - Rules Concerning Review and Endorsement of Correspondence are Found in paragraph (d) to Conduct Rule 3010.

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member.

(2) A separate file of all advertisements and sales literature, including the name(s) of the person(s) who prepared them and/or approved their use, shall be maintained for a period of three years from the date of each use.

(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of paragraph (c)(2), and public direct participation programs (as defined in Rule 2810) shall be filed with the Association's Advertising/Investment Companies Regulation Department (Department) within 10 days of first use or publication by any member. The member must provide with each filing the actual or anticipated date of first use. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this paragraph (c) that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

(2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933, and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The member must provide with each filing the actual or anticipated date of first use. Any member filing any investment company advertisement or sales literature pursuant to this paragraph shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.

(3)(A) Each member of the Association which has not previously filed advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this Rule) shall file its initial advertisement with the Department at least ten days prior to use and shall continue to file its advertisements at least ten days prior to use for a period of one year. The member must provide with each filing the actual or anticipated date of first use.

(B) Except for advertisements related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, members subject to the requirements of paragraph (c)(3)(A) [or (B)] of this Rule may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in [those] that subparagraph[s], with any registered securities exchange having standards comparable to those contained in this Rule.

(4)(A) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department and/or the District Committee, at least ten days prior to use. The member must provide with each filing the actual or anticipated date of first use.

(B) The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure as contained in the Rule 9000 Series.

(5) In addition to the foregoing requirements, every member's [advertising] advertisements and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and, except for material related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, the procedure will not be applied to members who have been, within the Association's current examination cycle subjected to a spot-check by a registered securities exchange or other self-regulatory organization using procedures comparable to those used by the Association.

(6) The following types of material are excluded from the foregoing filing requirements and spot-check procedures:

(A) Advertisements or sales literature solely related to changes in a member's name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member;

(B) Advertisements or sales literature which do no more than identify the Nasdaq symbol of the member and/or of a security in which the member is a Nasdaq registered market maker;

(C) Advertisements or sales literature which do no more than identify the member and/or offer a specific security at a stated price;

(D) Material sent to branch offices or other internal material that is not distributed to the public;

(E) Prospectuses, preliminary prospectuses, offering circulars and similar documents used in connection with an offering of securities which has been registered or filed with the Commission or any state, or which is exempt from such registration, except that an investment company prospectus published pursuant to SEC Rule 482 under the Securities Act of 1933 shall not be considered a prospectus for purposes of this exclusion;

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

(7) Material which refers to investment company securities or direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Act) solely as part of a listing of products and/or services offered by the member, is excluded from the requirements of subparagraphs (1) and (2).

(d) Standards Applicable to Communications with the Public

(1) General Standards

(A) All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered. No material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause

the [advertising or sales literature] communication to be misleading.

(B) Exaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members. In preparing such [literature] communications, members must bear in mind that inherent in investments are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no member shall, directly or indirectly, publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

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

(D) In judging whether a communication or a particular element of a communication may be misleading, several factors should be considered, including but not limited to:

(i) the overall context in which the statement or statements are made. A statement made in one context may be misleading even though such a statement could be [perfectly] appropriate in another context. An essential test in this regard is the balance of treatment of risks and potential benefits.

(ii) the audience to which the communication is directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed, and the ability of the member given the nature of the media

used, to restrict the audience appropriately. If the statements made in a communication would be applicable only to a limited audience or if additional information might be necessary for other audiences, it should be kept in mind that it is not always possible to restrict the readership of a particular communication.

(iii) the overall clarity of the communication. A statement or disclosure made in an unclear manner [obviously] can result in a lack of understanding of the statement, or in a serious misunderstanding. A complex or overly technical explanation may be [worse] more confusing than too little information. Likewise, material disclosure relegated to legends or footnotes [realistically] may not enhance the reader's understanding of the communication.

(2) Specific Standards

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

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

(B) Recommendations.

(i) In making a recommendation in advertisements and sales literature, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose any of the following situations which are applicable:

a. that the member usually makes a market in the securities being recom-

mended, or in the underlying security if the recommended security is an option, [and/]or that the member or associated persons will sell to or buy from customers on a principal basis;

b. that the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;

c. that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.

(ii) The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.

(iii) A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.

(iv) Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the infor-

mation specified in subparagraph (iii). Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

(C) Claims and Opinions. Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts.

(D) Testimonials. In testimonials concerning the quality of a firm's investment advice, the following points must be clearly stated in [the] advertisements or sales literature [communication]:

(i) The testimonial may not be representative of the experience of other clients.

(ii) The testimonial is not indicative of future performance or success.

(iii) If more than a nominal sum is paid, the fact that it is a paid testimonial must be indicated.

(iv) If the testimonial concerns a technical aspect of investing, the person making the testimonial must have knowledge and experience to form a valid opinion.

(E) Offers of Free Service. Any statement in communications with the public to the effect that any report, analysis, or other service will be furnished free or without any charge must not be made unless such

report, analysis or other service actually is or will be furnished entirely free and without condition or obligation.

(F) Claims for Research Facilities. No claim or implication in communications with the public may be made for research or other facilities beyond those which the member actually possesses or has reasonable capacity to provide.

(G) Hedge Clauses. No cautionary statements or caveats, often called hedge clauses, may be used in communications with the public if they are misleading or are inconsistent with the content of the material.

(H) Recruiting Advertising. Advertisements in connection with the recruitment of sales personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business and should not refer to specific earnings figures or ranges which are not reasonable under the circumstances.

(I) Periodic Investment Plans. Advertisements and sales literature [Communications with the public] should not discuss or portray any type of continuous or periodic investment plan without disclosing that such a plan does not assure a profit and does not protect against loss in declining markets. In addition, if the material deals specifically with the principles of dollar-cost averaging, it should point out that since such a plan involves continuous investment in securities regardless of fluctuating price levels of such securities, the investor should consider his financial ability to continue his purchases through periods of low price levels.

(J) References to Regulatory Organizations. Communications with the public shall not make any reference to membership in the Association or to registration or regulation of the

securities being offered, or of the underwriter, sponsor, or any member or associated person, which reference could imply endorsement or approval by the Association or any federal or state regulatory body. References to membership in the Association or Securities Investors Protection Corporation shall comply with all applicable By-Laws and Rules pertaining thereto.

(K) Identification of Sources. Statistical tables, charts, graphs or other illustrations used by members in advertising or sales literature should disclose the source of the information if not prepared by the member.

(L) Claims of Tax Free/Tax Exempt Returns. Income or investment returns may not be characterized in communications with the public as tax free or exempt from income tax where tax liability is merely postponed or deferred. If taxes are payable upon redemption, that fact must be disclosed in advertisements and sales literature. References in advertisements and sales literature to tax free/tax exempt current income must indicate which income taxes apply or which do not unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds may be subject to state or local income taxes, this should be stated, or the illustration should otherwise make it clear that income is free from federal income tax.

(M) Comparisons. In making a comparison in advertisements or sales literature, either directly or indirectly, the member must make certain that the purpose of the comparison is clear and must provide a fair and balanced presentation, including any material differences between the subjects of comparison. Such differences may include investment objectives, sales and management fees, liquidity, safety, guarantees or insur-

ance, fluctuation of principal and/or return, tax features, and any other factors necessary to make such comparisons fair and not misleading.

(N) Predictions and Projections. In communications with the public, investment results cannot be predicted or projected. Investment performance illustrations may not imply that gain or income realized in the past will be repeated in the future. However, for purposes of this Rule, hypothetical illustrations of mathematical principles are not considered projections of performance; e.g., illustrations designed to show the effects of dollar cost averaging, tax-free compounding, or the mechanics of variable annuity contracts or variable life policies.

IM-2210-1. Communications with the Public About Collateralized Mortgage Obligations (CMOs)

(a) General Considerations

For purposes of the following guidelines, the term "collateralized mortgage obligation" (CMO) refers to a multiclass bond backed by a pool of mortgage pass-through securities or mortgage loans. CMOs are also known as "real estate mortgage investment conduits" (REMICs). As a result of the 1986 Tax Reform Act, most CMOs are issued in REMIC form to create certain tax advantages for the issuer. The term CMO and REMIC are now used interchangeably. In order to prevent [a communication about] advertisements and sales literature regarding CMOs from being false or misleading, there are certain factors to be considered, including, but not limited to, the following:

(1) Product Identification

In order to assure that investors understand exactly what security is being discussed, all communications concerning CMOs should clearly describe the product as a "collateralized mortgage obligation." Member firms should not use the proprietary names for CMOs as they do not adequately identify the product. To prevent confusion and the possibility of misleading the reader, communications should not contain comparisons between CMOs and any other investment vehicle, including Certificates of Deposit.

(2) Educational Material

In order to ensure that customers are adequately informed about CMOs members are required to offer to customers educational material which covers the following matters:

- (A) A discussion of CMO characteristics as investments and their attendant risks;
- (B) An explanation of the structure of a CMO, including the various types of tranches;
- (C) A discussion of mortgage loans and mortgage securities;
- (D) Features of CMOs, including: credit quality, prepayment rates and average lives, interest rates (including effect on value and prepayment

rates), tax considerations, minimum investments, transactions costs and liquidity;

(E) Questions an investor should ask before investing; and

(F) A glossary of terms that may be helpful to an investor considering an investment.

(3) Safety Claims

A communication should not overstate the relative safety offered by the CMO. Although CMOs generally offer low investment risk, they are subject to market risk like all investment securities and there should be no implication otherwise. Accordingly, references to liquidity should be balanced with disclosure that, upon resale, an investor may receive more or less than his original investment.

(4) Claims About Government Guarantees

(A) Communications should accurately depict the guarantees associated with CMO securities. For example, in most cases it would be misleading to state that CMOs are "government guaranteed" securities. A government agency issue could instead be characterized as government agency backed. Of course, private-issue CMO advertisements should not contain references to guarantees or backing, but may disclose the rating.

(B) If the CMO is offered at a premium, the communication should clearly indicate that the government agency backing applies only to the face value of the CMO, and not to any premium paid. Furthermore, communications should not imply that either the market value or the anticipated yield of the CMO is guaranteed.

(5) Simplicity Claims

CMOs are complex securities and require full, fair and clear disclosure in order to be understood by the investor. A communication should not imply that these are simple securities that may be suitable for any investor seeking high yields. All CMOs do not have the same characteristics and it is misleading to indicate otherwise. Even though two CMOs may have the same underlying collateral, they may differ greatly in their prepayment speed and volatility.

(6) Claims About Predictability

A communication would be misleading if it indicated that the anticipated yield and average life of a CMO were assured. It should disclose that the yield and average life will fluctuate depending on the actual prepayment experience and changes in current interest rates.

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NASD Notice to Members 98-84

Broker/Dealer And Agent Renewals For 1999

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The 1999 National Association of Securities Dealers, Inc. (NASD[®]) broker/dealer and agent registration renewal cycle begins in early November. This program simplifies the registration renewal process through the payment of one invoiced amount that will include fees for NASD personnel assessments, NASD branch offices, New York Stock Exchange (NYSE), American Stock Exchange (Amex), Chicago Board Options Exchange (CBOE), Pacific Exchange (PSE), and Philadelphia Stock Exchange (PHLX) maintenance fees. The invoice also includes state agent renewal fees and state broker/dealer renewal fees. Members should read this *Notice* and the instruction materials to be sent with the November invoice package to ensure continued eligibility to do business in the states effective January 1, 1999. Any renewal processing changes subsequent to the publishing of this *Notice to Members* will be provided to you in a *Special Notice to Members*.

Questions concerning this *Notice* may be directed to the CRD/PD Gateway Call Center at (301) 869-6699.

Initial Renewal Invoices

On or around November 9, 1998, initial renewal invoices will be mailed to all member firms. The invoices will include fees for NASD personnel assessments, NASD branch-office fees, NYSE, Amex, CBOE, PSE, and PHLX maintenance fees, state agent renewal fees, and state broker/dealer renewal fees. The NASD must receive full payment of the November invoice **no later than December 11, 1998**.

NASD personnel assessments for 1999 will be based on the number of registered personnel with an approved or conditional NASD

license on or before December 31, 1998. That personnel assessment is currently \$10.00 per person. The NASD branch office assessment fee is \$75.00 per branch based on the number of active branches as of December 31, 1998.

Agent renewal fees for NYSE, Amex, CBOE, PSE, PHLX, and state affiliations are listed in a matrix enclosed with each invoice. The matrix includes a list of broker/dealer renewal fees for states that participate in the broker/dealer renewal program. NYSE, Amex, CBOE, PSE, and PHLX maintenance fees—collected by the NASD for firms that are registered with those exchanges as well as the NASD—are based on the number of NYSE-, Amex-, CBOE-, PSE-, and PHLX-registered personnel employed by the member.

If a state does not participate in this year's broker/dealer renewal program, members registered in that state must contact the state directly to ensure compliance with renewal requirements. In addition, some participating states may require steps beyond the payment of renewal fees to complete the broker/dealer renewal process. Members should contact states directly for further information on state renewal requirements.

Payment of the initial invoice should be either in the form of a check made payable to NASD Regulation, Inc. (NASD RegulationSM) or by bank wire transfer. The check should be drawn on the member firm's account, with the firm's Central Registration Depository (CRDSM) number included on the check. Submit the check, along with the top portion of the invoice, and mail in the return envelope to:

NASD Regulation, Inc.
Finance Department - Renewals
15201 Diamondback Drive
Rockville, MD 20850

To ensure prompt processing, the renewal invoice payment should not be included with other forms or fee submissions. Members are advised that failure to return full payment to the NASD by the December 11, 1998, deadline could cause a member to immediately become ineligible to do business in the states effective January 1, 1999.

Filing Forms U-5

Members may avoid paying unnecessary renewal fees by filing Forms U-5 for agents terminating in one or more jurisdiction affiliations. Due to the positive feedback received by the NASD by its member firms that used post-dated Forms U-5 for renewals, the NASD will again accept post-dated agent termination notices on the Forms U-5. From November 2 to December 11, the NASD will accept and process Forms U-5 (both partial and full terminations) with **post-dated dates of termination**. Under this procedure, if the Form U-5 indicates a termination date of December 31, 1998, an agent may continue doing business in a jurisdiction until the end of the calendar year without being assessed renewal fees for that jurisdiction. Please ensure that Forms U-5 are filed by the renewal deadline date of December 11, 1998. **Also, post-dated Forms U-5 cannot be processed if the date of termination is after December 31, 1998.**

Members should exercise care when submitting post-dated Forms U-5. The NASD will process these forms as they are received but cannot withdraw a post-dated termination once processed. To withdraw a post-dated termination, a member would have to file a new Form U-4 **after** the termination date indicated on the Form U-5.

The NASD encourages members having access to the Firm Access Query System (FAQS) to use electronic filings for the submission of all

Forms U-5 and Page 1s of Form U-4. FAQS offers several advantages to firms in this regard, including the ability to **immediately** process terminations, ensure in-house control over agent registrations, and reduce normal and express mailing costs, as well as long-distance telephone charges. FAQS also allows members to quickly and efficiently handle the large filing volumes that typically occur at this time every year. Because of that, the NASD will provide an additional service to FAQS users by expanding the on-line user hours for November and December 1998. The system will be operational from 7 a.m. to 11 p.m., Eastern Time (ET), Monday through Friday, and will also be available on Saturdays from 9 a.m. to 5 p.m., ET, during these months.

Filing Forms BDW

The CRD Phase II program, now in its ninth year, allows firms requesting terminations (either full or state only) to file their Forms BDW with the CRD to avoid the assessment of renewal fees in those jurisdictions that are designated on the Form BDW, **provided that the jurisdiction is a CRD Phase II participant**. Currently, there are six jurisdictions that are not participating in Phase II. They are:

- Michigan
- Puerto Rico
- American Stock Exchange
- Chicago Board Options Exchange
- New York Stock Exchange
- Pacific Exchange

Firms requesting termination in any of the above-listed jurisdictions must submit a Form BDW directly to the jurisdiction as well as to the CRD.

The deadline for receipt of Forms BDW by the CRD for firms desiring to terminate an affiliation before year-end 1998 is December 11, 1998. This same date applies to the filing of Forms BDW with the jurisdictions that are not participating in Phase II. Post-dated Forms BDW filed with the CRD **will be** accepted and processed in the same manner as post-dated Forms U-5.

Removing Open Registrations

The initial invoice package will include a roster of firm agents whose NASD registration is either terminated or purged due to the existence of a deficient condition for more than 180 days, **but** who have an approved registration with a state. This roster should aid in the reconciliation of personnel registrations prior to year's end. Firms may terminate obsolete state registrations through the submission of Forms U-5 or reinstate the NASD licenses through the filing of Page 1s of Forms U-4. No roster will be included if a firm does not have agents within this category.

Final Adjusted Invoices

On or about January 11, 1999, the NASD will mail final adjusted invoices to its members. These invoices will reflect the final status of firm and agent registrations as of December 31, 1998. Any adjustments in fees owed as a result of registration terminations or approvals subsequent to the initial invoice mailing will be made in this final reconciled invoice. If a member has more agents and/or branch offices registered at year's end than it did on the November invoice date, additional fees will be assessed. If a member has fewer agents and/or branch offices registered at year's end than it did in November, a credit/refund will be issued.

Included with this adjusted invoice will be the member renewal rosters that will list all renewed personnel with the NASD, NYSE, Amex, CBOE, PSE, PHLX, and each state. Persons whose registrations are approved in any of these jurisdictions during November and December will be included in this roster, while registrations that are pending approval or are deficient at year's end **will not** be included in the renewal process. Firms will also receive an NASD branch-office roster that lists all

branches for which they have been assessed.

This year's final invoice package will also include a breakdown of fees by billing code for firms that use billing codes in the registration process. This breakdown will aid firms in their internal research and allocation of fees.

Firms then will have approximately two months in which to reconcile any discrepancies on the renewal ros-

ters. All jurisdictions should be contacted directly in writing. Specific information and instructions concerning the final adjusted invoice package will appear in the January 1999 issue of *Notices to Members*, as well as on the inside cover of the renewal roster. Firms may also refer to their renewal edition of the *CRD/PD Bulletin* for details concerning the renewal process.

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NASD Notice to Members 98-85

SEC Approves Rule Changes Regarding Electronic Communication Networks, Locked And Crossed Markets, And Members' Obligation To Provide Nasdaq With Certain Information

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On September 22, 1998, the Securities and Exchange Commission (SEC) approved amendments to the National Association of Securities Dealers, Inc. (NASD[®] or Association) rules regarding Electronic Communications Networks (ECNs) and locked and crossed markets. The SEC also approved a new rule regarding information requests made by Nasdaq[®] to NASD members. Specifically, the rule changes: (1) amend NASD Rule 4623 to specify the manner in which ECN orders that have a reserved size must interact with incoming SelectNetSM messages; (2) amend Rule 4613(e) to specify the manner in which quotations that are entered into Nasdaq at or after 9:25 a.m. and that lock or cross the market on the opening, must be resolved at the market's opening; and (3) add Rule 4625, which will require members that participate in The Nasdaq Stock Market[®] to provide information to Nasdaq departments and staff when information is so requested. The rule changes are effective November 1, 1998.

Questions concerning this *Notice* may be directed to John Malitzis, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8245.

Background

With the implementation of the SEC's Order Handling Rules in early 1997, a number of ECNs have been integrated into the Nasdaq market. Under SEC Rule 11Ac1-1(c)(5) (the ECN Rule) which was adopted as part of the SEC's Order Handling Rules, a Nasdaq Market Maker must reflect in its public quotes any superior prices that the Market Maker privately quotes in an ECN. The ECN Rule provides an alternative to this public quote display requirement, under which a Market Maker may comply with the ECN Rule if the ECN in which the Market Maker is privately quoting has:

- established a link to Nasdaq by displaying the best ECN prices in Nasdaq's quote montage; and
- provided access through Nasdaq to such publicly displayed prices.

To accommodate this alternative, Nasdaq created the "SelectNet Linkage" that allows: 1) ECNs to display their best prices from Market Makers and other ECN subscribers in the Nasdaq quote montage, including the inside market display; and 2) market participants to access those prices by sending orders to an ECN through SelectNet. The NASD is adopting the following rule changes in light of Nasdaq's experience with the integration of ECNs into the market.

Reserved Size

The NASD is adopting amendments to NASD Rule 4623 to establish the manner in which orders that have a reserved size and that are entered into an ECN must interact with SelectNet orders that are sent to an ECN.

Subsequent to the inclusion of ECNs into the market, Nasdaq has observed locked and crossed markets¹ occurring in connection with the use of "reserved" size orders in ECNs. Specifically, an ECN may display a portion of a customer order (*e.g.*, 1,000 shares) while maintaining a significantly larger portion of the order in reserve (*e.g.*, 10,000 shares). It is Nasdaq's experience that often a Market Maker will send a large SelectNet order (*e.g.*, 20,000 shares) to the ECN to take out the displayed and reserved portion of the ECN order so that the Market Maker may move its quote without locking/crossing the market. The ECN's system may be programmed, however, so that the incoming SelectNet order interacts only with the displayed portion of the ECN order, not the reserved and displayed portions of such order (*i.e.*, the 20,000 share SelectNet message will

execute against the displayed 1,000 shares only, not the full 11,000 shares). Thus, a Market Maker often is unable to take out the entire ECN order -- except in pieces and through multiple executions. After using reasonable means to avoid locking/crossing the market by—for example—sending SelectNet messages to the ECN to take out the quotation, the Market Maker often will enter a quotation that locks/crosses the market. These locked/crossed markets may last for a significant period and disrupt the marketplace.

The NASD is amending NASD Rule 4623 to address this issue. Under the amendment, if an ECN displays in Nasdaq a customer order having a reserved size and a market participant attempts to access the ECN's Nasdaq-displayed order by sending (via a Nasdaq-provided means) an order that is larger than the ECN's Nasdaq-displayed size, the ECN must execute the Nasdaq-delivered order: 1) up to the size of the Nasdaq-delivered order, if the ECN order (including the reserved size and displayed portions) is the same size or larger than the Nasdaq-delivered order; or 2) up to the size of the ECN order (including the reserved size and displayed portions), if the Nasdaq-delivered order is the same size or larger than the ECN order (including the reserved size and displayed portions). Thus, in the above example where the ECN is displaying 1,000 shares and holding 10,000 shares in reserve and the Market Maker sends the ECN a SelectNet order for 20,000 shares, the ECN would be required to execute 11,000 shares—the full size of the order in the ECN.

Locked/Crossed Markets

Nasdaq has observed instances of Market Makers and ECNs entering orders at 9:29 a.m. (when quotations

are not firm) that lock/cross the market and then leaving these orders in place at 9:30 a.m. when the quotations become firm and the market opens. Often times the Market Maker or ECN will not take action to attempt to resolve the lock/cross when the market opens. This effectively locks/crosses the market on the opening and disrupts the opening process.

In light of this situation, the NASD is amending Rule 4613(e). Amended Rule 4613(e) provides that if a Market Maker or ECN enters a quotation at or after 9:25:00 a.m. Eastern Time and the quotation locks or crosses the market on the opening, it is the obligation of that Market Maker or ECN to take action immediately when the market opens to avoid the lock or cross. The rule specifies that the Market Maker or ECN must take such take action (*e.g.*, by sending a SelectNet order to the quotation it will lock/cross, or by taking down its quotation, if appropriate) when the market opens at 9:30:00 a.m., but in no case later than 30 seconds thereafter (*i.e.*, 9:30:30 a.m.). The 30-second period is intended to give a Market Maker or ECN an opportunity to send a SelectNet message to the party that it will lock/cross at a point in time when quotations are firm (*i.e.*, at or after 9:30:00 a.m.).

For example, at 9:28:35 a.m., the market in Stock QRST is 20 x 20 3/16, and MMAB is displaying an offer of 20 3/16. At 9:29:45 a.m., MMCD enters a bid of 20 3/16 thereby locking the market. MMCD is obligated to attempt to resolve the lock as soon as the market opens (but no later than by 9:30:30 a.m.) by, for example, sending a SelectNet message to MMAB.

Although market participants should always monitor their pre-opening quotations to ensure that they do not lock/cross the market on the open-

ing, the amended rule: (1) provides a benchmark of 9:25:00 a.m., at which time market participants must start monitoring their quotations to determine whether they are entering locking/crossing quotations; (2) delineates which party must take action to resolve the lock/cross when the market opens; and (3) provides a benchmark of 9:30:30 a.m., by which time the market participant must take action to resolve the locked/crossed market situation.

Nasdaq Information Requests

Finally, the NASD is adopting Rule 4625 regarding members' obligation to supply Nasdaq with certain information when so requested. Nasdaq's MarketWatch and Market Operations departments have day-to-day responsibilities for administering various NASD and SEC rules, as well as carrying out duties delegated to them by the Association. For example, Nasdaq's MarketWatch Department is responsible for initiating trading halts and monitoring locked and crossed market situations, while Nasdaq's Market Operations Department is responsible for reviewing ITS trade-through complaints, clearly erroneous transactions, and requests for excused withdrawals or reinstatements from unexcused withdrawals. In order to properly administer a particular rule or to carry out a departmental function, Nasdaq staff often must obtain information on a real-time basis from market participants. For example, when monitoring for locked and crossed markets, Nasdaq MarketWatch routinely will contact the parties to the lock or cross (*e.g.*, a Market Maker and/or ECN) to request relevant information.² Staff then will review this information on a real-time basis and assist in resolving the locked or crossed market situation.³

Currently there is no explicit authority in the NASD's rules that allow Nas-

daq staff to request information from members, although members generally have voluntarily complied with such requests in the past. Thus, the NASD is adopting Rule 4625, which authorizes Nasdaq staff to request information in specific circumstances and obligates members to comply with such requests. Under Rule 4625, Nasdaq staff may request from a member information directly related to: a SEC or NASD rule that the Nasdaq department is responsible for administering; or to other duties/responsibilities imposed on the Nasdaq department by the "Plan of Allocation and Delegation of Function by the NASD to Subsidiaries" or otherwise delegated by the Association to such department. Members should note that, under Rule 4625, a failure to provide information in a timely, truthful, and/or complete manner, could subject the member to disciplinary action.

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

Rule 4623. Electronic Communications Networks

(a) The Association may provide a means to permit electronic communications networks ("ECN"), as such term is defined in SEC Rule 11Ac1-1(a)(8), to meet the terms of the [electronic communications network] ECN display alternative provided for in SEC Rule 11Ac1-1(c)(5)(ii)(A) and (B) ("ECN display alternative"). In providing any such means, the Association shall establish a mechanism that permits the [electronic communications network] ECN to display the best prices and sizes of orders entered by Nasdaq market makers (and other entities, if the [electronic communications network] ECN so chooses) into the [electronic communications network] ECN, and allows any NASD member the electronic

ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a Nasdaq market maker quotation in Nasdaq operated systems.

(b) An [electronic communications network] ECN that seeks to utilize the Nasdaq-provided means to comply with the [electronic communications network] ECN display alternative shall:

(1) demonstrate to the Association that it qualifies as an [electronic communications network] ECN meeting the definition in the SEC Rule;

(2) be registered as a[n] NASD member;

(3) enter into and comply with the terms of a Nasdaq WorkStation Subscriber Agreement, as amended for ECNs;

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq market maker orders (and other entities, if the [electronic communications network] ECN so chooses) at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the [electronic communications network] ECN, and prior to entering such prices and sizes, register with Nasdaq Market Operations as an ECN; and

(5) provide an automated execution, or if the price is no longer available, an automated rejection of any order routed to the [electronic communications network] ECN through the Nasdaq-provided display alternative.

(c) When a NASD member attempts to electronically access through a Nasdaq-provided system an ECN-displayed order by sending an order that is larger than the ECN's Nasdaq-

displayed size and the ECN is displaying the order in Nasdaq on a reserved size basis, the NASD member that operates the ECN shall execute such Nasdaq-delivered order:

(1) up to the size of the Nasdaq-delivered order, if the ECN order (including the reserved size and displayed portions) is the same size or larger than the Nasdaq-delivered order; or

(2) up to the size of the ECN order (including the reserved size and displayed portions), if the Nasdaq-delivered order is the same size or larger than the ECN order (including the reserved size and displayed portions).

No ECN operating in Nasdaq pursuant to this rule is permitted to provide a reserved-size function unless the size of the order displayed in Nasdaq is 100 shares or greater. For purposes of this rule, the term "reserved size" shall mean that a customer entering an order into an ECN has authorized the ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

Rule 4613. Character of Quotations

(a) - (d) No Change

(e) Locked and Crossed Markets

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) the bid quotation entered is equal to or greater than the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to or less than the bid quotation of another market maker entering quotations in the same security.

The prohibitions of this rule include the entry of a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time if such quotation continues to lock or cross the market at the market's opening, and requires a market maker or ECN that enters a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time to take action to avoid the lock or cross at the market's open or immediately thereafter, but in no case more than 30 seconds after 9:30:00 a.m.

(2) A market maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Pursuant to the provisions of paragraph (b) of this Rule 4613, a market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through Nasdaq at the time of receipt of any order.

(3) For purposes of this [paragraph] rule, the term "market maker" shall include:

(i) any NASD member that enters into an [electronic communications network] ECN, as defined in SEC Rule 11Ac1-1(a)(8), a priced order that is displayed in The Nasdaq Stock Market; and

(ii) [Such term also shall include] any NASD member that operates the [electronic communication network] ECN when the priced order being displayed has been entered by a person or entity that is not a[n] NASD member.

Rule 4625. Obligation to Provide Information

(1) A NASD member operating in or participating in the third market, The Nasdaq Stock Market, or other Nasdaq-operated system, shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of Nasdaq when:

(a) Nasdaq MarketWatch staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, or provision of a joint industry plan (e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq MarketWatch is responsible for administering or to other duties and/or obligations imposed on Nasdaq MarketWatch by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or otherwise; this shall include, but not be limited to, information relating to:

(i) a locked or crossed market;

(ii) a trade reported by a member or ECN to the Automated Transaction Confirmation Service ("ACT"); or

(iii) trading activity, rumors, or information that a member may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to NASD Rule 4120 and IM-4120-1; or

(iv) a quotation that appears not to be reasonably related to the prevailing market.

(b) Nasdaq Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, provision of a joint industry plan (e.g., ITS, UTP, CTA,

and CQA) (as promulgated and amended from time-to-time) that Nasdaq Market Operations is responsible for administering or to other duties and/or obligations imposed on Nasdaq Market Operations by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or otherwise; this shall include, but not be limited to, information relating to:

(i) a clearly erroneous transaction, pursuant to NASD Rule 11890;

(ii) a request to reconsider a determination to withhold a primary market maker designation, pursuant to NASD Rule 4612;

(iii) a request for an excused withdrawal or reinstatement, pursuant to NASD Rules 4619, 4620, 4730, 5106 and 6350;

(iv) the resolution of a trade-through complaint, pursuant to NASD Rules 5262, 5265, and 11890;

(v) an ACT input error;

(vi) an equipment failure; or

(vii) a request to submit a stabilizing bid, pursuant to NASD Rules 4614 and 5106, or a request to have a quotation identified as a penalty bid on Nasdaq, pursuant to NASD Rule 4624.

(2) A failure to comply in a timely, truthful, and/or complete manner with a request for information made pursuant to this rule may be deemed conduct inconsistent with just and equitable principles of trade.

Endnotes

¹A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

²Staff may request information on the identity of the customers, trade information, the reason for the lock or cross (e.g., system

error), and other information related to the locked or crossed market situation.

³In addition to the locks and crosses, there are other instances when staff must gather information from Market Makers and ECNs on a real-time basis. For example, Nasdaq MarketWatch may need to contact a Market Maker or ECN to determine quickly if a trade, quotation, or series of trades appear-

ing to be aberrations, were caused by a malfunction of a computer system (which could pose a threat to the integrity of Nasdaq from a technological perspective) or by some other source.

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NASD Notice to Members 98-86

Columbus Day,
Veterans Day, And
Thanksgiving Day:
Trade Date–Settlement
Date Schedule

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

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 12, 1998. On this day, The Nasdaq Stock Market[®] 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. 7	Oct. 9
5	8	12
6	9	13
7	13	14
8	14	15
9	15	16
12	15	19
13	16	20

Note: October 12, 1998, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 12, will be combined with transactions made on the previous business day, October 9, for settlement on October 15. 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 12.

Veterans Day And Thanksgiving Day: Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Veterans Day, Wednesday, November 11, 1998, and Thanksgiving Day, Thursday, November 26, 1998. On Wednesday, November 11, The Nasdaq Stock Market 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 in observance of Veterans Day. All securities markets will be closed on Thursday, November 26, in observance of Thanksgiving Day.

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Nov. 4	Nov. 9	Nov. 11
5	10	12
6	12	13
9	13	16
10	16	17
11	16	18
12	17	19
19	24	27
20	25	30
23	27	Dec. 1
24	30	2
25	Dec. 1	3
26	Markets Closed	—
27	2	4

Note: November 11, 1998, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on November 11 will be combined with transactions made on the previous business day, November 10, for settlement on November 16. 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 November 11.

*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 five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

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NASD Notice to Members 98-87

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of August 24, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of August 24, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
ABLC.GA	American Builders & Contractors Inc	10.625	05/15/07
AFGH.GA	Affinity Group Holding Inc.	11.000	04/01/07
ALAI.GA	Aladdin Gaming/Cap Corp.	13.500	03/01/10
APFC.GA	American Pacific Corp.	9.250	03/01/05
APFC.GA	American Pacific Corp.	9.250	03/01/05
APLO.GA	AP Holdings Inc.	11.250	03/15/08
APLO.GA	AP Holdings Inc.	11.250	03/15/08
ARGI.GD	American Restaurant Group Inc.	11.500	02/15/03
ARSL.GA	Ameristeel Corp.	8.750	04/15/08
ARUC.GA	Accuride Corp.	9.250	02/01/08
AVS.GA	Avistion Sales Co.	8.125	02/15/08
BCC.GA	Boise Cascade Corp.	9.875	02/15/01
BCC.GB	Boise Cascade Corp.	9.450	11/01/09
BCC.GC	Boise Cascade Corp.	9.900	03/15/00
BCC.GD	Boise Cascade Corp.	9.850	06/15/02
BCC.GE	Boise Cascade Corp.	7.350	02/01/16
BOP.GA	Boise Cascade Office Products Corp.	7.050	05/15/05
CE.GE	CalEnergy Co.	6.960	09/15/03
CE.GF	CalEnergy Co.	7.230	09/15/05
CHK.GG	Chesapeake Energy Corp.	9.625	05/01/05
CIOF.GA	Chiles Offshore LLC/Fin Corp.	10.000	05/01/08
CMCO.GA	Columbus McKinnon Corp.	8.500	04/01/08
CR.GG	CalEnergy Co.	7.520	09/15/08
CR.GH	CalEnergy Co.	8.480	09/15/28
EGHI.GA	Elgar Holdings Inc.	9.875	02/01/08
ENGL.GD	Engle Homes Inc.	9.250	02/01/08
FKNC.GA	Frank's Nursery & Crafts Inc.	10.250	03/01/08
FOHO.GA	Fort Howard Corp.	9.000	02/01/06
FTZH.GA	Fitzgerald Gaming	12.250	12/15/04
GBND.GA	General Binding Corp.	9.375	06/01/08
GTAR.GD	Globalstar LP/Cap Corp.	11.500	06/01/05
GW.GA	Grey Wolf Inc.	8.875	07/01/07
HPII.GA	Home Products Intl Inc.	9.625	05/15/08
HTHR.GA	Hawthorne Financial Corp.	12.50	12/31/04
ICGS.GA	ICG Services	10.000	02/15/08
ICIX.GD	Intermedia Communications Inc.	8.500	01/15/08
IHK.GB	Imperial Holly Corp.	9.750	12/15/07
IIXC.GB	IXC Communications Inc.	9.000	04/15/08
KMCT.GA	KMC Telecom Holdings Inc.	12.500	02/15/08
LIEV.GA	LIN Television Corp.	8.375	03/01/08
LNGS.GA	LIN Holdings Corp.	10.000	03/01/08
LNR.GA	LNR Property Corp.	9.375	03/15/08
LNR.GA	LNR Property Corp.	9.375	03/15/08
LO.GA	Local Financial Corp.	11.000	09/08/04
LWN.GC	Loewen Group Intl. Inc.	7.500	04/15/01
MEAL.GB	Metallurg Inc.	11.000	12/01/07
MEDA.GA	Medaphis Corp.	9.500	02/15/05
MKHU.GA	Market Hub Partners Inc.	8.250	03/01/08
MPN.GB	Mariner Post-Acute Network Inc.	9.500	04/01/06

Symbol	Name	Coupon	Maturity
MRNR.GA	Mariner Health Group	9.500	04/01/06
MTUM.GA	Mentus Media Corp.	12.000	02/01/03
MUI.GA	Metals USA	8.625	02/15/08
NTHC.GA	Northland Cable Television Inc.	10.250	11/15/07
NXLK.GB	Nextlink Communications Inc.	9.000	03/15/08
NXTL.GG	Nextel Communications Inc.	11.500	09/01/03
PMSI.GA	Prime Medical Services Inc.	8.750	04/01/08
PMWI.GB	Pagemart Wireless Inc.	11.250	02/01/08
PRRJ.GA	Perry-Judds Inc.	10.625	12/15/07
PSAI.GA	Pediatric Services of America Inc.	10.00	04/15/08
PSIX.GA	PSINet Inc.	10.00	02/15/05
QWST.GC	Qwest Communications Intl. Inc.	8.290	02/01/08
RSLU.GA	RSL Communications PLC	9.125	03/01/08
SFXE.GA	SFX Entertainment Inc.	9.125	02/01/08
SILA.GA	Silver Cinemas Intl. Inc.	10.500	04/15/05
SPF.GC	Standard Pacific Corp.	8.000	02/15/08
SPVI.GA	Spectra Vision Inc.	11.500	10/01/01
SYAU.GA	Stanadyne Automotive Corp.	10.250	12/15/07
SYPT.GA	Syratech Corp.	11.000	04/15/07
TSO.GA	Tesoro Petroleum Corp.	9.000	07/01/08
TWA.GD	Trans World Airlines Inc.	11.375	03/01/06
TWA.GE	Trans World Airlines Inc.	10.250	06/15/03
UNTA.GA	United Artists Theaters Co.	9.750	04/15/08
UNTA.GB	United Artists Theaters Co.	10.062	10/15/07
WPSN.GC	Westpoint Stevens Inc.	7.875	06/15/08

As of August 24, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
ACCP.GA	American Cap Corp.	8.400	06/15/93
AMIC.GC	Americold Corp.	11.500	03/01/05
ARGI.GA	American Restaurant Group Inc.	12.000	09/15/98
ARGI.GB	American Restaurant Group Inc.	13.000	09/15/98
ARGI.GC	American Restaurant Group Inc.	13.000	09/15/98
CHK.GF	Chesapeake Energy Corp.	10.500	06/01/02
FERL.GC	Ferrellgas LP/Finance Corp.	10.000	08/01/01
JORE.GA	Jorgensen Earle M Co. Del New	10.750	03/01/00
LIEV.GA	LIN Television Corp.	8.375	03/01/08
LNGS.GA	Lin Holdings Corp.	10.000	03/01/08
LPET.GA	La Petite Holdings Corp.	9.625	08/01/01
LQI.GA	La Quinta Inns Inc.	9.250	05/15/03
MRNR.GA	Mariner Health Group	9.500	04/01/06
NXTL.GG	Nextel Communications Inc.	11.500	09/01/03
OEH.GA	Orient Express Hotels Inc.	10.250	09/01/98
RYL.GA	Ryland Group Inc.	10.500	07/15/02
SPVI.GA	Spectra Vision Inc.	11.500	10/01/01
SPVI.GA	Spectra Vision Inc.	11.500	10/01/01
TEP.GB	Tucson Electric Power Co.	8.125	09/01/01
TEP.GC	Tucson Electric Power Co.	7.550	03/01/02
TEP.GC	Tucson Electric Power Co.	7.550	03/01/02

Symbol	Name	Coupon	Maturity
TEP.GD	Tucson Electric Power Co.	7.650	05/01/03
TEP.GD	Tucson Electric Power Co.	7.650	05/01/03
TRIP.GA	Trangle Pacific Corp. Del	10.500	08/01/03
VNCI.GA	Vencor Inc.	10.125	09/01/01
VNCI.GA	Vencor Inc.	10.125	09/01/01
WYDM.GA	Wyndam Banking Inc.	13.625	09/15/98

As of August 24, 1998, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
CHCA.GD	CRBR.GA	Chancellor Radio Broadcasting Co.	9.375	10/01/04
VNCI.GA	HIL.GA	Hill Haven Corp. New	10.125	09/01/08

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation (NASD RegulationSM), at (301) 590-6451.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq[®] Market Operations, at (203) 385-6310.

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NASD Notice to Members 98-88

Underwriting Compensation In Public Offerings

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) is issuing this *Notice to Members* to remind members that compensation received by members in public offerings of securities is to be determined through negotiation with the issuer offering the securities. Consistent with long-standing policy, it is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to engage, directly or indirectly, in any conduct that discourages the competitive activities of other member firms. This includes, but is not limited to, directly or indirectly engaging in any conduct that inhibits competition in the pricing of services offered by members including conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence, constrain, or inhibit the freedom of a member or person associated with a member to price its services competitively.

Questions regarding this *Notice* may be directed to Gary Goldsholle, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8104.

Discussion

The National Association of Securities Dealers, Inc. (NASD[®]) Rule 2710(c) prohibits a member or person associated with a member from receiving compensation or participating in a public offering of securities if the underwriting compensation in connection with the public offering is unfair or unreasonable. NASD Regulation's Corporate Financing Department (Department) has direct responsibility for the review of underwriting compensation. The Department reviews public offerings before their effective dates and aggregates all items of value proposed to be received by underwriters and related persons. Total compensation is then

reviewed and a determination is made as to whether the compensation is fair and reasonable.

The pricing of underwriting compensation, including the gross spread on offerings, is determined by the issuer and the underwriter through negotiation, subject to NASD Regulation's review to ensure that it is fair and reasonable. NASD Regulation has noted a high degree of price uniformity in gross spreads charged by underwriters in initial public offerings of corporate equity securities. NASD Regulation considers it important to remind members that there is no standard level of underwriting compensation. Prices should be determined through competition and the level of underwriter compensation on a given transaction should be the product of negotiation between the issuer and the underwriter. The exchange of current price information among competitors in this context may raise serious anti-competitive concerns. Any attempt improperly to influence another member in its pricing is a violation of NASD Rule 2110.

As set forth in IM-2110-5, it is NASD Regulation's long-standing policy that it is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to coordinate the prices of such member with any other member or associated person; to direct or request another member to alter a price; or to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or other conduct that retaliates against or discourages the competitive activities of another market participant. While IM-2110-

5(5) specifically permits member firms to engage in any underwriting (or any syndicate for the underwriting) of securities to the extent permitted by the federal securities laws, this exclusion does not permit member firms to engage in conduct that discourages the competitive activities of other firms.

Member firms should review their practices and procedures regarding the pricing of their services in public offerings to ensure that such pricing results from appropriate negotiation with the issuer, and that conduct of the type noted above is prohibited. A finding of such conduct will result in disciplinary action. Member firms should also review their supervisory

procedures regarding underwriting compensation to ensure that the requirement for free negotiation of fees is emphasized to all relevant employees and that procedures exist to identify any questionable activity.

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Disciplinary Actions

Disciplinary Actions Reported For October

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rule-making Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, October 19, 1998. The information relating to matters contained in this *Notice* is current as of the end of September 23.

Firms and Individuals Fined

B. Riley & Company, Inc. (Los Angeles, California) and **Bryant R. Riley (Registered Principal, Pacific Palisades, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$12,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Riley, reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations, and with applicable NASD rules relating to the designation of supervisory personnel, trade reporting, and recordkeeping.

J. B. Oxford & Company (Beverly Hills, California) and **Stephen M. Rubenstein (Registered Principal, Chatsworth, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$20,000, jointly and severally. In addition, the firm

was fined \$5,000, jointly and severally, with another individual. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting under the direction and control of Rubenstein, failed to maintain margin requirements in certain customer accounts of its day traders. The findings also stated that the firm, acting under the direction and control of another individual, failed to compute accurately the amount required to be deposited into the Special Reserve Bank Account for the Exclusive Benefit of Customers and failed to deposit the amount required to be deposited into the account no later than one hour after the opening of banking business on the second following business day.

Olsen Payne and Company (Salt Lake City, Utah) and **James Dean Payne (Registered Principal, Salt Lake City, Utah)** submitted an Offer of Settlement pursuant to which they were censured and fined \$16,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Payne, reported transactions through ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm, acting through Payne, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations and NASD rules regarding trading ahead of customer limit orders, and short-sale rules.

Portfolio Management, Inc. (Little Rock, Arkansas) and **Samuel L. Bowman, III (Registered Principal, Little Rock, Arkansas)** submitted an Offer of Settlement pursuant to which they were censured and fined

\$14,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Bowman, allowed the entry of proprietary trades through the Small Order Execution System (SOES) into an account controlled by Bowman. The findings also stated that the firm, acting through Bowman, failed and neglected to establish, maintain, and enforce proper supervisory procedures governing the entry of trades through SOES.

Securities America, Inc. (Omaha, Nebraska) and **Thomas Gerard Zielinski (Registered Principal, Omaha, Nebraska)** submitted an Offer of Settlement pursuant to which they were each censured and fined \$10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Zielinski failed to take steps reasonably designed to ensure that a branch manager carried out his supervisory responsibilities over registered persons in a reasonable manner under the attendant circumstances, or that the registered persons ceased their participation in unsupervised sales of unapproved promissory notes away from the member firm. The findings also stated that the firm failed to establish adequate written procedures or unwritten procedures to ensure the reasonable supervision of a registered representative to ensure that he was reasonably performing his supervisory duties over the activities of registered persons in regard to their compliance with the applicable NASD rules.

Sy Leavitt Company, Inc. (Escondido, California), William L. Atkinson (Registered Principal, Carlsbad, California), Thomas G. Scalzo, Jr. (Registered Principal, Loma Linda, California), and

William J. Schurmann (Registered Principal, Escondido, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$10,625, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting under the direction and control of Atkinson, Scalzo, and Schurmann, participated in a contingency offering of securities and withdrew funds received from public customers from the bank escrow account to which they had been deposited before the terms of the contingency were met.

Firms Fined

Columbia Hospital Securities Corporation (Nashville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed individuals to maintain their representative registrations with the firm, although they were not at all times actively engaged in the securities business of the firm. The findings also stated that the firm failed and neglected to achieve compliance with the Firm Element of the Continuing Education Requirements in that the firm failed to prepare adequate written training plans and failed to maintain adequate records documenting the content and completion of training programs by registered persons.

Empire Securities Incorporated of Washington (Spokane, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in viola-

tion of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting and record-keeping.

Interstate/Johnson Lane Corporation (Charlotte, North Carolina) submitted an Offer of Settlement pursuant to which the firm was censured, fined \$10,000 and ordered to disgorge \$62,640 to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make and keep current a list of political contributions to officials of issuers. The findings also stated that the firm failed to list political contributions made by a registered representative and engaged in prohibited municipal securities business with the city of Charlotte, North Carolina.

Needham & Company, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it received customer limit orders to buy and to sell stock, and failed to execute contemporaneously the customer orders after it bought or sold shares for its own market-making account. The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. Furthermore, the NASD determined that when the firm acted as principal for its own account, it failed to provide written

notification to a customer that the price to the customer was an average of the trade prices reported by the firm to ACT. In addition, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules regarding trade reporting, Securities and Exchange Commission (SEC) Order Execution Rules, Best Execution, Anti-Competitive Practices, and SOES.

Normandy Securities, Inc. (Scarsdale, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$10,000, and required to undertake revision of the firm's written supervisory procedures relating to firm quote compliance in a manner not unacceptable to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered Market Maker, the firm was presented an order at the firm's published bid or published offer in an amount up to its published quotation size and failed to execute the orders thereby failing to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations concerning the SEC and NASD firm quote rules.

Individuals Barred or Suspended

Jeremy David Alk (Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$31,000, and barred from association with any NASD member in any capacity. Without admitting or deny-

ing the allegations, Alk consented to the described sanctions and to the entry of findings that he wrote checks drawn on a nonprofit social organization totaling \$4,203 and, without authorization, used \$4,000 of the funds for his personal benefit.

Vincent Au (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify as a general securities representative by taking the Series 7 exam prior to again acting in any registered capacity with the NASD. Without admitting or denying the allegations, Au consented to the described sanctions and to the entry of findings that he wired funds to a public customer in an attempt to settle a customer complaint away from the firm, without the knowledge and consent of his member firm.

Vincent Alan Beck (Registered Representative, Wayne, New Jersey) was censured, fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Beck received a \$118 check from a public customer for insurance premium payments, failed to apply the funds toward the insurance premiums, endorsed the check, and converted the monies to his own personal use. Beck also failed to respond to NASD requests for information.

Dean K. Birkelo (Registered Representative, Colorado Springs, Colorado) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 30 days. The Denver District Business Conduct Committee

(DBCC) imposed the sanctions following an order of remand by the National Business Conduct Committee (NBCC). Without admitting or denying the allegations, Birkelo consented to the described sanctions and to the entry of findings that he engaged in a private security transaction and failed to provide prior written notice to his member firm.

Nicholas Robert Borissoff (Registered Representative, Concord, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$70,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Borissoff consented to the described sanctions and to the entry of findings that he recommended to public customers and effected in their accounts the purchase and sale of securities which transactions were unsuitable for the customers in light of their size and frequency and in light of the facts disclosed by customers as to their other security holdings and their financial situations and needs. The findings also stated that Borissoff participated in private securities transactions while failing to give prior written notification of these transactions to his member firm.

Paul Francis Byrne (Registered Principal, Red Bank, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for five months, and required to comply with the regulatory computer-based training of the Regulatory Element of the Continuing Education Requirements beginning within two months of his reentry into the securities industry. Without admitting or denying the allegations, Byrne consented to the described sanctions and to the entry of findings that he failed to exercise his supervisory obligations adequately. According to the find-

ings, Byrne allowed the use of scripts or sales presentations by registered representatives at his member firm that were materially false and misleading in that, among other things, they did not contain disclosure of risk factors or negative factor information, and created a wholly optimistic picture as to the likely success of an investment. In addition, the NASD found that some of the scripts included inaccurate or materially incomplete information about the issuers of the securities being sold, and some provided for improper price predictions or comparisons among unrelated securities.

Arthur Emil Cohen (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$15,000 plus interest in restitution. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he requested that a check in the amount of \$15,000 be issued against the securities account of a public customer, obtained the check, endorsed it with the purported endorsement of the customer and his own endorsement, and deposited the check into his bank account, without the customer's prior authorization. The findings also stated that Cohen caused \$14,000 to be transferred from the securities account of one customer to the bank account of another customer without the prior authorization of the first customer.

Mitchell John Dabo, Jr. (Registered Principal, Hollister, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Dabo participated in the

purchase of limited partnership interests without providing prior written notification to his member firm.

James Michael Dean (Registered Representative, Atlanta, Georgia) was censured, fined \$185,245.50, barred from association with any NASD member in any capacity, and ordered to pay \$14,549.10, plus interest in restitution to a public customer. The sanctions were based on findings that Dean forged the signature of a public customer on a letter of authorization in order to convert the public customer's funds to his own use and benefit; without the customer's knowledge or authorization, Dean deposited the checks into an unauthorized account, had checks drawn against the unauthorized account, and converted the proceeds of those checks to his own use and benefit.

In addition, Dean deposited a public customer's checks in an undisclosed securities account at another member firm and did not provide written notification to his member firm nor did he advise the executing firm of his association with another, caused checks made payable to himself and others in the amount of \$14,549.10 to be drawn against the account. Dean also failed to respond to NASD requests for information.

Peter F. Drewek (Registered Representative, Baltimore, Maryland) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Drewek failed to respond to NASD requests for information.

Eric Scott Elkins (Registered Representative, Vincennes, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$360,000, barred from association with any NASD member in any

capacity, and ordered to pay \$57,029.98 in restitution. Without admitting or denying the allegations, Elkins consented to the described sanctions and to the entry of findings that he obtained a total of \$57,029.98 in checks drawn on bank accounts of public customers, which funds represented the proceeds of mutual fund liquidations for the customers. The NASD determined that Elkins, without the knowledge or consent of the customers, caused the checks to be deposited in bank accounts and/or mutual fund accounts maintained in his name, and used the funds for some purpose other than for the benefit of the customers. Elkins also failed to respond to NASD requests for information.

Michael Peter Finn (Registered Representative, Babylon, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Finn consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted material facts in connection with his recommendations of securities to public customers. The findings also stated that Finn made fraudulent price predictions to customers in connection with his recommendations and made an unauthorized transaction in the account of a public customer.

Edward Golick (Registered Principal, Del Mar, California) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Golick failed to respond to NASD requests to appear for an on-the-record interview.

George Glen Hartberg (Registered Principal, Los Angeles, California) and **John Wesley Hartberg (Registered Principal, Los Angeles, California)** were each censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that they failed to respond to NASD requests for information.

Donald Martin Hogan, Jr. (Registered Representative, St. Louis, Missouri) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hogan consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Christopher Edward Jann (Registered Representative, Centereach, New York) was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to retake the Regulatory Element of the Continuing Education Requirements before reassociating with an NASD member. The sanctions were based on findings that Jann solicited members of the public to become customers of his member firm and purchase stock offered by the firm, and in connection with such solicitation, made certain representations about the securities and the offering that he knew, or should have known, to be false and misleading and omitted information that he knew, or should have known, to be material to the investment decision of the persons he solicited.

Maurice Henry Jedda (Registered Representative, Great Neck, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined

\$40,000, barred from association with any NASD member in any capacity, and required to offer proof to the NASD that recession totaling \$345,000 was made to public customers. Without admitting or denying the allegations, Jedda consented to the described sanctions and to the entry of findings that he effected private securities transactions for public customers without prior written notification to his member firm. The findings also stated that not only did Jedda fail to notify his member firm of his own personal investment of \$75,000 in a private securities transaction, but he also actively attempted to conceal this information from the firm.

Ronald Mills Johnston (Registered Representative, Rockford, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$346,110.40 in restitution. Without admitting or denying the allegations, Johnston consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed and neglected to give written notice of his intention to engage in such activities to his member firms and to receive written approval from the firms to engage in such activities.

Bernadette Jones (Registered Representative, Pomona, California) was censured, fined \$3,500, barred from association with any NASD member in any capacity, and ordered to pay \$2,516.56 in restitution to a member firm. The National Adjudicatory Council (NAC) imposed the sanctions following the review of a Los Angeles DBCC decision. The sanctions were based on findings that Jones received \$6,000 from a public customer for the purpose of purchasing a life insurance policy. Jones submitted an application for a

different insurance policy with a money order for \$1,483.44 to her member firm and misused the remainder of the funds received from the customer for her own use and benefit. In addition, Jones submitted a Form U-4 to her member firm that contained false and misleading information.

Gloria Anita Jordan (Registered Representative, Brooklyn, New York) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jordan failed to respond to NASD requests for information.

Ian Tamer Kideys (Registered Representative, Los Angeles, California) was censured, fined \$84,811.37, and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Kideys participated in private securities transactions, for which he received compensation, and failed to provide prior written notification to, or obtain written approval from, his member firm.

Mark Kevin Lammers (Registered Representative, Tucson, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Lammers consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving prior written notice to his member firm and therefore failed to receive written approval from his firm. The findings also stated that Lammers made misrepresentations and omissions in his solicitation of securities to public customers.

Donald Clewell Maier (Registered Principal, Monte Sereno, California) was censured, fined \$39,750, suspended from association with any NASD member in any capacity for 30 business days, and ordered to requalify by exam before reassociating with an NASD member firm. The sanctions were based on findings that Maier participated in private securities transactions without providing prior written notification to his member firm and filed an annual questionnaire with his firm that contained false information concerning private placements and unregistered securities.

Douglas John Mangan (Registered Representative, Massapequa, New York) was censured, fined \$120,000, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Mangan created a false and inaccurate customer securities account statement and caused his member firms' records to indicate falsely the customer's address as his own without the knowledge, consent, or authorization of the customer. Mangan also failed to respond to NASD requests to appear for an on-the-record interview.

Wayne Albert McIntosh (Registered Representative, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, McIntosh consented to the described sanctions and to the entry of findings that he participated in private securities transactions for compensation and failed to provide prior written notice to, or receive prior authorization from, his member firm.

David C. McLaurin (Registered Representative, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, McLaurin consented to the described sanctions and to the entry of findings that he completed and signed a Form U-4 that contained inaccurate information. The findings also stated that McLaurin provided his member firm with a false college diploma that he had created on his personal computer.

Arlesta Mae Meyers (Registered Representative, Wichita, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Meyers consented to the described sanctions and to the entry of findings that she provided materially incomplete information to the NASD in response to requests for information.

Jose Reynaldo Moreno (Registered Representative, Phoenix, Arizona) was censured, fined \$20,000, suspended from association with any NASD member in any capacity for three years, and ordered to requalify by exam before reassociating with any NASD member firm. The sanctions were based on findings that Moreno failed to respond completely to NASD requests for information.

Mike D. Nolan (Registered Representative, Denham Springs, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$700,000, barred from association with any NASD member in any capacity, and

required to demonstrate that full restitution has been made to the appropriate parties. Without admitting or denying the allegations, Nolan consented to the described sanctions and to the entry of findings that he received checks and cash totaling \$116,550 from public customers for the purpose of investing in medical receivables, failed and neglected to invest these funds on the customers' behalf, and instead converted the funds to his own use and benefit, without the customers' knowledge or consent. The findings also stated that Nolan failed to respond to NASD requests for information.

Allen R. Prewitt (Registered Representative, Bradenton, Florida) was censured, fined \$10,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following its review of an Atlanta DBCC decision. The sanctions were based on findings that Prewitt provided false information on a Form U-4.

Anthony Eugene Priolo (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days and required to requalify as a general securities representative by taking the Series 7 exam before ever functioning again in that capacity. Without admitting or denying the allegations, Priolo consented to the described sanctions and to the entry of findings that he prepared documentation for the accounts of public customers containing information which he knew or should have known to be inaccurate.

Ivan A. Radowitz (Registered Representative, Jamesburg, New Jersey) submitted a Letter of Acceptance, Waiver and Consent

pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Radowitz consented to the described sanctions and to the entry of findings that he endorsed and deposited a public customer's rollover check in the amount of \$7,780.05 into his personal bank account, without the consent or knowledge of the customer. The findings also stated that Radowitz misappropriated \$200 in cash from another public customer, which represented a partial premium payment from the customer for a new policy.

Joel Jacob Reznick (Registered Representative, Wheeling, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Reznick consented to the described sanctions and to the entry of findings that he purchased shares of stocks for the account of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization to exercise discretion in the account.

Christopher Lee Rice (Registered Representative, Buffalo Grove, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,506.83, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Rice consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers without the customers' prior knowledge, authorization, or consent. In addition, Rice executed unauthorized margin transactions in the account of public customers without the customers'

knowledge, authorization, or consent that the transactions were done on margin rather than in the customers' cash account.

Cheryl Ann Rodgers (Registered Representative, Dallas, Texas) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rodgers failed to respond to an NASD request for testimony.

Jeffrey L. Salzwedel (Registered Principal, Tualatin, Oregon) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$107,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Salzwedel consented to the described sanctions and to the entry of findings that he made unsuitable recommendations for the purchase and/or sale of various securities in the accounts of public customers without having reasonable grounds for believing that such recommendations were suitable for these customers in view of the number of shares purchased and held, the nature of the recommended securities, the concentration of securities held in the accounts, and the customers' specific financial situations, circumstances, and needs.

Michael Dennis Shaw (Registered Principal, Atlanta, Georgia) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Shaw consented to the described sanctions and to the entry of findings that he effected the purchase of units in an initial public offering (IPO) for the account of a public customer without the customer's knowledge or consent.

Joseph Anthony Simonell (Registered Representative, Rancho Palos Verdes, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Simonell consented to the described sanctions and to the entry of findings that he sent letters to investment product companies stating that he had recently conducted an investor seminar at which the companies' products were mentioned. The letters offered the companies the opportunity to participate in the seminars and referenced receipt from a local restaurant itemizing purported expenses he incurred. The NASD found that Simonell had not conducted a seminar nor had he incurred any expenses. Simonell received checks from two of the firms for \$100 and \$200, cashed the checks, and deposited the funds into his bank account.

John S. Smoot, Jr. (Registered Representative, Jackson, Tennessee) submitted an Offer of Settlement pursuant to which he was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay \$6,300 in restitution to the appropriate parties. Without admitting or denying the allegations, Smoot consented to the described sanctions and to the entry of findings that he received payments from public customers for the purchase of, and as payment on, various homeowner's insurance policies, automobile insurance premiums and a life insurance policy, failed and neglected to submit these funds to his member firm on the customers' behalf, and instead converted the funds to his own use and benefit, without the customers' knowledge or consent. Smoot also failed to respond to NASD requests for information.

John J. Squeri, Jr. (Registered Representative, Atlantic Beach, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for 18 months, and required to requalify by exam in all capacities. Without admitting or denying the allegations, Squeri consented to the described sanctions and to the entry of findings that he executed the sale of shares of securities in the account of a public customer without the customer's prior knowledge, authorization, or consent. The findings also stated that Squeri contacted another customer, a resident of the state of Georgia, and identified himself as another registered representative in an attempt to obtain information from the customer for his new account form. The NASD determined that Squeri contacted this person when his registration to conduct business within and from the state of Georgia was suspended.

William Kevin Stewart (Registered Principal, Cape Girardeau, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry of findings that he failed to respond completely to an NASD request for information.

Michael Taliercio (Registered Representative, Brooklyn, New York), James Garofalo, Jr. (Registered Representative, Flushing, New York), Robert Francis Smith (Registered Representative, Gaithersburg, Maryland), April Wiener (Registered Representative, Plainview, New York), and Edward Sparacio (Registered Representative, Brooklyn, New York) submit-

ted Offers of Settlement pursuant to which Taliercio was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Garofalo was censured, fined \$20,000, suspended from association with any NASD member in any capacity for 18 months, and required to requalify by exam prior to becoming associated with any NASD member, and Smith was censured, fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam prior to becoming associated with any NASD member. Wiener was censured, fined \$10,000, suspended from association with any NASD member in any capacity for 18 months, and required to requalify by exam prior to becoming associated with any NASD member firm, and Sparacio was censured, suspended from association with any NASD member in any capacity for three years, and required to requalify by exam prior to becoming associated with any NASD member firm. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Taliercio, Garofalo, Smith, Wiener, and Sparacio made baseless and improper price predictions to public customers regarding speculative securities, and Taliercio, Garofalo, and Smith made materially false and misleading statements. The findings also stated that Taliercio, Garofalo, Smith, and Sparacio made misrepresentations as to specific issuers, and Taliercio and Garofalo claimed to have access to inside information. Moreover, the NASD found that Taliercio, Wiener, and Sparacio engaged in unauthorized trading, Taliercio and Sparacio made unfounded comparisons between unrelated securities, and Taliercio improperly failed to execute or discouraged sell orders, made false and misleading representations as to the risk of investing in a speculative

security, and engaged in unsuitable trading in a customer's account. Furthermore, the NASD determined that Garofalo and Wiener made false promises to limit losses to customers, and Wiener and Sparacio promised to make up losses with new trading. Garofalo and Smith failed to execute a sell order. Garofalo, Smith, and Sparacio provided false testimony to the NASD. Sparacio told a public customer to disregard information in prospectuses and falsified records as to customers' financial conditions.

Ada Lai Yin Tam (Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$15,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tam consented to the described sanctions and to the entry of findings that she falsified her Form U-4 applications by failing to include her prior association with a member firm and by stating that she was employed for over two years at a member firm where she had never been employed. The findings also stated that Tam impersonated another representative in order to obtain privileged and confidential information about an investigation and, provided false information to the NASD concerning her prior employment and securities industry compensation in response to a written request for information.

Rooney Thomas (Registered Representative, Coral Springs, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas consented to the described sanctions and to the entry of findings that he failed to enter sell orders per public

customers' instructions and guaranteed the customers against losses in their account. The findings also stated that Thomas received \$21,000 from a public customer for investment purposes and never invested the money as instructed, and instead, deposited the check in his personal bank account. Thomas also failed to respond to NASD requests for information.

Spiro George Tsotsos (Registered Principal, Upper Brookville, New York) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Tsotsos consented to the described sanctions and to the entry of findings that he failed to appear for testimony before the NASD.

Richard Leroy Valentine (Registered Representative, Goddard, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Valentine consented to the described sanctions and to the entry of findings that he participated in private securities transactions without prior written notice to and written approval and/or acknowledgment from his member firm.

Christiaan P. Van Der Put (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Van Der Put consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Jeffrey Mark Vassallo (Registered Representative, Munster, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vassallo consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he submitted disbursement request forms to his member firm for the purpose of causing policy loans and/or the surrender of paid-up additional insurance to be made against insurance policies owned by the customer with the proceeds to be used in payment of the premiums for the second insurance policy owned by the customer.

Kelly Ray Webb (Registered Representative, Gilbert, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Webb consented to the described sanctions and to the entry of findings that he placed inaccurate information on order tickets that were submitted to an NASD member in connection with securities transactions. The findings also stated that Webb effected an unauthorized transaction in public customer accounts and effected mutual fund purchases for a public customer in amounts that, if aggregated, would have caused the account to be eligible for reduced sales charges.

Ted Daniel Wells (Registered Representative, Kennesaw, Georgia) was censured, fined \$5,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanction following its review of an Atlanta DBCC decision. The sanctions were based on

findings that Wells effected the sale of warrants for the account of a public customer without the customer's prior knowledge or authorization.

Jere Thomas Wickert (Registered Principal, Chicago, Illinois) was censured, fined \$9,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Wickert recommended and effected index options transactions in customers' accounts without the knowledge, consent, or authorization of the customers and in the absence of a reasonable basis for believing that the recommendations were suitable for the customers in light of their investment objectives, experience, financial situations, or needs.

Bryan Scott Zimmerman (Registered Representative, Land O'Lakes, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Zimmerman consented to the described sanctions and to the entry of findings that he faxed a letter to a public customer that failed to conform to NASD prospectus requirements and included information regarding an IPO in which he made an unwarranted price prediction.

Individuals Fined

Graciela Armendariz (Registered Principal, El Paso, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$25,000, and ordered to requalify as an investment company and variable contracts products representative by taking and passing the Series 6 exam prior to acting again in any registered capacity. Without admitting or deny-

ing the allegations, Armendariz consented to the described sanctions and to the entry of findings that, while associated with a member firm, Armendariz made payments of commissions received in connection with the sale of variable annuity products to an individual who was registered with another member firm that was not authorized to sell variable annuity products in the state where the sales took place. These payments were made without prior oral or written authorization from the member firm.

Kevin Michael Dunnigan (Registered Representative, Kalispell, Montana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Kalispell consented to the described sanctions and to the entry of findings that he recommended investments to public customers without having reasonable grounds for believing that such recommendations were suitable for these customers in view of the nature of the recommended investments, the facts disclosed by these customers as to their other security holdings, their financial situations, circumstances, objectives, and needs.

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of September 23, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Hattier, Sanford & Reynoir, L.L.P. (New Orleans, Louisiana) and Gus A. Reynoir (Registered Principal, New Orleans, Louisiana) were censured and fined \$10,000, jointly and severally. The sanctions were based on findings that the firm, acting through Reynoir, participated in the sale of municipal bonds and provided public customers with confirmations that failed to meet the requirements of MSRB Rule G-15. The firm, acting through Reynoir, issued confirmations that failed to disclose the lower of the yield to call or yield to maturity, the fact that the securities were initially offered at an "original issue discount", failed to disclose the fact that the securities were subject to the alternative minimum tax, and the fact that the securities were unrated. In addition, this decision serves as a Letter of Caution as to the firm, acting through Reynoir, for engaging in municipal securities sales transactions with public customers at prices that were unfair and unreasonable, taking into consideration all relevant factors.

The firm and Reynoir have appealed to the NAC and the sanctions are not in effect pending consideration of the appeal.

Robert Charles Madrid (Registered Representative, Blue Island, Illinois) was censured and fined \$10,000. The sanctions were based on findings that Madrid executed securities transactions in the account of a public customer without the customer's knowledge, authorization, or consent and in the absence of written or oral authorization discretion in the account.

This action has been called for review by the NAC and the sanctions are not in effect pending consideration of the review.

Joel Dean Moore (Registered Principal, Redding, California) was censured and fined \$11,900. The sanctions were based on finding that Moore recommended to public customers and effected for the customers' account the purchase of securities without having reasonable grounds for believing that such recommendations were suitable for the customers based upon the facts disclosed by the customers as to their other securities holdings and their financial situation and needs.

This action has been called for review by the NAC and the sanctions are not in effect pending consideration of the review.

Philip J. Schiller (Registered Principal, Highland Park, Illinois) was censured and fined \$57,747.30. The sanctions were based on findings that Schiller purchased securities in IPOs that traded at a premium in the immediate aftermarket in violation of the NASD's Free-Riding and Withholding Interpretation.

Schiller has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Kevin Harrison Stricklin (Registered Principal, Cranston, Rhode Island) was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Stricklin, in recommending and urging public customers to buy speculative and/or unseasoned securities, made baseless price predictions and/or predictions of returns. In addition, Stricklin, in connection with the purchases of securities, made untrue statements of material facts and/or omitted to state material facts necessary to make the statements by them, in

light of the circumstances in which they were made, not misleading.

Stricklin has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint.

Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Gregory Alan Casady (Registered Principal, Kansas City, Missouri)

was named as a respondent in an NASD complaint alleging that he executed unauthorized transactions in customer accounts without the customers' prior knowledge, authorization, or consent. The complaint alleges that Casady utilized the proceeds from the sale of a stock to cover the purchase of the same stock. The complaint also alleges that Casady failed to respond to NASD requests for information.

Daniel Joseph DiPoalo (Registered Representative, Matawan, New Jersey)

was named as a respondent in an NASD complaint alleging that he received \$144,850.58 in funds from public customers for investment purposes and, contrary to the customer's instructions and without their knowledge, failed to invest the funds and, instead, converted the funds by depositing them in his own personal accounts. The complaint alleges that DiPoalo has repaid two of the customers a total of \$26,000, and that

his employer firm has reimbursed the customers all but \$44,531.32 for the funds misappropriated by DiPoalo. The complaint also alleges that DiPoalo failed to respond to NASD requests for information.

Kai Fang (Registered Representative, Flushing, New York)

was named as a respondent in an NASD complaint alleging that he guaranteed a public customer against loss. The complaint alleges that Fang paid \$2,798.40 in a personal check to the customer as reimbursement for the loss incurred in the customer's account.

Deborah W. Henke (Registered Representative, Newbury Park, California)

was named as a respondent in an NASD complaint alleging that she met with public customers to discuss opening an investment account and preparing an investment plan, requested and received approximately \$4,900 in U.S. Treasury Bonds from the customers, and was never heard from again, despite repeated attempts by the customers and others to contact her. The complaint alleges that Henke never returned the U.S. Treasury Bonds to the customers. The complaint also alleges that Henke failed to respond to NASD requests for information.

Christopher Thomas McNamara (Registered Representative, Dix Hills, New York)

was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted material information in the course of soliciting public customers to purchase securities. The complaint alleges that McNamara effected transactions in public customer accounts without the prior authorization and consent of the customers. The complaint also alleges that McNamara predicted the future price of securities to public customers without having a reasonable basis for his predictions. The

complaint alleges that McNamara failed to contact a public customer in order to permit the customer to give instructions regarding his account, and failed to follow customer instructions to sell securities.

Rocco Anthony Vignola (Registered Representative, Bohemia, New York)

was named as a respondent in an NASD complaint alleging that he forged a public customer's signature on an application for an insurance policy in the customer's name and submitted the application, without the customer's knowledge or authorization. The complaint alleges that Vignola also forged the customer's signature on a check for \$908, which reflected the customer's credit resulting from the cash surrender of a separate insurance policy, and used a portion of the proceeds of that check to pay for the aforementioned unauthorized insurance policy.

James Thomas Walsh (Registered Representative, Commack, New York)

was named as a respondent in an NASD complaint alleging that he made material misrepresentations and failed to disclose material facts to public customers, in order to induce the customers to purchase securities. The complaint alleges that Walsh made fraudulent price predictions in connection with his recommendations to public customers to purchase securities. The complaint also alleges that Walsh effected a transaction in the account of a public customer, without the prior authorization of the customer.

Joseph A. Watters (Registered Representative, Monroeville, Pennsylvania)

was named as a respondent in an NASD complaint alleging that he conducted private securities transactions without giving prior written notice to, or receiving approval from, his member firm. The complaint alleges that Watters rec-

ommended that a public customer purchase a promissory note, without having reasonable grounds for believing that this recommendation and resulting transaction was suitable for the customer on the basis of her financial situation, investment objectives, and needs. The complaint also alleges that, in connection with the offer and sale of the aforementioned promissory note, Watters made misrepresentations to the public customer.

James Clark Williams (Registered Representative, Bloomsburg, Pennsylvania) was named as a respondent in an NASD complaint alleging that he received checks totaling \$166,560 from a public customer for the purpose of paying an insurance premium and purchasing securities. The complaint alleges that each of the checks was drawn to the order of James C. Williams at his request, that he negotiated each of the checks, and that he did not remit the proceeds of the checks to the customer's insurance company, nor did he otherwise cause the proceeds to be applied to the purposes for which the customer intended. The complaint also alleges that Williams mailed documents to the customer purporting to be account statements issued by the insurance company for the customer's investments, when in fact, the statements were false in that they were not issued by the insurance company and the customer did not have such accounts with the insurance company.

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD

Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Aequus Equities, Inc., New York, New York (August 31, 1998)

Alliance Asset Group, Inc., Englewood Cliffs, New Jersey (August 31, 1998)

Biscayne Capital LLC, New York, New York (August 31, 1998)

Fedick & Company, Inc., Easton, Connecticut (August 31, 1998)

Great Lakes Capital, Inc., Vero Beach, Florida (August 31, 1998)

McCormick-O'Mara Securities Co., New York, New York (August 31, 1998)

Nationwide Asset Management Corporation, Laguna Hills, California (August 31, 1998)

Firms Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Award

First Cambridge Securities Corp., New York, New York (September 15, 1998)

First United Equities Corp., New York, New York (September 3, 1998)

J.S. Securities, Inc. (a/k/a First National Equity Corp.), Point Pleasant Beach, New Jersey (August 10, 1998)

Marsh, Block & Company, Inc., New York, New York (August 21, 1998)

Matrix Securities Corporation, Garden City, New York (August 20, 1998)

Meyers Pollock Robbins, Inc., New York, New York (August 24, 1998)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Award

Alonzo, Arthur Andrew, Boca Raton, Florida (August 21, 1998)

Bonetti, Guiseppe, Brooklyn, New York (September 3, 1998)

Briganti, Nicholas Anthony, Brooklyn, New York (August 24, 1998)

Cohen, Jason Alan, Searingtown, New York (September 3, 1998)

Corso, Mark A., Brooklyn, New York (September 22, 1998)

Domin, Michael, Forest Hills, New York (September 15, 1998)

Mahon, Kevin Michael, Manalapan, New Jersey (August 21, 1998)

Smith, Brian Mark, Douglasville, Georgia (September 18, 1998)

Steel, Todd Coleman, Coral Springs, Florida (August 24, 1998)

Swayzee, Jerry, Boulder, Colorado (September 15, 1998)

Traynor, Douglas K., Pound Ridge, New York (September 3, 1998)

Weinstein, Howard, Port Washington, New York (September 3, 1998)

NASD Regulation Fines Olde Discount Corp. \$1.35 Million; Founder Ernest Olde Also Fined \$500,000 and Suspended

NASD Regulation fined Olde Discount Corporation \$1.35 million and censured it in connection with the firm's sales practices, including the distribution and use of improper advertising and promotional literature. Ernest J. Olde, the firm's former President and Chairman, was fined an additional \$500,000, suspended from the securities industry for 18 months, and censured. Both Olde Discount and Ernest Olde neither admitted nor denied NASD Regulation's findings.

As part of a coordinated regulatory effort, the Securities and Exchange Commission (SEC) also announced settlements with Ernest Olde and Olde Discount. In April 1993, Olde Discount began a major national print, radio, and television advertising campaign to promote "commission-free" trading. The first program featured the firm's "Smart Trade Account." Olde Discount advertised that through this account, investors with at least \$500,000 in cash or securities could buy or sell 1,000 or more shares of common stock worth at least \$5 a share, without being charged "markups, markdowns, or commission fees of any kind."

Later, in June 1994, Olde Discount began advertising a second program – SmartTrading – saying that any purchase of 1,000 or more shares of an Olde Discount recommended stock would be "commission-free – without markups of any kind." At the time, Olde Discount wrote and distributed a brochure, SmartTrade, Commission-less Trading Account, which explained how it could afford to offer this advantage. The firm answered its own question – "So, what is the catch?" – by stating: "Quite simply, there is none." The

brochure further explained that the firm would absorb the costs of these commission-less trades in the hope that customers would use the firm's other services, such as margin accounts.

In fact, although not disclosed in the advertising, Olde Discount and its registered representatives derived economic benefits from this "commission-free" trading. For example, the firm often derived revenue by capturing the spread between a stock's bid and ask price – and the broker was paid a portion of the spread in the form of sales credits. NASD Regulation found that Olde Discount's brokers failed to tell many investors that the firm actually made money on "commission-free" trades, even when they asked.

NASD Regulation found that both Olde Discount and Ernest Olde – who was involved in, and oversaw the adoption of most of the firm's advertising and compensation policies – violated the National Association of Securities Dealers' advertising rules because the firm and "its brokers' communications with the public failed to provide a sound basis for evaluating the facts in regard to the services characterized as 'commission-free' or 'commission-less' offered by the firm."

NASD Regulation also found that beginning in the fall of 1992, through August 1995, Olde Discount's registered representatives engaged in a series of fraudulent practices, including: churning, unauthorized trading, misrepresentations, omissions of material facts, and unsuitable recommendations. A consequence of Olde Discount's compensation, production, hiring, and training practices created an environment in which these violations occurred, NASD Regulation found. The SEC

sanctioned Olde Discount and Ernest Olde for this conduct and required the firm to waive statute of limitations defenses for certain arbitration claims by its customers.

Furthermore, NASD Regulation found that Ernest Olde failed to establish supervisory systems that could have prevented this conduct and was a cause of the firm's violations.

Ernest Olde was also separately sanctioned for failing to cooperate with an NASD Regulation's investigation, as all registered brokers and brokerage firms are required to do. NASD Regulation found that Ernest Olde failed to produce documents and information in a timely fashion and improperly refused to complete his on-the-record testimony after NASD Regulation declined to limit its questioning of him to one questioner per topic.

Twelve months of Ernest Olde's 18-month NASD Regulation suspension will run concurrently with his SEC suspension, and the remaining six months will be served thereafter. He is also required to take certain requalification examinations before he can re-enter the securities industry.

As part of the settlement, Olde Discount must, for the next 12 months, pre-file all of its advertisements that relate to commissions or charges to customers, markups, or broker/firm compensation with NASD Regulation.

This action resulted from an investigation by NASD Regulation's Enforcement and Advertising Regulation Departments. NASD Regulation also thanked the SEC for its assistance in this case.

NASD Regulation Fines DLJ \$100,000 For Trading Halted Stock

NASD Regulation announced that it has fined Donaldson, Lufkin & Jenrette Securities \$100,000 for executing a trade of a New York Stock Exchange (NYSE) listed security during a trading halt imposed by The Nasdaq Stock Market® and the NYSE. The firm was also censured.

The security in question was traded in the third market. Over-the-counter trading of exchange-listed securities is commonly known as third-market trading. Third-market transactions are effected by NASD member brokerage firms and are reported to Nasdaq®.

On January 29, 1997, Nasdaq and the NYSE halted trading in the security at 9:31 a.m., based on news that the company planned to restate its earnings. Trading did not resume until 2:02 p.m. on January 31, 1997.

NASD Regulation found that DLJ arranged buy and sell orders for a total of 6,511,900 shares of the company's stock on behalf of 29 separate customer accounts during the trading halt. The firm transmitted the orders – which had already been matched together – to an offshore, non-NASD member brokerage firm that completed them as a crossing transaction.

Offshore brokerage firms are located outside of the United States and, therefore, are not required to be members of the NASD.

DLJ, which neither admitted nor denied NASD Regulation's findings, was sanctioned for violating the NASD's rule that states no broker or brokerage firm "shall, directly or indirectly, effect any transaction in a security as to which a trading halt is currently in effect."

NASD Regulation Sanctions Hibbard, Brown Branch Managers

NASD Regulation today announced a decision by its District 9 Business Conduct Committee (DBCC) barring three former Hibbard, Brown & Co. branch managers from the securities industry and fining them a total of \$245,000 for operating a boiler room and for committing numerous sales practice violations. Hibbard was expelled from the NASD in 1994.

After a 14-day hearing, the DBCC found that Hibbard was a "classic boiler room operation" and that the three branch managers of Hibbard's Pittsburgh, Wayne, and Lancaster, PA offices were "integral cogs" in the fraudulent sales system. According to the decision, Hibbard's boiler room evolved directly from one set-up by its predecessor, the now defunct First Jersey Securities.

The three branch managers are:

- Steven D. Goodman – Barred, fined \$75,000 for his role in operating Hibbard's Pittsburgh, PA branch, and censured.
- Albert J. Ford – Barred, fined \$95,000 for his role in operating Hibbard's Wayne, PA branch, and censured.
- Douglas F. Andrews – Barred, fined \$75,000 for his role in operating the Lancaster, PA branch, and censured.

The DBCC found Goodman, Ford, and Andrews perpetuated the fraud by recruiting young, inexperienced brokers and training them to use highly aggressive, cold calling techniques to sell low-priced, speculative securities. All three were found to have encouraged Hibbard's brokers to use misleading sales literature and scripts during sales presentations to customers.

The decision also found that all three committed egregious sales practices abuses, including: providing baseless price predictions, misrepresentations, and unwarranted hyperbole about the securities they were selling. Ford also engaged in a pattern of unauthorized trading in the accounts of three customers.

To date, NASD Regulation's reviews of Hibbard's sales practices in its Pennsylvania, New Jersey, Kansas, and Missouri branch offices have resulted in a total of 41 formal disciplinary actions, including: 20 individuals who were barred from the securities industry, 3 individuals who were barred from acting as supervisors, 18 individuals who were suspended, and fines of more than \$2.3 million.

Initial actions, such as this, by NASD Regulation disciplinary committees are final after 45 days, unless they are appealed to NASD Regulation's National Adjudicatory Council (NAC), or called for review by the NAC. The sanctions are not effective during this period. If the decision in this case is appealed or called for review, the findings may be increased, decreased, modified, or reversed.

NASD Regulation Continues Microcap Market Focus; Complaints Name Brokers At Greenway Capital and Kensington Wells

NASD Regulation today announced that it has filed complaints in two microcap fraud cases. A total of 23 brokers at Greenway Capital and Kensington Wells, Inc., were named in the two separate complaints.

In both cases, NASD Regulation's complaints allege a series of fraudulent practices and the extensive use of abusive and high-pressure "boiler room" sales tactics to sell low-priced speculative securities to retail investors.

Greenway Capital Corp.

At Greenway Capital Corp., a now defunct New York, NY, brokerage firm that was also known as Cortlandt Capital Corp., 11 brokers – including the firm's President, John J. Margiotta; and one of its owners, Fred R. Luthy – were charged with a variety of sales practice and supervisory violations. Also named in the complaint are: Alan J. Mandel, Jason A. Prussing, James J. Crimi, Jeffrey S. Geoghegan, Javier Hernandez, James Morrill, Joseph A. Ricci, Cosmo Scali, and Joseph S. Tarulli.

NASD Regulation charged seven of the 11 brokers with fraud in connection with the April 1996 underwriting of Dialysis Corporation of America (DCA). Based on interviews with investors across the country, and after investigating customer complaints against the firm and its brokers, NASD Regulation uncovered evidence of numerous instances of unauthorized trading, misrepresentations, and the use of illegal boiler room sales tactics. For example, many investors complained that Greenway's brokers threatened to cancel their purchases of the initial public offering (IPO) if the investors refused to make additional investments in DCA.

The complaint also charges that many investors had their purchases canceled when they refused to buy additional DCA shares in the aftermarket.

In addition, NASD Regulation charged that the owners of certain favored accounts – such as former Greenway brokers, a relative of a current Greenway broker, and a former girlfriend of a Greenway broker – were permitted to purchase securities (both stock and warrants) in the IPO, and then sell them back to Greenway for a quick profit. These

customers were not required to purchase DCA shares in the aftermarket.

The complaint alleges that in the DCA offering Greenway used young, inexperienced brokers to sell low-priced, highly speculative securities to retail customers through boiler room sales tactics such as: trading without customer authorization; making material misrepresentations including making baseless price predictions; omitting material information; guaranteeing future stock performance; failing to execute customer orders; and not executing orders promptly.

NASD Regulation also charged six of the 11 brokers with unauthorized trading in connection with Greenway's dealings in several "house stocks," including: Hariston Corporation, Consolidated Western & Pacific Resources, Smartel Communications Corp., and J.B. Oxford Holdings, Inc. House stocks are generally viewed as those that have been underwritten by a single brokerage firm in circumstances where that firm is in control of much of the company's outstanding shares and dominates the aftermarket trading. The complaint alleges a series of violations with respect to these stocks, including: unauthorized trading; material misrepresentations and omissions; baseless price predictions; falsifying firm records; failing to follow customer instructions to sell securities; misusing customer funds; and violating state Blue Sky laws.

Greenway is not named in the complaint because the Securities and Exchange Commission (SEC) revoked its securities industry registration on June 19, 1998. The complaint does not allege any wrongdoing on the part of the issuers.

Previously, seven other Greenway brokers were barred from the securities industry and agreed to pay a total of \$1.2 million in fines as a result of NASD Regulation's investigation. Three of the seven – Jack Basile, Joseph Lanni, and Giuseppe Temperino – also consented to findings that they arranged for impostors to take their Series 7 qualification exams. The remaining four were: Rocco Basile, Peter DelBalso, Giuseppe Bonetti, and Salvatore Panetta.

The Greenway complaint was issued by NASD Regulation's District 10 Office in New York.

Kensington Wells, Inc.

In a separate complaint, NASD Regulation charged 12 former brokers of the now defunct Long Island brokerage firm Kensington Wells, Inc. with a wide range of sales practice abuses. The complaint alleges that the 12 brokers, who were based at Kensington Wells' Mineola, NY headquarters, participated in or facilitated a boiler room operation through a series of fraudulent sales practices and other misconduct from April 1994 through October 1996.

Named in the complaint are: Joel Grant, Steven Orandello, James McInerney, Steven Stecklow, Victor Difrisco, Steven Jaross, Edwin Lawrence, Kevin Loomis, Edward Stock, Craig Redding, Gary Redding, and Michael Newman.

According to the complaint, the sales practice violations occurred in connection with Kensington Wells' underwriting of the IPOs of Xchem International, Inc.; Universal Automotive Inc.; and VideoLan Technologies, Inc. The brokers are alleged to have engaged in unauthorized trading; baseless or improper price predictions; making

improper comparisons to other stocks; tying the purchase of IPOs to a commitment to buy stock in the aftermarket; guaranteeing customers against loss; promising to make up losses with new trades; and refusing to execute or aggressively discouraging orders to sell stocks, immediately before and after the IPOs.

At least 60 investors were victimized through fraudulent practices, the complaint said.

Both complaints demand that the respondents forfeit the profits that

were illegally obtained and make restitution to defrauded investors. The complaint does not allege any wrongdoing on the part of the issuers.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondents before drawing any conclusion

regarding the allegations in the complaint.

Under NASD rules, the individuals and the firms named in the complaint can file a response and request a hearing before an NASD Regulation disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from the NASD.

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For Your Information

OATS Update

IMPORTANT! Non-Market Makers in Nasdaq securities are NOT required to submit an Order Audit Trail SystemSM (OATSSM) Subscriber Initiation and Registration Form to the NASD until after January 1999. Only Market Makers in Nasdaq securities and ECNs were required to submit the Form by September 14, 1998.

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Special NASD Notice to Members 98-89

NASD Announces Changes In CRD Filing Fees

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The National Association of Securities Dealers, Inc. (NASD®) Board of Governors has approved changes to Schedule A of the NASD By-Laws affecting the Central Registration Depository (CRDSM) fee structure. The changes set registration fees at a level that will recover the costs of the CRD and Public Disclosure Programs, and more closely align the fees charged for specific transactions to the costs of the activities related to processing those transactions. For a detailed list of the fee changes and their respective effective dates, please refer to the NASD Regulation Web Site, www.nasdr.com.

Questions about this *Notice* may be directed to the NASD Call Center at (301) 869-6699.

Summary

On October 8, 1998, the NASD Board of Governors approved changes to Schedule A of the NASD By-Laws affecting the CRD fee structure. The changes set registration fees at a level that will recover the costs of the CRD and Public Disclosure Programs, and more closely align the fees charged for specific transactions to the costs of the activities related to processing those transactions. The changes involve:

- Implementing an annual renewal processing fee (\$15.00 per registered representative or principal) and a fee for amendments (\$20.00 per amendment filing). (**Note: The renewal processing fee for 1999 will be collected as part of the overall registration renewal process that begins in November 1998.**)
- Applying the existing fee for disclosure review (\$95.00) to all new or amended disclosures of reportable events; increasing the fee for processing fingerprint cards (to \$10.00

plus the FBI fee); and eliminating a reduced fee for registrations with more than one member firm that are not filed simultaneously.

- Eliminating the Firm Access Query System (FAQS) charges and CRD license and maintenance fees (effective upon deployment of the modernized CRD system).

Appropriate amendments to Schedule A of the By-Laws have been filed with the Securities and Exchange Commission (SEC). Pursuant to Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934, the fee changes became effective upon filing.

Most member firms will pay more for registration and other filing activity under the new fee structure. The benefits to the industry of the modernized CRD system, scheduled for deployment in the third quarter of 1999, will outweigh these additional costs.

The modernized CRD will significantly streamline the "one-stop" filing system for broker/dealers and their associated persons, and will deliver the following substantial financial, operational, and technological benefits to member firms:

- Expedited processing of initial registrations and transfers, which will reduce the number of days associated persons are restricted from conducting business (*e.g.*, registration filings that have no new disclosure will be processed by the NASD in 24 hours or less);
- Reduced registration processing costs by replacing paper filing with electronic form filing through the Web; and
- Improved member firm access to registration information by providing each member firm with a compre-

hensive, on-line registration processing and information system available directly through the Web.

As discussed above, upon deployment of the modernized CRD system, the NASD will eliminate FAQs charges (see Section 9 of Schedule A) incurred by subscribing members

because the information and services provided today by FAQs will be available through the Internet without a usage charge in the modernized CRD system. The date of the elimination of FAQs charges will be announced 45 days in advance in a *Notice to Members*.

For a detailed list of the fee changes and their respective effective dates, please refer to the NASD Regulation Web Site, www.nasdr.com, or telephone the NASD Call Center at (301) 869-6699.

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NASD Notices to Members (December 1996 to current) are also available on the Internet at www.nasdr.com.

YEAR 2000 UPDATE

SEC Reporting Requirement

In July of this year, the National Association of Securities Dealers, Inc. (NASD[®]) issued *Special Notice to Members 98-63* alerting members to a new reporting requirement imposed by an amendment to Securities and Exchange Commission (SEC) Rule 17a-5. The SEC rule amendment requires broker/dealers to file two Year 2000 reports using the new BD-Y2K Form. The first report was due to the SEC and designated examining authority (DEA) on or before August 31, 1998. The second report is due April 30, 1999.

The SEC and the NASD are working closely with all the self-regulatory organizations as well as the Securities Industry Association (SIA) to improve their ability to identify potential Year 2000 failures. Much of this work will be accomplished through careful analysis of the two reports required by the SEC of both broker/dealers and transfer agents.

The NASD strongly encourages those member firms that did not meet the August 31 deadline to submit the Year 2000 report immediately. The NASD sent out over 1,500 letters notifying NASD member firms that failed to comply with the SEC Year 2000 reporting requirement that the NASD and SEC will file disciplinary actions as appropriate. As of September 22, 195 firms were still delinquent in filing the Form BD-Y2K. The NASD and the SEC will be taking appropriate disciplinary action against these firms.

Broker/Dealer Contingency Plans

As the NASD and its member firms prepare their systems and applications to operate successfully in the face of the Year 2000 challenge, contingency planning is an essential step that should not be neglected. Contingency planning for Year 2000 occurs at different levels for member firms. Each broker/dealer is responsible for developing a written plan that ensures business continuity through the Year 2000.

Currently, contingency plans are being developed by industry associations like the Federal Reserve Board and SIA. The SIA has formed a policy-level contingency planning committee of experts to examine contingencies that might arise should computer programs and other automated systems not correctly recognize the century date change. The committee will focus on (1) developing steps to cushion the pressures on financial markets, financial institutions, and clearance and settlement systems that arise the last couple of weeks leading up to 2000 and first couple of weeks into 2000, and (2) developing contingency arrangements for maintaining business continuity during the century date change.

According to industry guidelines, organizations should begin constructing their contingency plans by the end of 1998 and spend 1999 detailing results and preparing business operations where needed. If you are not sure what a contingency plan is or when it would be useful, it is similar to Murphy's Law—be prepared for anything that could go wrong. For example, what will you do if you rely on public transportation, and it doesn't work on January 1, 2000? Or, if you rely on satellite feeds for clock synchronization, and they don't operate? Or, if your local telecommunications company were unable to function, how would you notify your customers? Lastly, how would you manage an orderly shutdown of your business?

The following column displays a high-level outline of the contents of a sample contingency plan. We share this with NASD member firms solely as an example.

Year 2000 contingency plans should include:

- 1 *The objective of the plan (e.g., continue normal operations, continue in a degraded mode, abort the function as quickly and safely possible, etc.)*
- 2 *Criteria for invoking the plan (e.g., missing a renovation milestone, reaching a Year 2000-related failure date, experiencing serious system failures, inability of a vendor to provide required service, etc.).*
- 3 *Schedule of activities, dependencies, and resources required from triggering events.*
- 4 *Expected life of the events (How long can operations continue in contingency operating mode?).*
- 5 *Roles, responsibilities, and authority.*
- 6 *Procedures for invoking contingency mode.*
- 7 *Procedures for operating in contingency mode.*
- 8 *Resource plan for operating in contingency mode (e.g., staffing, scheduling, materials, supplies, facilities, temporary hardware and software, communications, etc.).*
- 9 *Criteria for returning to normal operating mode.*
- 10 *Procedures for returning to normal operating mode.*
- 11 *Procedures for recovering lost business events or data.*

To find out more about contingency planning and legal issues surrounding the Year 2000 challenge, attend the Year 2000 Legal Seminars being held October 13 (Chicago), October 20 (Atlanta), and November 3 (New York City). This Year 2000 legal seminar will also be featured at the annual NASD Regulation Fall Securities Conference being held November 4-6 in San Francisco.

For more information on required Year 2000 reporting, help in developing a member firm Year 2000 contingency planning, and/ or details about Year 2000 workshops, contact the NASD Year 2000 Program Office by e-mail at y2k@nasd.com or by calling its toll-free number, at (888) 227-1330.

Year 2000 Activity Countdown

What are firms doing today? Are you ...

- Continuing to monitor mission-critical, third-party, and service provider Year 2000 progress, including clearing organizations, banks, and utilities?
- Adding Year 2000 warranty language to new contracts?
- Registering for SIA-sponsored industry testing?
- Revalidating inventory of mission-critical business systems to identify any missed or newly added systems due to business changes?
- Completing remediation of mission-critical business systems, facilities, and equipment?
- Continuing to test mission-critical business systems, facilities, and equipment, including testing with external parties?
- Developing plans to keep mission-critical business systems, facilities, and equipment Year 2000 compliant over the next 15 months?
- Verifying all desktop applications are Year 2000 compliant?
- Conducting legal reviews of Year 2000 plans and progress?
- Developing first draft of contingency plans for mission-critical business functions and service providers?
- Attending SIA workshops on industry testing?
- Registering for NASD Fall and Winter workshop series?
- Lining up auditors to perform required review of 1999 BD-Y2K reports?

Test With The NASD

To schedule testing or obtain information about NASD, NASD Regulation, or Nasdaq applications please contact:

**Nasdaq Customer Test System
(800) 288-3783**

**NASD, NASD Regulation Testing
(888) 227-1330 (select Option 3)**

Year 2000 Disciplinary Actions

NASD Regulation brought disciplinary actions against 59 brokerage firms for late filing of required BD-Y2K Forms; 37 of the firms entered into settlements agreeing to be censured and pay fines ranging from \$2,300 to \$3,200. Complaints have been issued against the remaining 22 firms.

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Upcoming Education and Events

NASD Workshops (See previous page for details)

Topic	Date	Location
Contingency Planning	December	Virtual
End User & Best Practices	December	Virtual
Legal Issues	January	Virtual
Mandatory Testing	January	District Offices

SIA Events

Operations Update	December 3	NYC
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For more information, visit the SIA Web Site (www.sia.com).

NASD & SEC Rules In The Works

Mandatory Testing *NASD*
Amendment to 17a-5 *SEC*

Reports & Other Filing Requirements

BD-Y2K Report #1 *August 31, 1998*
BD-Y2K Report #2 *April 30, 1999*
Test Results Report *Third Quarter 1999*

More Information/Questions

NASD Year 2000 Program Office
e-mail: y2k@nasd.com
phone: (888) 227-1330

Notices to Members YEAR 2000 UPDATE

November 1998

Mandatory Testing

On October 5, 1998, the National Association of Securities Dealers, Inc. (NASD[®]) filed a proposed rule change with the Securities and Exchange Commission (SEC) that would mandate Year 2000 testing for clearing firms, market makers, and government securities firms. The proposed rule also would strongly encourage testing between correspondent clearing firms and introducing firms with a proposed requirement for clearing firms to report test results. Members required to test may be able to satisfy the requirement by participating in all or a combination of the following types of tests: connectivity, point-to-point, Securities Industry Association (SIA)-sponsored extended point-to-point, and SIA-sponsored industry testing.¹ All firms would be required to report test results to the NASD. It is expected that the SEC will publish the proposal of comment in the next few weeks. Firms should register for industry testing with the SIA. The phone number is (888) Y2K-4SIA.

New Education Workshops That Require No Travel!

The NASD Year 2000 Program Office expanded its education and awareness activities to include Virtual Workshops. Virtual Workshops will be delivered through an MCI conference call-in session. These sessions—targeted to smaller firms and introducing firms—are intended to make educational workshops more accessible to members. Workshop outlines can be viewed on the NASD Regulation Web Site (www.nasdr.com). During the call-in sessions, members will hear a presentation, followed by a question and answer period. These sessions will provide an opportunity for members to share ideas and learn from other firms' experiences.

To participate in the Virtual Workshops, the NASD strongly encourages registration, but it is not required. Call MCI at (888) 839-8316, listen to the greeting, and provide the following information when prompted: firm name, Broker/Dealer #, and workshop date. For more information see the workshop schedule in the next column.

¹ Definitions:

Connectivity/Point-to-Point—Point-to-Point is a one-day test in a Year 2000 environment between firms, a firm and an exchange, or a firm and a utility. This test, which covers the communication links/external interfaces, can be initiated between any facilities with an electronic connection to each other.

Extended Point-to-Point—This mimics the Point-to-Point test, but is sponsored by the SIA, with testing dates available between Nov. 14, 1998 and Feb. 13, 1999. Extended Point-to-Point also is a one-day test, but includes all participating exchanges/utilities acting together.

Industry Testing—Industry testing is sponsored by the SIA, and is a four-date test, allowing for rollover of trade dates/settlements. Participants must have completed either Point-to-Point or Extended Point-to-Point testing as a pre-requisite for registration, which closes Nov. 30, 1998.

Virtual Workshop Schedule

Contingency Planning

Password: Contingency Plan98
Conference Leader: Lyn Kelly

- ◆ Introducing Firms:
December 1 and December 10
@ 11:00 a.m.
- ◆ Clearing Firms:
December 3 and December 8
@ 11:00 a.m.

End User Plans & Best Practices

Password: EndUser98
Conference Leader: Lyn Kelly
December 15 @ 1:00 p.m.

On the day of the session, call (888) 282-9568 and indicate the password and conference leader provided for the workshop.



Year 2000 Activity Countdown

What are firms doing today? Are you ...

- Continuing to monitor mission-critical, third-party, and service provider Year 2000 progress, including clearing organizations, banks, and utilities?
- Adding Year 2000 warranty language to new contracts?
- Registering for SIA-sponsored industry testing?
- Revalidating inventory of mission-critical business systems to identify any missed or newly added systems due to business changes?
- Completing remediation of mission-critical business systems, facilities, and equipment?
- Continuing to test mission-critical business systems, facilities, and equipment, including testing with external parties?
- Developing plans to keep mission-critical business systems, facilities, and equipment Year 2000 compliant over the next 15 months?
- Verifying all desktop applications are Year 2000 compliant?
- Conducting legal reviews of Year 2000 plans and progress?
- Developing first draft of contingency plans for mission-critical business functions and service providers?
- Attending SIA workshops on industry testing?
- Registering for NASD Fall and Winter workshop series?
- Lining up auditors to perform required review of 1999 BD-Y2K reports?

Test With The NASD

To schedule testing or obtain information about NASD, NASD Regulation, or Nasdaq applications please contact:

**Nasdaq Customer Test System
(800) 288-3783**

**NASD, NASD Regulation Testing
(888) 227-1330 (select Option 3)**

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NASD Notice to Members 98-90

New Arbitrator List Selection Rules And Monetary Thresholds For Simplified And Single Arbitration Cases Take Effect

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On October 14, 1998, the Securities and Exchange Commission (SEC) approved rule changes proposed by the National Association of Securities Dealers, Inc. (NASD[®]) relating to the selection of arbitrators.¹ The arbitrator list selection rules and related amendments to the Code of Arbitration Procedure will be effective on November 17, 1998. The list selection rules will allow the parties to an arbitration to have a significant role in selecting the arbitrators that will hear their dispute.

The NASD is also declaring effective previously approved increases in the ceilings for simplified arbitration cases and for cases eligible for resolution by a single arbitrator from \$10,000 to \$25,000, and from \$30,000 to \$50,000, respectively.²

Questions concerning this *Notice* should be directed to Sharon Zackula, Assistant General Counsel, NASD Regulation, Inc. (NASD RegulationSM), (202) 728-8985 (customer disputes) or Jean I. Feeney, Assistant General Counsel, NASD Regulation, (202) 728-6959 (intra-industry disputes).

New Arbitration Procedures For The Selection Of Arbitrators In Customer Disputes And Intra-Industry Disputes

The list selection rules will allow the parties to an arbitration to have a significant role in selecting the arbitrators who will hear their dispute. The new procedures will incorporate newly developed software, the Neutral List Selection System (NLSS), which can generate lists of arbitrators in a neutral fashion. Using the lists, the parties may state preferences among the listed arbitrators by numerically ranking them. After parties rank the listed arbitrators, NLSS will consolidate the parties' rankings of the listed arbitrators, and the arbitration panel will be selected in

accordance with the rankings. NLSS will also perform many other administrative functions in the arbitrator selection process.

The text of these rules and other related amendments that go into effect on November 17, 1998, is set forth at the end of this *Notice*.

New Thresholds For Simplified Arbitration

The new thresholds for simplified and single arbitration cases will also take effect simultaneously with the effectiveness of the list selection procedures announced in this *Notice*. Cases involving claims of no more than \$25,000 (up from \$10,000) will be eligible for resolution under the procedures specified in Rules 10203 and 10302, which provide for the resolution of such cases on the paper record (or after a hearing if demanded by the claimant) by a single arbitrator. Cases involving claims of no more than \$50,000 (up from \$30,000) may be resolved after a hearing by a single arbitrator. In both instances, the single arbitrator will be selected in accordance with the new list selection rules.

Effectiveness Of The New Procedures

The NASD intends to make the rule change effective on November 17, 1998.

A case will be subject to revised Rules 10202, 10203, and 10308 if, as of November 17, 1998, NASD Regulation has not mailed or otherwise transmitted a letter or other written communication to the parties notifying the parties of the names of the arbitrators appointed to hear the arbitration. In addition, as of November 17, 1998, the newly adopted changes to Rule 10104, Rules 10309 through 10313, and Rule 10315 will apply to this group of cases.

A case will be subject to current Rules 10202, 10203, and 10308 for the purpose of selecting an arbitration panel, if, before the effective date of the rule change, NASD Regulation identifies the arbitrator (in a case having one arbitrator) or the three-arbitrator panel (in a case having three arbitrators) and mails or otherwise transmits a letter or other written communication to the parties notifying the parties of the names of the arbitrators. However, as of November 17, 1998, such cases also will be subject to all provisions of amended Rule 10308, except those relating to the initial process of selecting an arbitration panel. In addition, the newly adopted changes to Rule 10104, Rules 10309 through 10313, and Rule 10315 will apply to this group of cases. Below are four examples of how the old rules and the amended rules intersect and will be applied to the group of cases for which a panel is appointed initially under current Rule 10308.

- **Peremptory Challenge** - In such cases, a party retains the right provided under current Rule 10311 to one peremptory challenge of an appointed arbitrator, because the party has not been able to exercise the parallel right of striking an undesirable arbitrator in the pre-appointment phase that is provided under amended Rule 10308. The party choosing to exercise this right should follow the procedure set forth in Rule 10311.

- **Chairperson** - The provisions of amended Rule 10308 will apply to such cases if the Director of Arbitration has not already selected the chairperson. Amended Rule 10308 (c)(5) grants the parties the right to select a chairperson. If the parties fail to act within the specified time, the Director must select a chairperson. The Director's authority to act is specifically stated in amended Rule 10308(c)(5) and generally stated in paragraph (e). Under paragraph

(c)(5), the Director must appoint a chairperson subject to three limitations, one of which is how the parties ranked the arbitrators. Since the Director will not have party rankings of arbitrators, the Director will appoint a chairperson subject to the two other limitations set forth in amended Rule 10308(c)(5), pursuant to the general authority in paragraph (e).

- **Right to Receive Arbitrator Information and Request Additional Information** - A party will retain the right under current Rule 10310 to receive employment information and information disclosed pursuant to Rule 10312 about the arbitrators that have been appointed for his or her case and to make additional inquiries about an arbitrator. A party's right to receive such information is included in amended Rule 10308; the NASD is simply clarifying that such information about arbitrators shall be provided to a party either pursuant to current Rule 10310 in cases where the arbitrators are appointed under current Rule 10308 or pursuant to amended Rule 10308(b)(6) in cases where arbitrators are appointed under amended Rule 10308.

- **Right to Challenge a Replacement Arbitrator** - A party will not retain the right in Rule 10310 to challenge a replacement arbitrator for cases where the arbitrators are appointed under current Rule 10308. Instead, a party may exercise the right to object to a replacement arbitrator under amended Rule 10308(d).

NASD Regulation believes that this is the most appropriate approach to provide the benefits of list selection to the greatest number of parties as quickly as possible. List selection provides the parties additional input into the arbitration proceeding, and applying the new process for the appointment of arbitrators to certain cases filed shortly before the date of effectiveness will provide the benefits

to such parties. NASD Regulation does not believe that any party will suffer an unfair surprise if the list selection rule and the other rule changes are applied to an arbitration case filed prior to November 17, 1998. Finally, in order to implement the proposed rule change, NASD Regulation must make a number of operational changes. The administrative burdens of fully implementing the list selection process nationwide are many, and NASD Regulation believes that the benefits of implementing the new procedures rapidly and system-wide outweigh the benefits, if any, obtainable from continued use of the old system.

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

Rule 10104. Composition and Appointment of Panels

Except as otherwise specifically provided in Rule 10308, ~~t~~^[T]he Director [of Arbitration] shall compose and appoint panels of arbitrators from the existing pool of arbitrators of the Association to conduct the arbitration of any matter which shall be eligible for submission under this Code. [The Director of Arbitration may request that the Executive Committee of the National Arbitration Committee undertake the composition and appointment of a panel or undertake consultation with the Executive Committee regarding the composition and appointment of a panel in any circumstance where he determines such action to be appropriate.]

Rule 10202. Composition of Panels

(a) In disputes subject to arbitration that arise out of the employment or termination of employment of an associated person, and that relate exclusively to disputes involving

employment contracts, promissory notes or receipt of commissions, the panel of arbitrators shall be appointed as provided by paragraph (b)(1) or (2) or Rule 10203, whichever is applicable. In all other disputes arising out of the employment or termination of employment of an associated person, the panel of arbitrators shall be appointed as provided by Rule 10302 or Rule 10308, whichever is applicable.

(b) [(1) Except as otherwise provided in paragraph (a) or Rule 10203, in all arbitration matters between or among members and/or persons associated with members, and where the amount in controversy does not exceed \$30,000, the Director of Arbitration shall appoint a single arbitrator to decide the matter in controversy. The arbitrator chosen shall be from the securities industry. Upon the request of a party in its initial filing or the arbitrator, the Director of Arbitration shall appoint a panel of three (3) arbitrators, all of whom shall be from the securities industry.]

(1) Composition of Arbitration Panel

(A) Claims of \$50,000 or Less

If the amount of a claim is \$50,000 or less, the Director shall appoint an arbitration panel composed of one non-public arbitrator, unless the parties agree to the appointment of a public arbitrator.

(i) If the amount of a claim is \$25,000 or less and an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of three non-public arbitrators, unless the parties agree to a different panel composition.

(ii) If the amount of a claim is greater than \$25,000 and not more than \$50,000 and a party in its initial filing or an arbitrator appointed to the case

requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of three non-public arbitrators, unless the parties agree to a different panel composition.

(B) Claims of More than \$50,000

If the amount of a claim is more than \$50,000, the Director shall appoint an arbitration panel composed of three non-public arbitrators, unless the parties agree to a different panel composition.

(2) Except as otherwise provided in paragraph (a), in all arbitration matters between or among members and/or persons associated with members and where the amount in controversy exceeds [~~\$30,000~~] \$50,000, exclusive of attendant costs and interest, a panel shall consist of three arbitrators, all of whom shall be [from the securities industry] non-public arbitrators.

(c) In proceedings relating to injunctions under Rule 10335, the provisions of Rule 10335 shall supersede the provisions of this Rule.

(d) Except as otherwise provided in this Rule or Rule 10203, the provisions of Rule 10308 shall apply to intra-industry disputes.

Rule 10203. Simplified Industry Arbitration

(a) Any dispute, claim, or controversy arising between or among members or associated persons submitted to arbitration under this Code involving a dollar amount not exceeding [~~\$10,000~~] \$25,000, exclusive of attendant costs and interest, shall be resolved by an arbitration panel constituted pursuant to the provisions of subparagraph (1) hereof solely upon the pleadings and documentary evidence filed by the parties, unless one of the parties to the proceeding files

with the Office of the Director of Arbitration within ten (10) business days following the filing of the last pleading a request for a hearing of the matter.

(1) In any proceeding pursuant to this Rule, an arbitration panel shall consist of [no fewer than one (1) but no more than three (3) arbitrators, all of whom shall be from the securities industry] a single non-public arbitrator.

(2) No Change

(b) No Change

Rule 10302. Simplified Arbitration

(a) Any dispute, claim, or controversy arising between a public customer(s) and an associated person or a member subject to arbitration under this Code involving a dollar amount not exceeding [~~\$10,000~~] \$25,000, exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided.

(b) No Change

(c) The Claimant shall pay a non-refundable filing fee and shall remit a hearing session deposit as specified in Rule 10332 of this Code upon the filing of the Submission Agreement. The final disposition of the fee or deposit shall be determined by the arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be

filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees for customer disputes. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third-Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third-Party Claim, the Respondent(s) shall serve the Third-Party Respondent with an executed Submission Agreement, a copy of the Respondent's Answer containing the Third-Party Claim, and a copy of the original Claim filed by the Claimant. The Third-Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding [\$10,000] \$25,000 exclusive of attendant costs and interest, the arbitrator may refer the Claim, Counterclaim and/or Third-Party Claim, if any, to a panel of three (3) [or five (5)] arbitrators in accordance with Rule 10308 or, he may dismiss the Counterclaim and/or Third-Party Claim without prejudice to the Counterclaimant(s) and/or Third Party Claimant(s) pursuing the Counterclaim and/or Third Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Rule 10332.

(e) No Change

(f) The dispute, claim or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry [selected] appointed by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator calls a hearing, the arbitrator shall decide the dispute, claim or controversy solely upon the pleadings and evidence filed by the parties. If a

hearing is necessary, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration.

(g) No Change

(h)(1) The arbitrator shall be authorized to require the submission of further documentary evidence as he, in his sole discretion, deems advisable.

(2) If a hearing is demanded or consented to in accordance with paragraph (f), the General Provisions Governing Pre-Hearing Proceedings under Rule 10321 shall apply.

(3) If no hearing is demanded or consented to, all requests for document production shall be submitted in writing to the Director of Arbitration within ten (10) business days of notification of the identity of the arbitrator selected to decide the case. The requesting party shall serve simultaneously its request for document production on all parties. Any response or objections to the requested document production shall be served on all parties and filed with the Director of Arbitration within five (5) business days of receipt of the requests for production. The [selected] appointed arbitrator shall resolve all requests under this Rule on the papers submitted.

(i) - (l) No Change

Rule 10308. [Designation of Number of Arbitrators] Selection of Arbitrators

This Rule specifies how parties may select or reject arbitrators, and who can be a public arbitrator.

[Rule text replaced in its entirety.]

(a) Definitions

(1) "day"

For purposes of this Rule, the term "day" means calendar day.

(2) "claimant"

For purposes of this Rule, the term "claimant" means one or more persons who file a single claim.

(3) "Neutral List Selection System"

The term "Neutral List Selection System" means the software that maintains the roster of arbitrators and performs various functions relating to the selection of arbitrators.

(4) "non-public arbitrator"

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(A) is, or within the past three years, was:

(i) associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(ii) registered under the Commodity Exchange Act;

(iii) a member of a commodities exchange or a registered futures association; or

(iv) associated with a person or firm registered under the Commodity Exchange Act;

(B) is retired from engaging in any of the business activities listed in subparagraph (4)(A);

(C) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

(5) "public arbitrator"

(A) The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and is not:

(i) engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); or

(ii) the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(B) For the purpose of this Rule, the term "immediate family member" means:

(i) a family member who shares a home with a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

(ii) a person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); or

(iii) a person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(6) "respondent"

For purposes of this Rule, the term "respondent" means one or more persons who individually or jointly file an answer to a complaint.

(7) "send"

For purposes of this Rule, the term "send" means to send by first class mail, facsimile, or any other method available and convenient to the parties and the Director.

(b) Composition of Arbitration Panel; Preparation of Lists for Mailing to Parties

(1) Composition of Arbitration Panel

(A) Claims of \$50,000 or Less

If the amount of a claim is \$50,000 or less, the Director shall appoint an arbitration panel composed of one public arbitrator, unless the parties agree to the appointment of a non-public arbitrator.

(i) If the amount of a claim is \$25,000 or less and an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.

(ii) If the amount of a claim is greater than \$25,000 and not more than \$50,000 and a party in its initial filing or an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.

(B) Claims of More Than \$50,000

If the amount of a claim is more than \$50,000, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.

(2) One List for Panel of One Arbitrator

If one arbitrator will serve as the arbitration panel, the Director shall send to the parties one list of public arbitrators, unless the parties agree otherwise.

(3) Two Lists for Panel of Three Arbitrators

If three arbitrators will serve as the arbitration panel, the Director shall send two lists to the parties, one with the names of public arbitrators and one with the names of non-public arbitrators. The lists shall contain numbers of public and non-public arbitrators, in a ratio of approximately two to one, respectively, to the extent possible, based on the roster of available arbitrators.

(4) Preparation of Lists

(A) Except as provided in subparagraph (B) below, the Neutral List Selection System shall generate the lists of public and non-public arbitrators on a rotating basis within a designated geographic hearing site and shall exclude arbitrators based upon conflicts of interest identified within the Neutral List Selection System database.

(B) If a party requests that the lists include arbitrators with expertise classified in the Neutral List Selection System, the lists may include some arbitrators having the designated expertise.

(5) Sending of Lists to Parties

The Director shall send the lists of arbitrators to all parties at the same time approximately 30 days after the last answer is due.

(6) Information About Arbitrators

The Director shall send to the parties employment history for each listed arbitrator for the past 10 years and

other background information. If a party requests additional information about an arbitrator, the Director shall send such request to the arbitrator, and shall send the arbitrator's response to all parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for the parties to return the ranked lists under paragraph (c)(2).

(c) Striking, Ranking, and Appointing Arbitrators on Lists

(1) Striking and Ranking Arbitrators

(A) Striking An Arbitrator

A party may strike one or more of the arbitrators from each list for any reason.

(B) Ranking - Panel of One Arbitrator

Each party shall rank all of the arbitrators remaining on the list by assigning each arbitrator a different, sequential, numerical ranking, with a "1" rank indicating the party's first choice, a "2" indicating the party's second choice, and so on.

(C) Ranking - Panel of Three Arbitrators

Each party shall rank all of the public arbitrators remaining on the list by assigning each arbitrator a different, sequential, numerical ranking, with a "1" rank indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each party separately shall rank all of the non-public arbitrators remaining on the list, using the same procedure.

(2) Period for Ranking Arbitrators; Failure to Timely Strike and Rank

A party must return to the Director the list or lists with the rankings not later than 20 days after the Director sent the lists to the parties, unless

the Director has extended the period. If a party does not timely return the list or lists, the Director shall treat the party as having retained all the arbitrators on the list or lists and as having no preferences.

(3) Process of Consolidating Parties' Rankings

The Director shall prepare one or two consolidated lists of arbitrators, as appropriate under paragraph (b)(2) or (b)(3), based upon the parties' numerical rankings. The arbitrators shall be ranked by adding the rankings of all claimants together and all respondents together, including third-party respondents, to produce separate consolidated rankings of the claimants and the respondents. The Director shall then rank the arbitrators by adding the consolidated rankings of the claimants, the respondents, including third-party respondents, and any other party together, to produce a single consolidated ranking number, excluding arbitrators who were stricken by any party.

(4) Appointment of Arbitrators

(A) Appointment of Listed Arbitrators

The Director shall appoint arbitrators to serve on the arbitration panel based on the order of rankings on the consolidated list or lists, subject to availability and disqualification.

(B) Discretion to Appoint Arbitrators Not on List

If the number of arbitrators available to serve from the consolidated list is not sufficient to fill a panel, the Director shall appoint one or more Arbitrators to complete the arbitration panel. Unless the parties agree otherwise, the Director may not appoint a non-public arbitrator under paragraphs (a)(4)(B) or (a)(4)(C). The Director shall provide the parties information

about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).

(5) Selecting a Chairperson for the Panel

The parties shall have 15 days from the date the Director sends notice of the names of the arbitrators to select a chairperson. If the parties cannot agree, the Director shall appoint a chairperson from the panel as follows:

(A) The Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties as long as the person is not an attorney, accountant, or other professional who has devoted 50% or more of his or her professional or business activities, within the last two years, to representing or advising public customers in matters relating to disputed securities or commodities transactions or similar matters.

(B) If the most highly ranked public arbitrator is subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the other public arbitrator, as long as the person also is not subject to the exclusion set forth in subparagraph (A).

(C) If both public arbitrators are subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties.

(6) Additional Parties

If a party is added to an arbitration proceeding before the Director has consolidated the other parties' rankings, the Director shall send to that party the list or lists of arbitrators and permit the party to strike and rank the arbitrators. The party must return to

the Director the list or lists with numerical rankings not later than 20 days after the Director sent the lists to the party. The Director shall then consolidate the rankings as specified in this paragraph (c).

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

(1) Disqualification By Director

After the appointment of an arbitrator and prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if the Director or a party objects to the continued service of the arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director sends a notice to the parties that the arbitrator shall be disqualified, the arbitrator will be disqualified unless the parties unanimously agree otherwise in writing and notify the Director not later than 15 days after the Director sent the notice.

(2) Authority of Director to Disqualify Ceases

After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director's authority to remove an arbitrator from an arbitration panel ceases.

(3) Vacancies Created by Disqualification or Resignation

Prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if an arbitrator appointed to an arbitration panel is disqualified or is otherwise unable or unwilling to serve, the Director shall appoint from the consolidated list of arbitrators the arbitrator who is the most highly ranked available arbitrator of the proper classification remaining on the list. If

there are no available arbitrators of the proper classification on the consolidated list, the Director shall appoint an arbitrator of the proper classification subject to the limitation set forth in paragraph (c)(4)(B). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).

(e) Discretionary Authority

The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and the Rule 10000 Series to facilitate the appointment of arbitration panels and the resolution of arbitration disputes.

Rule 10309. Composition of Panels

Except as otherwise specifically provided in Rule 10308, t[T]he individuals who shall serve on a particular arbitration panel shall be determined by the Director [of Arbitration]. Except as otherwise specifically provided in Rule 10308, t[T]he Director [of Arbitration] may name the chairman of the panel.

Rule 10310. Notice of Selection of Arbitrators

(a) The Director shall inform the parties of the arbitrators' names and employment histories for the past 10 years, as well as information disclosed pursuant to Rule 10312, at least 15 business days prior to the date fixed for the first hearing session. A party may make further inquiry of the Director [of Arbitration] concerning an arbitrator's background. In the event that, prior to the first hearing session, any arbitrator should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, the Director

shall appoint a replacement arbitrator to fill the vacancy on the panel. The Director shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past 10 years, as well as information disclosed pursuant to Rule 10312. A party may make further inquiry of the Director [of Arbitration] concerning the replacement arbitrator's background and within the time remaining prior to the first hearing session or the 10 day period provided under Rule 10311, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 10311.

(b) This Rule shall not apply to arbitration proceedings that are subject to Rule 10308.

Rule 10311. Peremptory Challenge

(a) In an[y] arbitration proceeding, each party shall have the right to one [(1)] peremptory challenge. In arbitrations where there are multiple Claimants, Respondents, and/or Third-Party Respondents, the Claimants shall have one [(1)] peremptory challenge, the Respondents shall have one [(1)] peremptory challenge, and the Third-Party Respondents shall have one [(1)] peremptory challenge. The Director [of Arbitration] may in the interests of justice award additional peremptory challenges to any party to an arbitration proceeding. Unless extended by the Director [of Arbitration], a party wishing to exercise a peremptory challenge must do so by notifying the Director [of Arbitration] in writing within 10 business days of notification of the identity of the person(s) named under Rule 10310 or Rule 10321(d) or (e), whichever comes first. There shall be unlimited challenges for cause.

(b) This Rule shall not apply to arbitration proceedings that are subject to Rule 10308.

Rule 10312. Disclosures Required of Arbitrators and Director's Authority To Disqualify

(a) - (c) No Change

(d) Prior to the commencement of the earlier of (1) the first pre-hearing conference or (2) the first hearing, the Director may remove an arbitrator based on information disclosed pursuant to this Rule.

([d]e) Prior to the commencement of the [first hearing session,] earlier of (1) the first pre-hearing conference or (2) the first hearing, [the Director of Arbitration may remove an arbitrator based on information disclosed pursuant to this Rule.] t[T]he Director [of Arbitration] shall [also] inform the parties to an arbitration proceeding of any information disclosed to the Director under this Rule unless either the arbitrator who disclosed the information withdraws voluntarily as soon as the arbitrator learns of any interest or relationship described in paragraph (a) that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator [pursuant to this Rule if the arbitrator is not removed].

(f) After the commencement of the earlier of (1) the first pre-hearing conference or (2) the first hearing, the Director's authority to remove an arbitrator from an arbitration panel ceases. During this period, the Director shall inform the parties of any information disclosed by an arbitrator under this Rule.

Rule 10313. Disqualification or Other Disability of Arbitrators

In the event that any arbitrator, after the commencement of the earlier of (a) the first pre-hearing conference or (b) the first hearing but prior to the rendition of the award, should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) shall continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within 5 days of notification of the vacancy on the panel. Upon objection, the Director [of Arbitration] shall appoint a replacement arbitrator to fill the vacancy and the hearing shall continue. The Director [of Arbitration] shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past 10 years, as well as information disclosed pursuant to Rule 10312. A party may make further inquiry of the Director [of Arbitration] concerning the replacement arbitrator's background. If the arbitration proceeding is subject to Rule 10308, the party may exercise his or her right to challenge the replacement arbitrator within the time remaining prior to the next scheduled hearing session by notifying the Director in writing of the name of the arbitrator challenged and the basis for such challenge. If the arbitration proceeding is not subject to Rule 10308, [and] within the time remaining prior to the next scheduled hearing session or the 5 day period provided under Rule 10311, whichever is shorter, a party may exercise the party's [its] right to challenge the replacement arbitrator as provided in Rule 10311.

Rule 10315. Designation of Time and Place of First Meeting [Hearing]

The Director shall determine t[T]he time and place of the first meeting of the arbitration panel and the parties, whether the first meeting is a pre-hearing conference or a hearing. [initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators.] and shall give n[N]otice of the time and place [for the initial hearing shall be given] at least [eight (8)] 15 business days prior to the date fixed for the first meeting [hearing] by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this Rule. The arbitrators shall determine the time and place for all subsequent meetings, whether the meetings are pre-hearing conferences, hearings, or any other type of meetings, and shall give n[N]otice [for each hearing thereafter shall be given] as the arbitrators may determine. Attendance at a meeting [hearing] waives notice thereof.

Endnotes

¹Securities Exchange Act Rel. No. 40555 (October 14, 1998) (File No. SR-NASD-98-48) and Securities Exchange Act Rel. No. 40556 (October 14, 1998) (File No. SR-NASD-98-64).

²Securities Exchange Act Rel. No. 38635 (May 14, 1997) (File No. SR-NASD-97-22).

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NASD Notice to Members 98-91

NASD Alerts Members To Their Obligations Concerning Cold Calling And Advertising To Persons In The United Kingdom

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The Financial Services Authority (FSA) in the United Kingdom (U.K.) has detected an increase in the frequency with which National Association of Securities Dealers, Inc. (NASD[®]) member firms have been soliciting U.K. citizens. In response to this activity, the FSA has asked NASD Regulation, Inc. (NASD RegulationSM) to alert its members to the standards governing the solicitation of U.K. citizens generally and implications of cold calling and advertising to persons in the U.K. in particular. This *Notice* briefly summarizes the legal and regulatory framework in the U.K. regarding cold calling and advertising. NASD Regulation reminds members proposing to cold call or advertise into the U.K., or any foreign country, to ensure that any such activities comply with all applicable laws.

Questions concerning this *Notice* should be directed to Gary L. Goldsholle, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8104, or The Authorization Enquiries Department, Financial Services Authority, at (011) 44-171-676-4704.

Conduct Of Investment Business In The U.K.

Any person who carries on investment business in the U.K. must be authorized or exempt under the Financial Services Act of 1986 (the Act). Investment business includes dealing and arranging deals in investments and giving investment advice. "Investments" include stocks, shares, and derivatives. Persons who operate from outside the U.K. are "overseas persons" under the Act and enjoy the benefit of an exclusion from the need for authorization but only if they carry on their business in such a way that they do not breach the provisions of Section 56 (unsolicited or cold calls) and Section 57 (investment advertisements) of the Act.

Unsolicited Or Cold Calls

Section 56 of the Act generally prohibits cold calling by providing that no person shall make an unsolicited call (*i.e.*, any call without an express invitation) in an attempt to make an investment agreement with a person in the U.K. Members should be aware that this general prohibition in the U.K. applies to U.S. member firms and their associated persons notwithstanding the fact that such persons may be permitted to make cold calls under the NASD rules.

The FSA's Common Unsolicited Calls Regulations (CUC Regulations) provide exemptions from the general prohibition against cold calling. Under the CUC Regulations, an "overseas person" may make unsolicited calls only to:

- (1) "existing customers," defined as persons with whom the overseas person has an existing customer relationship that was established while the customer was *resident outside the U.K.*; and
- (2) "non-private customers," or business investors, such as government or public authorities, corporations, or partnerships with substantial assets and trustees of trusts holding substantial assets.

Investment Advertisements

Section 57 of the Act generally prohibits an overseas person, as defined above, from issuing or causing the issue of an investment advertisement in the U.K. unless its contents have been approved by an authorized person under the Act. An investment advertisement includes any advertisement containing information calculated to lead directly or indirectly to a person entering into an investment agreement. Foreign advertisements are treated as issued in the U.K. if they are directed to persons in the U.K. or made available to them other than through a newspaper or other

journal that is published and circulates mainly outside of the U.K.

Consequences Of Breaching U.K. Legislation

Any person who conducts investment business in the U.K. without authorization under the Act, or any person who issues an investment advertisement without approval may

be committing a criminal offense and be liable to prosecution. Also, any agreement made by or through an unauthorized person may be unenforceable against the other party.

The information provided in this *Notice* does not describe in detail the laws applicable to solicitation in the

U.K. NASD Regulation urges members considering soliciting U.K. citizens to review the U.K. laws specifically to ensure that their conduct complies with all applicable laws.

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NASD Notice to Members 98-92

NASD Regulation
Articulates Position On
The Application Of NASD
Rule 2680 To U.S.
Broker/Dealers That
Intermediate Transactions
Pursuant To Exchange Act
Rule 15a-6(a)(3)

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Through this *Notice*, NASD Regulation, Inc. (NASD RegulationSM) is establishing an interpretation that National Association of Securities Dealers, Inc. (NASD[®]) Rule 2860(b)(3) options position limits apply with respect to options transactions that are intermediated by member firms pursuant to Exchange Act Rule 15a-6(a)(3). Members are also reminded of the reporting obligations under Rule 2860(b)(5) with respect to such Rule 15a-6(a)(3) transactions.

Questions concerning this *Notice* may be directed to Gary L. Goldsholle, Assistant General Counsel, NASD Regulation, at (202) 728-8104.

Discussion

NASD Rule 2860(b)(3) imposes a ceiling or position limit on the number of conventional and standardized equity options contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by a member, a person associated with a member, a customer, or a group of customers acting in concert. Specifically, Rule 2860(b)(3) provides that “no member shall effect for any account in which such member has an interest, . . . or for the account of any customer, an opening transaction through . . . the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member . . . or customer would . . . hold or control or be obligated in respect of an aggregate equity options position in excess of [certain prescribed limits].”

Exchange Act Rule 15a-6(a)(3) permits a foreign broker/dealer, without registering as a broker/dealer in the United States, to induce or attempt to induce the purchase or sale of any security by a U.S.

institutional investor or major U.S. institutional investor if the resulting transactions are effected through a registered broker/dealer as specified in Rule 15a-6(a)(3). Among the requirements of Rule 15a-6(a)(3) are that the U.S. broker/dealer issues all required confirmations and statements to the institutional investors and maintains the required books and records relating to the transaction.

Member firms have expressed uncertainty as to the application of Rule 2860(b)(3) to Rule 15a-6(a)(3) transactions. Some members have taken the position that options transactions that are intermediated by U.S. member firms pursuant to Rule 15a-6(a)(3), but are not carried on their books for capital purposes, are not subject to the limits of Rule 2860(b)(3). Other members have taken the position that Rule 2860(b)(3) would apply to such transactions.

Through this *Notice*, NASD Regulation is issuing an interpretation to establish consistent application of Rule 2860(b)(3). NASD Regulation staff believes that NASD member firms that intermediate transactions under Rule 15a-6(a)(3) are “effecting” such transactions within the meaning of Rule 2860(b)(3) and that position limits should apply. We believe that the use of the term “effect” in this context, given its ordinary meaning, would apply to the functions that U.S. registered broker/dealers are required to perform under Rule 15a-6(a)(3). In this regard, subparagraph (iii)(A) of Rule 15a-6(a)(3) provides that the registered broker/dealer must be responsible for “effecting the transactions conducted under paragraph (a)(3)” We note that this interpretation is consistent with the overall purpose of Rule 2860(b)(3), which is to prevent the establishment of options positions

that can, or may provide incentive to, manipulate or disrupt the underlying market. These concerns exist with respect to options positions that are maintained at both NASD member firms and their foreign affiliates. Further, because the NASD member firm is required to record each options transaction that is effected under Rule 15a-6(a)(3), the member has the practical ability to enforce compliance with limits for positions that are maintained on its books.

NASD Regulation expects that member firms that are parties to

transactions under Rule 15a-6(a)(3) that would cause them to exceed the position limits of Rule 2860(b)(3) should restructure their positions as soon as practicable to meet the applicable limits. In restructuring options positions, members should be mindful of the exercise limits imposed by Rule 2860(b)(4).

Finally, members are reminded of their reporting obligations under Rule 2860(b)(5), which apply to "each account in which the member has an interest . . . and each customer account, which has established an

aggregate position of 200 or more option contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security or index . . ." Consistent with the interpretation described above, this requirement applies to intermediated transactions pursuant to 15a-6(a)(3).

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NASD Notice to Members 98-93

NASD Informs Members
Of District Committee
Members And District
Nominating Committee
Members

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Through this *Notice*, the National Association of Securities Dealers, Inc. (NASD®) is informing NASD members of the 1999 District Committee members and the District Nominating Committee members.

Questions concerning this *Notice* may be directed to the District Director noted or to Joan Conley, Corporate Secretary, NASD, at (202) 728-8381.

District Committee Members And District Nominating Committee Members

Members of the 1999 District Committees and District Nominating Committees are as follows:

DISTRICT 1

District Committee

To Serve Until January 2000

Glenn M. Colacurci	Salomon Smith Barney, Inc., San Francisco, CA
Jerry D. Phillips	Sutro & Co., San Francisco, CA
William A. Svoboda	Morgan Stanley Dean Witter, San Francisco, CA

To Serve Until January 2001

Steven R. Aaron	Hambrecht & Quist LLC, San Francisco, CA
Janet W. Campbell	Protected Investors of America, San Francisco, CA
Douglas C. Heske	Piper Jaffray, Inc., San Francisco, CA

To Serve Until January 2002

John H. Chung	Van Kasper & Company, Inc., San Francisco, CA
Steven D. Piper	Volpe Brown Whelan & Company LLC, San Francisco, CA

Nominating Committee

Deborah R. Gatzek	Franklin/Templeton Distributors, San Mateo, CA
John C. Helmer	Caldwell Securities, Danville, CA
Lawrence R. McKulla	Prudential Securities, San Francisco, CA
John J. Sanders	BancBoston Robertson Stephens, Inc., San Francisco, CA
John E. Schmidt	Credit Suisse First Boston, San Francisco, CA

District Director

Elisabeth P. Owens
525 Market Street, Suite 300
San Francisco, CA 94105
(415) 882-1200

DISTRICT 2

District Committee

To Serve Until January 2000

Terry L. Chase	EVEREN Securities, Inc., Pasadena, CA
Rodney D. Hagenbuch	Merrill Lynch, Pierce Fenner & Smith, Inc., Los Angeles, CA
William J. Porter, III	The Seidler Companies, Inc., Los Angeles, CA
Joan B. Seidel	Morton Seidel & Company, Inc., Beverly Hills, CA

To Serve Until January 2001

James B. Guillou, Sr.	Sutro & Co., Incorporated, LaJolla, CA
Andrew E. Haas	Bear Stearns & Co., Inc., Los Angeles, CA
Richard E. Wiseley	CIBC Oppenheimer & Co., Los Angeles, CA
Richard P. Woltman	Spelman & Co., Inc., San Diego, CA

To Serve Until January 2002

Margaret M. Black	Morgan Stanley Dean Witter, Beverly Hills, CA
Diane P. Blakeslee	Blakeslee & Blakeslee, Inc., San Luis Obispo, CA
Jack R. Handy, Jr.	Financial Network Investment Corporation, Torrance, CA
Dean A. Holmes	Gateway Investment Services, Inc., Glendale, CA

Nominating Committee

George H. Casey	Crowell Weedon & Co., Los Angeles, CA
William A. Hawkins	Griffin Financial Services, City of Industry, CA
Carl E. Lindros	Santa Barbara Securities, Inc., Santa Barbara, CA
Fredric M. Roberts	F. M. Roberts & Company, Los Angeles, CA
Robert L. Winston	American Funds Distributors, Inc., Los Angeles, CA

District Director

Lani M. Sen Woltmann
300 South Grand Avenue, Suite 1600
Los Angeles, CA 90071
(213) 627-2122

DISTRICT 3

District Committee

To Serve Until January 2000

Timothy H. Ganahl	Ragen MacKenzie, Inc., Seattle, WA
Thomas A. Petrie	Petrie Parkman & Co., Inc., Denver, CO
Patrick C. Rile	EVEREN Securities, Inc., Phoenix, AZ
Douglas E. Strand	Strand, Atkinson, Williams & York, Inc., Portland, OR

To Serve Until January 2001

Thomas R. Hislop	Peacock, Hislop, Staley & Given, Inc., Phoenix, AZ
Gerald Meyer	D. A. Davidson & Co., Great Falls, MT
John Morton	Morton Clarke Fu & Metcalf, Inc., Seattle, WA
Terry Lee Richards	PaineWebber, Inc., Salt Lake City, UT

To Serve Until January 2002

James Barnyak	Salomon Smith Barney, Inc., Seattle, WA
David Griswold	Frank Russell Securities, Inc., Tacoma, WA
James E. Stark	Charles Schwab & Co., Phoenix, AZ
Thomas Williams	TIAA/CREF, Denver, CO

Nominating Committee

Vincent Asaro	SunAmerica Securities, Inc., Phoenix, AZ
James Kerr	Dain Rauscher Incorporated, Seattle, WA
William Papesh	WM Funds Distributor, Inc., Spokane, WA
Anthony Petrelli	Neidiger Tucker Bruner, Inc., Denver, CO
Richard Royce	Salomon Smith Barney, Inc., Portland, OR

District Director

Frank J. Birgfeld
Republic Plaza Building
370 17th Street, Suite 2900
Denver, CO 80202-5629
(303) 446-3100

James G. Dawson, Associate Director
Two Union Square
601 Union Street, Suite 1616
Seattle, WA 98101-2327
(206) 624-0790

DISTRICT 4

District Committee

To Serve Until January 2000

Colleen Curran	American Express Financial Advisors, Inc., Minneapolis, MN
Arthur J. Kearney	John G. Kinnard & Company Inc., Minneapolis, MN
John R. Kuddes	Merrill Lynch, Pierce, Smith Incorporated, Overland Park, KS
Wayne H. Peterson	Washington Square Securities, Inc., Minneapolis, MN

To Serve Until January 2001

Antonio J. Cecin	Piper Jaffray Inc., Minneapolis, MN
Cheryl Cook-Schneider	Edward Jones, St. Louis, MO
Robert J. Goodmanson	Robert W. Baird & Co., Inc., St. Paul, MN
Brent M. Weisenborn	Security Investment Company of Kansas City, Kansas City, MO

To Serve Until January 2002

Robert M. Chambers	Chambers Martin & Co., Des Moines, IA
John R. Lepley	Princor Financial Services Corp., Des Moines, IA
William M. Lyons	American Century Investment Services, Inc., Kansas City, MO
Nancy E. Varner	Mercantile Investment Services, Inc., St. Louis, MO

Nominating Committee

Patricia S. Bartholomew	Craig-Hallum Capital Group, Inc., Minneapolis, MN
Edward J. Berkson	Locust Street Securities, Inc., Des Moines, IA
Norman Frager	Walnut Street Securities, St. Louis, MO
Albert W. Lauth	First St. Louis Securities, Inc., St. Louis, MO
Todd W. Miller	Miller, Johnson & Kuehn, Inc., Minneapolis, MN

District Director

Jack Rosenfield
120 W. 12th Street, Suite 900
Kansas City, MO 64105
(816) 421-5700

DISTRICT 5

District Committee

To Serve Until January 2000

R. Neal Culver	Culver Financial Management, Inc., Knoxville, TN
J. French Hill	First Commercial Investments, Inc., Little Rock, AR
Walter H. Johnson	Leo Oppenheim & Co., Inc., Oklahoma City, OK

To Serve Until January 2001

Benjamin D. Capshaw, III	Morgan Stanley Dean Witter, New Orleans, LA
James S. Jones	Crews & Associates, Inc., Little Rock, AR
Dene R. Shipp	SunTrust Equitable Securities, Nashville, TN
John C. West	Prudential Securities, Inc., Memphis, TN

To Serve Until January 2002

James D. Hudgins	SouthTrust Securities, Inc., Birmingham, AL
Leroy H. Paris, II	Mississippi Securities Company, Jackson, MS
Duncan F. Williams	Duncan-Williams, Inc., Memphis, TN

Nominating Committee

H. Kenneth Bennett	Stephens, Inc., Little Rock, AR
James C. Bradford, Jr.	J.C. Bradford & Co., Nashville, TN
Bill Carty	Carty & Company, Inc., Memphis, TN
William T. Patterson	Morgan Keegan & Company, Inc., Jackson, MS
Kenneth L. Wagner	J.J.B. Hilliard, W.L. Lyons, Inc., Louisville, KY

District Director

Warren A. Butler, Jr.
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163-0802
(504) 522-6527

DISTRICT 6

District Committee

To Serve Until January 2000

William D. Connally	Greenman Parker Connally Greenman, Inc., Ft. Worth, TX
Titus H. Harris	Harris Webb & Garrison, Inc., Houston, TX
Edward M. Milkie	Milkie Ferguson Investments, Inc., Dallas, TX

To Serve Until January 2001

Daniel C. Dooley	May Financial, Inc., Dallas, TX
Ronald J. Gard	Salomon Smith Barney, Inc., Dallas, TX
Jim G. Rhodes	Rhodes Securities, Inc., Ft. Worth, TX

To Serve Until January 2002

Fred McGinnis	PaineWebber, Houston, TX
Sue Peden	Brokers Transaction Services, Inc., Dallas, TX
Joseph Storthz	Transamerica Financial Resources, Houston, TX

Nominating Committee

John W. Ferguson	May Financial Corp., Dallas, TX
Robert Gunn, III	Gunn & Company Incorporated, San Antonio, TX
Bill Madden	Madden Securities Corporation, Dallas, TX
Gary Murray	Murray Traff Securities, Inc., Tyler, TX
George Stark	Burnham Securities, Inc., Houston, TX

District Director

Bernerd Young, Associate Director
12801 N. Central Expressway, Suite 1050
Dallas, TX 75243
(972) 701-8554

DISTRICT 7

District Committee

To Serve Until January 2000

Robert J. Brietz	Marion Bass Securities Corporation, Charlotte, NC
William H. Carter	J.C. Bradford & Co., Raleigh, NC
Dan B. Franks	Scott & Stringfellow, Inc., Richmond, VA
George K. Jennison	Wheat First Union, Richmond, VA
David G. Pittinos	Morgan Stanley Dean Witter, Tallahassee, FL
R. Charles Shufeldt	SunTrust Equitable Securities Corporation, Atlanta, GA

To Serve Until January 2001

Mary Jae Abbitt	Anderson & Strudwick, Incorporated, Richmond, VA
Robert M. Balentine	Balentine & Company, Atlanta, GA
James J. Buddle	Capital Brokerage Corporation, Richmond, VA
M. Anthony Greene	Investment Management & Research, Inc., Atlanta, GA
J. Lee Keiger III	Davenport & Company LLC, Richmond, VA
Raymond W. Snow	BT Alex. Brown Incorporated, Palm Beach, FL

To Serve Until January 2002

Perrin Q. Dargan, Jr.	A.G. Edwards & Sons, Inc., Pawleys Island, SC
James W. Hamilton, Jr.	Prudential Securities Incorporated, Atlanta, GA
Edward R. Hipp, III	Centura Securities, Inc., Rocky Mount, NC
Roark A. Young	Young, Stovall and Company, Miami, FL

Nominating Committee

John L. Dixom	Mutual Service Corporation, West Palm Beach, FL
Franklin C. Golden	James M. Myers and Co., Charlotte, NC
W. Robb Hough, Jr.	William R. Hough & Co., St. Petersburg, FL
Stuart J. Knobel	Edgar M. Norris & Co., Inc., Anderson, SC
Richard V. McGalliard	Interstate/Johnson Lane Corporation, Atlanta, GA

District Director

Marilyn B. Davis
One Securities Centre, Suite 500
3490 Piedmont Road, NE
Atlanta, GA 30305
(404) 239-6100

DISTRICT 8

District Committee

To Serve Until January 2000

James A. Bowen	Nike Securities, Inc., Lisle, IL
William L. Faulkner	Continental Capital Securities, Inc., Sylvania, OH
Peter C. McCabe, Jr.	Securities Corporation of Iowa, Chicago, IL
Anthony M. Sanfilippo	Trimark Securities, L.P., Chicago, IL
John L. Schlifer	McDonald Investments, Inc., Cleveland, OH

To Serve Until January 2001

William C. Alsover	Centennial Securities Company, Inc., Grand Rapids, MI
Wallen L. Crane	Salomon Smith Barney, Inc., Farmington Hills, MI
Kenneth R. Ehinger	Lincoln Financial Advisors Corp., Fort Wayne, IN
Alan H. Newman	J.J.B. Hilliard, W.L. Lyons, Inc., Evansville, IN
Bruce J. Young	Mesirow Financial, Inc., Chicago, IL

To Serve Until January 2002

R. Jack Conley	VESTAX Securities Corporation, Hudson, OH
Mary D. Esser	Cressman Esser Securities, Inc., Naperville, IL
Glen Hackmann	Robert W. Baird & Co., Inc., Milwaukee, WI
Robert A. Perrier	Butler, Wick & Co., Inc., Cleveland, OH
Kathleen A. Wieland	William Blair & Company, L.L.C., Chicago, IL

Nominating Committee

Kathy J. Birk	Morgan Stanley Dean Witter, Carmel, IN
Lewis H. Echlin	Roney & Co., L.L.C., Detroit, MI
Paul Murin	David A. Noyes & Co., Chicago, IL
Earl Clifford Oberlin, III	MFI Investments Corp., Bryan, OH
William H. Richardson	Trubee, Collins & Co., Inc., Buffalo, NY

District Director

Carlotta A. Romano
10 South LaSalle, 20th Floor
Chicago, IL 60603-1002
(312) 899-4400

William H. Jackson, Jr.
Renaissance on Playhouse Square
1350 Euclid Avenue, Suite 650
Cleveland, OH 44115
(216) 694-4545

DISTRICT 9

District Committee

To Serve Until January 2000

Irving A. Faigen	Prudential Securities Incorporated, Pittsburgh, PA
Allen S. Jacobson	Gibraltar Securities Co., Florham Park, NJ
James Malespina	Herzog, Heine, Geduld, Inc., Jersey City, NJ
William F. Rienhoff IV	BT Alex. Brown Incorporated, Baltimore, MD

To Serve Until January 2001

Victor M. Frye	The Advisors Group, Inc., Bethesda, MD
Phillip C. Graham	Legg Mason Wood Walker, Incorporated, Philadelphia, PA
Jerome J. Murphy	Janney Montgomery Scott Inc., Philadelphia, PA

To Serve Until January 2002

A. Louis Denton	Philadelphia Corporation for Investment Services, Philadelphia, PA
Thomas W. Neumann	Sherwood Securities Corp., Jersey City, NJ
Joseph S. Rizzello	Vanguard Marketing Corporation, Valley Forge, PA
Gregory R. Zappala	RRZ Public Markets, Inc., Cranberry Township, PA

Nominating Committee

Mark W. Cresap	Cresap, Inc., Radnor, PA
John J. Gray	Janney Montgomery Scott Inc., Philadelphia, PA
Dennis V. Marino	Sherwood Securities Corp., Jersey City, NJ
Eric H. Pookrum	Innova Securities, Inc., Suitland, MD
Robert A. Woeber	Arthurs, Lestrangle & Company Incorporated, Pittsburgh, PA

District Director

John P. Nocella
11 Penn Center
1835 Market Street, Suite 1900
Philadelphia, PA 19103
(215) 665-1180

DISTRICT 10

District Committee

To Serve Until January 2000

Joan Caridi	Salomon Smith Barney, Inc., New York, NY
Harold G. Ognelodh	M. R. Beal & Company, New York, NY
Brian T. Shea	Pershing, Division of Donaldson, Lufkin & Jenrette Securities Corporation, Jersey City, NJ

To Serve Until January 2001

Herbert Ackerman	Neuberger & Berman, LLC, New York, NY
Arthur S. Ainsberg	Brahman Securities Inc., New York, NY
Williams P. Behrens	Ernst & Co., New York, NY
Laurence H. Bertan	Sanford C. Bernstein & Co., Inc., New York, NY
Mark D. Madoff	Bernard L. Madoff Investment Securities, New York, NY
Stuart L. Sindell	Dillon, Read & Co., Inc., New York, NY

To Serve Until January 2002

John Iachello	Ing Baring Furman Selz, New York, NY
Philip V. Oppenheimer	Oppenheimer & Close Inc., New York, NY
Gary Salamone	Schroder & Co. Inc., New York, NY
Eugene A. Schlanger	Nomura Securities International, Inc., New York, NY
Lawrence F. Sherman	Mony Securities Corp., New York, NY
Tom M. Wirtshafter	Nathan & Lewis Securities Inc., New York, NY

Nominating Committee

Michael F. Dura	Schroder & Co., Inc., New York, NY
Joseph A. Gottlieb	Bear, Stearns & Co. Inc., New York, NY
Joan S. Green	BT Brokerage Corporation, New York, NY
Norman H. Pessin	Neuberger & Berman, LLC, New York, NY
Stuart J. Voisin	Stuart, Coleman & Co., Inc., New York, NY

District Director

Barbara Cody, Deputy Director
Gary Liebowitz, Deputy Director
NASD Financial Center
33 Whitehall Street
New York, NY 10004
(212) 858-4000

DISTRICT 11

District Committee

To Serve Until January 2000

Harry H. Branning	Advest, Inc., Hartford, CT
Stephanie Brown	Linsco/Private Ledger Corp., Boston, MA
David C. Gowell	Gowell Securities Corp., Boston, MA
William N. Shiebler	Putnam Mutual Funds Corp., Boston, MA

To Serve Until January 2001

Michael J. Dell'Olio	Investment Management and Research, Inc., South Portland, ME
Frank V. Knox, Jr.	Fidelity Distributors Corporation, Boston, MA
Laurie Lennox	SunLife of Canada (U.S.) Distributors, Inc., Boston, MA
Kenneth Unger	Boston Capital Services, Inc., Boston, MA

To Serve Until January 2002

Stephen O. Buff	BancBoston Robertson Stephens, Inc., Boston, MA
Gerard A. Rocchi	W.S. Griffith & Co., Inc., Hartford, CT
James P. Rybeck	The RYBECK, Division of Fechtor, Detwiler & Co., Inc., Meriden, CT
Dennis R. Surprenant	Cantella & Co., Inc., Boston, MA

Nominating Committee

John A. Goc	Boston Institutional Services, Boston, MA
Grant Kurtz	Advest, Inc., Hartford, CT
Wilson G. Saville	Barrett & Company, Providence, RI
Edward L. Sherr	Carl P. Sherr & Company, Worcester, MA
Mary Toumpas	American Skandia Marketing, Inc., Shelton, CT

District Director

Willis H. Riccio
260 Franklin Street, 16th Floor
Boston, MA 02110
(617) 261-0800

NASD Notice to Members 98-94

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

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

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

The Nasdaq Stock Market® and the securities exchanges will be closed on Friday, December 25, 1998, in observance of Christmas Day, and Friday, January 1, 1999, 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. 17	Dec. 22	Dec. 24
18	23	28
21	24	29
22	28	30
23	29	31
24	30	Jan. 4, 1999
25	Markets Closed	—
28	31	5
29	Jan. 4, 1999	6
30	5	7
31	6	8
Jan. 1, 1999	Markets Closed	—
4	7	11

*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 five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

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NASD Notice to Members 98-95

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of September 23, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of September 23, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
AMZN.GA	Amazon Com Inc.	10.000	05/01/08
ATCV.GA	ATC Group Services Inc.	12.000	01/15/08
AXTO.GB	Abraxas Petro Corp.	11.500	11/01/04
BDGM.GD	Building Materials Corp.	7.750	07/15/05
BUS.GC	Greyhound Lines Inc.	11.500	04/15/07
CBEA.GA	Cobb Theatres LLC/Cobb Fin Corp.	10.625	03/01/03
CEAW.GA	Caesars World Inc.	8.875	08/15/02
DIGO.GB	DiGiorgio Corp.	10.000	06/15/07
DOSE.GA	PharMerica Inc.	8.375	04/01/08
GI.GB	Giant Industries Inc.	9.000	09/01/07
GMRK.GA	Gulfmark Offshore Inc.	8.750	06/01/08
HAY.GD	Hayes Wheels Intl Inc.	9.125	07/15/07
HWG.GB	Hallwood Group Inc.	10.000	07/31/05
ICIX.GE	Intermedia Communications Corp.	8.875	11/01/07
ICIX.GF	Intermedia Comm Inc.	8.600	06/01/08
ICN.GA	ICN Pharmaceuticals Inc.	9.250	08/15/05
IKNF.GA	Int'l Knife & Saw Inc.	11.375	11/15/06
IMTI.GA	Imagyn Medical Tech	12.500	04/01/04
INSL.GA	Insilco Corp.	10.25	08/15/07
ISLP.GA	Isle of Capri/Cap Corp.	13.000	08/31/04
ITTD.GA	ITT Industry Inc.	6.750	11/15/03
ITTO.GA	ITT Corp. (New)	6.250	11/15/00
ITTO.GB	ITT Corp. (New)	6.750	11/15/05
ITTO.GC	ITT Corp. (New)	7.375	11/15/15
ITTO.GD	ITT Corp. (New)	7.750	11/15/25
IV.GD	Mark IV Industries Inc.	7.500	09/01/07
KBLR.GA	Keebler Foods Corp.	10.750	07/01/06
KNTC.GA	Kinetic Concepts Inc.	9.625	11/01/07
KRYS.GA	Krystal Co.	10.250	10/01/07
KSLG.GA	KSL Recreation Group Inc.	10.250	05/01/07
LENF.GB	Lenfest Communications Inc.	10.500	06/15/06
LPMT.GA	Leslie's Poolmart Inc.	10.375	07/15/04
MECU.GA	Mediacom LLC/Cap Corp.	8.500	04/15/08
NBCQ.GA	NBC Acquisition Corp.	10.750	02/15/09
NBKA.GA	Nebraska Book Co.	8.750	02/15/08
NTK.GE	Nortek Inc.	9.125	09/01/07
NWCG.GA	NWCG Holdings Corp.	13.500	06/15/99
OBTI.GA	Orbital Imaging Corp.	11.625	03/01/05
PCKI.GB	PrintPack Inc.	10.625	08/15/06
PGCU.GA	Pegasus Media & Comm Inc.	12.500	07/01/05
PGI.GB	Polymer Group Inc.	8.750	03/01/08
PGTV.GA	Pegasus Communications Corp.	9.625	10/15/05
PKED.GA	Package Ice	9.750	02/01/05
PRGC.GA	Paragon Corp. Holdings	9.625	04/01/08
PRTL.GB	Primus Telecomm Group Inc.	9.875	05/15/08
PSHF.GA	Petro Shopping Ctrs/Fin Corp.	10.500	02/01/07
PSTC.GA	Prestolite Electric Inc.	9.625	02/01/08
PUML.GA	Purina Mills Inc.	9.000	03/15/10
RCCC.GA	Rural Cellular	9.625	05/15/08

Symbol	Name	Coupon	Maturity
RCNC.GC	RCN Corp.	10.000	10/15/07
RSLU.GB	RSL Communications Plc	10.125	03/01/08
RSTS.GA	Raintree Resorts Intl. Inc.	13.000	12/01/04
RSUR.GA	Resort at Summerlin	13.00	12/15/07
SHLR.GA	Schuler Homes Inc.	9.00	04/15/08
SIND.GB	Synthetic Industries Inc.	9.250	02/15/07
SLYM.GA	Sealy Mattress	9.875	12/15/07
SLYM.GB	Sealy Mattress	10.875	12/15/07
SMLA.GA	Simcala Inc.	9.625	04/15/06
SUTG.GA	South'n Foods/SFG Cap Corp.	9.875	09/01/07
SVIS.GA	Spectra Vision Inc.	11.500	10/01/01
TCEN.GA	21st Century Telecom Gr Inc.	12.250	02/15/08
TGNT.GB	Teligant Inc.	11.500	03/01/08
TRNR.GB	Trans-Resources Inc.	10.750	03/15/08
TRUA.GA	Trump Atlantic City Assoc Inc.	11.250	05/01/06
TRUG.GA	Trump Atlantic City Assoc Inc.	11.250	05/01/06
UIHI.GC	United Int'l Holdings Inc.	10.750	02/15/08
USMR.GB	United Stationers Supply Co.	8.375	04/15/08
VCRO.GA	Vencor Operating Inc.	9.875	05/01/05
VNCA.GA	Venetian Casino/LV Sands Inc.	10.000	11/15/05
VNCA.GB	Venetian Casino/LV Sands Inc.	10.250	11/15/04
VRIO.GA	Verio Inc.	10.375	04/01/05
VRIO.GB	Verio Inc.	13.500	06/15/04
VSYS.GB	Viasystems Inc.	9.750	06/01/07
WMNT.GA	Wam Net Inc.	13.250	03/01/05
WRNH.GA	Werner Holdings Co.	10.000	11/15/07
WXMN.GA	Waxman USA Inc.	11.125	09/01/01
ZLOG.GA	Zilog Inc.	9.500	03/01/05

As of September 23, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
ASCM.GA	Associated Materials Inc.	11.500	08/15/03
BBY.GB	Best Buy Inc.	8.625	10/01/00
BEPT.GA	Brooks Fiber Properties Inc.	11.875	11/01/06
BRDO.GA	Bridge Oil USA Inc.	9.500	08/15/00
BYLP.GA	Bryland LP/Brylane Cap Corp.	10.000	09/01/03
CGGI.GA	Carbide/Graphite Group Inc.	11.500	09/01/03
CLNG.GA	Cole National Group Inc.	11.250	10/01/01
CONG.GA	Congoleum Corp.	9.000	02/01/01
CTF.GA	Cort Furniture Rental Corp.	12.000	09/01/00
DELL.GA	Dell Computer Corp.	11.000	08/15/00
FLIA.GA	Florida Steel Corp.	11.500	12/15/00
FNPH.GA	First Nationwide Parent Holdings Inc	12.500	04/15/03
GLCM.GB	General Chem Corp.	9.250	08/15/03
JORD.GC	Jordan Ind Inc.	10.375	08/01/03
LFI.GC	Levitz Furniture Corp.	13.375	10/15/98
MLTI.GA	Multicare Cos Inc.	12.500	07/01/02
MXMG.GA	Maxxam Group Inc.	12.250	08/01/03

Symbol	Name	Coupon	Maturity
MXMG.GB	Maxxam Group Inc.	11.250	08/01/03
PLUM.GA	Pacific Lumber Co.	10.500	03/01/03
RGRO.GE	Ralphs Grocery Co. New	13.750	06/15/05
SIDE.GA	Assoc Materials Inc.	11.500	08/15/03
SVIS.GA	Spectra Vision Inc.	11.500	10/01/01
TEP.GA	Tuscon Electric Power Co.	8.500	11/01/99
TOWV.GA	Stratosphere Corp.	14.25	05/15/02

As of September 23, 1998, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
PGI.GA	PGH.GA	Polymer Group Inc.	9.00	07/01/07

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation, Inc. (NASD RegulationSM), at (301) 590-6451.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq[®] Market Operations, at (203) 385-6310.

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Disciplinary Actions

Disciplinary Actions Reported For November

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, November 16, 1998. The information relating to matters contained in this *Notice* is current as of the end of October 23.

Firm Expelled, Individuals Sanctioned

Hampton Capital Management Corp., (Stamford, Connecticut), Marquis Barnes Quetant (Registered Principal, Rosedale, New York), and Rhett McIntosh (Associated Person, Brooklyn, New York). The firm was censured, fined \$40,000, and expelled from NASD membership. Quetant was censured, fined \$75,000, and barred from association with any NASD member in any capacity, and McIntosh was censured, fined \$65,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Quetant and McIntosh refused to allow the NASD staff to enter the firm's branch office to examine the firm's books and records and to otherwise conduct an on-site examination. Furthermore, Quetant and McIntosh falsely advised the staff that there was no one present at the branch office at the time of the NASD's visit and McIntosh also falsely advised the NASD that he was not employed by the firm. The firm, Quetant, and McIntosh also failed to appear at NASD pre-hearing conferences.

Firm Fined, Individuals Sanctioned

Lexington Capital Corporation (New York, New York), Alan Michael Berkun (Registered Principal, East Rockaway, New York), and Joseph Marc Blumenthal (Registered Representative, North Woodmere, New York) submitted an Offer of Settlement pursuant to which the firm was censured, fined \$100,000, required to disgorge \$236,247.89, jointly and severally, with Berkun. In addition, the firm and Berkun are ordered to undertake to ensure that Berkun is not employed, affiliated, or otherwise associated with the firm and does not participate, directly or indirectly, in the management and/or operation of the firm after December 31, 1998. However, Berkun shall be permitted to retain a passive ownership interest in the firm until April 1, 1999, and shall have no direct or indirect ownership interest in the firm after April 1, 1999. The firm is also ordered to undertake to ensure that between September 16, 1998, and January 1, 1999, Berkun does not function in any supervisory or managerial capacity, and further, will ensure that he is only permitted to perform those duties specifically stated in the firm's Letter of Mitigation. Furthermore, the firm was ordered to undertake to review, modify, and improve its compliance and supervisory procedures so as to address the allegations (particularly those relating to penny stocks and markups) and to be immediately and permanently expelled from NASD membership if it fails to comply with any of the terms set forth in its Offer of Settlement. Berkun was censured, fined \$150,000, required to disgorge \$236,247.89, jointly and severally, with the firm, barred from association with any NASD member in the capacity of a general securities principal effective January 1, 1999, and barred from association with any NASD member as a general securities representative, with a right to

reapply in two years, effective January 1, 1999. Berkun will be eligible to reapply as a general securities representative on January 1, 2001. Berkun will be immediately and permanently barred from association with any NASD member in any capacity if he fails to comply with any of the terms set forth in his Offer of Settlement (including, but not limited to, that he only engage in those activities set forth in the firm's Letter of Mitigation). Blumenthal was censured, fined \$100,000, and barred from association with any NASD member in any capacity.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Berkun and others, allowed a statutorily disqualified individual to be associated with and conduct activities on behalf of the firm without first receiving the proper regulatory approvals. The firm failed to disclose on said individual's application for employment with the firm that he was the present and sole owner of a non-member firm and paid a commission to the non-member firm owned by the aforementioned statutorily disqualified person. The firm also failed to report to the NASD that it had conducted business with a firm owned by a person subject to a statutory disqualification. The findings also stated that the firm, acting through Berkun and others, executed sales of penny stocks to public customers while failing to make both the appropriate suitability determinations and disclosures required by the penny stock rules, and violated the firm's restriction agreement with the NASD by effecting penny stock transactions. Berkun failed to adequately supervise the firm's sales staff to ensure adherence to the aforesaid suitability and disclosure requirements. Furthermore, the NASD determined that the firm, acting through Berkun, sold unregistered

securities to the investing public improperly, and in connection with such sales, charged its customers fraudulently excessive markups, failed to disclose that the firm was acting as principal, and failed to disclose the amount of remuneration received by the firm. Additionally, the NASD found that the firm, acting through Berkun, allowed Blumenthal to conduct a securities business at the firm while his registration was inactive; falsified firm records, confirmations, orders tickets, and customer account statements; and engaged in a scheme to circumvent the NASD and various state registration requirements by deliberately processing transactions effected by Blumenthal under Berkun's registered representative number. The firm failed to adopt, maintain, and enforce a system to supervise the activities of the firm's registered representatives and associated persons that was reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules.

Firms And Individuals Fined
Dillon-Gage Securities, Inc. (Dallas, Texas) and Stephen Watterson Miller (Registered Principal, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Miller, participated in a public offering prior to filing the documents and information to be reviewed by the NASD, and receiving an opinion from the NASD that it has no objections to the proposed underwriting; and failed to enforce its own written supervisory procedures in that it failed to obtain a no-objection letter from the NASD prior to participating in an offering of securities.

The findings also stated that the firm, acting through Miller, participated in a contingency offering and failed to disclose to purchasers that the minimum would be reached through sales to affiliates of the issuer and since the sale to an affiliate represented a significant and material amount, the offering memorandum failed to disclose such purchase as a risk factor.

Paragon Capital Corporation (New York, New York) and Danny Jay Levine (Registered Principal, West Caldwell, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$40,000, jointly and severally. The firm was also fined \$95,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Levine reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting and recordkeeping. The firm also permitted an individual to engage in the investment banking or securities business of the firm when he was not registered with NASD. The findings also stated that the firm and Levine failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations regarding trade reporting, the limit order protection interpretation, the Small Order Execution SystemSM (SOESSM), best execution, the registration of persons with the NASD, and recordkeeping.

Providential Securities, Inc. (Fountain Valley, California) and Henry Dack Fahman (Registered Principal, Huntington Beach, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined

\$28,500, jointly and severally. In addition, Fahman was ordered to requalify by exam as a financial and operations principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting under the direction and control of Fahman, effected transactions in securities and/or induced or attempted to induce the purchase or sale of securities when the firm failed to have and maintain sufficient net capital. The findings also stated that the firm, acting through Fahman, failed to send public customers the requisite written notification or confirmation in securities transactions in that it did not disclose the difference in the price securities were purchased from and sold to customers and the firm's contemporaneous offsetting purchase or sale price to or from a Market Maker.

Firms Fined

GFI Group Inc. (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and recordkeeping. The findings also stated that the firm failed to accept or decline a transaction in an eligible security within 20 minutes after execution, and failed to show on the memoranda of brokerage orders the time of execution or the correct time of execution. Furthermore, the NASD determined that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations regarding trade reporting and registration of persons with the NASD.

International Securities Corporation (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and ordered to undertake to revise its written supervisory procedures relating to firm quote compliance in a manner not unacceptable to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to execute orders presented to it and thereby failed to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations concerning the Securities and Exchange Commission (SEC) and NASD firm quote rules.

John Hancock Distributors, Inc. (Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$100,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in connection with the offer and sale of interests in various limited partnerships, the firm distributed certain "internal use only" sales communications to its registered representatives and also provided certain sales communications to the public that omitted material information and included exaggerated, unwarranted, or misleading statements or claims regarding investments in certain limited partnerships.

Paribas Corporation (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described

sanctions and to the entry of findings that it failed to report transactions in Nasdaq National Market[®], Nasdaq SmallCapSM, over-the-counter, and listed securities in which it had reporting responsibility. The findings also stated that the firm reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting, and failed to provide written notification accurately disclosing the firm's reported price and the difference between the price to the customer and the reported trade price. Furthermore, the NASD determined that the firm failed to consistently and accurately reflect the time of entry and time of execution on order tickets and failed to implement and enforce adequate supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations relating to trade reporting.

Individuals Barred Or Suspended

Stanley Alan Anderson, Jr. (Registered Representative, Cartersville, Georgia) submitted an Offer of Settlement pursuant to which he was censured, fined \$379,583.75, barred from association with any NASD member in any capacity, and ordered to pay \$69,916.75 in restitution to a public customer. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that he received a savings bond redemption check payable to a public customer in the amount of \$8,732.04. Rather than depositing the check in a government fund account as instructed by the customer, Anderson deposited it in his personal bank account, purchased only \$3,023.04 worth of the government fund, and converted the remaining \$5,709.00 to his own use and benefit. The findings also stated that Anderson withdrew \$2,029.66 from the customer's savings account and sold shares of stock totaling

\$34,219.71, without the customer's knowledge or authorization, and used the funds to purchase shares of the government fund for the customer. Furthermore, the NASD determined that Anderson made unauthorized sales from the customer's government fund, forged the customer's endorsement on redemption checks totaling \$15,224.61, and converted the proceeds and deposited the funds in his bank account and converted a \$4,750 check and additional funds totaling \$44,233.14 from the bank account of the customer without the customer's knowledge or consent. In addition, the findings stated that Anderson made numerous misrepresentations to the customer regarding her investments, falsely represented himself as another employee of his member firm, submitted new accounts applications that contained false information regarding the accounts, and failed to respond to NASD requests for information.

Mark Scott Blonder (Registered Principal, Plainview, New York)

was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blonder failed to respond to NASD requests for information.

Thomas J. Brown (Registered Representative, Nanuet, New York)

was censured, fined \$160,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brown misappropriated funds in the amount of \$24,000 that he received from a public customer as a premium payment on the customer's life insurance policy. Brown also failed to respond to NASD requests to appear for an on-the-record interview and to respond to NASD requests for information.

Frank John Bursinger, III (Registered Representative, Seal Beach, California)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,280, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Bursinger consented to the described sanctions and to the entry of findings that he participated in private securities transactions but failed to provide prior written notification to and receive permission from his member firm.

Ming Cheng (Registered Representative, Ridgewood, New York)

was censured, fined \$78,745, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cheng caused his member firm to issue a check for \$749 to him on behalf of an insurance customer, forged the customer's signature on the check, and converted the funds to his own use and benefit. Cheng also failed to respond to NASD requests for information.

Darcie Coy (Registered Principal, Lakewood, Colorado)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$2,500, suspended from association with any NASD member in any capacity as a financial and operations principal for 30 days, and required to requalify by exam before functioning again in that capacity. Without admitting or denying the allegations, Coy consented to the described sanctions and to the entry of findings that her member firm acting through Coy failed to deposit promptly to an escrow account checks received from public customers of her firm in connection with the offer and sale of securities subject to a minimum sales contingency.

Michele Ann Desilets (Registered Principal, Littleton, Colorado)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which

she was censured, fined \$10,000, suspended from association with any NASD member in any principal capacity for 10 business days which shall be served in two five-business-day periods in successive months. Without admitting or denying the allegations, Desilets consented to the described sanctions and to the entry of findings that she failed to establish a supervisory system that was reasonably designed to achieve compliance with applicable SEC and NASD laws, rules, and regulations.

Desilets' second suspension for five business days will begin December 21, 1998, and will conclude at the close of business on December 28, 1998.

Ernesto Diaz (Associated Person, Corona, New York)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Diaz consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Sidney C. Eng (Registered Principal, Mill Valley, California)

was censured, fined \$75,000, and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of an April 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Eng engaged in insider trading by purchasing shares of stock while in possession of material, non-public information.

Robert Vance Manuel English (Registered Principal, San Diego, California)

submitted an Offer of Settlement pursuant to which he was censured, fined \$232,858.45, and

barred from association with any NASD member in any capacity. Without admitting or denying the allegations, English consented to the described sanctions and to the entry of findings that he received \$20,571.69 from a public customer intended for investment purposes and without the customer's knowledge or consent, converted the funds to his own use and benefit by depositing the checks into his member firm's general operating bank account and wrote checks on the account payable to himself and to cash. In order to conceal his misconduct, English provided the customer with fabricated statements to mislead the customer into believing that her funds had been safely invested and were accumulating interest. English also failed to respond to NASD requests for information and to provide testimony.

Gary Wayne Fenster (Registered Representative, Council Bluffs, Iowa) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Fenster consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm.

John Kevin Finn (Registered Principal, Dubuque, Iowa) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Finn consented to the described sanctions and to the entry of findings

that he failed to respond completely to NASD requests for information.

Brad B. Fletcher (Registered Representative, Aventura, Florida) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fletcher failed to respond to an NASD request for information.

Dean Scott Friedman (Registered Principal, Glen Head, New York), Kenneth James Fuina (Registered Principal, White Plains, New York), George Patsis (Registered Representative, Brooklyn, New York), Joseph Teseo (Registered Representative, Atlantic Beach, New York), and Peter T. Tsadilas (Registered Representative, North Hills, New York) submitted Offers of Settlement pursuant to which Friedman was censured, fined \$15,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by taking the Series 7 exam prior to acting in that capacity. Fuina was censured, fined \$10,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam for the Series 7 or Series 62 prior to becoming associated with any NASD member firm. Patsis was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Teseo was censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam prior to becoming associated with any NASD member firm, and Tsadilas was censured, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam prior to becoming associated with any NASD member firm.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Friedman, Fuina, Patsis, Teseo, and Tsadilas made baseless and improper price predictions pertaining to highly speculative securities and engaged in unauthorized trading in the accounts of public customers. The findings also stated that Friedman, Fuina, Teseo, and Tsadilas discouraged or failed to execute customer sell orders, and Patsis discouraged or failed to execute sell orders on a timely basis. Furthermore, the NASD determined that Friedman, Patsis, and Teseo made false promises to customers to limit their losses, Friedman made improper comparisons between unrelated securities, and Patsis misled a customer as to risk and falsely led a customer to believe he had access to inside information as to an issuer whose securities he was selling. The NASD also determined that Teseo and Tsadilas provided false testimony during an NASD investigation and Tsadilas improperly promised to make up losses with new trading, and falsified a customer's account records as to the customer's state of residence and financial condition.

Jay J. Gelfenbaum (Registered Representative, Coral Springs, Florida) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gelfenbaum failed to respond to NASD requests for information.

Henry C. Glogowski (Registered Representative, Butler, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Glogowski con-

sent to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

John Edward Guerriero, Jr. (Registered Representative, Rockville Centre, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Guerriero consented to the described sanctions and to the entry of findings that he failed to appear to testify on the record before the NASD. The findings also stated that without his member firm's knowledge or authorization, Guerriero entered into a separate agreement with public customers under which he agreed to make monetary payments to the respective customers and thereafter paid money to them in settlement of a claim or complaint against him by the customers.

Kenneth Michael Kinzler (Registered Representative, Chicago, Illinois) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kinzler failed to respond to NASD requests for information.

Steven Albert Kirschbaum (Registered Representative, Coral Springs, Florida) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal and call for review of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Kirschbaum forged the signatures of public customers on change of dealer forms or new account forms.

Michael Richard MacCaull (Registered Representative, Commack, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$185,673, barred from association with any NASD member in any capacity with the right to reapply after five years, and ordered to pay \$23,672 in restitution to a public customer or demonstrate that he has paid the customer such amount as has been determined in an arbitration or other proceeding or settlement to be owed to the customer. Without admitting or denying the allegations, MacCaull consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his recommendations of securities to public customers. The findings also stated that MacCaull guaranteed a public customer against loss in the customer's account; entered a purchase order in the account of a public customer without obtaining the customer's authorization; and made fraudulent, baseless, and unreasonable price predictions to customers. Furthermore, the NASD determined that MacCaull failed to follow a customer's instructions to sell securities in the customer's account.

Timothy Francis Manning, Jr. (Registered Representative, Spring Lake Heights, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Manning consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Scott Thomas McMahon (Registered Representative, South Bend, Indiana) submitted a Letter of Acceptance, Waiver, and Consent

pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McMahon consented to the described sanctions and to the entry of findings that he received checks totaling \$8,500 from a public customer made payable to McMahon for deposit in a non-qualified tax deferred annuity account, negotiated and cashed the checks, and used the funds for some purpose other than for the benefit of the customer.

Michael Joseph Minnehan (Registered Representative, Milford, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$40,930.80, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Minnehan consented to the described sanctions and to the entry of findings that, without the knowledge or consent of public customers, he endorsed and cashed policyholder cash surrender checks totaling \$6,186.16, which were payable to the customers and converted the funds to his own use and benefit.

Kent Davis Peterson (Registered Representative, St. George, Utah) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for one month, and required to re-take the Series 63 exam within 90 days of the conclusion of the suspension. Without admitting or denying the allegations, Peterson consented to the described sanctions and to the entry of findings that he made cash payments totaling \$900 to an individual who made a public customer referral to him. The findings also stated that Peterson affixed the signatures of public customers to

various documents required by his member firm to be signed by the customers, with the knowledge and consent of the customers, but failed to disclose to his firm that he, not the customers, had affixed the signatures.

Mark Eugene Rowe (Registered Representative, Wexford, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,800, suspended from association with any NASD member in any capacity for 15 business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Rowe consented to the described sanctions and to the entry of findings that he recommended to a public customer and effected in the customer's securities accounts, the purchase of securities without having reasonable grounds for believing the respective securities were suitable for the customer.

Bernice Anne Sanders (Registered Principal, Clinton, Maine) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sanders consented to the described sanctions and to the entry of findings that she engaged in private securities transactions by selling \$184,000 in promissory notes to public customers without prior written notice to and approval from her member firm.

James Leonard Schermerhorn (Registered Representative, Santa Maria, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$40,762.70, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schermer-

horn consented to the described sanctions and to the entry of findings that he received insurance premium payments from a public customer totaling \$8,344.54, forwarded only \$2,192 of the customer's funds to the insurance company, and converted the remaining funds for his personal benefit.

Kevin Eric Shaughnessy (Registered Principal, Pittsburgh, Pennsylvania) was censured, fined \$11,675, barred from association with any NASD member in any capacity, required to pay \$390 in losses to customers, and required to pay \$1,526.37 in commissions to customers. The SEC affirmed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Shaughnessy entered into an arrangement with a non-registered individual whereby he agreed to sell shares of stock to his retail customers in exchange for compensation, without disclosing the arrangement with the customers or his member firm.

Evan Russell Stoopler (Registered Principal, Jericho, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Stoopler consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that Stoopler failed to indicate on the order tickets for these transactions that such trades were discretionary, and incorrectly indicated on the order tickets that such trades were unsolicited.

Richard Ray Vaillant (Registered Representative, Tacoma, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$35,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vaillant consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Wayne E. Warren-Young (Registered Representative, Atlanta, Georgia) was censured, fined \$85,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Warren-Young accepted a \$50,000 check from a public customer for investment in mutual funds, deposited the check in a bank account of a private company contrary to the customer's instruction and, without his member firm's knowledge, failed to comply with the customer's demand for return of the money. Warren-Young also failed to respond to NASD requests for information.

Gerald Mark Wilkinson (Registered Representative, York, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Wilkinson consented to the described sanctions and to the entry of findings that he functioned as an investment company and variable contract products representative and engaged in a securities business by preparing a variable annuity application and accepting a customer check for such investment before his registration in such capacity was effective.

Individuals Fined

Steven Morris Goldsmith (Associated Person, Wayzata, Minnesota)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$16,621. Without admitting or denying the allegations, Goldsmith consented to the described sanctions and to the entry of findings that he failed to advise his member firm that he opened an account with another firm, and failed to provide written notification to the executing firm of his association with the member firm. The findings also stated that Goldsmith purchased shares of stock that traded at a premium in the secondary market in violation of the NASD Board of Governors' Free-Riding and Withholding Interpretation.

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of October 23, 1998.

The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Steven Douglas Goodman (Registered Principal, Allison Park, Pennsylvania), Albert Joseph Ford (Registered Representative, Oakton, Virginia), and Douglas Francis Andrews (Registered Principal, Ashburn, Virginia). Goodman was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Ford was censured, fined \$95,000, and barred from association with any NASD member in any capacity, and Andrews was censured, fined \$75,000, and barred from association with any NASD

member in any capacity. The sanctions were based on findings that the respondents, in their capacities as branch managers, through their supervisions of the activities of the registered representatives assigned to them, encouraged, directed, participated in and/or facilitated a "boiler room" operation featuring high pressure sales tactics, material misrepresentations and omissions, unfounded price predictions, the use of false and misleading scripts and research summaries, and unauthorized transactions, among other things, and, in their individual capacities as registered representatives, engaged in the same violative activities in their dealings with their own customers. In addition, Ford effected unauthorized securities transactions in customer accounts.

Goodman, Ford, and Andrews have appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Stuart Gordon Horowitz (Registered Representative, Boca Raton, Florida) was censured, fined \$90,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Horowitz failed to amend a Form U-4 to disclose that his license to practice law had been suspended by the Supreme Court of Florida and that he was the subject of an investigation by the Florida Bar. Horowitz also failed to respond to NASD requests for information.

Horowitz has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

John David Morgan (Registered Representative, Dunedin, Florida) was censured, fined \$10,000, and

suspended from association with any NASD member in any capacity for three business days. The sanctions were based on findings that Morgan exercised discretion in a public customer's account without having a signed discretionary agreement giving him such authorization and effected unauthorized securities transactions in the account. Also, Morgan guaranteed the customer against loss in that he purchased additional shares of stock for the customer without the customer's knowledge in order to cover the drop in value of the first shares.

This action was called for review by the NAC and the sanctions are not in effect pending consideration of the review.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Nicholas Mario Antonelli (Registered Representative, Hauppauge, New York) and **Alexander Velez (Registered Representative, Brentwood, New York)** were named as respondents in an NASD complaint alleging that they failed to obey public customers' instructions to sell securities in the customers' accounts. The complaint alleges that Antonelli effected a securities transaction in a public customer's account without the prior knowledge or authorization of the customer. The complaint also alleges that Antonelli knowingly completed a public cus-

customer's new account application with a false address in an effort to avoid the effect of the suspension of his member firm in the customer's state of residence. The complaint also alleges that Velez failed to complete his Form U-4 accurately in failing to disclose that he was the subject of complaints and investigations.

Delio Pereira DaSilva (Registered Representative, Campbell, California) was named as a respondent in an NASD complaint alleging that he effected transactions in the account of public customers without the knowledge and consent of the customers. The complaint alleges that DaSilva received and misused \$11,813.95 belonging to the customers. The complaint also alleges that DaSilva provided a business card to a public customer which falsely represented that DaSilva was a principal of an NASD member firm. The complaint also alleges that DaSilva failed to provide documents requested by the NASD.

Jasen Michael Devlin (Registered Principal, Bayshore, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations and failed to disclose material facts to public customers in connection with his recommendations to purchase securities. The complaint alleges that Devlin predicted the future prices of securities without a reasonable basis to public customers in order to induce the customers to purchase securities. The complaint also alleges that Devlin failed to execute a public customer's orders to sell securities.

Jeffrey Harold Hamsher (Registered Representative, Sinking Spring, Pennsylvania) was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omissions of material fact in connection with his purported offer and sale of Treasury

bonds to public customers. The complaint alleges that Hamsher used public customers' funds in an amount totaling approximately \$71,000, for some purpose other than for the benefit of the customers, without their consent or authority. The complaint also alleges that Hamsher engaged in private securities transactions without prior written notice to and approval from his member firm. The complaint also alleges that Hamsher failed to respond to NASD requests for information.

Frank James Hutton (Registered Representative, Brandon, Mississippi) was named as a respondent in an NASD complaint alleging that he executed securities transactions in the accounts of public customers without prior authorization from the customers. The complaint alleges that Hutton caused a check in the amount of \$29,972.71 to be issued from the joint account of public customers which represented the proceeds from the unauthorized sale of securities, and converted the \$29,972.71 to his own use and benefit by forging the customers' signatures to the check and depositing the check into a bank account under his control, without the customers' knowledge or consent. The complaint alleges that in an effort to conceal the unauthorized transactions, Hutton prepared and mailed to the customers a fictitious monthly account statement that did not reflect the unauthorized transactions and that did not reflect his withdrawal of funds. The complaint also alleges that Hutton effected withdrawals totaling \$96,552.40 from the joint account of other public customers, and converted the \$96,552.40 to his own use and benefit by forging the customers' signatures on checks and maintaining possession of the funds, without the customers' knowledge or consent. The complaint also alleges that Hutton failed to respond to NASD requests for information.

Brian Joseph Lichtlin (Registered Representative, Secaucus, New Jersey) was named as a respondent in an NASD complaint alleging that he effected securities transactions in the accounts of public customers, without the customers' knowledge or consent, and in the absence of written or oral authorization to exercise discretion in the customers' accounts. The complaint alleges that in connection with these unauthorized transactions, Lichtlin affixed the customers' signatures on documents purporting to state that the transactions were unsolicited. The complaint also alleges that Lichtlin failed to respond to NASD requests for information.

Robert Charles Madrid (Registered Representative, Blue Island, Illinois) was named as a respondent in an NASD complaint alleging that he executed securities transactions in the account of a public customer without the knowledge or consent of the customer and exercised discretion in the account without the customer's written or oral authorization. The complaint alleges that Madrid failed to respond to NASD requests for information.

Jeffrey David Miller (Registered Representative, Moody, Alabama) was named as a respondent in an NASD complaint alleging that he received a check in the amount of \$2,558 from a public customer for the purchase of insurance policies, failed and neglected to execute the purchase of these insurance policies, and instead misappropriated or converted the \$2,558 to his own use without the customer's consent. The complaint alleges that Miller failed to amend his Form U-4 to disclose a civil judgment against him in the amount of \$11,293.85 and to disclose the filing of a federal tax lien against him by the Internal Revenue Service for payroll taxes in the amount of \$47,329.94. The complaint also alleges that Miller failed to

respond to NASD requests for information.

Luis Jaime Ramirez (Registered Representative, Manhasset Hills, New York) was named as a respondent in an NASD complaint alleging that he requested his member firm issue checks totaling \$17,124.50 that represented dividend disbursements from public customers' life insurance policies, then deposited proceeds from these checks into his own account without the knowledge, permission, or authority of the customers. The complaint alleges that Ramirez engaged in forgery in that he caused his member firm to issue a disbursement check in the amount of \$5,759.45 to a public customer at Ramirez's post office box, when the customer had not given Ramirez permission or authority to issue the check and had not provided the firm with a change of address notification that listed Ramirez's post office box as her "current" address. The complaint also alleges that Ramirez failed to provide documents and/or information requested by the NASD.

Darrin Patrick Sullivan (Registered Representative, Holbrook, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations and failed to disclose material facts to public customers in connection with his recommendations to purchase securities. The complaint alleges that Sullivan made baseless, fraudulent price predictions to public customers in connection with his recommendations to purchase securities. The complaint also alleges that Sullivan insulted and berated a public customer when the customer refused to purchase securities. The complaint also alleges that Sullivan failed to respond to an NASD request to appear for an on-the-record interview.

Victoria Jean Williams (Registered Representative, Sunset Beach, California) was named as a respondent in an NASD complaint alleging that she received \$1,000 from a public customer for investment in securities and instead, improperly caused the customer's funds to be deposited into the account of Williams' landlord without the customer's knowledge or consent.

Firms Suspended/Canceled

The following firms were suspended/canceled from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions/cancellations commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Aequus Equities, Inc., New York, New York (October 5, 1998)

Alliance Asset Group, Inc., Englewood Cliffs, New Jersey (October 5, 1998)

Biscayne Capital LLC, New York, New York (October 5, 1998)

Block Trading, Inc., Houston, Texas (October 5, 1998)

First International Capital LTD., Hamilton, Bermuda (October 5, 1998)

Great American Financial Network, Inc., Norcross, Georgia (October 5, 1998)

Great Lakes Capital, Inc., Vero Beach, Florida (October 5, 1998)

Hemisphere Capital Corp., New York, New York (October 5, 1998)

Nationwide Asset Management Corporation, Laguna Hills, California (October 5, 1998)

Firms Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Award

Capital World Securities Corporation, City of Industry, California (October 13, 1998)

First Cambridge Securities Corp., New York, New York (September 23, 1998)

State Capital Markets Corp., New York, New York (September 23, 1998)

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

Buonocore, Louis T., Staten, Island, New York (October 16, 1998)

Donart, Donald C., Tucson, Arizona (September 18, 1998)

Elgindy, Amr I., Colleyville, Texas (September 18, 1998)

Falco, Michael J., Marshfield, Massachusetts (October 16, 1998)

Mooney, William J., Bayside, New York (October 16, 1998)

Portier, Frank J., Columbus, Ohio (October 16, 1998)

Schiano, Anthony D., Franklin Square, New York (October 16, 1998)

Wallach, John M., Lakeworth, Florida (October 16, 1998)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Awards

Feintuch, Ira, Englewood, New Jersey (October 9, 1998)

Fleischmakher, Isaac, Chicago, Illinois (September 9, 1998)

Gaer, Jason Robert, Paramus, New Jersey (September 25, 1998 - October 1, 1998)

Lantieri, John Charles, Edison, New Jersey (October 2, 1998)

Leffel, Jasen E., Maineville, Ohio (October 2, 1998)

Liounis, Peter, Brooklyn, New York (September 23, 1998)

Richardson, Michael J., Astoria, New York (September 23, 1998 - September 29, 1998)

Ruffler, Kirk, Perrineville, New Jersey (September 9, 1998)

Smith, Tony Raynard, New York, New York (October 9, 1998)

NASD Regulation Charges LT Lawrence & Co., Inc. And Principals With Fraud

NASD Regulation announced that it issued a complaint charging LT Lawrence & Co., Inc., New York, NY; its Chief Executive Officer, Lawrence Principato, Staten Island, NY; and its President, Todd E. Roberti, Florham Park, NJ, with excessive and fraudulent markups and markdowns in the trading of EcoTyre Technologies, Inc. Common Stock and Class A Warrants. The firm, along with Principato and Roberti, was also charged with failing to establish, implement, and enforce adequate supervisory procedures designed to prevent the alleged conduct.

According to the complaint, LT Lawrence, after acting as the managing underwriter of EcoTyre's initial public offering, dominated and controlled the trading in the company's common stock and warrants from February 6, 1996 through March 29, 1996. During this time, LT Lawrence charged its customers, residing in 35 states, excessive markups and markdowns totaling \$487,642.58 in 474 separate transactions. As many as 58 percent of these transactions were at prices that were fraudulently excessive, in that they charged their customers markups and markdowns more than 10 percent totaling \$306,277.39 in 275 transactions.

In the complaint, NASD Regulation does not allege any wrongdoing on the part of EcoTyre.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondents before drawing any conclusion regarding the allegations in the complaint.

Under NASD Regulation rules, the individuals and the firms named in the complaint can file a response and request a hearing before an NASD Regulation disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from the NASD.

NASD Regulation Institutes Proceedings Against 59 Firms for Late Y2K Filings

NASD Regulation announced disciplinary actions against 59 brokerage firms for late filing of required "Year 2000" status reports. Thirty-seven of

the firms entered into settlements agreeing to be censured and pay fines ranging from \$2,300 to \$3,200. Complaints have been issued against the remaining 22 firms. Today's actions are part of a coordinated effort with the SEC.

According to a rule adopted by the SEC earlier this year, every brokerage firm with a minimum net capital requirement of \$5,000 or more, was required to inform the NASD and the SEC, no later than August 31, 1998, of its Year 2000 readiness by filing a Form BD-Y2K. The form required firms to detail the efforts they are taking to identify and remedy their potential technical problems arising from the transition to the year 2000. All of the firms included in today's actions failed to file either the form or a significant portion of the form within a "grace period" which expired September 21, 1998. Firms will again be required to file this report in April 1999.

"Today's actions reflect NASD Regulation's commitment to ensuring that all brokerage firms recognize and address the potential problems of the year 2000 before it is too late. It is crucial for investor protection that firms not delay in readying their systems," said Mary L. Schapiro, President, NASD Regulation.

NASD Regulation's actions were coordinated with 37 separate disciplinary proceedings instituted today by the SEC against firms that failed to file the required reports by October 2, 1998. NASD Regulation acknowledges the valuable assistance provided by the SEC staff in these matters.

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Notices to Members YEAR 2000 UPDATE

December 1998

SEC 1999 BD-Y2K Independent Public Accountant's Report

As discussed in earlier issues of *Notices to Members*, and in other National Association of Securities Dealers, Inc. (NASD®) publications, the Securities and Exchange Commission (SEC) adopted an amendment to its Rule 17a-5 requiring that broker/dealers file Year 2000 readiness reports (BD-Y2K); the first report was due August 31, 1998, and a second report is due April 30, 1999. Broker/dealers with minimum net capital requirements of \$100,000 or greater as of March 15, 1999, and broker/dealers that were required to file Part II of Form BD-Y2K on August 31, 1998, are required to file both Part I and Part II of Form BD-Y2K due April 30, 1999.

As part of the amendments to SEC Rule 17a-5, Part II filers must also file a report prepared by an independent public accountant regarding the broker/dealer's process for addressing Year 2000 problems. The independent accountant's report must be prepared in accordance with standards that have been reviewed by the SEC and that have been issued by a national organization that is responsible for promulgating authoritative accounting and auditing standards. Such standards do not have to involve an attestation engagement.

In conjunction with adopting the independent public accountant reporting requirement, the SEC reviewed the procedures included in Statement of Position 98-8 (SOP 98-8), issued by the American Institute of Certified Public Accountant's Auditing Standards Board, and concluded that an independent public accountant's report prepared in accordance with SOP 98-8 would satisfy the independent public accountant reporting requirement. Details of the amendment to SEC Rule 17a-5 are available on the SEC Web Site (www.sec.gov). Details of SOP 98-8 are available on the American Institute of Certified Public Accountants' Web Site (www.aicpa.org). The independent public accountant's report becomes Part III of the Form BD-Y2K submission due to the SEC and the NASD by April 30, 1999.

August 31, 1998 BD-Y2K Report Update

After reviewing member firms' BD-Y2K reports that were due on August 31, 1998, the NASD Year 2000 Program Office has discovered a number of firms that have issues regarding their Part II submissions and will require NASD Regulation follow-up. A common example is inconsistencies in the information presented in Part I and Part II of their respective reports. NASD Year 2000 staff will contact these firms by phone to discuss problem areas and clarify the firms' Year 2000 readiness. The SEC has requested that the NASD provide a list of firms with issues that are still unresolved by January 25, 1999.

Important Notes For Independent Accountant's Report (these notes supplement the instructions found on the Form BD-Y2K):

- ◆ *The broker/dealer must complete its Form BD-Y2K before the auditor's review.*
- ◆ *The broker/dealer must engage a firm to do this based on the "as of March 15, 1999" reporting date. The auditor providing the independent public accountant's report does not have to be the same as the financial auditor.*
- ◆ *Submissions must include the name and address of the auditor.*
- ◆ *The broker/dealer must submit the independent public accountant's report as Part III with Part I and Part II; Form BD-Y2K will not be considered "filed" unless all three parts are received together with the signed cover sheet by the April 30th due date.*
- ◆ *All Parts must contain the BD#, BD Name, and SEC 8-Number.*
- ◆ *All Parts of Form BD-Y2K will be made available to the public.*



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More Virtual Workshops

Last month we highlighted the first in a series of Year 2000 Virtual Workshops—workshops in which NASD members may hear about important Year 2000 issues via conference call-in sessions. During the call-in sessions, members will hear a presentation, followed by a question and answer period. The following sessions will provide an opportunity for members to share ideas and learn from other firms' experiences. The phone number to register for all virtual workshops listed here is (800) 839-9159.

Workshops In Districts To Discuss Mandatory Testing

The NASD Year 2000 Program Office is holding mandatory testing workshops in selected NASD Regulation District Offices in January. To register for on-site training, call the Program Office at (888) 227-1330. Once you are registered, you will be sent a confirmation letter. You **must** bring your confirmation letter to the seminar. Unfortunately, because of limited space, we will not be able to accommodate on-site registrants.

January 20, Dallas District Office, 8:00 a.m. - 5:00 p.m.

January 25, Denver District Office, 8:00 a.m. - 5:00 p.m.

January 26, Los Angeles District Office, 8:00 a.m. - 5:00 p.m.

Virtual Workshops

January 12 - Legal Issues

Password: Legal
Leader: Lyn Kelly
Conf: # 2519205
Call-in phone number:
(888) 282-9568

Issues to be covered:

- ◆ due diligence efforts for brokers/dealers
- ◆ litigation helpful hints
- ◆ recent developments in disclosure

January 14 - Mandatory Testing (also offered January 28, see last column)

Password: Mandatory Testing
Leader: Lyn Kelly
Conf: # 3402274
Call-in phone number:
(888) 455-5419

Issues to be covered:

- ◆ internal testing
- ◆ SIA-sponsored industry-wide testing
- ◆ testing with the NASD

January 20 - BD-Y2K for Small Firms

Password: BD-Y2K
Leader: Lyn Kelly
Conf: # 3402355
Call-in phone number:
(888) 455-5419

Issues to be covered:

- ◆ upcoming BD-Y2K Report and a small firm approach
- ◆ 1999 Report vs. 1998 Report

January 27 - SOP; Part III of BD-Y2K

Password: SOP
Leader: Lyn Kelly
Conf: # 3402391
Call-in phone number:
(888) 455-5419

Issues to be covered:

- ◆ how completing Part III of your BD-Y2K Form affects you
- ◆ what does the SOP cover
- ◆ helpful hints in the completion of Part III

January 28 - Mandatory Testing

Password: Mandatory Testing
Leader: Lyn Kelly
Conf: # 3402436
Call-in phone number:
(888) 455-5419

Issues to be covered:

- ◆ internal testing
- ◆ SIA-sponsored industry-wide testing
- ◆ testing with the NASD

To participate in the Virtual Workshops, the NASD strongly encourages registration, but it is not required. Call MCI at (800) 839-9159, listen to the greeting, and provide the following information when prompted: firm name, Broker/Dealer #, and workshop date. On the day of the session, call the phone number listed above with the associated workshop, and indicate the password and conference leader provided for the workshop.

Voluntary Testing

NASD Test Centers are open with scheduling opportunities available to test NASD, NASD Regulation, and Nasdaq applications. Enclosed are updated NASDR and Nasdaq Year 2000 Service and Product flyers that indicate the status of each major system/application as it relates to Year 2000 readiness and ability to test. The NASD encourages firms to participate in voluntary testing with the NASD. To schedule testing or obtain information about NASD, NASD Regulation, or Nasdaq applications please contact:

Nasdaq Customer Test System—(800) 288-3783

NASD, NASD Regulation Testing—(888) 227-1330

Mandatory Testing

The SEC approved a new NASD rule that would mandate Year 2000 testing for clearing firms, market makers, and government securities firms. Members should check the NASD Regulation Web Site (www.nasdr.com) and watch for the January *Notices to Members* for details. Clearing firms should already have registered for Securities Industry Association (SIA)-sponsored industry testing and have performed all prerequisite testing such as point-to-point testing. To schedule industry-wide testing with the SIA call (888) Y2K-4SIA (888-925-4742).

More Information/Questions

NASD Year 2000 Program Office

e-mail: y2k@nasd.com

phone: (888) 227-1330

Important Publishing Note

Beginning January 1999, the primary method of publishing *Notices to Members* and NASD Regulation's other major member publication—the *Regulatory & Compliance Alert*—will be via the Internet. To continue to read these newsletters, and find out timely information about the NASD's Year 2000 efforts, please visit the NASDR or NASD Web Sites (www.nasdr.com and www.nasd.com, respectively) on a regular basis.

To place your name on an e-mail list that will alert you to new issues of these publications, go to the NASDR Web Site and click on the button on the Home Page that says "Subscribe To Our E-Mail Notifications." Each Executive Representative will be eligible for one subscription to a hard-copy version of *Notices to Members* at cost, \$15 per year. Each branch office will be eligible for one subscription to the hard-copy version of the *Regulatory & Compliance Alert* at cost, also \$15 per year. Hard-copy versions of these publications can be purchased by calling NASD MediaSourceSM at (301) 590-6142.

Upcoming NASD Education And Events

Topic	Date	Location
Legal Issues	January 12	Virtual
Mandatory Testing	January 14	Virtual
BD-Y2K for Small Firms	January 20	Virtual
Mandatory Testing	January 20	Dallas District
Mandatory Testing	January 25	Denver District
Mandatory Testing	January 26	Los Angeles District
SOP; Part III of BD-Y2K	January 27	Virtual
Mandatory Testing	January 28	Virtual

SIA Events

Year 2000 Industry Testing Seminar; February 2-3; New York City ♦ Visit SIA Web Site (www.sia.com) to register and for more information.

NASD Notice to Members 98-96

NASD Elaborates On Member Firms' Supervision Responsibilities For Trade Reporting And Market-Making Activities

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

During the last two years, NASD Regulation, Inc. (NASD RegulationSM) has imposed numerous and significant disciplinary actions against member firms for supervisory deficiencies, particularly in the areas of trade reporting and market-making activities. Indeed, much of the recent focus in the area of written supervisory procedures has been in the context of NASD Regulation's Trading and Market Maker Surveillance (TMMS) examination process. Accordingly, the purpose of this *Notice* is to reiterate for members in the context of trading and market-making activities the requirements of National Association of Securities Dealers, Inc. (NASD[®]) Rule 3010, the supervision rule, concerning a member firm's obligation to establish, maintain, and enforce a supervisory system and written supervisory procedures which reflect that system.¹

Establishing, maintaining, and enforcing written supervisory procedures is a cornerstone of self-regulation within the securities industry. Supervisory procedures reasonably designed to achieve compliance with applicable rules, and to detect and deter rule violations by a member firm and its associated persons, enable the firm to identify and respond to regulatory concerns in a manner that can reduce the risk of disciplinary action by NASD Regulation.² Moreover, appropriately designed and implemented supervisory systems and written supervisory procedures serve as a "frontline" defense to protect investors from fraudulent trading practices and help to ensure that members are complying with rules designed to promote the transparency and integrity of the market. As a result, effective supervisory systems within member firms enhance investor confidence and, in turn, promote the fairness, liquidity, and efficiency of the market for all market participants.

As markets evolve and become more complex, it is essential that firms have in place effective supervisory systems and written supervisory procedures. At most member firms front-line supervisors have responsibilities for firm revenues in addition to their supervisory responsibilities with regard to applicable laws, rules, and regulations. Appreciating both the significance and the compatibility of these dual responsibilities, NASD Regulation believes that an effective supervisory system contemplated by Rule 3010 includes a strong overall commitment on the part of supervisors to establish and maintain clearly defined procedures for compliance with applicable laws, rules, and regulations, and a climate of intolerance for lax compliance by the persons they supervise.

NASD Rule 3010 requires each member to establish, maintain, and enforce written supervisory procedures with respect to the types of business in which it engages, which "are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules . . ."³ Because many of the failure to supervise charges recently imposed on members have been for inadequacies revealed in the TMMS examination process, in the trade reporting, market making, and equity order handling areas, this *Notice* focuses on elements of adequate supervisory procedures and systems in these areas. Given the differences among member firms in terms of their business mixes, and the fact that compliance with NASD Rule 3010 can be achieved through a variety of procedures and systems, this *Notice* only addresses some of the general elements that member firms should consider in assessing their supervisory systems and written procedures. NASD Regulation is not mandating any particular type or method of supervision. Nor is the *Notice* designed to provide a checklist of

steps guaranteed to constitute adequate written supervisory procedures. NASD Regulation will continue to examine closely member firms' supervisory systems and written procedures and, where appropriate, initiate disciplinary action against both firms and their supervisory personnel for failure to adopt, implement, and enforce appropriate supervisory procedures.

If you have any questions about this *Notice*, please call the Legal Section of the Market Regulation Department, NASD Regulation, at (301) 590-6410.

Discussion

Requirements Of NASD Rule 3010

NASD Rule 3010 provides that each NASD member must "establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the rules of this Association."⁴ In addition to the creation of supervisory systems, Rule 3010 also requires member firms to establish, maintain, and enforce companion written supervisory procedures.⁵ Thus, a member and/or individual can violate NASD Rule 3010 in several different ways. Specifically, it is a violation if the member and/or individual *fails to establish and maintain* a supervisory system and/or fails to describe the operation of that system in written supervisory procedures. In addition, it is a violation if the member and/or individual *fails to enforce* a supervisory system and/or written supervisory procedures. Either type of violation can occur in the absence of an underlying rule violation.

There is an important distinction between written guidelines for com-

pliance and written supervisory procedures. Guidelines for compliance generally set forth the applicable rules and describe prohibited practices.⁶ While such compliance guidelines certainly serve a valuable regulatory purpose, and can represent an important element of an effective supervisory system, compliance guidelines in and of themselves do not constitute an adequate supervisory system or procedures. Beyond compliance guidelines, member firms must also adopt written *supervisory* procedures that describe the actual supervisory system established by the firm to achieve compliance with applicable rules and regulations. Specifically, the firm's written supervisory procedures should include a description of the controls and procedures used by the firm to deter and detect misconduct and improper activity. The written supervisory procedures should also identify the specific personnel who perform the various supervisory functions.

A firm's supervisory system may include a range of techniques and controls in addition to formal reviews and examinations of exception reports, which always should be included. For example, an effective supervisory system can include the maintenance of a comprehensive training and continuing education program that promotes a thorough understanding by associated persons of the applicable laws, rules, and regulations. In addition, elements of an effective supervisory system can include internal and external audits, and periodic reviews by "audit committees" or similar bodies constituted to evaluate a firm's controls. It can also include less formal monitoring and oversight by a qualified supervisor, or designee, actively involved in the business. Ultimately, an effective supervisory system may be comprised of many different elements, both objective—

such as regular reviews of specific areas of activity—and subjective, including placing competent, qualified, and experienced individuals in supervisory roles. In addition, a tone should be set from the top of the firm that lax compliance with – and deliberate violation of – laws, rules, and regulations will not be tolerated.

The supervisory system should be designed to ensure that delegated responsibilities are diligently exercised. Policies and procedures are not sufficient if there are no auditing systems to determine whether they are being followed as described.

Accordingly, written supervisory procedures should describe the following:

a) specific identification of the individual(s) responsible for supervision – either by name or by title and position;

b) the supervisory steps and reviews to be taken by the appropriate supervisor – this need not be a detailed description, but it should identify any exception reports and/or other documents being reviewed and the substantive area being reviewed (*e.g.*, Limit Order Protection, trade reporting, etc.). If a member firm employs automated systems as part of its supervisory system, those systems should also be generally described.

c) the frequency of such reviews – this should be more specific than simply providing for "a review" or "a review from time to time." The frequency of reviews should be described, *e.g.*, daily, weekly, monthly, quarterly, or annually (how frequently a firm conducts any such reviews will depend upon the nature, type, or level of firm activity in that particular area); and

d) how such reviews shall be documented – the firm should describe how the review will be documented, for example, initialing order tickets, initialing blotters, or filling out review logs. The procedures should also provide for the documentation of steps taken as a result of supervisory reviews (e.g., trades broken, restitution for best execution violations, etc.). The staff recognizes that there are a variety of ways, in addition to those noted, that reviews can be documented as having been conducted, particularly where the review is conducted on-line. Firms should document reviews in a manner sufficient to demonstrate to firm management and regulators that a review has been conducted.

Subject Areas Typically Addressed In The Written Supervisory Procedures Of Firms Engaged In Market-Making Activity

As the staff has pointed out during the course of TMMS examinations, the written supervisory procedures and supervisory systems of firms engaged in market-making activities must address, at a minimum, trading practice rules (*i.e.*, passive market making, best execution, firm quote rule compliance, limit order protection, short-sale rules, markups and markdowns, and the Securities and Exchange Commission's [SEC] Order Handling Rules), trading systems such as Small Order Execution SystemSM (SOESSM) and SelectNetSM, trade reporting, Automated Confirmation Transaction SystemSM (ACTSM) Rules compliance, and any other material aspect of the firm's market-making business.

In August 1996, the SEC issued a Report of Investigation that detailed deficiencies in the NASD's performance of its duty to oversee The Nasdaq Stock Market® (Section 21(a) Report). As a result, NASD

Regulation has been examining carefully member firm policies, practices, and procedures that encompass all of the areas referenced in the Section 21(a) Report. In particular, NASD Regulation has been looking closely at whether a firm's written supervisory procedures address the following subject areas:

- pricing conventions;
- size conventions;
- coordination of quotations, trades, and trade reports;
- exchange of proprietary and customer information;
- improper collaboration and coordination of Market Maker activities;
- failure to honor quotations;
- harassment;
- late and inaccurate trade reporting; and
- other trading rules and regulations that relate to market-making activities.

In addition, both the NASD and the SEC have recently emphasized the importance of a broker/dealer's best execution obligations. Whether a firm has fulfilled these obligations depends upon the different facts and circumstances present at each member firm. Nevertheless, as the SEC has repeatedly stated, to comply with the supervisory obligations that flow from best execution, a supervisory system must provide a mechanism for regularly and rigorously comparing execution quality likely to be obtained from different markets or Market Makers, and for determining that such analyses are performed.

Obligation To Update And Amend Written Supervisory Procedures And Supervisory Systems Upon The Implementation Of Rule Changes; Awareness Of Market Practices

Members must keep abreast of changes in laws, rules and regulations, market practices, and indicated patterns of non-compliance and must modify their supervisory procedures and systems as necessary. In this connection, NASD Rule 3010(b)(3) provides that "each member shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in applicable securities laws and regulations, including the Rules of this Association." What constitutes a "reasonable time" depends on, among other things, the complexity of the rule change and the changes (if any) required to be made in the supervisory system, the magnitude of any such changes, the extent to which the rule change imposes new requirements or modifies pre-existing requirements, and the amount of advance notice provided about the effective date of the rule change. In this connection, NASD Regulation believes that significant rule changes generally are promulgated and approved in a manner that affords members sufficient time to prepare for implementation of the rule change.

When rule changes necessitate a modification of a member firm's supervisory system and written supervisory procedures, a firm can comply with NASD Rule 3010(b)(3) by preparing and distributing a supplemental memorandum or other similar document describing the modification or amendment being made and updating in some manner relevant supervisory materials.

Supervisory Responsibilities Of Firms That Enter Into Give-up Or Other Arrangements

Many member firms enter into give-up or other arrangements that allow another firm to report trades on their behalf. Although a firm may allow another firm to perform its trade reporting responsibilities, the firm has the ultimate obligation to report trades in compliance with the rules and to supervise its activities to detect and deter violations of the trade reporting and ACT rules. These obligations cannot be contracted away. Thus, any firm that agrees to allow another firm to report trades on its behalf must establish, maintain, and enforce supervisory procedures which allow it to determine that the other firm is reporting those transactions in compliance with the rules. In this connection, NASD Regulation notes that executing "Attachment 2" to the ACT agreement does not relieve a member firm of any of its obligations in this area.

Use Of Automation As Part Of A Firm's Supervisory System

Written supervisory procedures may incorporate the use of automated systems to assist in determining compliance with applicable rules. As part of its supervisory system, a firm must test and monitor such systems periodically to determine that they are operating properly. In addition, personnel using the systems should be trained so that they understand how the systems work. For example, programmers should be advised of the regulatory requirements the system is being designed to address. Supervisory and compliance personnel should understand the system's capabilities and limitations. These principles apply whether or not the system software is designed by the firm or purchased from an

outside source. Additionally, when purchasing or designing a system, the firm should determine that such a system can reasonably assist the member firm in meeting its supervisory obligations. A system programming error or the failure of software need not result in a charge of failure to supervise if the firm has in place an effective supervisory procedure reasonably designed to detect such errors or failures. Indeed, the existence of an appropriate supervisory system that detects a particular error or failure and permits the firm to take appropriate remedial action may in certain instances be a mitigating factor in determining the necessity and severity of disciplinary action. Despite the means or procedures to detect system errors or failures, however, repeated system failures or errors without corrective action would weigh heavily against any mitigation that such procedures may provide.

Automated Assistance From NASD Regulation And Nasdaq

In a number of areas, resources are provided by NASD Regulation and Nasdaq to assist member firms in meeting their supervisory responsibilities. For example, NASD Regulation presently seeks to contact member firms engaged in underwriting activities on a real-time basis if it detects trading or quotation activity that may be inconsistent with the SEC's "passive market-making" rule, Rule 103 under Regulation M.

Additionally, NASD Regulation and Nasdaq provide the membership with transaction and market data that may be accessed through the Nasdaq TraderSM Web Site (www.nasdaqtrader.com) on the Proprietary Trading Data Web page. Information currently available includes monthly "report cards" that compare a firm's level of late trade reporting to industry-wide averages

and the member's direct peers. The "report card" also provides similar information with respect to the firm's compliance with the firm quote rule and the best execution rule. Through this Web Site, members also have access to daily share volume reports for a broker/dealer, daily share volume reports for a security, monthly summaries, and historical research reports such as Market Maker Price Movement Reports and Equity Trade Journals.

The provision of such reports and trade information by NASD Regulation and Nasdaq do not obviate the need for member firm supervision. Nevertheless, member firms may appropriately incorporate such resources into the overall design and implementation of their written supervisory procedures and systems.

Common Supervisory Deficiencies Noted During TMMS Examinations

To assist the membership in developing adequate written supervisory procedures, the following are examples of supervisory procedures most frequently found to be deficient by the staff during the course of TMMS examinations. Merely avoiding these bad practices in no way ensures that a firm's written procedures will be found to be adequate. Avoiding these particular practices, however, could assist member firms significantly in developing adequate written supervisory procedures.

1. The Written Supervisory Procedures Merely Recite the Applicable Rules: The staff has observed many instances where the written supervisory procedures merely recite applicable NASD and SEC rules without any description of a procedure that will achieve compliance with those rules. While

such documents can be an important component of a member firm's supervisory system, duplicating or restating the rules and identifying prohibited activities, without describing a procedure to determine whether there is compliance with those rules, is not sufficient to serve as the firm's written supervisory procedures.

2. Failure to Designate Responsible Supervisory Personnel in the Procedures: The staff has observed instances where firms have failed to designate the person or persons responsible for conducting supervision in each type of business. The specific person charged with conducting a particular review or procedure should be identified – either by name or by title.⁷ Merely stating that the “Compliance Department,” “Trading Department,” or a “principal” will conduct the review is not sufficient. The procedures should state, for example, that “John Doe will review” or “the Head Trader will review.” Additionally, the person designated to carry out the review should be adequately experienced and qualified to do so.

3. Failure to Describe the Review Process Adequately: As stated above, the supervisory steps and reviews do not necessarily have to be set forth in a detailed description. Nevertheless, the staff has observed instances where the description of the supervisory procedure or review has been so vague that firm management, firm supervisory personnel, and regulators cannot determine what the review entails. For example, it is not sufficient to provide that “John Doe will review for compliance with all NASD trade reporting rules, limit order protection, etc.”

4. Failure to Document Reviews: The staff has observed instances where firms have failed to preserve

and maintain the documentation that reflects the fact that particular supervisory reviews have been conducted.

5. Failure to Denote Specifically the Frequency of Reviews: The staff has observed instances where firms have failed to designate the frequency with which particular supervisory reviews are conducted.⁸

6. Failure to Monitor Adequately the Performance of Automated Compliance Systems: The staff has observed instances where firms have failed to test periodically the performance of automated trade execution, reporting, and other automated compliance systems that assist the firm in complying with applicable rules.

7. Failure to Monitor Adequately the Performance of Service Bureaus and Other Members to Which the Firm has Delegated its Trade Reporting Responsibility: The staff has observed instances where firms have failed to implement procedures to review periodically the accuracy and timeliness of trade reporting conducted by another member or service bureau on the firm's behalf.

8. Failure to Reflect Supervisory Systems in the Firm's Written Supervisory Procedures: The staff has observed instances where firms that in fact have effective supervisory systems in place fail to describe them in the firm's written supervisory procedures. It has also been the staff's experience that firms which conduct effective supervisory reviews sometimes fail to describe them in their written supervisory procedures. This is particularly true for firms that use automated systems to ensure compliance with applicable rules. Such systems should be generally described in the firm's written supervisory procedures.

9. Failure to Describe the Steps the Firm Will Take when Potential Deficiencies are Identified: The staff has reviewed written supervisory procedures that fail to describe the steps a supervisor should take when deficiencies are found. Because each situation may have aggravating or mitigating factors, general procedures, versus specific steps to be taken, will be adequate for purposes of the written supervisory procedures. For example, the procedures may indicate that the supervisor will discuss the matter with the compliance, audit, or legal department and the supervisor and/or representatives from one or more of these other areas will follow up with the registered person or persons involved to determine the reason for a deficiency, the possible need for further training, etc.

10. Failure to Update Procedures Within a Reasonable Period to Reflect New Regulatory Requirements or Firm Procedures: The staff has observed numerous instances where members have failed to establish and maintain written supervisory procedures by the effective date of a new rule.

11. Failure to Preserve and Maintain Written Supervisory Procedures That Were in Effect During Past Time Periods in Accordance with SEC Rules 17a-3 and 17a-4: The staff has reviewed instances where members allege that written supervisory procedures were in effect for a specified business line during a specified time period, but were unable to document that the procedures actually existed at that time.

Firms should review their existing supervisory systems and written supervisory procedures in light of the guidance provided in this *Notice*. Deficiencies in supervisory systems should be addressed immediately.

Endnotes

¹For additional guidance concerning NASD Rule 3010, see *Notices to Members 88-84* and *89-34*.

²Self-imposed disciplinary action at the firm level is an integral part of the self-regulatory process – one that often constitutes a mitigating factor with respect to sanctions. However, self-imposed disciplinary action does not necessarily preclude the imposition of appropriate sanctions by NASD Regulation where it is deemed warranted after review of the facts and circumstances regarding a particular matter.

³NASD Rule 3010(b)(1).

⁴NASD Rule 3010(a).

⁵See NASD Rule 3010(b) (1) and (2).

⁶See *In Re Bryant*, Securities Exchange Act Release No. 32357, 54 SEC Docket 345.

⁷It should be noted that NASD Rule 3010(b)(2) provides that a member firm shall maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective.

⁸NASD Rule 3010 clearly does not require, however, that a member firm must review *all* of its trading activity for compliance with

applicable rules. In these instances, the following have been found insufficient:

- a) reviews will be conducted as warranted or as needed;
- b) reviews will be conducted from time to time;
- c) reviews will be conducted regularly; and
- d) reviews will be conducted on a “spot check” basis.

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NASD Notice to Members 98-97

Notice Of Increase In Advertising Review Fees

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On November 2, 1998, NASD Regulation, Inc. (NASD RegulationSM) filed amendments for immediate effectiveness with the Securities and Exchange Commission (SEC) that will amend Section 13 of Schedule A to the By-Laws of the National Association of Securities Dealers, Inc. (NASD[®]) to increase the review charge for advertisements, sales literature, and other such material filed or submitted to the NASD Advertising Regulation Department. The increase is effective on January 1, 1999.

Questions regarding this *Notice* may be directed to Thomas A. Pappas, Director, Advertising Regulation Department, NASD Regulation, at (202) 728-8330, or Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Discussion

The Advertising/Investment Companies Regulation Department (the Department) evaluates member firms' advertisements and sales literature for compliance with applicable rules of the NASD, SEC, Municipal Securities Rulemaking Board, and Securities Investors Protection Corporation. These public communications include print, television, and radio advertisements, or electronic communications such as Web sites. They also include brochures, form letters, direct mail, and telemarketing scripts.

Approximately 1,450 member firms submitted sales material last year, either voluntarily or pursuant to a rule requirement. Significant increases in filing volume and workload have made ever increasing demands on the Department's operations. For example, between 1994 (the last time advertising fees were amended) and 1997, the number of communications reviewed in the filings and

spot check programs increased 43 percent, from 42,681 to 61,096. The Department expects filing volume to continue to increase in subsequent years.

In order to enhance its operations and to continue to provide timely, high-quality reviews, NASD Regulation intends to dedicate additional staff and resources to the Department, as well as to other departments whose programs are related to the regulation of member communications with the public. The cost of the additional staff and resources will be covered by an increase in the basic charge for reviewing submitted material from \$50 to \$75.

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

Schedule A to the NASD By-Laws

Section 13—[Service] Review Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

There shall be a [service] review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video, electronic or other form, filed with or submitted to the Association, except for items that are filed or submitted in response to a written request from the Association's Advertising Regulation Department issued pursuant to the spot check procedures set forth in the Association's Rules as follows: (1) for printed material reviewed, [~~\$50.00~~] \$75.00, plus \$10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, [~~\$50.00~~] \$75.00, plus \$10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation department there shall be a [service] review charge of \$500.00 per item plus \$25 for each page reviewed in excess of 10 pages. Expedited review shall be

completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Depart-

ment may, in its sole discretion, refuse requests for expedited review.

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NASD Notice to Members 98-98

SEC Approves Rule Change Relating To Mutual Fund Breakpoint Sales

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On November 10, 1998, the Securities and Exchange Commission (SEC) approved amendments to the National Association of Securities Dealers, Inc. (NASD[®]) Interpretive Memorandum 2830-1 (IM-2830-1) to clarify the application of the mutual fund breakpoint sales rule to modern portfolio investment strategies. The amendments are effective immediately.

Questions regarding this *Notice* may be directed to Joseph E. Price, Director, Corporate Financing, NASD Regulation, Inc. (NASD RegulationSM), at (202) 728-8877, or Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Discussion

In the context of mutual fund sales, a "breakpoint" is that point at which the sales charge is reduced for quantity purchases of fund shares. NASD Rule IM-2830-1 prohibits sales of mutual fund shares in amounts below breakpoints, if such sales are made "so as to share in higher sales charges." The application of this standard depends on the purpose, or intent, of the member recommending the transaction. Accordingly, whether a breakpoint sales violation has occurred must depend on facts and circumstances that provide evidence of intent.

Recently, NASD Regulation considered the application of IM-2830-1 to modern portfolio investment strategies that utilize many different mutual funds with varying investment objectives. The amendments specify more precisely those facts and circumstances the staff will consider when examining whether trades that miss breakpoints, but are made pursuant to bona fide asset allocation programs, may have violated NASD rules.

NASD Regulation believes that, under most circumstances, sales under a breakpoint pursuant to a bona fide asset allocation program would not constitute a breakpoint violation. Because investors generally can benefit from asset-based investment strategies, such strategies should not be discouraged. The amendments provide that, for purposes of determining whether a sale was made in a dollar amount below a breakpoint in order to share in a higher commission, the NASD will consider the facts and circumstances of the sale, including whether the member has retained records that demonstrate that the trade was executed in accordance with a bona fide asset allocation program and that customers were informed that they may not receive breakpoint reductions that otherwise would be available.

Text Of Amendments

(Note: New text is underlined.)

IM-2830-1 "Breakpoint" Sales

The sale of investment company shares in dollar amounts just below the point at which the sales charge is reduced on quantity transactions so as to share in the higher sales charges applicable on sales below the breakpoint is contrary to just and equitable principles of trade.

Investment company underwriters and sponsors, as well as dealers, have a definite responsibility in such matters and failure to discourage and to discontinue such practices shall not be countenanced.

For purposes of determining whether a sale in dollar amounts just below a breakpoint was made in order to share in a higher sales charge, the Association will consider the facts and circumstances, including, for example, whether a member has retained records that demonstrate

that the trade was executed in accordance with a bona fide asset allocation program that the member offers to its customers:

- which is designed to meet their

diversification needs and investment goals; and

- under which the member discloses to its customers that they may not

qualify for breakpoint reductions that are otherwise available.

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NASD Notice to Members 98-99

SEC Issues No-Action Letter On Proprietary Accounts Of Introducing Broker/Dealers

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On November 3, 1998, the Securities and Exchange Commission (SEC) issued a No-Action Letter to clarify its position under SEC Rule 15c3-1 (Net Capital Rule) regarding the capital treatment of assets in the proprietary account of an introducing broker/dealer (PAIB) held by a clearing broker/dealer. The letter allows introducing broker/dealers to include PAIB assets as allowable assets in their net capital computations, provided the clearing broker/dealer establishes a separate reserve account for PAIB assets in accordance with SEC Rule 15c3-3 (Customer Protection Rule) and both the introducing broker/dealer and the clearing broker/dealer enter into a written agreement whereby the clearing broker/dealer will perform the PAIB calculation in accordance with the provisions, procedures, and interpretations set forth in the letter. Firms must begin adhering to the requirements stated in the No-Action Letter on June 1, 1999; until then introducing broker/dealers may continue their current practice of treating PAIB assets as allowable.

A copy of the No-Action Letter is attached. Questions concerning this *Notice* may be directed to Samuel Luque, Jr., Associate Director, Member Regulation, NASD Regulation, Inc. (NASD RegulationSM), (202) 728-8472, or Susan DeMando, Regional Compliance Supervisor, Member Regulation, NASD Regulation, (202) 728-8411.

Background

The Net Capital Rule requires broker/dealers to have sufficient liquid capital to protect the assets of customers and to meet their obligations to other broker/dealers. In calculating net capital, broker/dealers begin with their net worth and then make various positive and negative adjustments. The Customer Protection Rule requires broker/dealers that carry customer accounts to maintain

physical possession or control of all customer fully paid and excess margin securities, and periodically to compute and set aside in a special reserve bank account a certain amount of money that is customer money or money obtained from using customer securities.

Introducing broker/dealers typically include their proprietary cash and securities held by their clearing firms as allowable assets in calculating their net capital. However, clearing broker/dealers are not required to maintain physical possession or control of these PAIB assets, or include them as customer credits in their customer reserve formula calculation, because the Customer Protection Rule specifically excludes broker/dealers from the definition of "customer." Therefore, since clearing broker/dealers are free of these customer-protection restrictions, it is possible for them to treat PAIB assets as their own. In fact, clearing broker/dealers have never been precluded from using PAIB assets in the normal course of their business. However, this means that introducing broker/dealers may have assets that are not always readily available to them. Under the Net Capital Rule, any assets "not readily convertible into cash" must be deducted from net worth and should be classified as non-allowable assets when calculating net capital.

This situation prompted concerns by NASD Regulation and the New York Stock Exchange (NYSE) that both an introducing broker/dealer and a clearing broker/dealer may be using the same proprietary assets in conducting their individual businesses. NASD Regulation and the NYSE requested the SEC to clarify its position regarding PAIBs.

Treatment Of Assets Held In A PAIB

In order for an introducing broker/dealer to treat its PAIB assets as allowable

assets in calculating its net capital, the introducing firm and its clearing broker/dealer must enter into a written agreement providing that the clearing broker/dealer will perform the PAIB calculation in accordance with the following provisions:

1. A clearing broker/dealer must perform a computation for PAIB assets (PAIB reserve computation) of all its introducing broker/dealers in accordance with the customer reserve computation set forth in the Customer Protection Rule (customer reserve formula) with the following modifications:

A. Any credit (including a credit applied to reduce a debit) that is included in the customer reserve formula cannot be included as a credit in the PAIB reserve computation;

B. Note E(3) to Rule 15c3-3a which reduces debit balances by one percent under the basic method and subparagraph (a)(1)(ii)(A) of the Net Capital Rule which reduces debit balances by three percent under the alternative method will not apply; and

C. Neither Note E(1) to Rule 15c3-3a nor NYSE Interpretation /04 to Item 10 of Rule 15c3-3a regarding securities concentration charges is applicable to the PAIB reserve computation.

2. The PAIB reserve computation must include all the proprietary accounts of all introducing broker/dealers covered by the PAIB Agreement. All PAIB assets must be kept separate and distinct from customer assets under the customer reserve formula in the Customer Protection Rule.

3. The PAIB reserve computation must be prepared within the same time frames as those prescribed by

the Customer Protection Rule for the customer reserve formula.

4. The clearing broker/dealer must establish and maintain a separate "Special Reserve Account for the Exclusive Benefit of Customers" with a bank in conformity with the standards of paragraph (f) of the Customer Protection Rule (PAIB Reserve Account). Cash and/or qualified securities as defined in the customer reserve formula must be maintained in the PAIB Reserve Account in an amount equal to the PAIB reserve requirement.

5. If the PAIB reserve computation results in a deposit requirement, the requirement can be satisfied to the extent of any excess debit in the customer reserve formula of the same date. However, a deposit requirement resulting from the customer reserve formula cannot be satisfied with excess debits from the PAIB reserve computation.

6. Within two business days of entering into any PAIB Agreement, an introducing broker/dealer must notify its designated examining authority (DEA) in writing that it has entered into such an agreement with a clearing broker/dealer.

7. Commissions receivable and other receivables of an introducing broker/dealer from its correspondent clearing broker/dealer (excluding clearing deposits) that are otherwise allowable assets under the Net Capital Rule are not to be included in the PAIB reserve computation, provided the amounts have been clearly identified as receivables on the books and records of the introducing broker/dealer and as payables on the books of the clearing broker/dealer.

8. The proprietary account of an introducing broker/dealer that is a guaranteed subsidiary of a clearing broker/dealer or that guarantees a

clearing broker/dealer (*i.e.*, guarantees all liabilities and obligations) is to be excluded from the PAIB reserve computation.

9. Upon discovery that any deposit made to the PAIB Reserve Account did not satisfy its deposit requirement, a clearing broker/dealer shall by facsimile or telegram immediately notify its DEA and the SEC. Unless a corrective plan is found to be acceptable by the SEC and the DEA, the clearing broker/dealer must provide written notification within five business days of the date of discovery to its introducing broker/dealers that PAIB assets held by the clearing broker/dealer will not be deemed allowable assets for net capital purposes. The letter should also state that if the introducing broker/dealer wishes to continue to count its PAIB assets as allowable, it has until the last business day of the month following the month in which the notification was made to transfer all PAIB assets to another clearing broker/dealer. However, if the deposit deficiency is remedied before the time at which the introducing broker/dealer must transfer its PAIB assets to another clearing broker/dealer, the introducing broker/dealer may choose to keep its assets at the original clearing broker/dealer.

Interpretations

In addition, the No-Action Letter stipulates that certain interpretations are applicable to PAIBs. These interpretations were developed in conjunction with representatives from the Capital and Clearing Firm Committees of the Securities Industry Association. See the attached No-Action Letter for details.

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DIVISION OF
MARKET REGULATION

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

November 3, 1998

Mr. Raymond J. Hennessy
Vice President
New York Stock Exchange, Inc.
Member Firm Regulation
20 Broad Street
New York, New York 10005

Mr. Thomas Cassella
Vice President
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500

Re: **Proprietary Accounts of Introducing Brokers and Dealers**

Dear Messrs. Hennessy and Cassella:

The New York Stock Exchange, Inc. ("NYSE") and NASD Regulation, Inc. ("NASDR") have raised concerns regarding the capital treatment of assets of broker-dealers that introduce their proprietary accounts on a fully disclosed basis ("introducing brokers") to other broker-dealers ("clearing brokers") for clearance and settlement. You have advised us that under certain circumstances an introducing broker and its correspondent clearing broker may each utilize the same proprietary assets of the introducing broker in their individual operations. You have requested that the Division of Market Regulation ("Division") clarify its position as to the capital treatment of assets in the proprietary account of an introducing broker ("PAIB") held by a clearing broker, and you propose a methodology under which introducing brokers may properly account for PAIB assets for purposes of the net capital computation required by Rule 15c3-1 ("net capital rule").¹

I. BACKGROUND

A. Rules 15c3-1 and 15c3-3

Rule 15c3-1 requires every broker-dealer to maintain at all times specified minimum levels of liquid assets, or net capital, sufficient to enable a firm that falls below its minimum requirement to liquidate in an orderly fashion. The rule is designed

¹ 17 CFR 240.15c3-1.

to protect the customers of a broker-dealer that fails. To compute its current amount of liquid assets, a broker-dealer begins with its net worth and then makes various positive and negative adjustments to arrive at its net capital. This amount is then compared against the firm's minimum net capital requirement. If a firm's net capital computation yields an amount less than its minimum net capital requirement, the firm must immediately cease doing business.

Rule 15c3-3 ("customer protection rule") generally requires every broker-dealer that carries customer accounts to maintain physical possession or control of all fully-paid and excess margin securities. The customer protection rule also requires firms to make a periodic computation ("customer reserve formula") to ascertain the amount of money it holds that is either customer money or money obtained from the use of customer securities (*i.e.*, customer credits). If customer credits exceed the amount customers owe the firm (*i.e.*, customer financing or debits), the broker-dealer must deposit the excess in a special reserve bank account for the exclusive benefit of its customers. In this way, Rule 15c3-3 protects customer funds and securities held at a broker-dealer by requiring firms to maintain possession or control of customer securities, and by permitting firms to use customer money only to the extent necessary to finance customer related business.

B. Treatment of Assets Held in a PAIB

In addition to the regular customer accounts held by a clearing broker on behalf of the introducing broker, an introducing broker itself may maintain a proprietary trading account, or PAIB, with a clearing broker. When computing its net capital, an introducing broker typically includes its proprietary cash and securities held by the clearing broker as allowable assets. However, because the customer protection rule specifically excludes brokers and dealers from the definition of "customer,"² the clearing broker is not subject to the restrictions of Rule 15c3-3 with regard to PAIB assets. Therefore, a clearing broker is not required to maintain the physical possession or control of PAIB assets, nor is the clearing broker restricted as to its use of PAIB assets which, if attributable to "customers," would constitute customer credits in the customer reserve formula.

Consequently, this interaction between the net capital rule and the customer protection rule serves to permit an introducing broker to treat PAIB assets as allowable assets for purposes of Rule 15c3-1 while a clearing broker can exclude these assets as credits from the customer reserve formula. In effect, this permits clearing brokers to use the same PAIB assets free of the restrictions imposed by Rule 15c3-3 that are otherwise applicable to a broker-dealer's use of customer funds and securities. In

² 17 CFR 240.15c3-3(a)(1). Rule 15c3-3 reads, in pertinent part, that "[t]he term [customer] shall not include a broker or dealer or a registered municipal securities dealer."

effect, the clearing broker can treat the assets as their own, free of any restrictions. Consequently, the assets may not be readily available to the introducing broker if its correspondent clearing broker fails or otherwise experiences financial difficulties. This result is inconsistent with subparagraph (c)(2)(iv) of net capital rule which requires that assets "not readily convertible into cash" be deducted from a broker-dealer's net worth, and accordingly, PAIB assets should be considered as non-allowable assets, and an introducing broker should deduct such assets from its net worth when calculating its net capital.

II. PROPOSAL

A. PAIB Agreement: You believe that under certain circumstances, it may be appropriate for an introducing broker to be permitted to treat such assets as allowable for purposes of the net capital rule. Accordingly, you have proposed the methodology set forth below as an elective procedure to be followed by an introducing broker and its correspondent clearing broker that would permit the introducing broker to treat its PAIB assets as allowable assets for purposes of its net capital calculation. Specifically, you propose that for an introducing broker to treat its PAIB assets held at a clearing firm as allowable for purposes of the net capital rule, an introducing broker and its correspondent clearing broker must agree (in writing) to perform the PAIB calculation in accordance with the following provisions ("PAIB Agreement"):

1. A clearing broker must perform a computation for PAIB assets ("PAIB reserve computation") of all its introducing brokers in accordance with the customer reserve computation set forth in Rule 15c3-3 ("customer reserve formula") with the following modifications:
 - A. Any credit (including a credit applied to reduce a debit) that is included in the customer reserve formula cannot be included as a credit in the PAIB reserve computation;
 - B. Note E(3) to Rule 15c3-3a which reduces debit balances by 1% under the basic method and subparagraph (a)(1)(ii)(A) of the net capital rule which reduces debit balances by 3% under the alternative method will not apply; and
 - C. Neither Note E(1) to Rule 15c3-3a nor NYSE Interpretation /04 to Item 10 of Rule 15c3-3a regarding securities concentration charges is applicable to the PAIB reserve computation.
2. The PAIB reserve computation must include all the proprietary accounts of all introducing brokers covered by the PAIB Agreement. All PAIB assets must be kept separate and distinct from customer assets under the customer reserve formula in Rule 15c3-3.

3. The PAIB reserve computation must be prepared within the same time frames as those prescribed by Rule 15c3-3 for the customer reserve formula.
4. The clearing broker must establish and maintain a separate "Special Reserve Account for the Exclusive Benefit of Customers" with a bank in conformity with the standards of paragraph (f) of Rule 15c3-3 ("PAIB Reserve Account"). Cash and/or qualified securities as defined in the customer reserve formula must be maintained in the PAIB Reserve Account in an amount equal to the PAIB reserve requirement.
5. If the PAIB reserve computation results in a deposit requirement, the requirement can be satisfied to the extent of any excess debit in the customer reserve formula of the same date. However, a deposit requirement resulting from the customer reserve formula cannot be satisfied with excess debits from the PAIB reserve computation.
6. Within two business days of entering into any PAIB Agreement, an introducing broker must notify its designated examining authority in writing that it has entered into such agreement with a clearing broker.
7. Commissions receivable and other receivables of an introducing broker from its correspondent clearing broker (excluding clearing deposits) that are otherwise allowable assets under the net capital rule are not to be included in the PAIB reserve computation, provided the amounts have been clearly identified as receivables on the books and records of the introducing broker and as payables on the books of the clearing broker.
8. The proprietary account of an introducing broker that is a guaranteed subsidiary of a clearing broker or who guarantees a clearing broker (i.e., guarantees all liabilities and obligations) is to be excluded from the PAIB reserve computation.
9. Upon discovery that any deposit made to the PAIB Reserve Account did not satisfy its deposit requirement, a clearing broker shall by facsimile or telegram immediately notify its designated examining authority and the Securities and Exchange Commission ("Commission"). Unless a corrective plan is found acceptable by the Commission and the designated examining authority, the clearing broker must provide written notification within 5 business days of the date of discovery to its introducing brokers that PAIB assets held by the clearing broker will not be deemed allowable assets for net capital purposes. The letter should also state that if the introducing broker wishes to continue to count its

PAIB assets as allowable, it has until the last business day of the month following the month in which the notification was made to transfer all PAIB assets to another clearing broker. However, if the deposit deficiency is remedied before the time at which introducing broker must transfer its PAIB assets to another clearing broker, the introducing broker may choose to keep its assets at the clearing broker.

B. Interpretations: In addition, you have proposed the following interpretations regarding the PAIB reserve computation that were developed in conjunction with representatives from the Capital and Clearing Firm Committees of the Securities Industry Association. The interpretations are as follows:

1. Credits included in the PAIB reserve computation that result from the use of PAIB securities pledged to meet intra-day margin calls in a cross margin account established between The Options Clearing Corporation and any regulated commodity exchange can be reduced to the extent that the excess margin held by the other clearing corporation in the cross margin relationship is used the following business day to replace the PAIB securities that were previously pledged. In addition, balances resulting from a cross margin account which are segregated pursuant to Commodities Future Trading Commission regulations need not be included in the PAIB reserve computation.
2. Deposits received prior to a transaction pending settlement³ which are \$5 million or greater for any single transaction or \$10 million in aggregate can be excluded as credits from the PAIB reserve computation if such balances are placed and maintained in a separate PAIB Reserve Account by 12 noon eastern time ("ET") on the following business day.⁴ Thereafter, the money representing any such deposits may be withdrawn to complete the related transactions without performing a new PAIB reserve computation.
3. Clearing deposits required to be maintained at registered clearing agencies may be included as debits in the PAIB reserve computation to the extent the percentage of the deposit, which is based upon the clearing agency's aggregate deposit requirements (e.g., dollar trading volume),

³ For example, large deposits could include moneys accumulated prior to underwritings, required at foreign clearing facilities, or for settlement of domestic transactions requiring federal funds in which next day funds were originally deposited.

⁴ This account would be in addition to any other reserve account maintained by the clearing broker under this no-action letter or otherwise.

that relates to the proprietary business of introducing brokers can be identified.

4. Any clearing broker that does not carry "customers" as defined by Rule 15c3-3 or conduct a proprietary trading business must still obtain the PAIB Agreement from its introducing brokers. But as long as such clearing broker does not have a PAIB deposit requirement, it may make its PAIB reserve computation monthly rather than weekly. If a clearing broker computing on a monthly basis has, at the time of any required computation, a PAIB deposit requirement, the clearing broker shall thereafter compute weekly until four successive weekly computations are made, none of which is made at a time when the clearing broker had a PAIB deposit requirement.
5. A credit balance resulting from a PAIB reserve computation can be reduced by the amount that items representing such credits are swept into money market funds or mutual funds of an investment company registered under the Investment Company Act of 1940 on or prior to 10 a.m. ET on the deposit date provided that the credits swept into any such fund are not subject to any right, charge, security interest, lien, or claim of any kind in favor of the investment company or the clearing broker. Any credits which have been swept into money market funds or mutual funds must be maintained in the name of a particular introducing broker or for the benefit of an introducing broker. This treatment of credit balances applies only to the PAIB reserve computation and does not apply to the customer reserve formula.
6. Carrying brokers that clear the PAIB accounts of their correspondents through an affiliate or third party clearing broker must include these PAIB accounts balances and the omnibus PAIB account balance in their computation provided the clearing broker agrees in writing to (1) perform a computation for PAIB assets as described in IIA, and (2) include the omnibus PAIB account balance in its computation.

You also propose that, on a case by case basis, the designated examining authority ("DEA") of a clearing broker may grant extensions of time regarding compliance with the terms of the PAIB Agreement as set forth in this letter if the DEA is satisfied the broker-dealer is acting in good faith and that exceptional circumstances warrant the extension. The DEA may confer with the staff of the Commission before granting an extension. The designated examining authority must maintain a summary of the justification for the extensions in a manner similar to the treatment of extensions granted under Rule 15c3-3(n).

Messrs. Hennessy and Cassella
November 3, 1998
Page 7

III. CONCLUSION

Based on the foregoing, the Division will not recommend to the Commission that enforcement action be taken if an introducing broker includes PAIB assets as allowable assets in its net capital computation so long as the introducing broker and clearing broker adhere to the elective procedures regarding the PAIB Agreement and its attendant interpretations that are set forth in this letter. We understand that introducing and clearing brokers must make operational changes to comply with the terms of this letter; therefore, introducing firms may continue their current practice of treating PAIB assets as allowable until June 1, 1999.

You should be aware that this is a staff position with respect to enforcement only and does not purport to express any legal conclusions. This position is based solely on the foregoing description. Factual variations could warrant a different response, and any material change in the facts must be brought to the Division's attention. This position may be withdrawn or modified if the staff determines that such action is necessary for the protection of investors, in the public interest, or otherwise in furtherance of the purposes of the securities laws.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Macchiaroli".

Michael A. Macchiaroli
Associate Director

NASD Notice to Members 98-100

FOCUS Filing Due Dates For 1999

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

NASD Regulation, Inc. (NASD RegulationSM) would like to remind members of their obligation to file the appropriate FOCUS reports by their due dates. The following schedule outlines due dates for 1999.

In particular, members are reminded that Schedule I of Form X-17A-5 for the 1998 calendar year must be filed electronically via PC FOCUSSM by **Wednesday, January 27, 1999**. This due date applies to members regardless of their fiscal year end. Those firms that engage in municipal securities activities must disclose income from such activity under the NASD Miscellaneous Information section of the Schedule I form as it appears in PC FOCUS.

Anyone having difficulty filing FOCUS reports electronically can refer to Appendix A - Error Messages and Appendix B - Troubleshooting in the *PC FOCUS User Guide* (Version 2.01). In addition, Appendix E - Schedule I Informational Guide contains information on common errors and error resolution for Schedule I specifically.

Questions regarding the information to be filed can be directed to the appropriate District Office. Questions concerning software, hardware, or the transmission of the FOCUS filing can be directed to the NASD toll-free hotline at (800) 321-NASD.

FOCUS Reports Schedule For 1999

Schedule I for 1998 Year End **Due Date**

1998 FOCUS Schedule I January 27, 1999

Quarterly FOCUS Part II/IIA for 1998

Period Ending ***Due Date***

December 31, 1998 January 27, 1999

Monthly And Fifth* FOCUS II/IIA Filings for 1999

Period Ending ***Due Date***

January 31, 1999 February 24, 1999

February 28, 1999 March 23, 1999

April 30, 1999 May 25, 1999

May 31, 1999 June 23, 1999

July 31, 1999 August 24, 1999

August 31, 1999 September 24, 1999

October 31, 1999 November 23, 1999

November 30, 1999 December 23, 1999

Quarterly FOCUS Part II/IIA Filings For 1999

Quarter Ending ***Due Date***

March 31, 1999 April 26, 1999

June 30, 1999 July 26, 1999

September 30, 1999 October 25, 1999

December 31, 1999 January 27, 2000

Schedule I for 1999 Year End **Due Date**

1999 FOCUS Schedule I January 27, 2000

* A Fifth FOCUS report is an additional report that is due from a member whose fiscal year end is a date other than the calendar quarter.

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NASD Notice to Members 98-101

NASD Requests Comment On Proposed Amendments To Disclosure Questions On Forms U-4 And U-5; Comment Period Expires January 15, 1999

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) is proposing to amend disclosure questions on the Form U-4 and Form U-5 that were approved by the Securities and Exchange Commission (SEC) in July 1996, but have not been made effective pending the full implementation of the modernized Central Registration Depository (CRDSM), and is soliciting comment on the proposed amendments. First, NASD Regulation proposes to amend Question 22I(2) on the 1996 Form U-4 and Question 17B on the 1996 Form U-5 to require the reporting of any settlement for \$10,000 or more of an oral or written customer complaint alleging sales practice violations. The 1996 Forms U-4 and U-5 questions require such settlements to be reported only if the customer submits such a complaint in writing. Second, NASD Regulation proposes to amend Questions 14 and 15 on the 1996 Form U-5 to require a terminating firm to report certain criminal and regulatory actions on a former registered person that are initiated after that person is terminated if the action is in connection with events that occurred while the person was employed by or associated with the firm. The 1996 Form U-5 questions require a firm to report such actions only if the actions occurred while a person was employed by or associated with the firm. Finally, NASD Regulation proposes to amend Question 17 on the 1996 Form U-5, which requires a firm to report customer complaints filed against former registered persons, to harmonize it with the parallel question on the 1996 Form U-4 (*i.e.*, Question 22I). This proposed change is designed to permit the archiving of customer complaints that are more than 24 months old and no longer reportable, regardless of whether the customer complaint is reported on Form U-4 or Form U-5. The text of these disclo-

sure questions with the amendments follows this *Request For Comment*.

The North American Securities Administrators Association (NASAA) approved all of the amendments to the Forms U-4 and U-5 at its October 1998 membership meeting.

Questions concerning this *Request For Comment* may be directed to Ann E. Bushey, Assistant Director, CRD/Public Disclosure, NASD Regulation, at (301) 590-6389; Mary M. Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252; or Richard E. Pullano, Associate Director and Counsel, CRD/Public Disclosure, NASD Regulation, at (301) 212-3789.

Request For Comment

NASD Regulation encourages all interested parties to comment on the proposal. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500

or e-mailed to:
pubcom@nasd.com

Important Note: The only comments that will be considered are those submitted via e-mail or in writing.

Comments must be received by **January 15, 1999**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

NASD Regulation Request For Comment 98-101

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) is proposing to amend disclosure questions on the Form U-4 and Form U-5 that were approved by the Securities and Exchange Commission (SEC) in July 1996, but have not been made effective pending the full implementation of the modernized Central Registration Depository (CRDSM), and is soliciting comment on the proposed amendments. First, NASD Regulation proposes to amend Question 22I(2) on the 1996 Form U-4 and Question 17B on the 1996 Form U-5 to require the reporting of any settlement for \$10,000 or more of an oral or written customer complaint alleging sales practice violations. The 1996 Forms U-4 and U-5 questions require such settlements to be reported only if the customer submits such a complaint in writing. Second, NASD Regulation proposes to amend Questions 14 and 15 on the 1996 Form U-5 to require a terminating firm to report certain criminal and regulatory actions on a former registered person that are initiated after that person is terminated if the action is in connection with events that occurred while the person was employed by or associated with the firm. The 1996 Form U-5 questions require a firm to report such actions only if the actions occurred while a person was employed by or associated with the firm. Finally, NASD Regulation proposes to amend Question 17 on the 1996 Form U-5, which requires a firm to report customer complaints filed against former registered persons, to harmonize it with the parallel question on the 1996 Form U-4 (*i.e.*, Question 22I). This proposed change is designed to permit the archiving of customer complaints that are more than 24 months old and no longer reportable, regardless of whether the customer complaint is reported on Form U-4 or Form U-5. The text of these disclosure questions with the amendments follows this *Request For Comment*.

The North American Securities Administrators Association (NASAA) approved all of the amendments to the Forms U-4 and U-5 at its October 1998 membership meeting.

Background And Discussion

NASD Regulation is proposing amendments to four disclosure questions on the Forms U-4 and U-5 that were approved by SEC in July 1996, but have not been made effective pending the full implementation of the modernized CRD.¹ As discussed below, these amendments involve changes to Question 22I(2) on the 1996 Form U-4, and Questions 14, 15, and 17 on the 1996 Form U-5. The text of these questions with the amendments marked follows this *Request For Comment*.

First, NASD Regulation proposes to amend Question 22I(2) on the 1996 Form U-4 and Question 17B on the 1996 Form U-5 regarding the reporting of settled customer complaints. The 1996 questions require the reporting of any settlement for \$10,000 or more of a *written* customer complaint alleging sales practice violations. NASD Regulation believes that a settlement of \$10,000 or more should be reported, regardless of whether the complaint that led to the settlement was written or oral. Thus, NASD Regulation proposes that the 1996 Form U-4 Question 22I(2) be amended to read as follows: "Have you even been the subject of an investment-related, consumer-initiated complaint, not otherwise reported under question 22I(1) above, which alleged that you were involved in one or more sales practice violations, and which complaint was settled for an amount of \$10,000 or more?" The question, as amended, would not require the reporting of all oral customer complaints alleging sales practice violations, just those that are settled for \$10,000 or more. A corresponding change to Question 17B on the 1996 Form U-5 also is proposed.

Second, NASD Regulation proposes to amend Questions 14 and 15 on the 1996 Form U-5, which require a terminating firm to report certain criminal actions and regulatory actions, respectively. The 1996 versions of these questions require a terminating firm to report criminal or regulatory actions involving an individual that occur while the individual was employed by or associated with the firm. NASD Regulation proposes to amend these questions by extending a firm's reporting obligation to include criminal and regulatory actions that are initiated after termination if the action is in connection with events that occurred while the individual was employed by or associated with the firm. This proposed amendment is intended to address those instances where a firm may have actual notice of the initiation of a criminal or regulatory action involving an individual after he or she has been terminated. Notwithstanding the proposed change, firms would not be required to report criminal or regulatory events that occur after an individual's termination if the firm has no notice of the event. In this regard, NASD Regulation is working with NASAA and other regulators to issue an interpretation that provides guidance on what constitutes actual notice. Generally speaking, firms would receive actual notice of the initiation of a criminal or regulatory action against a terminated person only if that action is based on events that occurred in connection with the former associated person's employment.

Finally, NASD Regulation proposes amending Question 17 on the 1996 Form U-5, which requires the reporting of certain customer complaints, to harmonize it with the parallel question on the 1996 Form U-4 (*i.e.*, Question 22I). The proposed change is designed to permit the archiving of customer complaints that are more than 24 months old and no longer

reportable, regardless of whether the customer complaint is reported on Form U-4 or Form U-5.

Proposed Revisions

(Note: New text is underlined; deletions are bracketed.)

1996 Form U-4 Question 22I(2):²

Have you ever been the subject of an investment-related, consumer-initiated [written] complaint, not otherwise reported under question 22I(1) above, which alleged that you were involved in one or more sales practice violations, and which complaint was settled for an amount of \$10,000 or more?

1996 Form U-5 Question 14:³

While employed by or associated with your firm, or in connection with events that occurred while the individual was employed by or associated with your firm, was the individual:

A. convicted of or did the individual plead guilty or nolo contendere ("no contest") in a domestic, or foreign or military court to any felony?

B. charged with any felony?

C. convicted of or did the individual plead guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?

D. charged with a misdemeanor specified in 14(C)?

1996 Form U-5 Question 15:⁴

While employed by or associated with your firm, or in connection with events that occurred while the individual was employed by or associated with your firm, was the individual involved in any disciplinary action by a domestic or foreign governmental body or self regulatory organization (other than those designated as a "minor rule violation" under a plan approved by the U.S. Securities and Exchange Commission) with jurisdiction over the investment-related businesses?

1996 Form U-5 Question 17:⁵

A: In connection with events that occurred while the individual was employed by or associated with your firm, was the individual:

(1) named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the individual was involved in one or more sales practice violations and which:

(a) is still pending, or;

(b) resulted in an arbitration award or civil judgment against the individual, regardless of amount, or;

(c) was settled for an amount of \$10,000 or more²[, or;]

(2) the subject of an investment-related, consumer-initiated [written] complaint, not otherwise reported under question 17(A)(1) above, which alleged that the individual was involved in one or more sales practice violations, and which complaint was settled for an amount of \$10,000 or more?

B. In connection with events that occurred while the individual was employed by or associated with your firm, [but for a period not to exceed the most recent twenty-four (24) months of employment,] was the individual the subject of an investment-related, consumer-initiated written complaint, not otherwise reported under question 17(A) above, which:

[(1) alleged that the individual was involved in one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than \$5,000), or];

(1) would be reportable under question 22I(3)(a) on Form U-4, if the individual were still employed by your firm, but which has not previously been reported on the individual's Form U-4 by your firm; or

[(2) alleged that the individual was involved in forgery, theft, misappropriation or conversion of funds or securities?]

(2) would be reportable under question 22I(3)(b) on Form U-4, if the individual were still employed by your firm, but which has not previously been reported on the individual's Form U-4 by your firm.

Request For Comment

NASD Regulation encourages all interested parties to comment on the proposal. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500

or e-mailed to:
pubcom@nasd.com

Important Note: The only comments that will be considered are those submitted via e-mail or in writing.

Comments must be received by **January 15, 1999**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

Endnotes

¹The NASD is currently using the Interim Forms U-4 and U-5 that were approved by the SEC in January 1998 for use until the modernized CRD is completed. The Interim Forms include all of the substantive changes and some of the changes to the instructions that were approved in 1996 and reformatted them in a manner that is compatible with the current CRD system.

²This Question appears as Question 22H(2) on the Interim Form U-4 (Rev. 11/97).

³This Question appears as Question 13C on the Interim Form U-5 (Rev. 11/97).

⁴This Question appears as Question 13A on the Interim Form U-5 (Rev. 11/97).

⁵This Question appears as Question 13B on the Interim Form U-5 (Rev. 11/97).

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NASD Notice to Members 98-102

Calculating Margin For Day-Trading And Cross- Guaranteed Accounts

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Federal Reserve Board Regulation T governs the extension of credit to customers by broker/dealers. Among the provisions of Regulation T are requirements governing the initial margin requirements for certain securities transactions. In addition, National Association of Securities Dealers, Inc. (NASD[®]) Rule 2520 requires NASD members to impose additional margin requirements on customer accounts.¹ The purpose of this *Notice* is to communicate the opinion of the NASD on the margin requirements under Regulation T and Rule 2520 for day-trading and cross-guaranteed accounts with the expectation that members will calculate margin for such accounts in a manner that is consistent with Regulation T and Rule 2520.

The NASD believes that some members are calculating margin for day-traders and cross-guaranteed accounts in a manner that is not consistent with the requirements of Regulation T and Rule 2520. Accordingly, members are advised to review their margin calculation practices to ensure that they conform to the requirements of these rules. Adherence to the margin requirements is in the best interest of the investing public and serves to protect the financial security of members that extend credit.

Finally, the NASD believes that some members may be failing to take certain account-related charges when computing their net capital pursuant to Securities and Exchange Commission (SEC) Rule 15c3-1. These charges include those specified in Rule 2520(f)(4) for certain guaranteed accounts. Members should review the requirements of SEC Rule 15c3-1 and Rule 2520 to determine whether they are in compliance with these rules.

Members should be aware that the NASD believes compliance with the

margin and net capital requirements is of paramount importance and intends to examine member firms for compliance with these rules.

Questions concerning this *Notice* may be directed to Samuel Luque, Associate Director, Member Regulation, NASD Regulation, Inc. (NASD RegulationSM), at (202) 728-8472, or Susan DeMando, Regional Compliance Supervisor, Member Regulation, NASD Regulation, at (202) 728-8411.

Discussion

This *Notice* addresses some of the most frequently asked questions regarding the application of Regulation T and Rule 2520 to day-trading and cross-guaranteed accounts. In addition, this *Notice* addresses only common scenarios and questions relating to marginable equity securities and is not meant to be a complete discussion of the application of Regulation T and Rule 2520 to all possible trading strategies utilized by day-trading and/or cross-guaranteed accounts.

In order to clarify member understanding of the requirements relating to day-trading and cross-guaranteed accounts, highlighted below in plain English are some of the fundamental requirements and provisions of these rules.

General

- Members must perform two separate margin calculations for each account each day; one for Regulation T and one for Rule 2520. The calculations should be performed at the end of each trade date; intra-day calculations are not permitted. Members must comply with the requirements of both rules at all times.

- "Day-trading" means buying and selling the same security on the same day. A "day-trader" is any cus-

tomers whose trading shows a pattern of day-trading (see Rule 2520(f)(8)(B)). (See also the Securities Industry Association's *Credit Division Manual's* definition of "day-trading" as "selling first and then repurchasing" the same security on the same day.)

- Day-trades should occur only in margin accounts. Day-trading in a cash account may amount to free riding (*i.e.*, purchasing a security and then selling it without having paid for the purchase).

- Regulation T requires initial margin of 50 percent for new purchases and 150 percent for short sales (of which 100 percent can come from the proceeds of the short sale, with the customer depositing the remaining 50 percent). (See Regulation T, Sections 220.12(a) and (c)(1).)

- Rule 2520 requires maintenance margin of 25 percent of the current market value for all long positions, and \$5 per share or 30 percent of the current market value, whichever amount is greater, of each stock "short" in the account selling at \$5 per share or above (see Rule 2520(c)(1) and (c)(3)). *If a customer's account is both "long" and "short" the same security, Rule 2520(e)(1) requires five percent maintenance margin of the current market value of the long security. The short position must be marked to the market.*

- If two accounts are cross-guaranteed and one is long the same security that the other is short the same number of securities, the maintenance margin requirement on the combined positions is five percent. This five percent maintenance margin requirement in no way eliminates the requirement to comply with the initial margin requirements of Regulation T on the original purchase and short sale.

- When calculating Regulation T margin, cross guarantees have *no* effect (see Regulation T, Section 3(d)). Therefore, members must apply Regulation T to each account separately, notwithstanding the fact that Rule 2520 permits certain special maintenance margin treatment for transactions in cross-guaranteed accounts.

- Rule 2520(f)(4) permits cross guarantees for maintenance margin purposes so that the amount of maintenance margin excess in one account may be used to offset a maintenance margin deficit in the other cross-guaranteed account. In any given situation, the account with the maintenance margin excess is considered the guaranteeing account and the account with the maintenance margin deficit is considered the guaranteed account.

- The fact that Regulation T margin is calculated at the end of the business day only does not mean that broker/dealers can disregard intraday risk. Reliance on the proceeds of anticipated sales to pay for purchases exposes the broker/dealer to risk.

Regulation T

- Margin is required for each long or short securities position unless an exception or special provision is available (see Regulation T, Section 4(b)). The required margin is set forth in Section 12 (the Supplement).

- Regulation T margin is calculated at the end of the business day. All transactions on the same day are combined to determine the Regulation T requirement. Therefore, Regulation T does not distinguish between day-trading and other forms of trading (see Regulation T, Section 4(c)(1)).

- A Regulation T margin requirement may be satisfied by a transfer from

the Special Memorandum Account (SMA), or by a deposit of cash, margin securities, or exempted securities, in any combination (see Regulation T, Section 4(c)(2)).

- Regulation T treats a short sale "against the box" as a long sale (see Regulation T, Section 4(b)(2)). As a result, there is no Regulation T requirement on the transaction; however, Rule 2520(e)(1) imposes a five percent margin requirement on the market value of the long position and requires the short position to be marked to the market.

- A sale cannot be treated as a short sale "against the box," nor can it be treated as a long sale, if the account making the sale is not long the same number of shares of the same security, even if another cross-guaranteeing account is long the security. Because cross guarantees have no effect under Regulation T, the fact that another cross-guaranteeing account is long the security is meaningless for Regulation T purposes and the sale must be regarded as a short sale subject to a margin requirement of 150 percent (see Regulation T, Section 12(c)(1)).

- Regulation T has no margin requirements for day-trading *per se*. Regulation T margin is calculated on the position in the account at the end of the day. Therefore, if a day-trader engages in numerous day-trades throughout the day, but ends the day with no securities position, Regulation T requires margin equal to the net loss in the account at the end of the day. A Regulation T call must be issued for the entire amount of the loss. The call may be met by a deposit of cash or securities (margin or exempted), a transfer from SMA, or any combination (see Regulation T, Section 4(c)(2)).

Rule 2520

• While often thought of as a “maintenance” margin rule, Rule 2520 also contains initial margin requirements (see paragraph (b)). Initial margin is always the greater of the amount specified in Regulation T or the maintenance margin specified in paragraph (c). This requirement applies to both non day-traders (see paragraph (B)) and day-traders (see paragraph (f)(8)(B)).

• Rule 2520 was created to work in tandem with Regulation T. Therefore, because Regulation T calculations are made only at the end of the day, Rule 2520 maintenance margin calculations must be made only at the end of the day.

Although firms may calculate margin intra-day for risk assessment and risk avoidance purposes, and may impose margin calls based on such intra-day calculations, members may not grant additional buying power² to a customer on the basis of such intra-day calculations. Buying power may only be based on the preceding day’s end-of-the-day margin calculations.

• A maintenance margin call may be satisfied by a deposit of cash, margin securities, or exempted securities, in any combination. A maintenance margin call *may not* be satisfied by a transfer from the SMA.

• Rule 2520(f)(4) permits special margin treatment for transactions in cross-guaranteed accounts if certain conditions are met. Since Regulation T does not recognize cross guarantees, nothing in Rule 2520 is intended to grant guaranteed accounts any benefit that would circumvent the provisions of Regulation T.

• Day-trading is recognized by Rule 2520 through the definitions of “day-trading,” “day-trader” and the margin

requirements specified in Rule 2520 (f)(8)(B). The paragraph states:

Whenever day-trading occurs in a customer’s margin account the margin to be maintained shall be the margin on the “long” or “short” transaction, whichever occurred first, as required pursuant to the other provisions of this Rule. When day-trading occurs in the account of a “day-trader” the margin to be maintained shall be the margin on the “long” or “short” transaction, whichever occurred first, as required by Regulation T of the Board of Governors of the Federal Reserve System or as required pursuant to the other provisions of this Rule, whichever amount is greater.

Questions And Answers Relating To The Calculation Of Initial And Maintenance Margin On Day-Trading And Cross-Guaranteed Accounts

For the purpose of the illustrations contained in this Notice, the examples assume: 1) that the securities discussed are marginable equity securities; 2) that unless otherwise noted the maintenance margin requirement on short transactions is 30 percent of the current market value of the security; 3) the customer intends to meet his/her requirement with a deposit of cash; and 4) that each of the customers has a history of day-trading, whether or not the trades in a specific example are day-trades.

1.

Q. *Customer A and Customer B cross guarantee each other’s accounts. Customer A buys \$1,000,000 of securities on Day 1 and is long the securities at the end of the day. Customer B sells short*

\$1,000,000 of different securities on Day 1 and is short the securities at the end of the day. What are the Regulation T and maintenance margin requirements for each customer?

A. Since Regulation T does not acknowledge the existence of the cross guarantee, Regulation T would require Customer A to put up margin of 50 percent or \$500,000 in payment for the securities purchased in Customer A’s account (see Regulation T, Section 220.12(a)). Regulation T would require Customer B to put up margin of 150 percent or \$1,500,000 in payment for the securities sold short in Customer B’s account, of which \$1,000,000 could come from the proceeds of the short sale (see Regulation T, Section 220.12(c)(1)).

Rule 2520 requires maintenance margin for Customer A of \$250,000 (25 percent of the market value long) and maintenance margin for Customer B of \$300,000 (30 percent of the market value short). (See Rule 2520, paragraphs (c)(1) and (c)(3) respectively.)

2.

Q. *Considering the facts in Question 1 again, would the answer be different if the securities bought by Customer A and sold short by Customer B were the same securities, i.e., because of the cross guarantee the accounts were fully hedged?*

A. Again, since Regulation T does not acknowledge the existence of the cross guarantee, Regulation T would require Customer A to put up margin of 50 percent or \$500,000 in payment for the securities purchased in Customer A’s account (see Regulation T, Section 220.12(a)). Regulation T would require Customer B to put up margin of 150 percent or \$1,500,000 in payment for the securities sold short in Customer B’s

account, of which \$1,000,000 could come from the proceeds of the short sale (see Regulation T, Section 220.12(c)(1)).

Rule 2520 (e)(1) permits maintenance margin of five percent of the current market value of the long securities for "Offsetting 'Long' and 'Short' Positions" where the same security is carried long and short for the same customer. Given the existence of the cross guarantee, Rule 2520(f)(4) allows any account guaranteed by another account to be consolidated with the other account, and the margin to be maintained may be determined on the net positions on both accounts. In this case, since Customer A and Customer B are long and short the same securities, and since they cross guarantee each other's accounts, they may utilize the five percent maintenance margin requirement outlined in paragraph (e)(1) on the offsetting positions. Therefore, the required maintenance margin for the combined position would be \$50,000.

3.

Q. On Day 1, Customer C purchases \$400,000 of securities. The Regulation T margin required is \$200,000. The customer deposits \$250,000 cash in the account and, as a result, has received a margin loan of \$150,000 from the broker/dealer to complete the transaction. What is the customer's Regulation T buying power for Day 2? What is the customer's day-trading buying power for Day 2?

A. Going into Day 2, Customer C has Regulation T buying power of \$100,000 because the previous day's Regulation T excess of \$50,000 would provide \$100,000 in buying power. Thus, if Customer C purchases securities on Day 2 that he does not sell on Day 2, he can make such purchases up to

\$100,000 without incurring a Regulation T call. Buying power is calculated as follows: $(\$250,000 - (\$400,000 \times 50\%)) \times 2 = \$100,000$.

Going into Day 2, the customer has day-trading buying power of \$300,000 because the maintenance margin excess of \$150,000 provides day-trading buying power of \$300,000. If Customer C purchases securities on Day 2 which he subsequently sells on Day 2, i.e., he engages in day-trading, he can make such purchases up to \$300,000 without incurring a day-trading call. This is calculated as follows: $(\$250,000 - (\$400,000 \times 25\%)) \times 2 = \$300,000$.

The above answer presumes Customer C did not incur a loss on the day-trades (i.e., made a profit or broke even). If Customer C were to buy \$300,000 of securities and sell them the same day for \$280,000, he would have a Regulation T call for \$20,000, or 100 percent of the loss. Regulation T requires additional margin when a transaction creates or increases a margin deficiency in an amount equal to the deficiency created or increased (see Regulation T, Section 220.4(c)(1)).

4.

Q. Customer D makes one purchase for \$2,000,000 in the morning of Day 1 and then sells the securities at a profit in the afternoon of Day 1 for the same account ending the day with no securities position. What is the customer's margin requirement?

A. Regulation T margin is calculated on the end of the day position. Because the customer has no securities position at the end of the day, and did not incur a loss, there is no Regulation T requirement. However, there is a required day-trading maintenance margin requirement of \$1,000,000. The margin call would be classified as a Rule 2520 Call (not

a Regulation T call) since it is Rule 2520 (b) that sets the margin for the trade.

5.

Q. On Day 1, Customer E buys 100 ABCD at \$88 in an existing margin account that has no SMA, and deposits \$4,400, which is the Regulation T requirement, into the account. She carries the position over into Day 2. On Day 2, she sells 100 ABCD at \$89 at 11 a.m. What is impact of the sale on the customer's Regulation T buying power or day-trading buying power for the remainder of Day 2?

A. Going into Day 2, the customer has zero Regulation T buying power since she deposited the exact amount of the Regulation T requirement into her account on Day 1, i.e., $\$8,800 \times 50\% = \$4,400$. Per Regulation T, Section 220.4(c)(1), buying power for Day 2 is based on the status of the account at the end of Day 1. Intra-day sales on Day 2 cannot be used to increase Regulation T buying power for Day 2. Therefore, Customer E's Regulation T buying power for Day 2 remains at zero, irrespective of the sale on Day 2.

Going into Day 2, the customer has day-trading buying power of \$4,400. If Customer E chooses to purchase securities on Day 2 that she subsequently sells on Day 2, i.e., she engages in day-trading, she can make such purchases up to \$4,400 without incurring a day-trading call. This is calculated as follows: $(\$4,400 - (\$8,800 \times 25\%)) \times 2 = \$4,400$. The customer's day-trading buying power is set at \$4,400 for Day 2. It can not be adjusted by intra-day activity.

6.

Q. On Day 1, Customer F has an account containing equity securities with a market value of \$100,000, a

debit balance of \$70,000, equity of \$30,000, and maintenance margin excess of \$5,000. On Day 2, the customer purchases \$100,000 in equity securities and later in the same day sells them for \$105,000. What is the Regulation T requirement for Day 2?

A. Regulation T margin is calculated on the end of the day position. Since the customer has no securities position at the end of Day 2 resulting from Day 2 transactions and earned a profit on the sale, there is no Regulation T requirement for Day 2.

However, there is a Rule 2520 requirement. Going into Day 2, the customer may use the maintenance margin excess carried over from Day 1 to day-trade additional securities.

Customer F has a maintenance margin excess of \$5,000 (\$30,000 - (\$100,000 x 25%)). She could use this excess to day-trade \$10,000 (\$5,000 x 2) in equity securities on Day 2 without having to deposit any additional margin as long as she incurs no loss (*i.e.*, she makes a profit or breaks even) on the Day 2 day-trades. Taking the above into account, the customer should receive a Rule 2520 day-trading margin call of \$45,000 representing half of the purchase price not covered by the day-trading buying power.

Endnotes

¹Several years ago, the NASD amended Rule 2520 to make it substantially the same as New York Stock Exchange (NYSE) Rule

431, including paragraph numbering. Thus, for example, paragraph 2520(f)(4) is the same as NYSE Rule 431(f)(4). The NASD has also customized Rule 2520 in a few places in recognition of certain differences between the NASD and NYSE in rules, jurisdiction, and market structure. Members should be familiar with the requirements of either NASD Rule 2520 or NYSE Rule 431, depending upon which one applies to them.

²Buying power - either Regulation T or day-trading - represents the dollar value of securities that can be purchased with a given amount of Regulation T or maintenance margin excess respectively (usually twice the amount of the excess).

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NASD Notice to Members 98-103

Maximum SOES Order
Sizes Set To Change
January 1, 1999

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Effective January 1, 1999, the maximum Small Order Execution SystemSM (SOESSM) order sizes for 476 Nasdaq National Market[®] (NNM) securities will be revised in accordance with National Association of Securities Dealers, Inc. (NASD[®]) Rule 4710(g).

For more information, please contact Nasdaq[®] Market Operations at (203) 378-0284.

Description

Under Rule 4710, the maximum SOES order size for an NNM security is 1,000, 500, or 200 shares, depending on the trading characteristics of the security. The Nasdaq Workstation II[®] (NWII) indicates the maximum SOES order size for each NNM security. The indicator "NM10," "NM5," or "NM2" displayed in NWII corresponds to a maximum SOES order size of 1,000, 500, or 200 shares, respectively.¹

The criteria for establishing maximum SOES order sizes are as follows:

- (1) a 1,000-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to \$100, and three or more Market Makers;
- (2) a 500-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to \$150, and two or more Market Makers; and
- (3) a 200-share maximum order size shall apply to NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price of less than or equal to

\$250, and two or more Market Makers.

In accordance with Rule 4710, Nasdaq periodically reviews the maximum SOES order size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant an adjustment. Such a review was conducted using data as of September 30, 1998, pursuant to the aforementioned standards. The maximum SOES order-size changes called for by this review are being implemented with three exceptions.

- First, issues were not permitted to move more than one size level. For example, if an issue was previously categorized in the 1,000-share level, it would not be permitted to move to the 200-share level, even if the formula calculated that such a move was warranted. The issue could move only one level to the 500-share level as a result of any single review.
- Second, for securities priced below \$1 where the reranking called for a reduction in the level, the maximum SOES order size was not reduced.
- Third, for the top 50 Nasdaq securities based on market capitalization, the maximum SOES order sizes were not reduced, regardless of whether the reranking called for a reduction.

In addition, with respect to initial public offerings (IPOs), the SOES order-size reranking procedures provide that a security must first be traded on Nasdaq for at least 45 days before it is eligible to be reclassified.

Thus, IPOs listed on Nasdaq within the 45 days prior to September 30, 1998, were not subject to SOES order-size reranking procedures.

Following is a listing of the 476 NNM issues that will have the maximum SOES order size changed on January 1, 1999.

Endnote

¹ Previously, Nasdaq Market Makers were required to maintain a minimum quotation

size for an NNM security in an amount equal to the maximum SOES order size for that security. See generally, NASD Rule 4613(a)(1) - (2). On July 15, 1998, the Securities and Exchange Commission approved an amendment to NASD Rule 4613(a)(1)(C), which reduced the minimum quotation size for all Nasdaq securities to one normal trad-

ing unit when a Market Maker is not displaying a limit order, and which thus eliminated the requirement that Market Makers quote a size equal to the maximum SOES order size.

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Maximum SOES Order Size Changes In NNM Securities All Issues In Alphabetical Order By Security Name (Effective January 1, 1999)

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
A				AXTI	AMERICAN XTAL TECH	200	500
ABANP	ABI CAP TRUST PFD	200	500	AZTC	AZTEC TECH PTNRS	200	500
ABBKP	ABINGTON TR PFD	200	500	B			
ABFI	AMERICAN BUS FIN S	500	1000	BARI	BANK RHODE ISLAND	500	1000
ABFSP	ARKANSAS BEST CV P	200	500	BAYB	BAY BANCSHARES	500	1000
ABGX	ABGENIX INC	200	500	BBAR	BALANCE BAR CO	200	500
ACLE	ACCEL INTL CP	1000	500	BCORY	BIACORE INTL AB ADR	500	200
ACLNF	A C L N LIMITED	200	500	BCSB	BCSB BANKCORP	200	500
ACMTA	A C M A T CP CL A	200	500	BCST	BROADCAST.COM	200	500
ACTU	ACTUATE SOFTWARE	200	500	BEBE	BEBE STORES INC	200	500
ADGO	ADAMS GOLF INC	200	500	BEERF	BIG ROCK BREWERY LTD	500	200
ADPI	AMERICAN DENTAL	500	1000	BESIF	B E SEMICON ORD SHRS	500	200
ADSC	ATLANTIC DATA SVCS	200	500	BEYE	BOLLE INC	500	1000
AHAA	ALPHA INDS INC	200	500	BHAG	B H A GP HLDGS	1000	500
AIRS	AMERICAN AIRCARRIE	200	500	BIORY	BIORA AB ADR	1000	500
AKZOY	AKZO NOBEL NV ADR	500	1000	BKCT	BANCORP CONN INC	1000	500
ALGX	ALLEGIANCE TELECOM	200	500	BKUNZ	BANKUNITED CAP II	500	1000
ALREF	ANNUITY AND LIFE	500	1000	BLCA	BOREL BK & TR (CA)	500	200
AMBC	AMER BNCP OHIO	1000	500	BNBC	BROAD NATL BNCP	1000	500
AMBCP	AMER BNCP CAP TR	200	500	BNCM	BNC MORTGAGE INC	500	1000
AMCT	AMRESKO CAP TRUST	500	1000	BNSC	BANK OF SANTA CLAR	500	200
AMKR	AMKOR TECHNOLOGY	500	1000	BOGN	BOGEN COMMUN INT	200	500
ANAT	AMER NATL INS CO	500	1000	BOGNW	BOGEN COMMUN WT	200	500
ANCOW	ANACOMP INC WTS	500	200	BOKF	B O K FINL CP	500	1000
ANDR	ANDERSEN GROUP INC	1000	500	BORAY	BORAL LTD ADS	200	500
ANSR	ANSWERTHINK CONS	200	500	BOYD	BOYD BROS TRANS IN	500	1000
ARDNA	ARDEN GROUP CL A	200	500	BPAO	BALDWIN PIANO ORGA	1000	500
ARGX	ARGUSS HOLDINGS INC	500	1000	BPFH	BOSTON PVT FIN	500	1000
ARMHY	ARM HLDGS ADS	500	1000	BRCM	BROADCOM CORP CL A	500	1000
ARSCW	ARIS CORP WTS	200	500	BRGP	BUSINESS RESOURCE	500	1000
ARTW	ART S WAY MFG CO I	200	500	BRID	BRIDGFORD FOODS CP	500	1000
ASAM	ASAHI/AMERICA INC	500	1000	BRKL	BROOKLINE BANCORP	500	1000
ASPCE	ASPEC TECH INC	500	1000	BRYO	BRIO TECHNOLOGY	500	1000
ASTI	ALLERGAN SPEC WI	500	1000	BTBTY	B T SHIP SPONSOR ADR	200	500
ASYCF	ARCHITEL SYST CORP	200	500	BTSR	BRIGHTSTAR INFO	500	1000
ASYM	ASYMETRIX LEARNING	200	500	BUCK	BUCKHEAD AMERICA C	1000	500
ATGC	ATG INC	500	1000				
ATPX	ADV TEC PROD	500	1000				

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
BVEW	BINDVIEW DEV CORP	200	500	COLTY	C O L T TELECOM AD	500	1000
BWCF	BWC FINANCIAL CORP	200	500	COOL	CYBERIAN OUTPOST	200	500
BYND	SOFTWARE.NET CP	200	500	CRAI	CHARLES RIVER	500	1000
C				CRDT	CREDITRUST CORP	200	500
CANI	CARREKER-ANTINORI	200	500	CRGN	CURAGEN CORP	500	1000
CASA	CASA OLE' RESTRS I	500	1000	CRHCY	C R H PLC ADR	200	500
CAVB	CAVALRY BANCORP	500	1000	CRSB	CRUSADER HLDG CORP	1000	500
CBBI	C B BANCSHARES	500	1000	CSCQW	CORRECTIONAL SVCS	1000	500
CBCI	CALUMET BANCORP IN	500	1000	CSON	COHESION TECHS	200	500
CBMD	COLUMBIA BANCORP M	500	1000	CSTL	CASTELLE	1000	500
CBNY	COMMERCIAL BK OF N	1000	500	CTSH	COGNIZANT TECH SOL	200	500
CBRNB	CANANDAIGUA BRANDS	500	200	CTWS	CONN WATER SVCS IN	500	1000
CCBG	CAPITAL CITY BANK	500	1000	CULS	COST-U-LESS INC	200	500
CCBN	CENTRAL COAST BCP	200	500	CVBK	CENTRAL VA BKSHS I	200	500
CCHE	CLINICHEM A	200	500	CVOL	COVOL TECHS INC	500	1000
CCHM	COMBICHEM INC	500	1000	CWCOF	CAYMAN WATER ORD	1000	500
CCPRZ	COAST FED LIT CPR	500	1000	CWLZ	COWLITZ BANCORPN	500	1000
CDIR	CONCEPTS DIRECT IN	1000	500	D			
CEBK	CENTRAL CO OP BANK	500	1000	DACG	DA CONSULTING GRP	500	1000
CERB	C E R B C O INC	500	1000	DCBI	DELPHOS CITIZENS B	500	1000
CFBC	COMMUNITY FIRST BN	500	1000	DCBK	DESERT COMMUNITY B	200	500
CFIC	COMMUNITY FIN CP	1000	500	DCLK	DOUBLECLICK INC	500	1000
CFKY	COLUMBIA FIN KY	500	1000	DCPI	DICK CLARK PROD IN	500	200
CGII	CUNNINGHAM GRAPHIC	500	1000	DCRNW	DIACRIN INC WT	500	1000
CHANF	CHANDLER INS CO LTD	500	1000	DECO	DECORA INDS	500	1000
CHAS	CHASTAIN CAP CORP	500	1000	DGIC	DONEGAL GROUP INC	500	1000
CHKE	CHEROKEE INC	500	1000	DIIBF	DOREL INDS CL B	500	1000
CIBN	CALIFORNIA IND BNC	500	200	DLVRY	CORTECS INTL SPO ADR	1000	500
CITC	CITADEL COMMUN CP	200	500	DNFCP	D & N CAP CORP PFD	200	500
CITZ	CFS BANCORP INC	200	500	DOCC	DOCUCORP INTL	500	1000
CLBR	CALIBER LEARN NTWK	500	1000	DOCDF	DOCDATA NV	1000	500
CLEC	US L E C CP	500	1000	DRAI	DATA RESEARCH ASSO	1000	500
CLRS	CLARUS CORPORATION	200	500	DRIV	DIGITAL RIVER INC	200	500
CLTDF	COMPUTALOG LTD	200	500	DROV	DROVERS BANCSHARES	200	500
CLTX	COLLATERAL THERAP	200	500	DRRAP	DURA AUTO CAP TR	500	1000
CMIV	IVI CHECKMATE CORP	200	500	DXCPO	DYNEX CAPITAL PFD B	1000	500
CMLS	CUMULUS MEDIA INC	200	500	E			
CMND	COMMAND SYSTEMS	500	1000	EBSC	ELDER-BEERMAN ST	500	1000
CMPS	COMPASS INTL SVCS	500	1000	ECLP	ECLIPSYS CORP	200	500
CMTO	COM21 INC	200	500	EDCO	EDISON CONTROL CP	500	200
CNAF	COMMERCIAL NATL FI	500	200	EDEL	EDELBROCK CP	1000	500
CNBA	CHESTER BANCORP IN	500	1000	EDIN	EDUCATIONAL INSIGH	500	1000
CNBF	C N B FINANCIAL CP	500	1000	EFBI	ENTERPRISE FED BNC	500	1000
CNBKP	CENTURY BCP CAP TR	200	500	ELBO	ELECTRONICS BOUT	200	500
CNDSP	CELLNET FNDG PFD	500	1000	ELON	ECHELON CORP	200	500
CNRD	CONRAD INDS INC	200	500	EMCC	EUROPEAN MICRO HLD	200	500
CNTBY	CANTAB PHARM	500	200				
COBZ	COLORADO BUS BCSHS	200	500				
COLM	COLUMBIA SPRTSWR	500	1000				

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
ENBRF	ENBRIDGE INC	200	500	GCLI	GRAND COURT LIFE	500	1000
ENGEF	ENGEL GNRL DEV SE	1000	500	GCTY	GEOCITIES	200	500
ENGSY	ENERGIS ADS	1000	500	GEND	GENESIS DIRECT INC	500	1000
ENSR	ENSTAR INC	500	1000	GIGX	GIGA INFO GROUP	200	500
ERTH	EARTHSHELL CORP	500	1000	GISX	GLOBAL IMAGING SYS	200	500
ETRC	EQUITRAC CP	500	1000	GLDBP	GBCI CAP TR PFD	500	200
EVOL	EVOLVING SYSTEMS	500	1000	GNET	GO2NET INC	500	1000
EXDS	EXODUS COMMUN	500	1000	GNSSF	GENESIS MICROCHIP	500	1000
F				GNTY	GUARANTY BANCSHARE	200	500
FACT	FIRST ALBANY COS I	1000	500	GSBNZ	GOLDEN LIT WTS	500	1000
FBCI	FIDELITY BANCORP D	500	1000	GSOE	GROUP 1 SOFTWR	500	1000
FCFCO	FIRSTCITY SPCL PFD	200	500	GSTX	GST TELECOMMUN INC	500	1000
FCIN	FLOUR CITY INTL	200	500	GTAX	GILMAN & CIOCIA INC	500	1000
FCNB	F C N B CP	500	1000	GTPS	GREAT AMER BNCP IN	500	1000
FCNBP	FCNB CAP TR PFD	200	500	GWBK	GULF WEST BANKS	500	1000
FFES	FIRST FED S L E.HT	1000	500	H			
FFFLP	FIDELITY CAP TR I	1000	500	HABC	HABERSHAM BANCORP	500	200
FFIN	FIRST FINL BKSHS I	1000	500	HACHA	HACH COMPANY CL A	1000	500
FFKY	FIRST FED FIN KENT	500	200	HAMP	HAMPSHIRE GROUP LT	500	200
FFLC	FFLC BNCP INC	500	1000	HAST	HASTINGS ENT INC	200	500
FFOH	FIDELITY FIN OF OH	500	1000	HAUP	HAUPPAUGE DIGITAL	500	1000
FGHC	FIRST GEORG HLDGS	500	1000	HBSC	HERITAGE BNCP (DE)	500	1000
FKAN	FIRST KANSAS FIN	200	500	HCAR	HOMETOWN AUTO CL A	200	500
FLAG	F L A G FINANCIAL	1000	500	HCOU	HORIZON ORGANIC HD	200	500
FLBK	FLORIDA BANKS INC	200	500	HDVS	H. D. VEST INC	1000	500
FLGSP	FLAGSTAR CAP PFD A	500	1000	HDWY	HEADWAY CORPORATE	500	1000
FLYAF	C H C HELICO CL A	200	500	HERBL	DECS TRUST III	500	1000
FLYR	NAVIGANT INTL INC	200	500	HFBC	HOPFED BANCORP INC	1000	500
FMAPR	MARINER CAP TR PFD	200	500	HFGI	HARRINGTON FIN GRP	500	1000
FMCO	F M S FINANCIAL CP	500	1000	HIFS	HINGHAM INSTI SAVI	200	500
FNBN	F N B CORPORATION	500	200	HKID	HAPPY KIDS INC	500	1000
FNDTF	FUNDTECH LTD	500	1000	HNBC	HARLEYSVILLE NATL	1000	500
FOBBA	FIRST OAK BROOK CL A	500	1000	HOFF	HORIZON OFFSHORE	500	1000
FREEY	FREEPAGES GR PLC ADR	500	200	HOLO	HOLOPAK TECHS INC	1000	500
FRPP	F R P PROPERTIES I	500	200	HORT	HINES HORTICULTURE	200	500
FSTH	FIRST SO BCSHS INC	200	500	HPBC	HOME PORT BNCP INC	500	1000
FSVBP	FRANKLIN FIN PD A	500	1000	HPSC	H P S C INC	500	1000
FTBK	FRONTIER FIN CORP	500	1000	HRBT	HUDSON RVR BNCP	200	500
FTCG	FIRST COLONIAL GP	500	200	HTBK	HERITAGE COMMERCE	200	500
FTFN	FIRST FIN CP (RI)	500	200	HTCO	HICKORY TECH CP	500	1000
FUNC	FIRST UNITED CORP	500	1000	HYBRE	HYBRID NETWORKS	1000	500
FVCX	FVC.COM INN	500	1000	HYPT	HYPERION TELECOMM	500	1000
G				I			
GABC	GERMAN AMER BANCOR	200	500	IAABY	INDIGO AVIATIO ADS	500	1000
GBBKP	GBB CAP I CUM TR PFD	200	500	IBOC	INTL BANCSHS CP	500	1000
GBLX	GLOBAL CROSSING	200	500				
GBNK	GASTON FED BANCP	500	1000				

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
ICBC	INDEPENDENCE COMM	500	1000	LKFN	LAKELAND FINL CP	500	1000
ICLRY	ICON PLC ADS	500	1000	LMIA	LMI AEROSPACE INC	200	500
ICOGF	ICO GLOBAL COMM	200	500	LNDL	LINDAL CEDAR HOMES	1000	500
ICUB	INTL INTEGRATION	200	500	LSBI	LSB FINANCIAL CP	200	500
IDEA	INNOVASIVE DEVICES	500	1000	LVLT	LEVEL 3 COMM INC	500	1000
IDGB	IDG BOOKS WRLDWIDE	200	500				
IFCI	INTL FIBERCOM INC	500	1000	M			
IGPFF	IMPERIAL GINSENG PRO	500	1000	MAGR	MASTER GRAPICS INC	200	500
IHIIZ	INDUSTRIAL HLDG WT	500	200	MANH	MANHATTAN ASSOC	500	1000
IMGK	INTERACTIVE MAGIC	200	500	MARN	MARION CAP HLDGS I	1000	500
INDYY	INDEP ENERGY ADS	200	500	MAXC	MAXCO INC	1000	500
INKT	INKTOMI CORP	200	500	MBBC	MONTEREY BAY BANCO	500	1000
INOC	INNOTRAC CORP	500	1000	MBHI	MIDWEST BANC HLDG	500	1000
INTT	INTEST CORPORATION	500	1000	MBIA	MERCHANTS BNCP IL	500	1000
IPLY	INTERPLAY ENT CORP	200	500	MBNK	MAIN STREET BNCP	500	1000
IROQ	IROQUOIS BNCP	1000	500	MDST	MID-STATE BCSH	200	500
ISKO	ISCO INC	1000	500	MERB	MERRILL MERCHANT	200	500
ISNR	INTEGRATED SENS SL	500	1000	METF	METROPOLITAN FIN C	1000	500
ISSX	I S S GROUP INC	500	1000	METFP	METROPOLITAN CAP	500	1000
ISYS	INTEGRAL SYSTEMS INC	500	1000	MFBC	M F B CORP	200	500
IUBCP	IUB CAP TRUST PFD	1000	500	MFRI	M F R I INC	1000	500
				MGCX	MGC COMMUN INC	500	1000
J				MHCO	MOORE HANDLEY INC	1000	500
JADEF	LJ INTL INC	500	1000	MIGI	MERIDIAN INS GP IN	1000	500
JADWF	LJ INTL WTS 4/2002	500	1000	MIPS	MIPS TECHS INC	200	500
JPSP	JPS PACKAGING CO	200	500	MNES	MINE SAFETY APPLS	1000	500
JPST	JPS TEXTILE GRP	1000	500	MNOC	MONOCACY BANCSHARE	200	500
JVLN	JAVELIN SYS INC	500	1000	MOBI	MOBIUS MGMT SYST	500	1000
				MOTR	MOTOR CLUB OF AMER	1000	500
K				MRET	MERIT HOLDING CP	500	1000
KASP	KASPER ASL LTD	200	500	MSPG	MINDSPRING ENTER I	500	1000
KAYE	KAYE GROUP INC	500	1000	MSTR	MICROSTRATEGY INC	200	500
KEQU	KEWAUNEE SCIENTIFI	1000	500	MTLX	MARINE TRANSPORT	200	500
KESI	KENTUCKY ELEC STEE	1000	500	MUEL	MUELLER PAUL CO	200	500
KLLM	K L L M TRANSPORT	500	1000	MVII	MARK VII INC	500	1000
KTII	K TRON INTL INC	1000	500	MXTR	MAXTOR CORP	200	500
				N			
L				NADX	NATL DENTEX CP	1000	500
LFBI	LITTLE FALLS BNCP	500	1000	NBAK	NATL BNCP ALASKA	500	1000
LGCB	LONG ISLAND COMM	1000	500	NBCP	NIAGARA BANCORP	500	1000
LIBB	LIBERTY BANCORP	200	500	NCBH	NORTH COUNTY BANCO	1000	500
LIBHA	LIBERTY HOMES INC A	500	200	NEIB	NORTHEAST IND BNCP	500	1000
LIHRY	LIHIR GOLD LTD ADR	1000	500	NETG	NETGRAVITY INC	200	500
LIQB	LIQUI BOX CP	1000	500	NGEN	NANOGEN INC	500	1000
LJLB	LJL BIOSYSTEMS	500	1000	NHCH	NEWMARK HOMES CORP	500	1000
				NHHC	NATL HOME HLTH CAR	500	1000
				NITE	KNIGHT/TRIMARK GR	200	500
				NSBC	NEWSOUTH BANCORP I	500	1000

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
NSCF	NORTHSTAR COMPUTER	1000	500	RBCAA	REPUBLIC BCP CL A	200	500
NSDB	N S D BANCORP INC	500	200	RBOW	RAINBOW RENTALS	200	500
NTOL	NATROL INC	200	500	RCBK	RICHMOND COUNTY	500	1000
NUTR	NUTRACEUTICAL INTL	500	1000	RCCK	ROCK FINANCIAL CP	500	1000
NWFL	NORWOOD FIN CORP	500	200	RDGE	READING ENT INC	1000	500
O				RIGX	REALTY INFO GROUP	200	500
OAKF	OAK HILL FIN INC	500	1000	RINO	BLUE RHINO CORP	200	500
ODFL	OLD DOMINION FREIG	500	1000	RLCO	REALCO INC	200	500
OKSB	SOUTHWEST BNCP INC	500	1000	RSTO	RESTORATION HARDWR	200	500
OLCWF	OLICOM A/S WTS	1000	500	RWKS	RAILWORKS CORP	200	500
OLGR	OILGEAR CO	500	200	S			
OTRX	O T R EXPRESS INC	1000	500	SAVB	SAVANNAH BNCP INC	200	500
OWWI	OMEGA WORLDWIDE	500	1000	SBGIP	SINCLAIR BRD PFD SE	500	1000
P				SBIBP	STERLING CAP TR PF	500	200
PABN	PACIFIC CAP BNCP	500	1000	SCCX	SCC COMMUNICATIONS	200	500
PACK	GIBRALTAR PKG GP I	500	1000	SCHR	SCHERER HEALTHCARE	1000	500
PAZZF	PACALTA RES LTD	200	500	SCNYA	SAUCONY INC	500	1000
PBOC	PBOC HOLDINGS INC	500	1000	SCOT	SCOTT AND STRINGF	500	1000
PCCC	PC CONNECTION INC	500	1000	SCSAY	STOLT COMEX ADS	200	500
PCCIP	PCC CAPITAL I PFD	500	200	SENEB	SENECA FOODS CP B	200	500
PDII	PROF DETAILING INC	200	500	SFED	S F S BANCORP INC	500	1000
PEBK	PEOPLES BANK	500	200	SFSW	STATE FINL SVCS CL	500	1000
PGEOF	PARADIGM GEOPHYS	200	500	SFXE	SFX ENT CL A	500	1000
PHFCP	PITT HOME CAP TR	500	200	SHBK	SHORE FINANCIAL CORPORATION	200	500
PHLYZ	PHIL CONS IN PRIDE	500	1000	SHOE	SHOE PAVILION INC	500	1000
PILT	PILOT NETWORK SVC	200	500	SHPGY	SHIRE PHARM	500	1000
PLFC	PULASKI FURNITURE	1000	500	SIDE	ASSOC MATERIALS	500	1000
PLSIA	PREMIER LASER SY	1000	500	SIVBP	SVB CAPITAL I PFD	200	500
PMFG	PEERLESS MFG CO	500	1000	SJNB	S J N B FINANCIAL	1000	500
PNBC	PRINCETON NATL BNC	1000	500	SKYEY	SKYEPHARMA PLC	200	500
PNBF	PNB FINCL GROUP	200	500	SLFI	STERLING FINL CP	1000	500
PNTE	POINTE FINCL CORP	200	500	SMBC	SOUTHERN MO BNCP I	500	1000
POSIF	POINT OF SALE LTD	200	500	SNDS	SANDS REGENT THE	500	1000
POVT	PROVANT INC	500	1000	SNFCA	SECURITY NATL FINL A	500	200
PPCCP	PEOPLE'S PFD CAP C	1000	500	SNRS	SUNRISE TECHNOLOGIES	200	500
PPCO	PENWEST PHARM	200	500	SONO	SONOSITE INC	500	1000
PRTW	PRINTWARE INC	500	1000	SPCH	SPORT CHALET INC	1000	500
PSBI	PSB BANCORP INC	200	500	SPPR	SUPERTEL HOSPITALI	1000	500
PTRN	PHOTRAN CORP	500	1000	SRDX	SURMODICS INC	500	1000
PULS	PULSE BANCORP INC	500	1000	STHLY	STET HELL ADS	200	500
PWCC	POINT WEST CAP CP	1000	500	STVI	S T V GROUP INC	1000	500
R				SUBK	SUFFOLK BNCP	1000	500
RARB	RARITAN BANCORP IN	200	500	SUBSC	MIAMI SUBS CP	500	1000
				SUNH	SUNDANCE HOMES INC	1000	500
				SVBF	SVB FIN SVCS INC	200	500
				SWMAY	SWEDISH MATCH AB ADR	1000	500

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
SWPA	SOUTHWEST NATL CP	500	1000	UPFC	UNITED PANAM FIN	500	1000
SWRX	SOFTWARES INC	200	500	URSI	UNITED ROAD SVCS	500	1000
SYBBF	SYNSORB BIOTCH INC	500	1000	UTCC	URSUS TELECOM CP	500	1000
SYNM	SYNTROLEUM CORP	200	500	UTCIW	UNIROYAL TECH CP WTS	500	200
SYPR	SYPRIS SOLU	1000	500				
T				V			
TBCOL	TRIATHALON BD DEP SH	200	500	VALN	VALLEN CP	1000	500
TBFC	TELEBANC FIN CP	200	500	VALU	VALUE LINE INC	1000	500
TBFCP	TELEBANC CAP TR	200	500	VBNJ	VISTA BANCORP INC	500	1000
TFSM	24/7 MEDIA INC	200	500	VDRY	VACU DRY CO	500	200
THRD	T F FINANCIAL CP	1000	500	VENT	VENTURIAN CP	1000	500
THRNY	THORN PLC ADR	1000	500	VIAX	VIAGRAFIX CORP	500	1000
THTL	THISTLE GROUP HLDG	200	500	VINT	GOLDEN ST VINT B	200	500
TIWIF	TELESYSTEM INTL	200	500	VITX	VI TECHNOLOGIES	200	500
TMSTA	THOMASTON MILLS A	500	1000	VLGEA	VILLAGE SUPER MKT A	500	1000
TONSF	NOVAMERICAN STEEL	1000	500	VNGI	VALLEY NATL GASES	500	1000
TRGNY	TRANSGENE SA ADR	500	1000	VRIO	VERIO INC	500	1000
TRKA	TRAK AUTO CP	200	500	VSEC	V S E CP	500	200
TRNI	TRANS INDS INC	500	1000	VSLF	SEMELE GROUP	1000	500
TSRC	TECHNISOURCE INC	200	500	VTRAO	VBC CAPITAL I CAP	200	500
TSSS	TRIPLE S PLASTICS	1000	500				
TTWO	TAKE-TWO INTERACTI	500	1000	W			
TWNE	TOWNE SVCS INC	200	500	WBCO	WASHINGTON BKG CO	200	500
TWTR	TWEETER HOME ENT	200	500	WCBI	WESTCO BANCORP	500	1000
U				WCNX	WASTE CONNECTIONS	200	500
UBCD	UNIONBANCORP INC	1000	500	WMSI	WILLIAMS INDS INC	500	1000
UCFC	UNITED COMM FIN CP	200	500	WORK	WORKFLOW MGMT INC	200	500
UFPT	U F P TECH INC	1000	500	WREI	WILSHIRE R E INV	500	1000
UIRT	UNITED INVST RLTY	500	1000	WVFC	W V S FINANCIAL CP	500	1000
ULTI	ULTIMATE SOFTWARE	200	500	X			
UMPQ	SOUTH UMPQUA BANK	500	1000	XTND	EXTENDED SYSTEMS #1	500	1000

NASD Notice to Members 98-104

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of October 23, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of October 23, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
ACFL.GA	ACC Consumer Finl Corp.	10.250	12/01/03
ANCP.GB	Anacomp Inc	10.875	04/01/04
CSUD.GA	Corning Consumer Prod. Co.	9.625	05/01/08
DDBD.GA	Diamond Brands Inc.	12.875	04/15/09
DMBD.GA	Diamond Brands Oper Corp.	10.125	04/15/08
DSUO.GA	Doe Run Resources Corp.	0.000	03/15/03
DSUO.GB	Doe Run Resources Corp.	11.250	03/15/05
FNVW.GA	Fountain View Inc.	11.250	04/15/08
ICIX.GC	Intermedia Communication Inc.	13.500	06/01/05
IMTN.GB	Iron Mountain Inc.	8.750	09/30/09
JAIL.GB	Johnstown America Industries Inc.	11.750	08/15/05
JKPD.GA	Jackson Products Inc.	9.500	04/15/05
KTTY.GA	Kitty Hawk Inc.	9.950	11/15/04
LAQU.GA	La Quintas Inns Inc.	7.400	09/15/05
LAQU.GB	La Quintas Inns Inc.	7.250	03/15/04
LI.GA	Lilly Industries Inc.	7.750	12/01/07
MAM.GA	Maxxim Medical Inc.	10.500	08/01/06
MCLL.GB	Metrocall Inc.	9.750	11/01/07
MNRH.GA	Mariner Health Group Inc.	9.500	04/01/06
MT.GA	Meditrust Corp.	7.375	07/15/00
MT.GB	Meditrust Corp.	7.600	07/15/01
MT.GC	Meditrust Corp.	7.820	09/10/26
MT.GD	Meditrust Corp.	7.000	08/15/07
NFX.GA	Newfield Exploration Co.	7.450	10/15/07
OEI.GC	Ocean Energy Inc.	8.375	07/01/08
OEI.GD	Ocean Energy Inc.	7.625	07/01/05
OEI.GE	Ocean Energy Inc.	8.250	07/01/18
SKS.GA	Saks Inc.	8.250	11/15/08
SUAS.GA	South Seas Prop L.P.	10.000	04/15/03
SVIS.GA	Spectra Vision Inc.	11.650	12/01/02

As of October 23, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
AVLM.GA	Avalon Marketing Inc.	14.000	11/01/98
AXTO.GA	Abraxas Petro Corp./Cn Abraxas	11.500	11/01/04
DOPD.GA	Doane Products Co.	10.625	03/01/06
GTCO.GA	Great American Cookie	10.875	01/15/01
HRJZ.GA	Harrahs Jazz Co.	14.250	11/15/01
MAG.GA	Magnetek Inc.	10.750	11/15/98
MDCA.GA	Maryland Cable Corp.	15.375	11/15/98
NAV.GA	Navistar Financial Corp.	8.875	11/15/98
PMIA.GA	PMI Acquisition Corp.	10.250	09/01/03
SMU.GA	Simula Inc.	12.000	11/15/98
SVIS.GA	Spectra Vision Inc.	11.650	12/01/02
UIS.GF	Unisys Corp.	10.625	10/01/99
VDKP.GA	Van de Kamps Inc.	12.000	09/15/05

Symbol	Name	Coupon	Maturity
VIA.GB	Viacom Inc.	7.750	06/01/05
VIA.GC	Viacom Inc.	6.750	05/15/03
VIA.GD	Viacom Inc.	7.625	01/15/16
WHLP.GA	Windy Hill Pet Food Co.	9.750	05/15/07

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation, Inc. (NASD RegulationSM), at (301) 590-6451.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq[®] Market Operations, at (203) 385-6310.

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NASD Notice to Members 98-105

NASD 1999 Holiday Schedule

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

The National Association of Securities Dealers, Inc. (NASD®) will observe the following holiday schedule for 1999:

January 1	New Years Day
January 18	Birthday of Martin Luther King, Jr. (Observed)
February 15	Presidents Day
April 2	Good Friday
May 31	Memorial Day
July 5	Independence Day (Observed)
September 6	Labor Day
November 25	Thanksgiving Day
December 24	Christmas Day (Observed)

Questions regarding this holiday schedule may be directed to NASD Human Resources, at (301) 590-6821.

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NASD Notice to Members 98-106

Trade Date–Settlement Date Schedule For 1999

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

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

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, January 18, 1999, in observance of Martin Luther King, Jr., 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>
Jan. 12	Jan. 15	Jan. 20
13	19	21
14	20	22
15	21	25
18	Markets Closed	—
19	22	26

Presidents Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, February 15, 1999, 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. 9	Feb. 12	Feb. 17
10	16	18
11	17	19
12	18	22
15	Markets Closed	—
16	19	23

Good Friday: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Good Friday, April 2, 1999. "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>
March 29	April 1	April 6
30	5	7
31	6	8
April 1	7	9
2	Markets Closed	—
5	8	12

Memorial Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, May 31, 1999, 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 25	May 28	June 2
26	June 1	3
27	2	4
28	3	7
31	Markets Closed	—
June 1	4	8

Independence Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, July 5, 1999, 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 29	July 2	July 7
30	6	8
July 1	7	9
2	8	12
5	Markets Closed	—
6	9	13

Labor Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, September 6, 1999, 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. 31	Sept. 3	Sept. 8
Sept. 1	7	9
2	8	10
3	9	13
6	Markets Closed	—
7	10	14

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 11, 1999. On this day, The Nasdaq Stock Market 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. 5	Oct. 8	Oct. 12
6	12	13
7	13	14
8	14	15
11	14	18
12	15	19

Note: October 11, 1999, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 11, will be combined with transactions made on the previous business day, October 8, for settlement on October 14. 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 11.

Veterans Day And Thanksgiving Day: Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Veterans Day, Thursday, November 11, 1999, and Thanksgiving Day, Thursday, November 25, 1999. On Thursday, November 11, The Nasdaq Stock Market 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 in observance of Veterans Day. All securities markets will be closed on Thursday, November 25, in observance of Thanksgiving Day.

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Nov. 5	Nov. 10	Nov. 12
8	12	15
9	15	16
10	16	17
11	16	18
12	17	19
19	24	29
22	26	30
23	29	Dec. 1
24	30	2
25	Markets Closed	—
26	Dec. 1	3

Note: November 11, 1999, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on November 11 will be combined with transactions made on the previous business day, November 10, for settlement on November 16. 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 November 11.

Christmas Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Friday, December 24, 1999, in observance of Christmas 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. 20	Dec. 23	Dec. 28
21	27	29
22	28	30
23	29	31
24	Markets Closed	—
27	30	Jan. 3, 2000

Note: The Nasdaq Stock Market and the securities exchanges will be open on December 31, 1999, and January 3, 2000.

Brokers, dealers, and municipal securities dealers should use the foregoing settlement dates for purposes of clearing and settling transactions pursuant to the National Association of Securities Dealers, Inc. (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.

*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 five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

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NASD Notice to Members 98-107

NASD Reminds Members Of Their Obligations To Disclose Mutual Fund Fees

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

This *Notice* reminds National Association of Securities Dealers, Inc. (NASD®) members of their obligation to ensure that discussions concerning fees and expenses in mutual fund advertisements and sales literature as defined in NASD Rule 2210(a) are fair, balanced, and not misleading. This *Notice* also provides guidance concerning fee and expense disclosure in certain types of mutual fund sales material, and announces an NASD initiative to review this issue further.

Questions concerning this *Notice* may be directed to Thomas M. Selman, Vice President, Investment Companies/Corporate Financing, NASD Regulation, Inc. (NASD RegulationSM), at (202) 728-8068, or Robert J. Smith, Assistant General Counsel, NASD Regulation, at (202) 728-8176.

Requirements Concerning Disclosure Of Fees And Expenses

Lists Of Fees And Expenses That Do Not Apply

NASD Rule 2210(d)(1) generally requires that all member communications with the public provide a sound basis for evaluating the facts regarding a particular security or service and that they include material qualifications necessary to ensure that the communications are fair, balanced, and not misleading.¹ Rule 2210 also prohibits the use of exaggerated, unwarranted, or misleading statements or claims. NASD Regulation has long interpreted Rule 2210 to prohibit members from making misleading or confusing presentations in their sales material concerning the fees and expenses associated with a variety of investment products and services, including discount brokerage, wrap accounts, and variable products.

In particular, NASD Regulation strongly objects to presentations that list

specific fees that *do not* apply, without discussing the fees or expenses that *do* apply. Such presentations raise investor protection concerns because of the possibility that the presentations may confuse investors about the range of fees and expenses that the investors must pay when they purchase and own particular products.

NASD Regulation reminds members that all of their mutual fund sales material must similarly comply with NASD rules. Discussions of factors such as fees and expenses should be fair and balanced, whether the investment decision concerns the purchase of mutual funds or other investment products. In order to ensure greater consistency in the application of the principles concerning disclosure of fees and expenses, NASD Regulation now takes the interpretive position that if an item of sales material lists specific mutual fund fees and expenses that *do not* apply to the purchase, redemption, or ownership of the fund's shares, then this sales material ordinarily must list specific fees and expenses that *do* apply (*e.g.*, applicable maximum front-end and deferred sales charges and redemption fees, and operating expenses). As always, NASD Regulation staff will respond to questions from members who file such sales material, concerning the practical application of this interpretive position.

Disclosure Of Sales Loads Under SEC Rule 482

Members also are reminded that Securities and Exchange Commission (SEC) Rule 482 under the Securities Act of 1933 and SEC Rule 34b-1 under the Investment Company Act of 1940 require that sales material presenting data about the performance of an advertised mutual fund, also disclose the maximum amount of any sales load or other nonrecurring fee. In addition, SEC Rule 156 under the Securities Act of

1933, which provides guidance on when sales material may be misleading, indicates that statements about investment expenses may be relevant to whether an implicit representation about future performance has been made.

Use Of The Term “No-Load”

NASD Regulation does not currently interpret the SEC and NASD rules to require disclosure of total fund operating expenses or other applicable fees when sales material merely refers to the advertised mutual fund as “no-load” or part of a “no-load” family of funds. In addition, this type of disclosure is not currently required when, in discussing how to invest in the fund, the sales material states merely that the mutual fund imposes no sales charge.

Members are on notice, however, that NASD Regulation now takes the position that in all such cases, the sales material must disclose the fact that other fees and expenses do apply to a continued investment in the fund and are described in the fund's current prospectus. (This disclosure could accompany the disclosure telling investors to read the prospectus before investing.) Similar-

ly, sales material that discloses the load charged by a mutual fund also must disclose that other expenses apply to a continued investment in the fund and are described in the fund's current prospectus, to ensure that investors are not confused about whether the load represents the only fee or expense associated with the purchase or continued investment in the mutual fund.

Future Initiatives

NASD Regulation and its Investment Companies Committee (the Committee) recognize the importance of ensuring that presentations in member sales material concerning mutual fund fees and expenses are fair, balanced, and not misleading. Consequently, the Committee has recommended that the NASD Regulation staff comprehensively evaluate the standards applicable to the disclosure of fees and expenses in mutual fund sales material. The staff intends to consider, among other issues, whether:

- the existing NASD standards are adequate;
- certain types of sales material present specific concerns that should be

addressed through new NASD standards;

- NASD Regulation should impose specific requirements concerning the prominence of fee and expense disclosure in sales material; and
- other types of sales material should describe the fees and expenses that an investor could expect to incur when purchasing and holding an advertised mutual fund, including the fund's expense ratio, maximum sales charge, redemption fee, and maximum deferred sales load.

During its evaluation of these issues, NASD Regulation intends to seek the views of NASD members and the investing public.

Endnote

¹Rule 2210(d)(2)(E) specifically prohibits any statement that a service is furnished without any charge unless the service is furnished free without condition or obligation.

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Disciplinary Actions

Disciplinary Actions Reported For December

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, December 21, 1998. The information relating to matters contained in this *Notice* is current as of the end of November 23.

Firms Fined, Individuals Sanctioned

Hunter International Securities, Inc. (Ft. Lauderdale, Florida) and Louis Nick Nizza, Jr. (Registered Principal, Deerfield Beach, Florida). The firm was censured and fined \$40,000 and Nizza was censured, fined \$20,000, barred from acting in the capacity of financial and operations principal (FINOP), suspended from association with any NASD member in any capacity for 60 days, and required to requalify by exam before acting in any capacity requiring registration. The National Adjudicatory Council (NAC) imposed the sanctions after review of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Nizza, conducted a securities business while it maintained insufficient net capital and failed to maintain accurate books and records. In addition, the firm, acting through Nizza, filed materially inaccurate FOCUS Part I and IIA reports. Hunter International reported Nasdaq[®] transactions erroneously, failed to disclose its Market Maker status on confirmations, and failed to disclose the markup or markdown it charged on confirmations.

Premier Capital Management, Inc. (Dallas, Texas) and Bryan James O'Leary (Registered Principal, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. In addition, O'Leary was suspended as an introducing broker/dealer FINOP for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through O'Leary, failed to post accurately on its general ledger and trial balance liabilities incurred for advertising expense. The findings also stated that the firm, acting through O'Leary, effected securities transactions while failing to maintain required minimum net capital.

Firms And Individuals Fined

E-W Investments, Inc. (San Gabriel, California) and John Arthur Pong (Registered Principal, San Gabriel, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured, fined \$10,000, jointly and severally, and ordered to reimburse public customers the total amount of commissions in excess of five percent (\$2,411.78). In addition, the firm was ordered to hire a new FINOP, other than Pong, and retain the new principal for one year or until Pong successfully requalified as a FINOP should he elect to do so. Without admitting or denying the allegations, the respondents consented to the described sanctions, and to the entry of findings that the firm, acting under the direction and control of Pong, acted as an agent for public customers in securities transactions and charged the customers more than a fair commission, taking into consideration all relevant circumstances including market conditions with respect to such securities at the time of the transactions, the expense of executing the orders, and the value

of any services they may have rendered by reason of experience in and knowledge of such securities and the markets. The findings also stated that the firm, acting under the direction and control of Pong, failed to have and maintain sufficient net capital.

Securities & Investment Planning Company (Chatham, New Jersey) and Daryl Scott Hersch (Registered Principal, Chatham, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured, fined \$10,000, jointly and severally, and the firm was fined an additional \$17,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hersch, failed to file reports in a timely manner pursuant to the NASD reporting rule. The findings also stated that the firm, acting through Hersch, reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting and failed to develop written supervisory procedures to address the NASD reporting requirements and trade reporting/ACT submissions. The NASD also determined that the firm, acting through Hersch, failed to enforce the written procedures it had established to better ensure compliance with applicable rules and regulations.

Firms Fined

Bear, Stearns & Co., Inc. (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$15,000, and required to undertake additional corrective actions to prevent future violations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry

of findings that it was named as a respondent in certain arbitration proceedings filed with the NASD by various public customers who included demands for punitive damages, attorneys' fees, as well as other relief. According to the findings, each of the customers signed an agreement with the firm stating that the terms of the agreement would be governed by the laws of the state of New York. The NASD determined that in some of these proceedings, Bear Stearns asserted that New York law applied to the proceeding by virtue of the governing law clause in the customer agreement and therefore precluded an award of punitive damages or attorneys' fees, in violation of IM-3110(f)(4).

Biltmore Securities, Inc. (Fort Lauderdale, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$20,000, and required to undertake additional corrective actions to prevent future violations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it was named as a respondent in certain arbitration proceedings filed with the NASD by public customers who sought punitive damages or attorneys' fees. According to the findings, each of the customers signed an agreement with the firm stating that the proceeding would be governed by the laws of the state of New York. The NASD determined that in a number of these arbitration proceedings, Biltmore Securities asserted that New York law applied to the proceeding by virtue of the governing law clause in the customer agreement and therefore precluded an award of punitive damages or attorneys' fees, in violation of IM-3110(f)(4).

Equitrade Securities Corporation (Lake Forest, California) submitted a Letter of Acceptance, Waiver, and

Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to reflect accurately the time of execution on order tickets for transactions in OTC equity securities, in Nasdaq National Market[®] securities, and a transaction in a Nasdaq Small-CapSM Market security. In addition, the NASD determined that the firm failed to provide to a public customer the requisite written disclosures or confirmations concerning securities transactions variously executed in two brokerage accounts, and that the firm conducted a general securities business while failing to have and maintain sufficient net capital. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws pertaining to trade reporting.

Gaines, Berland Inc. (Bethpage, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$31,000, and required to pay \$9,617.62 in restitution and interest to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting, and failed to establish and maintain writ-

ten supervisory procedures reasonably designed to achieve compliance with ACT rules, the Securities and Exchange Commission (SEC) Order Execution Rules, the Small Order Execution SystemSM (SOESSM) rules, and the trade reporting rules.

H. J. Meyers & Co., Inc.

(Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to display immediately customer limit orders to ACT when orders were at a price that would have improved the firm's bid or offer in each security related to those orders, or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a *de minimis* charge in relation to the size associated with the firm's bid or offer in each security. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable rules regarding trade reporting, anti-competitive practices, and order handling.

Merrill Lynch, Pierce, Fenner & Smith Incorporated (New York, New York)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$25,000, and required to undertake additional corrective actions to prevent future violations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it was named as a respondent in certain arbitration proceedings filed with the NASD by various public customers who included demands for punitive damages and/or attorneys' fees in the proceed-

ings. According to the findings, each of the customers signed an agreement with the firm stating that the terms of the agreement would be governed by the laws of the state of New York. The NASD determined that in some of these proceedings, Merrill Lynch asserted that New York law applied to the proceeding by virtue of the governing law clause in the customer agreement and therefore precluded an award of punitive damages or attorneys' fees, in violation of IM-3110(f)(4).

Individuals Barred Or Suspended

Derick Raymond Adamson (Registered Representative, Glassboro, New Jersey)

submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to make restitution in the amount of \$14,576.46 to a public customer. Without admitting or denying the allegations, Adamson consented to the described sanctions and to the entry of findings that, without the prior knowledge, authorization, or consent of a public customer, he signed the customer's name on insurance application forms which permitted the issuance of \$93,451 in the name of the customer's son and electronic fund transfers from the customer's personal bank account. Adamson also caused the customer's address to be changed to his address. Moreover, the findings stated that Adamson signed the customer's signature on a Policy Record Audit Letter, without the customer's knowledge or consent, caused a \$1,600 loan to be taken against the policy and mailed to his home address, and converted the check to his personal use and benefit. In addition, Adamson caused another customer's address to be changed, wrote checks totaling \$25,700 against the customer's account and converted the checks to his own use by depositing the checks into his personal bank

account. Adamson also signed the customer's name to a Flexible Premium Annuity application without the customer's knowledge, authorization, or consent. Adamson also failed to respond to NASD requests for information.

Dale Richard Altman (Registered Representative, Pittsburgh, Pennsylvania)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Altman signed the name of a public customer to an Authorization to Liquidate, Exchange and/or Change Broker/Dealer Form, without her knowledge or consent, causing the transfer of her IRA account to his member firm.

Michael Edward Anniuk (Registered Representative, Racine, Wisconsin)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$335,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Anniuk consented to the described sanctions and to the entry of findings that he accepted personal checks for the purchase of annuity contracts from public customers that he deposited in his personal account and converted to his own use. Anniuk also failed to respond to NASD requests for information.

Percy Barr (Registered Representative, Greenwood, Mississippi)

submitted an Offer of Settlement pursuant to which he was censured, fined \$373,500, barred from association with any NASD member in any capacity, and required to pay \$49,700 in restitution to the appropriate parties. Without admitting or denying the allegations, Barr consented to the described sanctions and to the entry

of findings that he received payments totaling \$49,700 from public customers for the purchase of, and as payment on, annuities and mutual funds. The NASD found that Barr failed and neglected to submit these funds to his member firm on the customers' behalf, and instead converted the funds to his own use and benefit, without the customers' knowledge or consent. The findings also stated that Barr failed to timely respond to NASD requests for information.

Jere Mease Bender (Registered Representative, Elizabethtown, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bender consented to the described sanctions and to the entry of findings that he collected funds from a public customer to be remitted in the payment of premiums on the customer's life insurance policy, but failed to remit the full amount received from the customer. The findings also stated that Bender made material misstatements and omitted material facts concerning his dealings with the customer during an internal inquiry conducted by his member firms.

Alan Barrie Best (Registered Representative, Vancouver, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Best consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide written notification to his member firm describing in detail the proposed transactions, his proposed role therein, and stating whether he had received or might receive selling

compensation in connection with the transactions.

Jack Charles Biondolillo (Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$142,686,94, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Biondolillo consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 and 63 exams on his behalf.

Charles Douglas Brown (Registered Representative, Apache Junction, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for 90 days, and required to pay \$50,000 in restitution to public customers. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in outside business activities and private securities transactions, without giving prior written notice to his member firms.

William George Brunner (Registered Representative, Huntington, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for 30 days, required to requalify as a general securities representative, and ordered to demonstrate that restitution in the amount of \$24,781.25 has been made to a public customer or that he has paid the customer such amount as has been determined by an arbitration or other proceeding or settlement to be owed to the customer by Brunner. The fine of \$20,000 shall be reduced, dollar for dollar, by the amount of any restitution

payments made to the customer. However, the fine shall not be reduced less than \$10,000. Without admitting or denying the allegations, Brunner consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his recommendations of securities to public customers. The findings also stated that Brunner made fraudulent price predictions in connection with his recommendation of securities and failed to execute the sell order of a public customer.

Robert Francis Carlton (Registered Representative, Aberdeen, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$39,575, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carlton consented to the described sanctions and to the entry of findings that he converted dividend withdrawal and refund checks totaling \$7,915 received from insurance customers for his own use by endorsing checks given to him for reinvestment or by forging customers' signatures on checks never delivered to the customers and depositing them into his personal bank account.

James Maurice Cassidy (Registered Representative, East Hampton, New York) was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cassidy failed to respond to NASD requests for information.

Jerry Enrique Chaverri (Registered Principal, DeSoto, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$2,500, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam in

all capacities. Without admitting or denying the allegations, Chaverri consented to the described sanctions and to the entry of findings that he made improper use of customer funds by taking possession of a customer's check in the amount of \$900, depositing the funds into his personal bank account, and failing to forward the customer's funds to his member firm until a later date.

John Michael Columbia (Registered Principal, Staten Island, New York) was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam in any capacity in which he seeks to participate in the securities industry. The NAC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Columbia executed an unauthorized transaction in the account of a public customer.

John Corona (Registered Representative, Howard Beach, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to disgorge all monies earned by him while associated or otherwise employed in the securities industry after March 3, 1995, in the amount of at least \$5,000. Without admitting or denying the allegations, Corona consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 and 63 exams on his behalf. Corona also failed to respond to NASD requests for information and to appear for an on-the-record interview.

Denis C. J. Dancoes (Registered Principal, South Portland, Maine) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association

with any NASD member in any capacity. Without admitting or denying the allegations, Dancoes consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents.

Michael Walesby Davis (Registered Principal, Plano, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$125,000, barred from association with any NASD member in any capacity, and required to pay restitution in the amount of \$1,049,792. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm, and participated in the operation of an unregistered broker/dealer. The findings also stated that Davis received funds from investors when no disclosure had been made to the investors that their funds would be used to pay broker/dealer expenses including payments to Davis.

Richard Kentner DeFreez (Registered Representative, Anchorage, Alaska) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,000, suspended from association with any NASD member in any capacity for seven business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, DeFreez consented to the described sanctions and to the entry of findings that he recommended purchases and sales of securities to public customers without having reasonable grounds for believing such transactions were suitable for them in view of the nature, size, and concentration of the recommended transactions and upon the basis of the facts disclosed by the customers as to their

other securities holdings and as to their financial situation, objectives, and needs.

Christopher B. Dolan (Registered Representative, Palm Beach Gardens, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 90 days. The \$10,000 fine and the 90-day suspension shall be deemed paid and served by virtue of the \$10,000 fine and 90-day suspension imposed against Dolan by his member firm. Without admitting or denying the allegations, Dolan consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the account of public customers.

Dolan's suspension began October 23, 1997, and concluded January 21, 1998.

Barry Alan Druschel (Registered Representative, Ellicott City, Maryland) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as an investment company and variable contracts products representative. Without admitting or denying the allegations, Druschel consented to the described sanctions and to the entry of findings that he sold an annuity issued by his member firm to insurance customers which was to replace and be funded with the proceeds from two annuities the customers owned that were issued by another company. The NASD found that thereafter, acting under a mistaken belief of implied authority, but without express authorization from the customers and without their knowledge, Druschel signed their names to a document and submitted it to the other insurance com-

pany, directing it to transfer the funds from the existing annuities to his member firm.

Paul Alderic Dufresne (Registered Representative, West Buxton, Maine) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dufresne consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and information.

Robert Eric Dunlap (Registered Representative, Columbus, Indiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$1,000,000, barred from association with any NASD member in any capacity, and required to provide proof of restitution to customers with any future application for association with a member firm. Without admitting or denying the allegations, Dunlap consented to the described sanctions and to the entry of findings that he received funds totaling \$79,788.93 from insurance customers with instructions to use the funds as payment on an insurance policy or to purchase insurance policies or certificates of deposit. The findings stated that Dunlap failed to follow the customers' instructions, used only \$400 to pay a customer's insurance policy, and used the remainder of the funds for some purpose other than the benefit of the customers. Dunlap also obtained a total of \$354,000 in loans or withdrawals from insurance policies of a public customer, without the approval of the customer, and used the funds for some purpose other than the benefit of the customer. In addition, Dunlap participated in private securities transactions and failed and neglected to give written notice of his intention to engage in such activities to his member firms and to receive

their written approval. Dunlap also failed to respond to NASD requests for information.

Mark Thomas Ennis (Registered Representative, Littleton, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ennis consented to the described sanctions and to the entry of findings that he signed a public customer's name to a Request for Partial Withdrawal of \$16,000 from the customer's fixed annuity contract, arranged for the negotiation of the withdrawal check, and converted the proceeds to his own use and benefit, without the knowledge or consent of the customer.

John Roger Faherty (Registered Principal, Spring Lake, New Jersey) was censured, fined \$150,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Faherty aided and abetted his member firm's manipulation of securities.

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

Gary Michael Ferone (Registered Representative, Tuckahoe, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$250,000, barred from association with any NASD member in any capacity, ordered to disgorge \$14,070 in commissions, and make restitution in the amount of \$469,000. Without admitting or denying the allegations, Ferone consented to the described sanctions and to the entry of findings that he engaged in private

securities transactions and failed to give prior notice to and receive consent from his member firm to engage in such activities. The findings also stated that Ferone engaged in the sale of unregistered securities. Furthermore, the NASD determined that Ferone recommended the purchase of securities to public customers without having reasonable grounds for believing that such recommendations were suitable for the customers based upon the customers' financial situations, needs, and stated investment objectives, and induced public customers to purchase securities by means of misrepresentations and omissions of material facts. Also, the NASD found that Ferone failed to register as a broker or dealer with the SEC and functioned in the capacity of a general securities representative without the benefit of proper registration with the NASD.

John Loras Finn (Registered Principal, Dubuque, Iowa) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Finn consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Steven Ladd Fritz (Registered Principal, Tulsa, Oklahoma) submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that he effected unauthorized withdrawals and/or transfers involving an estimated \$1,785,749 from the accounts of public customers. The NASD determined that Fritz converted approximately \$598,428 of these funds to his own use and benefit, without the customers' knowledge or consent, by

forging customers' signatures to Letters of Authorization, preparing and sending false account statements to the customers, and making false and misleading statements in an effort to conceal these activities. The findings also stated that Fritz failed to respond to NASD requests for information.

Daniel James Gallagher (Registered Representative, Roslyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by Series 7 exam prior to acting in that capacity. Without admitting or denying the allegations, Gallagher consented to the described sanctions and to the entry of findings that he made baseless and improper price predictions as to a speculative security to a public customer and made unauthorized trades in the accounts of public customers. The findings also stated that Gallagher made a false statement to a customer about an issuer's securities and improperly discouraged or failed to execute sell orders.

Ashton Noshir Gowadia (Registered Representative, Newport Beach, California) was fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify as a general securities representative. The SEC affirmed the sanctions following appeal of a November 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Gowadia failed to respond to NASD requests for information.

Stuart S. Greenberg (Registered Principal, Agoura Hills, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association as a general securities principal

for 10 business days. Without admitting or denying the allegations, Greenberg consented to the described sanctions and to the entry of findings that he permitted an individual subject to a statutory disqualification to function as an associated person of a member firm without having sought and obtained approval for such association from the NASD through its eligibility proceedings. The findings also stated that a member firm, acting under the direction and control of Greenberg, failed to have and maintain sufficient net capital as a result of Greenberg knowingly writing a bad check in the amount of \$100,000.

Debra Lynn Hart (Registered Representative, Tallahassee, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$117,070, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hart consented to the described sanctions and to the entry of findings that she received funds totaling \$23,414 from public customers for investment purposes and converted the funds to her own use and benefit.

Bryan Jay Herman (Registered Principal, Kings Point, New York) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Herman failed to respond to NASD requests for information and to appear for an on-the-record interview.

Ronald Lee Holifield (Registered Representative, Laurel, Mississippi) and **Reginald Glen Holifield (Registered Representative, Laurel, Mississippi)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which Ronald Holifield was censured, fined \$50,000, and barred from association with any NASD member in any capacity, and

Reginald Holifield was censured, fined \$10,000, suspended from association with any NASD member in any capacity for two years, and barred from association with any NASD member in any principal capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ronald Holifield engaged in private securities transactions without prior written notice to and approval from his member firm. The findings also stated that Reginald Holifield failed and neglected to exercise reasonable and proper supervision over Ronald Holifield in that he failed to monitor or report on private securities transactions being conducted by Ronald Holifield.

Michael Hyat (Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$24,308.58, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Hyat consented to the described sanctions and to the entry of findings that he entered into an arrangement with a registered individual employed at another broker/dealer to participate in private securities transactions and to execute orders away from the outside sales representative's firm, without notifying his member firm, either orally or in writing of this arrangement.

Morton Kirschenbaum (Registered Principal, San Mateo, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Kirschenbaum consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce a system to supervise the activities of his member

firm's Office of Supervisory Jurisdiction that was reasonably designed to achieve compliance with applicable securities laws and regulations and with the rules of the NASD.

Lori Sue Koppel-Heath (Registered Principal, Trabuco Canyon, California) was censured, fined \$59,021.31, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a general securities representative before again acting in that capacity. The NAC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Koppel-Heath recommended purchases, sales, and redemptions of mutual funds, unit investment trust shares, and other investments in public customer accounts without having reasonable grounds for believing that they were suitable for the customers in view of the size, frequency, and nature of the recommended transactions, and the facts disclosed by the customers as to their other securities holdings, financial situation, circumstances, and needs.

Richard Raymond Langevin (Registered Principal, Worcester, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Langevin consented to the described sanctions and to the entry of findings that he signed a public customer's name to an insurance policy rider without the knowledge or consent of the customer.

Jaime Enrique Lemus (Registered Representative, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying

the allegations, Lemus consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on documents to facilitate the liquidation of a fixed annuity owned by the customer. The findings also stated that Lemus forged the customer's signature on the \$24,462 annuity liquidation check and converted the proceeds by depositing the check into his personal business account. Lemus also failed to respond to an NASD request for information.

Gregg Robert Leslie (Registered Representative, La Costa, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$45,241.42, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Leslie consented to the described sanctions and to the entry of findings that he entered into an arrangement with a registered individual at another broker/dealer to execute orders away from Leslie's member firm and participated in private securities transactions through the other broker/dealer, without notifying his member firm, either orally or in writing, of this arrangement.

Alan Scott Lipsky (Registered Principal, Kings Point, New York) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lipsky failed to respond to NASD requests for information and to appear for an on-the-record interview.

Dean Joseph LoBrutto (Registered Representative, East Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the alle-

gations, LoBrutto consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm describing the transactions and his role therein.

Steven Terrell Mayes (Registered Representative, Oak Ridge, Tennessee) was censured, fined \$53,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mayes converted \$1,700 in customer funds, intended for the purchase of shares in a mutual fund. Mayes also failed to respond to NASD requests for information and documents.

Robert Gerard McAllister (Registered Principal, Sea Girt, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, McAllister consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Timothy Eric McKeon (Registered Principal, Holbrook, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$86,312, barred from association with any NASD member in any capacity, and ordered to pay restitution to customers in the amount of \$35,447. Without admitting or denying the allegations, McKeon consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted material information, and made fraudulent price predictions in the offer and sale of securities. The findings also stated that McKeon executed unauthorized transactions and failed to follow customer instructions.

Russell Wayne Millard (Registered Representative, Hemet, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, and ordered to offer rescission to investors, and to the extent the offer of rescission was accepted by any investors, Millard was ordered to exchange such investor's interests in the investment for full and complete restitution. Without admitting or denying the allegations, Millard consented to the described sanctions and to the entry of findings that he participated in contingent offerings and failed to deposit and retain customer funds in separate escrow accounts until the minimum number of units had been sold. Instead the funds were intentionally commingled with funds from other sources and used to cover, among other things, operating costs of affiliates and interest payments to investors of other private placements.

Joseph J. Miniaci (Registered Representative, Brooklyn, New York) was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Miniaci failed to respond to NASD requests for information.

Richard Gabriel Murphy (Registered Representative, Indianapolis, Indiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$18,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he obtained a total of \$1,500 in cash withdrawn from the bank account of a public customer without the knowledge or consent of the customer and used the funds for some purpose other than for the benefit of the customer.

Randy Harris Narod (Registered Representative, Oceanside, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to disgorge all monies earned by him while associated or otherwise employed in the securities industry after September 11, 1995, in the amount of at least \$1,000. Without admitting or denying the allegations, Narod consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 and 63 exams on his behalf. Narod also failed to respond to NASD requests to appear for an on-the-record interview.

Robert Edward Nicolosi (Registered Representative, Baldwin, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$70,000, barred from association with any NASD member in any capacity, and required to pay \$41,970 in restitution to a public customer. Without admitting or denying the allegations, Nicolosi consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his recommendations of securities to public customers. The findings also stated that Nicolosi made fraudulent price predictions in connection with his recommendations of securities to public customers, entered orders to purchase securities in the accounts of a public customer without first obtaining the authorization of the customer, and failed to testify truthfully at an NASD on-the-record interview.

David William Noble (Registered Principal, Flemington, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from associ-

ation with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Noble consented to the described sanctions and to the entry of findings that he aided and abetted his member firm and its president in an unlawful, unregistered distribution of common stock by executing "wash" and "matched" trades with two other broker/dealers. These transactions artificially inflated the reported trading volume in the stock and aided and abetted his member firm and its president in violating a provision in the firm's restriction agreement that prohibited principal retail trading. The NASD also found that Noble failed to reflect the circular nature of the trades in his firm's books and records, thereby causing them to be inaccurate and incomplete.

Peter David Ottaviano (Registered Representative, Colchester, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$402,000, barred from association with any NASD member in any capacity, and required to make restitution in the amount of \$46,355 to his member firm. Without admitting or denying the allegations, Ottaviano consented to the described sanctions and to the entry of findings that he received funds totaling \$78,355 from public customers intended for the purchase of non-securities products. The NASD found that Ottaviano failed to use the funds as intended or in any other manner for the benefit of the customers, and instead used them for his own benefit.

Michael Anthony Pellegrino (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to disgorge all monies earned by him while associated or otherwise employed in

the securities industry after October 26, 1995. Without admitting or denying the allegations, Pellegrino consented to the described sanctions and to the entry of findings that he had an impostor take the Series 7 exam on his behalf. Pellegrino also failed to respond to NASD requests to appear for an on-the-record interview.

George Perez, Jr. (Associated Person, Bronx, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Perez consented to the described sanctions and to the entry of findings that he submitted a Form U-4 that failed to disclose a felony conviction.

Jon David Raymond (Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$67,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Raymond consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of a public customer without obtaining prior written authorization from the customer and written acceptance by his member firm of the account as discretionary. The findings also stated that Raymond recommended, and executed, transactions on margin in the customer's securities accounts, without having reasonable grounds for believing that such recommendations were suitable for the customer.

George Alfred Rendon (Registered Principal, Laguna Niguel, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from associ-

ation with any NASD member in any capacity for one year. Without admitting or denying the allegations, Rendon consented to the described sanctions and to the entry of findings that he participated in private securities transactions but failed to provide prior written notification to his member firm.

Jean Richard (Registered Representative, Lake Worth, Florida) submitted an Offer of Settlement pursuant to which she was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Richard consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information.

Roderick James Rieman (Registered Representative, Naperville, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$8,900, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Rieman consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice of his intention to engage in such activities to his member firm, and to receive written approval from the firm prior to engaging in such activities.

Vincent Natale Scalese (Registered Representative, Groton, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$360,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Scalese consented to the described sanctions and to the entry of findings that, without the knowledge or consent of the ben-

eficiaries of the estate of a public customer, he misused funds totaling \$69,404.25 by signing the decedent's name to a check, removing cash from the decedent's safe deposit box, and changing the address of record for the estate of the decedent's trust fund to an address under his control.

Marc Walter Schulz (Registered Principal, Rockford, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Schulz consented to the described sanctions and to the entry of findings that he engaged in the purchases and sales of securities for the account of a public customer without having a reasonable basis for believing that the recommendations and resultant transactions were suitable for the customer based upon the facts known to him concerning the nature of the securities, the concentration of similar securities purchased by the customer, the customer's age, investment history, education, need for liquidity, investment objectives, and financial situation and needs.

Russell Thomas Tansey (Registered Representative, Amherst, Ohio) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegation, Tansey consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Waldith George Thompson (Registered Representative, Coral Springs, Florida) was censured, fined \$85,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Thompson received

funds totaling \$10,285 from an insurance customer intended for investment in an insurance plan. Contrary to the misrepresentations Thompson made to the customer, he never invested any of the customer's funds in the plan or any other investment or products offered by his member firm, used the customer's funds for another purpose, and failed to reimburse the customer. Thompson failed to respond to NASD requests for information.

Peter Robert Trapani (Registered Representative, Oakbrook Terrace, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, suspended from association with any NASD member in any capacity for five business days, and required to take and pass all examinations for the capacities in which he wishes to function with an NASD member. Without admitting or denying the allegations, Trapani consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice of his intention to engage in such activities to his member firm and receive written acknowledgment or approval from his firm prior to engaging in such activities. The findings also stated that Trapani opened several brokerage accounts in which he had a financial interest and/or discretionary trading authority at other firms, and failed to give written notice to his member firm of the accounts, and failed to give written notice to the other member firms of his association with a member firm. Furthermore, the NASD determined that Trapani purchased shares of common stock the first day of trading in the secondary market that traded at a premium in the immediate aftermarket in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation.

Horacio Garcia Valle (Registered Representative, Dallas, Texas) sub-

mitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for five business days, and required to honor an arbitration award by paying his member firm \$15,000 and \$3,000 each month thereafter until the award is satisfied. Without admitting or denying the allegations, Valle consented to the described sanctions and to the entry of findings that he failed to honor a New York Stock Exchange arbitration award in the amount of \$53,252.21.

Richard Herbert Walls (Registered Representative, Lubbock, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Walls consented to the described sanctions and to the entry of findings that he recommended to and effected the purchase of securities for public customers outside of the regular course or scope of his association with his member firm and failed to provide the firm with written notice detailing the transactions, his proposed role therein and whether he had or would receive selling compensation in connection with these securities transactions.

Leo Douglas Walter (Registered Representative, Clearwater, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Walter consented to the described sanctions and to the entry of findings that he misappropriated at least \$14,431.29 in premium payments made by customers for insurance policies.

Charles Edward Waterfall (Registered Principal, Royal Oak, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 40 business days (28 business days of which shall be deemed served by virtue of the 28-business day suspension imposed against him by his member firm). Without admitting or denying the allegations, Waterfall consented to the described sanctions and to the entry of findings that he entered into a settlement agreement with a public customer without informing his member firms of his actions or the customer's complaint and its resolution. The findings also stated that Waterfall failed to amend his Form U-4 to disclose the settlement agreement.

Waterfall's suspension began January 31, 1997 and concluded March 12, 1997.

Larry Anthony White (Registered Representative, Sarasota, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he signed the names of public customers on new account applications and mutual fund disclosure forms without their prior knowledge or authorization.

Thomas Charles Winn (Registered Principal, Haverstraw, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Winn consented to the described sanctions and to the entry

of findings that he participated in private securities transactions and failed to provide written notice to his member firm describing the proposed transactions. The findings also stated that Winn failed to respond to NASD requests for an on-the-record interview.

John Nicholas Withum (Registered Representative, Milltown, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Withum consented to the described sanctions and to the entry of findings that, without the customer's knowledge or authorization, he forged a public customer's signature on Disbursement Request forms pursuant to which money was borrowed from one of the customer's insurance policy to pay premiums on a subsequent insurance policy.

Todd Alan Zonca (Registered Principal, Howell, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$66,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zonca consented to the described sanctions and to the entry of findings that he withdrew a total of \$11,200 from the money market mutual fund of a public customer and used the funds for some purpose other than the benefit of the customer, without the knowledge or consent of the customer.

Vladislav Steven Zubkis (Registered Representative, Bonita, California) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of an August 1997 NBCC decision. The sanctions were based on findings that Zubkis failed to

respond to NASD requests for information and to provide testimony.

Individuals Fined

Michael William Adams (Registered Representative, Rowland Heights, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Adams consented to the described sanctions and to the entry of findings that he recommended numerous purchase and sale transactions in various securities accounts of public customers without having reasonable grounds for believing that they were suitable for the customers and accounts in view of the size, frequency, and nature of the recommended transactions and the facts disclosed by the customers as to their financial situation, objectives, circumstances, and needs. The findings also stated that Adams induced these purchase and sale transactions by means of manipulative, deceptive, or other fraudulent devices or contrivances.

Kenneth Eugene Banwart, Sr. (Registered Principal, Newport, Kentucky) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$14,639. Without admitting or denying the allegations, Banwart consented to the described sanctions and to the entry of findings that he failed to provide written notice to his member firms that he had opened a securities account with another firm and failed to provide written notice to the executing firm, that he was registered with other member firms. The findings also stated that Banwart purchased shares of units of public offerings that traded at a premium when the secondary market commenced for each security.

Christopher John Benz (Registered Principal, Santa Monica, California) was censured, fined \$7,500, and required to requalify by exam as a general securities principal before acting in a principal capacity. The U.S. Court of Appeals affirmed the sanctions following appeal of a March 1997 SEC decision. The sanctions were based on findings that Benz failed to supervise a registered representative adequately and failed to enforce his member firm's supervisory procedures.

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of November 23, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Robert Fitzpatrick (Registered Principal, Clifton Park, New York) was fined \$2,500, and suspended from association with any NASD member in any capacity for 15 business days. The sanctions were based on findings that Fitzpatrick failed to respond to NASD requests for information in a timely manner.

Fitzpatrick has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Hattier, Sanford & Reynoir, L.L.P (New Orleans, Louisiana) and **Gus A. Reynoir (Registered Principal, New Orleans, Louisiana)**. The firm and Reynoir withdrew their appeal and the NAC subsequently called the case for review. The sanctions are not in effect pending consideration of the review.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Paul Michael Acosta (Registered Representative, Naples, Florida)

was named as a respondent in an NASD complaint alleging that he received over \$1,054,000 from public customers for investment purposes, actually invested only \$150,000 of the total funds, and converted the remaining funds for his own use and benefit and the benefit of a business with which he was associated. The complaint also alleges that Acosta knowingly prepared and provided a public customer with account statements which misrepresented that the customer held investments which did not exist, and failed to disclose that a portion of the customer's funds had been converted and misappropriated. The complaint alleges that Acosta failed to provide prompt written notification of his employment with an outside corporation to either of his member firms. The complaint also alleges that Acosta failed to respond to NASD requests for information.

Thomas Owen Combs (Registered Representative, Memphis, Tennessee)

was named as a respondent in an NASD complaint alleging that he received \$4,000 in the form of checks from a public customer for the purpose of investing in variable annuities for her children, failed and neglected to establish the variable annuity accounts on the children's behalf, and instead converted the

\$4,000 to his own use and benefit without the customer's knowledge or consent. The complaint also alleges that Combs effected an unauthorized loan transaction in the amount of \$3,089 against the whole life insurance policy account of another public customer, then used these funds to establish a new variable life insurance policy on behalf of the customer, without the customer's knowledge or consent. The complaint also alleges that Combs failed to respond to NASD requests for information.

Wayne Adam Garfinkel (Registered Representative, Boca Raton, Florida)

was named as a respondent in an NASD complaint alleging that he recommended and implemented a course of unsuitable and excessive trading in the account of a public customer.

George W. Guttman (Registered Principal, Brooklyn, New York)

was named as a respondent in an NASD complaint alleging that he exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by Guttman's member firm. The complaint alleges that Guttman settled a public customer complaint without the prior knowledge or consent of his member firm. The complaint also alleges that Guttman falsely represented to the customer that his firm had agreed to reimburse the customer for the unauthorized trade, without the prior knowledge and consent of the member firm. The complaint also alleges that Guttman effected unauthorized transactions in the accounts of public customers without the customers' knowledge or consent. The complaint also alleges that Guttman guaranteed a public customer against loss by promising he would reimburse the customer for any loss.

Lawrence Ralph Kassl (Registered Representative, Danville, Illinois)

was named as a respondent in an NASD complaint alleging that he received checks in the amount of \$10,500 from a public customer with instructions to deposit the funds in an existing variable annuity. The complaint alleges that, contrary to the customer's instructions and without her knowledge or consent, Kassl deposited the checks in a bank account in which he had an interest or controlled, and used the customer's funds for some purpose other than the benefit of the customer.

Pier Luccarelli (Registered Principal, Fairfax, Virginia)

was named as a respondent in an NASD complaint alleging that he falsely told a public customer that the value of securities accounts as set forth on the customer's monthly account statements was incorrect, and misled the customer as to the true current value of the accounts.

Michael Andrew Maher (Registered Representative, Portland, Oregon)

was named as a respondent in an NASD complaint alleging that he withdrew at least \$12,097.97 from a scholarship fund operated by employees of his member firm, without the knowledge or approval of the scholarship fund's Board of Directors, and used the funds for his own personal use and benefit.

Roy Wayne Matheny (Registered Representative, Calhoun, Louisiana)

was named as a respondent in an NASD complaint alleging that he effected check withdrawals totaling approximately \$143,435 from the account of a public customer and converted these funds to his own use and benefit by forging the customer's endorsement on the checks and depositing them into an account without the customer's knowledge or consent. The complaint also alleges

that Matheny received a check in the amount of \$50,000 from the public customer for the purpose of investing in a mutual fund, failed and neglected to purchase shares in the mutual fund, and instead converted the funds to his own use and benefit by affixing a firm stamp on the check and depositing it into an account without the customer's knowledge or consent. The complaint also alleges that Matheny failed to respond to NASD requests for information.

Joseph Edward Mattera (Registered Representative, Medford, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted to disclose material facts in connection with his solicitations to induce public customers to purchase securities. The complaint also alleges that Mattera predicted the future prices of securities to public customers when he knew that he did not have a reasonable basis for his predictions, and that his predictions were materially misleading to the persons he was soliciting. The complaint also alleges that Mattera effected the purchase of securities in the accounts of customers without having obtained the prior authorization of the customers, then attempted to collect payment for one of the unauthorized transactions by stating or implying that the customer's credit rating would be damaged if payment was not made.

McLaughlin, Piven, Vogel Securities, Inc. (New York, New York) and **James Cecil McLaughlin (Registered Principal, New York, New York)** were named as respondents in an NASD complaint alleging that the firm, acting through McLaughlin, effected principal sales and purchases in municipal bonds for public customers at prices which were not fair, taking into consideration all relevant factors including, but not limited to, the expense or risk incurred on the

transactions, availability of the securities, the value of any services provided by the firm, and the total size of the transactions.

Bruce Dean Moutaw, Jr. (Registered Representative, San Diego, California) was named as a respondent in an NASD complaint alleging that he executed an unauthorized transaction in the account of a public customer by means of manipulative, deceptive, or other fraudulent devices or contrivances, without oral or discretionary authority from the customer.

Jeremy Lee Slovik (Registered Representative, Bayshore, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations, failed to disclose material facts, and made fraudulent price predictions in connection with his recommendations to public customers to purchase securities. The complaint also alleges that Slovik effected a transaction in the account of a public customer without the prior authorization of the customer.

Frederick Douglass Smith (Registered Representative, Los Angeles, California) was named as a respondent in an NASD complaint alleging that he received \$14,286.27 from public customers for the purpose of investing in securities, failed to invest these funds or otherwise use them for any legitimate investment purpose, and instead, converted the funds to his personal use and benefit by depositing them into his firm's account, caused checks to be issued from the account payable to himself, and endorsed and cashed the checks. The complaint also alleges that Smith signed and submitted to his member firm a Form U-4 that contained a false and misleading statement.

Firms Suspended/Canceled

The following firms were suspended/canceled from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions/cancellations commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Advanta OTC Securities, Philadelphia, Pennsylvania (November 3, 1998)

Ash Financial Corporation, Great Neck, New York (October 26, 1998)

Great American Financial Network, Inc., Norcross, Georgia (November 23, 1998)

Hampton Securities, Inc., Los Angeles, California (October 20, 1998)

Suspensions Lifted

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

Alexander Kale Securities, Inc. (f/k/a Hemisphere Capital Corp.), New York, New York (October 29, 1998)

Block Trading, Inc., Houston, Texas (October 29, 1998)

Firms Suspended Pursuant to NASD Rule Series 9510 For Failure To Pay Arbitration Award

Del Mar Financial Services, Inc., Del Mar, California (October 26, 1998)

Investors Associates, Inc., Hackensack, New Jersey (November 16, 1998)

Jaron Equities Corp., Hicksville, New York (November 16, 1998)

Smith, Benton & Hughes, Inc., Los Angeles, California (October 22, 1998)

Toluca Pacific Securities Corp., Burbank, California (November 4, 1998)

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

Christ, Michael H., Lynbrook, New York (October 27, 1998)

DeLong, Jr., Jack E., Dunwoody, Georgia (October 22, 1998)

Duran, Lee Thomas, Fort Lauderdale, Florida (October 22, 1998)

Gelfand, Howard S., New York, New York (October 27, 1998)

Goldberg, Cindy M., Denver, Colorado (October 22, 1998)

Mader, Joseph O., Lewiston, Idaho (October 22, 1998)

Oliver, James G., Grapeville, Texas (October 27, 1998)

Shackleton, Susan A., Woodland Hills, California (October 22, 1998)

Yancey, Michael L., Lake Park, Georgia (October 22, 1998)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Awards

Buxton, Stephen Glenn, Fort Lee, New Jersey (November 5, 1998)

Dills, Kevin C., Rancho Santa Fe, California (October 26, 1998)

Fiorini, Paul Thomas, Los Angeles, California (November 4, 1998)

Garofalo, Jr., James William, Bay-side, New York (November 6, 1998)

Hession, Steven H., Holbrook, New York (October 22, 1998)

Lawrence, Jr., Edwin Leslie, Dix Hills, New York (October 29, 1998)

Mancusi, Michael Thomas, Brooklyn, New York (November 4, 1998)

Nunziato, William, Whitestone, New York (November 16, 1998)

Reynoso, David (a/k/a Reynolds, David), Westbury, New York (November 16, 1998)

Rosen, Lee S., Boca Raton, Florida (October 27, 1998)

Vitagliano, Richard T., Levittown, New York (October 22, 1998)

NASD Regulation Fines Lexington Capital, President For Securities Violations; Both Ordered To Pay Restitution To Investors

NASD Regulation announced that it has censured and fined Lexington Capital Corporation, New York, NY, \$100,000 and its CEO and President, Alan Michael Berkun, \$150,000. The firm and Berkun were also ordered to pay more than \$200,000 in restitution and interest to nearly 200 investors.

Berkun was also censured and barred as a general securities principal. Another former employee and broker, Joseph Marc Blumenthal, was censured, barred, and fined \$100,000.

Lexington (formerly known as Marlowe & Company, and now known as

Preston Langley Asset Management) and Berkun, both neither admitting nor denying NASD Regulation's findings, were sanctioned for collaborating to defraud investors and impeding regulatory scrutiny. Specifically, Lexington and Berkun were charged with violating the federal securities laws by, among other things, selling thousands of shares of a penny stock, U.S. Bridge Corp., to nearly 200 investors without making the required disclosures and determining if the investors were suitable to purchase these securities. The complaint, filed by the NASD Regulation's New York District office, also alleged that Lexington and Berkun also charged investors more than \$100,000 in fraudulently excessive markups in connection with an unregistered public distribution of 100,000 shares of Crown Laboratories, Inc. common stock. The excessive markups ranged from 47 percent to over 70 percent.

In addition, NASD Regulation found that the firm and Berkun, allowed an individual, who had been barred by NASD Regulation in 1992, to be associated with Lexington, without receiving proper regulatory approvals. Individuals who have been barred and want to re-enter the securities industry are required to obtain approval from NASD Regulation and the SEC.

NASD Regulation also charged that Lexington, acting through Berkun and others, falsified the firm's books and records to conceal the fact that Blumenthal solicited and effected over 300 transactions with investors while not properly registered with NASD Regulation and several states.

NASD Regulation Sanctions Olde Trader For Anti-Competitive Harassment Of A Nasdaq Market Maker; Firm Also Fined

NASD Regulation announced that Todd Wodek, a trader with Olde Discount Corporation, has been fined

\$15,000 and censured for anti-competitive harassment of a competing Market Maker who had narrowed the spread in a security traded on The Nasdaq Stock Market®. Wodek must also take and pass the NASD Equity Trader (Series 55) examination by December 9.

NASD Regulation also fined Olde Discount \$20,000 and censured the firm for failing to establish, maintain, and enforce adequate written supervisory procedures to prevent anti-competitive activities.

The decision by an NASD Regulation hearing panel found that Wodek retaliated against another Market Maker because that firm narrowed the spread (the difference between a stock's buy and sell price) in Oak Technology, Inc. by quoting the stock in a finer increment than was being quoted by Olde and other Market Makers in the stock. Generally, the narrower the spread, the less profits can be made by Market Makers on the purchases and sales of an individual security.

The hearing panel found that Wodek harassed the other Market Maker by calling him 20 times between 2:25 p.m. and 3:58 p.m. on October 7, 1996, and selling only 100 shares of Oak Technology each time – even though that Market Maker was displaying (on the Nasdaq market) that it would buy at least 1,000 shares in a single trade. The Market Maker executed each of Wodek's 20 orders for 100 shares. Normally, a firm selling 2,000 shares would offer to complete the trade in a single transaction to save time, reduce transaction costs, and minimize recordkeeping. By calling the Market Maker 20 times

to execute a 2,000 share order in 100-share increments, Wodek forced the Market Maker to spend significantly more time executing, reporting, and confirming the trades than would have been the case if Wodek had traded with the Market Maker at its 1,000-share displayed offering.

As a result, the Market Maker was forced to divert its attention away from other trading opportunities and responsibilities. The hearing panel concluded that Wodek called the Market Maker 20 times in order "to harass [the Market Maker] for narrowing the spread in Oak Technology." NASD rules specifically prohibit a Market Maker from retaliating against or harassing another Market Maker for engaging in legitimate competitive activity.

The decision also noted that it was "particularly disturbing" that Olde had failed to instruct its trading supervisor as to his responsibilities for deterring and detecting anti-competitive behavior.

Initial actions, such as this, by NASD Regulation disciplinary committees are final after 45 days, unless they are appealed to NASD Regulation's NAC, or called for review by the NAC. The sanctions are not effective during this period. If the decision in this case is appealed or called for review, the findings may be increased, decreased, modified, or reversed.

NASD Regulation Fines And Sanctions Paragon Capital And President \$135,000

NASD Regulation announced that it has censured and fined Paragon Capital Corporation of New York,

NY, \$95,000. Additionally, Paragon Capital and its President, Danny Jay Levine, were censured and fined \$40,000.

Paragon Capital, while neither admitting nor denying NASD Regulation's findings, was sanctioned for violating NASD and SEC rules concerning trade reporting, ACT, recordkeeping, registration of associated persons, and supervision.

Both Paragon Capital and Levine were fined, jointly and severally, for failing to establish, maintain, and enforce written supervisory procedures designed to comply with NASD and SEC rules regarding trade reporting, customer limit orders, SOES, best execution, registration of persons, and recordkeeping.

The violations were discovered by NASD Regulation's Market Regulation Department during a Trading and Market Making Examination of Paragon Capital in February 1996. The Trading and Market Making Examination Program started in 1996 and is designed to ensure that NASD members understand and comply with NASD and SEC rules governing trading and market making functions. In these examinations, Market Regulation staff conducts reviews for compliance with a number of rules including trade reporting, recordkeeping, best execution, the display and protection of customer limit orders, the use of electronic communications networks, customer confirmation disclosures, and supervision.

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For Your Information

Treasury Makes New Mailing Lists Available Via The Internet

Recently, the U.S. Department of Treasury (Treasury) allowed interested parties to sign up for the following two new mailing list notification pages via the Bureau of the Public Debt's Web site:

- One page contains three mailing lists related to government securities market regulation and allows individuals to receive e-mail notification of new regulatory issuances.
- The second page contains three mailing lists related to the auction of Treasury marketable securities and allows individuals to receive e-mail notification of new press releases.

Government Securities Market Regulation Area

In the government securities market regulation area, anyone signing up for the *Auction Rule (Uniform Offering Circular) Amendments and Interpretations* mailing list will receive an e-mail notification when Treasury issues any rule amendments or interpretations specifically related to 31 CFR Part 356. Those signing up for the *Government Securities Act Rule Amendments, Interpretations and Exemptions* mailing list will receive an e-mail whenever there are any new issuances specifically related to 17 CFR Chapter IV.

Anyone who signs up for the *Notification of Calls for Large Position Reports* mailing list will be notified by e-mail any time Treasury announces a call (test or actual) for large position reports. Large position notifications are for entities that may potentially have a reportable position of \$2 billion or more in a particular Treasury security. Treasury advises market participants not to rely solely on their inclusion in this mailing list for notice of a call. As in the past, whenever Treasury announces a call, it will

continue to issue a press release and a *Federal Register* notice, post information on its Web site, and ask industry groups and regulators to notify their members.

The sign-up page for these regulatory issuances can be found at: www.publicdebt.treas.gov/cgi-bin/cgiwrap/~www/signup.cgi?cat=gdrs

Currently, you can also reach this page by going to the Public Debt's Web site (www.publicdebt.treas.gov), select the "Government Securities Market Regulation" image, then choose the "Sign up for our Government Securities Market Regulation mailing lists" option.

Treasury Securities Auction Area

Anyone who signs up for the *Auction Announcement Press Releases*, *Auction Results Press Releases*, and *Inflation-Indexed Security CPI Press Release* mailing lists will receive an e-mail whenever a new related press release is issued. The sign-up page for these auction-related press releases is located at: www.publicdebt.treas.gov/cgi-bin/cgiwrap/~www/signup.cgi?cat=of

Currently, you can also reach this page by going to the Public Debt's Web site (www.publicdebt.treas.gov), select "auction information" in the paragraph of text relating to "T-bills, Notes and Bonds," then choose the "Sign up for our Treasury Marketable Securities mailing lists" option.

Questions regarding the government securities market regulation mailing lists can be directed to the U.S. Department of Treasury, Government Securities Regulations staff at (202) 219-3632. Questions regarding the auction information mailing lists can be directed to the U.S. Department of Treasury, Office of Financing at (202) 219-3350.

Comment Period Extended

The comment period for *Notice to Members 98-81*, originally scheduled to expire on November 30, 1998, was extended to **January 15, 1999**.

Special NASD Notice to Members 98-108

NASD Extends Deadline
For Updating Firm
Contact Information Via
The NASD Regulation
Web Site To February 1,
1999

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

As published in *NASD Notice to Members 98-77* (September), Article IV, Section 3 of the National Association of Securities Dealers, Inc. (NASD®) By-Laws has been amended. This By-Law change, which takes effect January 1, 1999, requires members to: (1) obtain an Internet e-mail account and Internet access for their Executive Representative; and (2) update their firm's contact information via the NASD Regulation, Inc. (NASD RegulationSM) Web Site (www.nasdr.com) to include the Executive Representative's e-mail address.

By this time members should be in the process of obtaining, or have already obtained, the required Internet access and e-mail account for their Executive Representative. Members should have also returned the User Request Form, which was mailed to each Executive Representative on November 17, 1998, to request a User ID and password required to update the firm's Contact Questionnaire. NASD Regulation is currently processing requests for User IDs and passwords which should be mailed to members on or about December 16, 1998. Since the User ID and password are required to gain access to the Contact Questionnaire on the NASD Regulation Web Site and given the holiday season with its inherent postal delays, the deadline for updating the Questionnaire has been extended to February 1, 1999.

Additionally, members are reminded that effective January 1, 1999, the primary means of distribution of *NASD Notices to Members* and the *Regulatory & Compliance Alert* is in

electronic form via the NASD Regulation Web Site. Members are advised that the schedule for posting the monthly *NASD Notices to Members* to the Web Site will be on or about the 10th of each month. Once Executive Representatives have updated their Contact Questionnaire to include their Internet e-mail address, NASD Regulation will provide e-mail notification of new *Notices* and other updates posted to the Web Site.

Since the complimentary print distribution of these publications will terminate in January, member firms that wish to continue to receive the printed versions may subscribe at cost by contacting NASD Media-SourceSM at (301) 590-6142. Each Executive Representative will be eligible for one subscription to *Notices to Members* at cost, *i.e.* \$15 per year; each branch office will be eligible for one subscription to *Regulatory and Compliance Alert* at cost, also \$15 per year.

While members may choose to rely on the printed *NASD Notices to Members*, it does not relieve them of the requirement for the Executive Representative to maintain an Internet e-mail account on behalf of the firm, effective January 1, 1999, and to update the firm's Contact Questionnaire via the NASD Regulation Web Site by February 1, 1999.

For questions regarding the Contact Questionnaire, or to receive a copy of the User Request Form, please call (301) 869-6699.

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