

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K STREET NORTHWEST • WASHINGTON, D.C. 20006 • (202) 833-7200

March 1, 1982

TO: All NASD Members

RE: G. S. Omni Corporation
1670 Broadway
Denver, Colorado 80202

ATTN: Operations Officer, Cashier, Fail-Control Department

On Thursday, February 25, 1982, the United States District Court for the District of Colorado appointed a temporary receiver for the above captioned firm. Members may use the "immediate close-out" procedures as provided in Section 59(i) of the NASD's Uniform Practice Code to close-out open OTC contracts. Also, MSRB Rule G-12(h)(iv) provides that members may use the above procedures to close-out transactions in municipal securities.

Questions regarding the firm should be directed to:

Temporary Receiver

James H. Turner, Esquire
Gorsuch, Kirgis, Campbell, Walker and Grover
1200 American National Bank Building
Denver, Colorado 80202
Telephone: (303) 534-1200

* * * * *

NOTICE TO MEMBERS: 82-12
Notices to Members should be
retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K STREET NORTHWEST • WASHINGTON, D.C. 20006 • (202) 833-7200

March 1, 1982

TO: All NASD Members

RE: International Securities, Inc.
1050 17th Street
Denver, Colorado 80265

ATTN: Operations Officer, Cashier, Fail-Control Department

On Thursday, February 25, 1982, the United States District Court for the District of Colorado appointed a SIPC trustee for the above captioned firm. Members may use the "immediate close-out" procedures as provided in Section 59(i) of the NASD's Uniform Practice Code to close-out open OTC contracts. Also, MSRB Rule G-12(h)(iv) provides that members may use the above procedures to close-out transactions in municipal securities.

Questions regarding the firm should be directed to:

SIPC Trustee

William D. Scheid, Esquire
Law and Scheid, P. C.
3100 First of Denver Plaza
633 Seventeenth Street
Denver, Colorado 80202
Telephone: (303) 573-4800

* * * * *

(mostly limited partnerships) have been filed with the Association's Corporate Financing Department over the past eleven years, no system exists for exchanging information on any program securities which may be available for secondary trading. While limited secondary trading in program securities already exists, there is no efficient means to widely publicize offers to sell program securities. The Association is concerned regarding the inefficiencies of the present pricing system and has concluded that there is a need for a regulatory presence in the evolution of such a secondary trading system.

Under the direction of the Real Estate Committee, various aspects of a communications system for direct participation program securities has been considered and concepts refined. The Board of Governors has authorized the design and development of technical specifications for such a system on the basis of those concepts and such rule changes as are necessary to implement the system.

Description of System

It is important to note that the Association is proposing to establish only a communications system and not a new market place. Transactions executed as a result of the information contained in the system will be subject to all present regulatory requirements applicable to secondary market transfers, in the absence of a specific exemption, and no specific changes to those requirements are necessarily anticipated prior to initiation of the system.

The secondary trading system being proposed will be an "electronic bulletin board" and will provide a means of communication but no execution capability. The system will be separate from the NASDAQ System with different procedures, securities, obligations and regulations. Broker/dealers participating in the system will not be required to maintain firm, continuous or two-sided quotations and will not necessarily function as market-makers in the normal sense. The system will be accessed through NASDAQ terminals and will provide subscribing members with on-line ability to enter and update indications of interest in any security approved for the system and to query a data base to review information on individual securities or groups. Information will be located by either program name or category, e.g. real estate, oil and gas. The system will accommodate one or two-sided indications of interest and indications of size will be optional. Broker/ dealers entering information on each security will be listed chronologically according to their first entry and firms' telephone numbers will be displayed. Members will have the ability to direct the system to remove an indication of interest on a specific date; other-

wise, the indication of interest will automatically be deleted after five business days. Members subscribing to the system will be charged a fee in addition to the fee for a basic NASDAQ terminal.

To implement the system, the Association is proposing to amend Schedule D to Article XVI of the Association's By-Laws (NASD Manual (CCH) ¶1653A) to incorporate as new Section XIV qualifications for subscribers to the system and the securities on which information may be entered into the system. A subsection-by-subsection analysis of the proposed amendment is set out below. While the technical rules required to implement the system are being proposed as a new section of Schedule D, a decision has not been made as to the eventual location of the section in the rules of the Association.

Request for Comments

The Association requests comments on the proposed amendment to Schedule D from all interested person. This amendment is being proposed on the basis of an earlier survey, described above, which indicated support for a secondary market system for direct participation program securities. At this point in the development of the system, however, the Association is soliciting comments on the overall concept of a system for exchanging information on direct participation program securities available for secondary trading. The Association therefore urges all interested persons to provide comments on the concept of the system, the viability of the system as proposed, the extent to which the system would be utilized, the types of direct participation program securities on which information would be shown in the system, and the types of members (e.g. general securities, direct participation program only) who would use the system.

As noted above, the Association believes that existing regulations for secondary market transactions apply to direct participation programs to the same extent as to other securities. As the proposed system evolves, however, it may be necessary to clarify the applicability of certain rules to secondary trades in direct participation program securities. For example, the Association is now addressing the need to clarify the status of such trades under the Uniform Practice Code. The Association therefore urges all interested persons to provide comments on other NASD, SEC or state rules or requirements which should be clarified or amended with respect to their application to transactions executed on the basis of information contained in the proposed system.

Comment Procedure

The Association's Board of Governors is given the authority to adopt changes to Schedule D without vote of the membership by Article XVI, Section 3 of the Association's By-Laws. The Association is requesting comments on the proposed amendment prior to final Board approval. All comments received during this comment period will be reviewed by the Association's Real Estate Committee and changes to the proposed amendment will be recommended as deemed appropriate. The Board of Governors will then consider the proposed amendment again. If the Board approves the amendment, it must be filed with, and approved by, the Securities and Exchange Commission before it becomes effective.

The Association encourages members, their counsel and other interested parties to comment on the proposed amendment, as well as on the over-all concepts outlined herein and such other rule changes as are necessary to establish a fully structured secondary trading system in direct participation program securities. All comments should be directed to:

S. William Broka,
Secretary,
National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

All comments must be received by April 8, 1982. All comments received will be made available for public inspection.

The following documents attached are for the benefit of persons wishing to comment:

1. a subsection-by-subsection analysis of the proposed amendment; and
2. the text of the proposed amendment.

Any questions regarding this notice should be directed to Dennis C. Hensley, Vice President, Corporate Financing at (202) 833-7240.

Sincerely,



Frank J. Wilson
Executive Vice President
Legal and Compliance

Subsection-by-Subsection Analysis
of Proposed Amendment
to Schedule D to By-Laws

Subsection A: General - This subsection prohibits the entry of information into the system except in accordance with the section.

Subsection B: Definitions - This subsection would incorporate definitions of "direct participation program system," "eligible broker/dealer," "authorized security," and "trading unit" into the section. A "trading unit" is the minimum number of direct participation program securities which can be traded as a unit pursuant to the terms of the program.

Subsection C: Eligible Broker/Dealers - Subparagraph 1 of this subsection sets forth the qualifying criteria which a broker/dealer must meet in order to be considered eligible to enter information into the system. The first two criteria are the familiar requirements that a broker/dealer must be registered with the Securities and Exchange Commission and a member in good standing of the Association, as well as qualified with the Association to conduct a general securities business or a business in direct participation programs. In addition, subparagraph 1.c. of Subsection C establishes a minimum net capital requirement of \$25,000.

Subparagraph 2 of this subsection establishes the general requirement that a broker/dealer entering information into the system must have reasonable grounds to believe that the information represents a bona fide indication of interest in the purchase or sale of a trading unit of direct participation program securities. In addition, where the indication of interest is for the sale of a trading unit, the broker/dealer must have reasonable grounds to believe that the unit is transferable to a purchaser. This is intended to guard against the entry of information on securities which are not likely to be transferred by the program's general partner or sponsor.

Subsection D: Authorized Securities - This subsection sets forth the criteria for determining the eligibility of a program security to be an authorized security. These include the requirement that the security be one issued by a direct participation program and be currently registered and up-to-date in its filings under Section 12(g) of the Securities Exchange Act of 1934, with at least one broker/dealer who stands ready to enter information into the system on the security. The Association believes that entry to the system should be restricted to Section 12(g) reporting programs in order to ensure that sufficient information is available to investors regarding the program.

In addition, this subsection requires that the program have outstanding at least 10,000 trading units owned by not less than 300 persons. This assures an adequate depth to any potential trading market. By requiring a relatively large number of trading units, the Association is also providing an opportunity to those programs presently outstanding which do not meet this test to decide whether to reorganize in order to have their securities eligible for the system.

Subparagraph 2 of Subsection D describes the circumstances under which an otherwise eligible security shall not be authorized for entry into the system and an authorized security will be subject to suspension or cancellation of its authorization. Such circumstances include the suspension of the security from being traded over-the-counter. In addition, an eligible security shall be subject to cancellation if there is a failure by the issuer to promptly disclose to the public through the press any material information which may affect the value of its securities or influence investors' decisions.

Text of Proposed Amendment to Schedule D to By-Laws*

XIV

Direct Participation Program System

A. General

No member or person associated with a member shall enter information into the Direct Participation Program System except in accordance with this Section XIV.

B. Definitions

1. The term "direct participation program system" means an electronic data processing system interconnected by wire or other means with terminals which make readily available to approved subscribers information on direct participation program securities, referred to as the "System" in this Section XIV.
2. The term "eligible broker/dealer" means a broker/dealer which meets the qualifications set forth in paragraph C to this Section XIV.
3. The term "authorized security" means a direct participation program interest which meets the qualifications set forth in paragraph D to this Section XIV.
4. The term "trading unit" means that minimum number of direct participation program securities which may be traded as a unit pursuant to the terms of the program.

* Entire section is new.

C. Eligible Broker/Dealers

1. A broker/dealer will be permitted to enter information into the System if the broker/dealer:
 - a. is registered with the Securities and Exchange Commission and a member in good standing of the Association;
 - b. is qualified with the Association to conduct either a general securities business or a business in direct participation programs; and
 - c. maintains net capital, as defined in SEC Rule 15c3-1, of at least \$25,000.
2. Notwithstanding the requirements of paragraph C.1:
 - a. no broker/dealer may enter information into the System unless he has reasonable grounds to believe that the information represents a bona fide indication of interest in the purchase or sale of a trading unit; and
 - b. no broker/dealer may enter information on a security for sale into the System unless he has reasonable grounds to believe that the trading unit will be transferred to a purchaser.

D. Authorized Securities

1. A security will be eligible to be an authorized security if:
 - a. it is issued by a direct participation program;
 - b. it is currently registered under Section 12(g) of the Securities Exchange Act of 1934 and all reports required by the Securities Exchange Act of 1934 and rules adopted thereunder, have been filed with the Securities and Exchange Commission;

- c. the program has issued and outstanding at least 10,000 trading units owned by not less than 300 persons; and
 - d. at least one broker/dealer stands ready to enter information into the System on the security.
2. An eligible security shall not be authorized, and an authorized security shall be subject to suspension or cancellation of its authorization if:
- a. the security is suspended from being traded over-the-counter pursuant to Section 15(c)(5) of the Securities Exchange Act of 1934;
 - b. the issuer of the security fails to disclose promptly to the public through the press any material information which may affect the value of its securities or influence investors' decisions; or
 - c. the security is no longer registered under Section 12(g) of the Securities Exchange Act of 1934.

NOTICE TO MEMBERS: 82-14
Notices to Members
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future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K STREET NORTHWEST • WASHINGTON, D.C. 20006 • (202) 833-7200

March 9, 1982

IMPORTANT

OFFICERS, PARTNERS and PROPRIETORS

TO: Members of the National Association of Securities
Dealers, Inc. and Other Interested Persons

RE: Request for Comments on a Proposed Amendment to
Appendix F on Direct Participation Programs

COMMENT PERIOD CLOSSES ON: APRIL 8, 1982

The National Association of Securities Dealers, Inc. (the "Association" or "NASD") is publishing for comment a proposed amendment to Appendix F to Article III, Section 34 of the NASD Rules of Fair Practice ("Appendix F"). Appendix F relates to the public offering of direct participation programs and the amendment would permit members to receive continuing compensation for distributing such programs under certain circumstances. Comments are invited from all members and other interested persons. A discussion of the concerns which led the Association to propose this change appears below with an analysis of the change. The text of Section 5(b)(5) of Appendix F, marked to show the proposed amendment, is attached to this notice.

Background

Appendix F was first proposed by the Association in the early 1970's to deal with potential abuses related to the public offering of direct participation programs, primarily limited partnerships. After a series of revisions, Appendix F was filed with the SEC as a proposed rule change on August 7, 1981 (see SEC File No. SR-NASD-81-19). Commission approval of Appendix F is expected within the next few months.

As filed with the SEC, Appendix F requires that compensation received by members and associated persons in

connection with the public offering of direct participation programs be fair and reasonable and specifies certain arrangements which are presumed to be unreasonable. These provisions of Appendix F represent a codification of existing Association authority to regulate underwriting compensation under the Corporate Financing Interpretation adopted under Article III, Section 1 of the Rules of Fair Practice (NASD Manual (CCH) at ¶2151).

Section 5(b)(5) of Appendix F effectively precludes members from receiving underwriting compensation of an indeterminate value in connection with the public offering of a direct participation program. Over the past several months, the Association's Direct Participation Programs Committee has devoted considerable attention to a review of this restriction and has concluded that it may now be appropriate to provide an exception under certain circumstances in which members would be permitted to negotiate with issuers to receive compensation in the future in exchange for "front-end" cash compensation foregone at the time of the public offering. The Board of Governors has reviewed this proposal and has authorized its publication. The specific amendment being proposed is shown in the attached text of Appendix F and explained in the background discussion and analysis which follows.

Comment Procedure

The Association's Board of Governors is given the authority to adopt changes to Appendix F (without a vote of the membership) by Article III, Section 34 of the Rules of Fair Practice. The Board contemplates adopting the proposed amendment pursuant to that authority.

The Association is requesting comments on the proposed amendment prior to final Board consideration. All comments received during this comment period will be reviewed by the Direct Participation Programs Committee and changes to the proposed amendment will be recommended as deemed appropriate. The Board of Governors will then consider the amendment again. If the the Board approves the amendment, it must be filed with, and approved by, the Securities and Exchange Commission before it becomes effective.

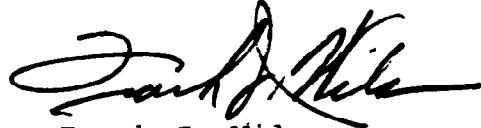
All written comments should be addressed to the following:

S. William Broka, Secretary
National Association of Securities Dealers, Inc.
1735 K Street, N. W.,
Washington, D.C. 20006

All coments must be received by April 8, 1982. All
comments received will be made available for public inspection.

Any questions regarding this notice should be directed
to Dennis C. Hensley or Harry E. Tutwiler of the Corporate
Financing Department at (202) 833-7240.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank J. Wilson".

Frank J. Wilson
Executive Vice President
Legal and Compliance

Attachment

Discussion and Analysis of
Proposed Amendment

To assist persons reviewing the proposed amendment, we have set out below a brief review of the Association's present policy on indeterminate compensation and a paragraph-by-paragraph analysis of the proposed amendment. The text of Section 5(b)(5) of Appendix F, marked to show proposed changes, is attached.

Status of Appendix F

Appendix F is not yet in effect but is pending approval by the Securities and Exchange Commission. The Appendix contains requirements applicable to members participating in a public offering of direct participation program, relating particularly to suitability, disclosure, and organization and offering expenses.* That section dealing with organization and offering expenses to a large extent constitutes a codification of policies currently applied pursuant to the general requirements of the Corporate Financing Interpretation under Article III, Section 1 of the Rules of Fair Practice (NASD Manual (CCH) ¶2151) (the "Corporate Financing Interpretation"). More specifically, the restriction against indeterminate compensation contained in Appendix F has been applied under the authority of the Corporate Financing Interpretation for several years.

The changes to Appendix F now being proposed are in the form of an amendment to the text currently on file with the SEC.

Present Policy

The present policy on indeterminate compensation is codified in Section 5(b)(5) of Appendix F. Section 5(b) states that a number of compensation arrangements are presumed to be unfair and unreasonable. One such arrangement is the payment of compensation of an indeterminate value in connection with the public offering of a direct participation program. It is important to note that two distinct factors are required: an

*The complete text of Appendix F as filed with the SEC was published in Notice-to-Members 81-34 (August 25, 1981). Additional copies of Appendix F are available upon request from the Corporate Financing Department (telephone number (202) 833-7240).

indeterminate compensation arrangement and a connection with the public distribution process.

Compensation is deemed to be indeterminate if it is impossible at the time the offering is filed to definitively determine the total value which eventually will accrue to the member as a result of the arrangement. Thus, most continuing compensation arrangements and arrangements where the amount of compensation depends on program performance fall within the restriction.

Often compensation paid to members or their affiliated sponsors for operational services rendered to programs take the form of indeterminate compensation. Therefore, the question of whether an indeterminate item of compensation is permissible ultimately turns on a determination of a connection with a public offering. The criteria to determine whether a connection exists are contained in Section 5(d) of Appendix F. That subsection provides that the determination shall be made on the basis of such factors as "the timing of the transaction, the consideration rendered, the investment risk, and the role of the member in the organization, management and direction of the enterprise in which the sponsor is involved."

Several regulatory purposes lie behind the Association's present policy on indeterminate compensation. Section 15A(b)(6) of the Securities Exchange Act of 1934 ("1934 Act") requires that NASD rules not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers" The same section of the 1934 Act requires that Association rules be designed "in general, to protect investors and the public interest." Acting pursuant to these statutory mandates, the Association seeks to administer its rules in an equitable manner without discriminating among members or issuers.

This goal is particularly important in adopting and administering any policies which affect underwriting compensation and the Association takes great care to assure that policies which define fair amounts of compensation are consistently applied. This important principle can not be observed, however, unless a value can be assigned to each item of compensation received by a member in connection with a public offering.

Furthermore, the statutory admonition to the Association to assure the protection of investors may be violated if the Association were to permit underwriting compensation which varied so substantially in amount and nature as to provide such an economic incentive as to cause firms and salespersons to ignore suitability criteria which would otherwise be controlling.

Recent Developments

As the direct participation programs segment of the industry has grown over the last few years, a wider variety of financing structures and underwriting compensation arrangements has evolved. Many of the proposed underwriting arrangements would provide broker/dealers with ongoing compensation of an indeterminate nature if it were not for the Association's policy. Also, many broker/dealers are becoming general partners for limited partnerships making it difficult to determine whether a particular continuing compensation arrangement is received for efforts in distribution or for program management functions.

As these arrangements have evolved, several arguments have been advanced to support a change in Association policy. Some argue that, in this era of heightened concern over impediments to capital raising, the Association should permit members to have greater flexibility in the structuring of financing packages. It is noted that it is usually to investors' benefit for the greatest possible percentage of proceeds to be committed to a program's operations rather than be diverted to "front-end" fees including underwriting fees. The present policy requires broker/dealers to take compensation at the beginning of a program's operations, thereby depriving the program of those funds and prohibiting the broker/dealer from participating on generally the same basis as its customers in the success or failure of the program. Others point out that indeterminate compensation is common practice in private offerings and that the Association's present policy encourages the use of private offerings, thereby depriving investors of the benefit of public registration.

Proposed Amendment

Giving effect to a balancing of the conflicting concerns and policy considerations here, the Direct Participation Programs Committee and Board of Governors have concluded that it may be appropriate to permit members to negotiate to receive continuing compensation for the distribution of public programs under certain circumstances. The Association is therefore proposing an amendment to Appendix F allowing continuing distribution compensation where the arrangement generally benefits both the investor and the broker/dealer and the Association's guidelines for fair amounts of total compensation are followed.

The amendment being proposed reflects several considerations. First, the amendment is permissive only. It will not require any broker/dealer to receive any particular form of compensation (or any compensation at all) but rather will permit a broker/dealer to negotiate certain arrangements if agreeable to the issuer.

Secondly, the proposed amendment permits ongoing compensation only in lieu of and not in addition to normal "front-end" compensation. Thus, the amendment should not permit broker/dealers to obtain additional compensation (in terms of present cash equivalent values) and should prevent unfair discrimination among different members and products in terms of total compensation received.

Thirdly, the Association believes that the amendment will benefit investors because it will permit a greater percentage of offering proceeds to be committed to program operations, increasing the likelihood of a successful return to investors. The amendment can be seen as encouraging broker/dealers to undertake the same risk of program failure as their customers take.

Fourthly, the amendment permits a "trade-off" which is believed to provide a reasonable return to broker/dealers who choose to forego "front-end" compensation for a future participation subordinated to investors' return of their investment. This choice can be viewed as an investment of deferred "front-end" compensation, the present value of which would vary depending upon future interest rates. In foregoing present compensation, one assumes the risk that future compensation actually received will be worth less. One is also assuming the risk that the program will not be sufficiently successful to generate enough funds to repay investors and then provide the broker/dealer with an amount of compensation at least equal to the time value of the foregone "front-end" compensation.

The "trade-off" ratio of three-to-one proposed in the amendment is based on analyses which tend to indicate that a broker/dealer operating under such a ratio will realize meaningful benefit by deferring compensation only if the program provides attractive returns to investors. Comments on the propriety of the ratio are specifically requested, however.

Analysis of Proposed Amendment

The text of the proposed amendment to Appendix F is attached to this notice and should be studied by commentators. The amendment would take the form of language added to subsection 5(b)(5) of Appendix F which presently contains the restriction on compensation of an indeterminate nature. Subsection 5(b) contains a listing of arrangements which are presumed to be unfair and unreasonable. The amendment would remove this presumption with respect to continuing compensation arrangements which meet specified conditions.

More specifically, the amendment would state that an arrangement providing for continuing compensation to be paid to a

member or person associated with a member in connection with a public offering of a direct participation program would not be presumed to be unfair and unreasonable if all of the conditions specified in items (i) through (iii) are met. The amendment does not in any respect require the use of arrangements providing for continuing compensation but sets forth those conditions under which such arrangements would be permitted if negotiated between members and issuers. The amendment requires that all of the listed conditions be satisfied in order for the new provision to be operative.

Item (i) of the amendment requires that any continuing compensation be received by the member or associated person only after each investor has received distributions from the program aggregating an amount equal to the investor's investment. Thus, the continuing compensation is subordinated to a 100 percent return of all investors' funds.

Item (ii) requires that the continuing compensation be calculated as a percentage of funds generated by the program's operations or the dissolution of the program.

Item (iii) restricts the amount of continuing compensation which may be received. That amount may not exceed three percent of program revenues for each one percent that the "front-end" compensation falls below the maximum permissible under Association guidelines. In no event, however, may the amount of revenues exceed 12 percent. Pursuant to this provision, assuming a ten percent limitation on total underwriting compensation, a member willing to distribute a program for seven percent of the proceeds would be able to negotiate with the issuer to receive participation in program revenues after a 100 percent return of investor funds equal to nine percent of such revenues.

Text of Proposed Amendment*

Section 5 - Organization and Offering Expenses

- (b) In determining the fairness and reasonableness of organization and offering expenses for purposes of Section (5)(a), the arrangements shall be presumed to be unfair and unreasonable if:
- (5) the program provides for compensation of an indeterminate nature to be paid to members or persons associated with members for sales of program units, or for services of any kind rendered in connection with or related to the distribution thereof, including, but not necessarily limited to, the following: a percentage of the management fee, a profit sharing arrangement, brokerage commissions, an overriding royalty interest, a net profits interest, a percentage of revenues, a reversionary interest, a working interest, a security or right to acquire a security having an indeterminate value, or other similar incentive items; provided, however, that an arrangement which provides for continuing compensation to a member or person associated with a member in connection with a public offering shall not be presumed to be unfair and unreasonable if all of the following conditions are satisfied:
- (i) the compensation is to be received only after each investor in the program has received distributions from the program aggregating an amount equal to his investment;
- (ii) the compensation is to be calculated as a percentage of revenues generated by the operation of the program or proceeds from dissolution of the program; and

*New language is underlined.

(iii) the amount of continuing compensation does not exceed three percent for each one percentage point that the compensation received at the time of the offering falls below the maximum compensation permissible under Association guidelines, provided that in no event shall the amount of continuing compensation exceed 12 percent.

NASD

*put me
Notice to Members*

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K STREET NORTHWEST • WASHINGTON, D.C. 20006 • (202) 833-7200

M E M O R A N D U M

March 9, 1982

TO: Members Specializing in Direct Participation Programs
RE: Survey of Direct Participation Program Broker/Dealers

A few years ago, the Association initiated a program intended to facilitate entry into the Association of firms specializing in distribution of direct participation programs, such as real estate syndications and oil and gas programs. As a service to these specialized broker/dealers, the Series 39 qualification examination for direct participation program principals and the Series 22 examination for direct participation program representatives were instituted in July, 1979 and August, 1980, respectively. A series of booklets explaining the Association's programs and membership procedures were prepared. A special "new member kit" was developed and streamlined membership application procedures were established for direct participation program firms. Several hundred firms have now joined the Association utilizing these specialized examinations and procedures.

The Association's Real Estate Committee is now attempting to ascertain the effectiveness of the direct participation program broker/dealer registration procedures. Assessing general trends with respect to the formation and structure of member firms specializing in distribution of direct participation programs will allow the Association to review the effectiveness of programs and procedures designed to serve these broker/dealers. This assessment will also greatly aid in long range planning efforts to improve those programs.

Attached is a questionnaire being sent to all member firms designated as direct participation program broker/dealers. Though participation in the questionnaire is voluntary, all direct participation program broker/dealers are

encouraged to complete the questionnaire in relevant detail and return it to the Association as soon as possible. The questionnaire has been designed to require a minimum amount of your time. It should be emphasized that all questionnaires will be handled confidentially and are for informational purposes only. Your efforts will assist the Association in improving and expanding its services specifically designed to meet the needs of direct participation program broker/dealers.

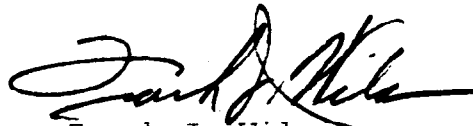
Please return your completed questionnaire by March 22, 1982 to the Association at the following address:

National Association of Securities Dealers, Inc.
Corporate Financing Department
1735 K Street, N.W., 8th Floor
Washington, D.C. 20006

Questions concerning this notice or the enclosed questionnaire may be directed to Harry E. Tutwiler or Larry M. Worrell of the Corporate Financing Department at (202) 833-7240.

Thank you for your assistance.

Sincerely,



Frank J. Wilson
Executive Vice President
Legal and Compliance

Attachment

Direct Participation Programs
Broker/Dealer Questionnaire

1. Firm Name(Optional): _____

2. Firm Address: _____

3. Effective date of firm membership with the NASD: ___/___/___

4. Number of branch offices: _____

5. Circle states in which firm is registered as a broker/dealer:

AL	AZ	AR	CA	CO	CT	DE	DC	FL	GA
HI	ID	IL	IN	IA	KS	KY	LA	ME	MD
MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ
NM	NY	NC	DN	OH	OK	OR	PA	RI	SC
SD	TN	TX	UT	VT	VA	WA	WV	WI	WY

6. Firm Type:

Sole Proprietorship _____
Partnership _____
Corporation _____

7. In which net capital category is your firm registered?

\$5,000 net capital _____
\$25,000 net capital _____

8. Number of customer accounts: _____

Notice to Members: 82-13
Notices to Members should be
retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K STREET NORTHWEST · WASHINGTON, D.C. 20006 · (202) 833-7200

March 9, 1982

I M P O R T A N T

OFFICERS, PARTNERS AND PROPRIETORS

TO: Members of the National Association of
Securities Dealers, Inc. and Other Interested
Persons

RE: Request for Comments on a Proposed System to
Facilitate Secondary Trading in Direct
Participation Programs

COMMENT PERIOD CLOSES ON: APRIL 8, 1982

The National Association of Securities Dealers, Inc. (the "Association") is publishing for comment a proposed amendment to Schedule D to the Association's By-Laws which would implement a communications system for the secondary trading of direct participation program securities. Comments are invited from members and other interested persons on the proposed amendment, as well as on the over-all concept of such a system, and other rule changes as may be appropriate. The text of the proposed amendment is attached to this notice. A discussion of the background and purpose of the proposed amendment and the underlying concepts relating thereto, as well as a subsection-by-subsection analysis of the proposed amendment, appears below.

Background and Purpose

In November of 1979, the NASD Real Estate Committee recommended that the Association institute a study of possible means for developing a communications system for secondary trading of direct participation program securities. This study culminated in a survey of members in early 1980 to determine interest in such a system. Almost 20 percent of the membership responded, with 68 percent favoring establishment of a system. Although some \$37 billion of public direct participation programs

9. What types of direct participation programs does the firm sell and what percentage of total sales is anticipated for each for the next 12 months?

<u>Type</u>	<u>Percent of Gross Sales</u>	
	<u>1981</u>	<u>Anticipated 1982</u>
Real estate partnerships registered with SEC	-----	-----
Real estate partnerships not registered with SEC	-----	-----
Oil and gas partnerships registered with SEC	-----	-----
Oil and gas partnerships not registered with SEC	-----	-----
Other (specify type and whether public or private):		
-----	-----	-----
-----	-----	-----

10. What type of business (e.g. commercial real estate, oil and gas drilling, etc.) was firm or its parent engaged in prior to the firm's joining the NASD?

11. List and briefly describe any types of business in which the firm is currently involved other than the sale of securities:

12. Number of registered individuals employed by firm and qualified in the following classifications:

Direct Participation Program Principals _____
 Direct Participation Program Representatives _____
 General Securities Principals _____
 General Securities Representatives _____
 Other (specify: _____) _____

13. Of the currently registered personnel, indicate how many individuals were previously employed in the securities industry. _____ Of these, how many were previously registered in a general securities capacity? _____

14. For those registered individuals not previously employed in the securities industry, please indicate the industry (e.g. real estate, oil and gas, insurance) in which they were most recently employed:

15. Did you find that NASD membership application procedures were easily understood and satisfied? yes _____ no _____

Comments:

16. Did you find the pre-membership interview to be helpful? yes _____ no _____

Comments:

17. Would your firm benefit by obtaining a list of NASD members qualified to deal only in direct participation programs? yes _____ no _____

18. General Comments:

Thank you for your assistance.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K STREET NORTHWEST · WASHINGTON, D.C. 20006 · (202) 833-7200

March 10, 1982

TO: All NASD Members

RE: G. S. Omni Corporation
1670 Broadway
Denver, Colorado

ATTN: Operations Officer, Cashier, Fail-Control Department

On Monday, March 8, 1982, the United States District Court for the District of Colorado appointed a SIPC Trustee for the above captioned firm. Previously, a temporary receiver had been appointed for the firm on February 25, 1982.

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

Questions regarding the firm should be directed to:

SIPC Trustee

James H. Turner, Esquire
Gorsuch, Kirgis, Campbell, Walker
and Grover
1200 American National Bank Building
Denver, Colorado 80202
Telephone: (303) 534-1200



NOTICE TO MEMBERS 82-16
Notices to Members should be
retained for future reference.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K STREET NORTHWEST • WASHINGTON, D.C. 20006 • (202) 833-7200

March 19, 1982

MEMORANDUM

TO: All NASD Members

RE: NASD Guide to Information and Services

The enclosed 1982 edition of the NASD Guide to Information and Services is an updated publication of the names and telephone numbers of various Association staff members who work most closely with the services, rules and regulations listed.

Copies of this Directory are being provided to all main and branch offices of members, and additional copies may be obtained by sending a self-addressed mailing label with the requested number of copies to:

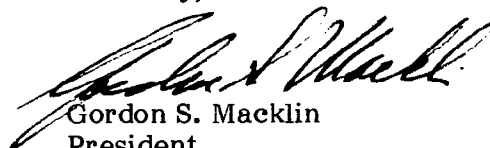
National Association of Securities Dealers, Inc.
Attention: Office Services
1735 K Street, N.W.
Washington, D.C. 20006

The NASD first published the Guide in 1981, as a means of assisting members and others by directing their inquiries to appropriate Association staff members.

The 1982 Guide should continue to provide a handy reference to the many services and programs which the Association provides to its members, and should aid members in receiving prompt responses to their questions.

Your comments and suggestions concerning the Guide are welcome and may be directed to James Cangiano, Assistant Director, Department of Policy Research at (202) 833-7209.

Sincerely,



Gordon S. Macklin
President

Enclosure



NOTICE TO MEMBERS: 82-17
Notices to Members should be
retained for future reference.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K STREET NORTHWEST • WASHINGTON, D.C. 20006 • (202) 833-7200

IMPORTANT

**Please Direct This Notice to All
Compliance Directors and All
Compliance Personnel**

Re: Proposed Amendments to Board of Governors
Interpretation on "Free-Riding and Withholding"

Date: March 23, 1982

Enclosed herewith are proposed amendments to the Board of Governors Interpretation on "Free-Riding and Withholding". These amendments have been approved by the Board of Governors and are being submitted to the membership for comment. Comments on these proposals must be submitted in writing and be received by the Association not later than April 22, 1982 in order to receive consideration. After the comment period has expired, the proposals will be reviewed by the Board of Governors. If the proposals, or an amended version thereof, are at that time approved by the Board, they must then be submitted to and approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934, as amended, prior to becoming effective.

Background and Explanation of Proposals

The amendments were developed during the past year by a special committee designated by the Board for that purpose and the National Business Conduct Committee. The impetus for such consideration was a recommendation by the District Advisory Council and certain inquiries directed to the Association as a result of the increase in hot issues during the past two years. The Board considers most of these amendments to be clarifying in nature in that they are intended to explain in more detail provisions already in the Interpretation. Many of these clarifications were published in a Notice to Members in November, 1973. They are now proposed to be made part of the Interpretation itself. In addition, there are several substantive changes. A summary of these clarifications and changes follows:

1. Issuer Directed Securities

The Association has received several inquiries involving the sale of issuer directed securities to groups of individuals related to the issuer some of whom may be restricted persons under the Interpretation. During the past, these inquiries have been presented to the Board of Governors when there was an issue as to whether prohibiting

such sales might be unfair to the parties involved. The Board has on a few occasions granted such requests based upon the circumstances involved and where the effect was not inconsistent with the obligation to effect a bona fide public distribution. The Board has, therefore, decided to include this practice as part of the Interpretation under certain conditions enumerated in the Interpretation.

2. Investment Partnerships and Corporations

The Board wishes to clarify that beneficial interests of restricted parties covers not only ownership interests, but every type of financial interest, including, but not limited to, management fees based on the performance of the account.

3. Immediate Family

The definition of immediate family has been expanded to include a son-in-law or daughter-in-law, and any person who is supported by a restricted person. Thus, individuals who are not related to a restricted person may also be restricted if they are supported by a restricted person.

4. Normal Investment Practice

The amendments clarify the factors to be considered in determining whether a purchase of a hot issue was made pursuant to normal investment practice. The amendments also make a substantive change in the definition of normal investment practice by allowing the history of investment with another member to be considered if the customer's present account is serviced by the same registered representative. Thus, a customer may carry his investment history with him if his registered representative moves to a new firm.

5. Disproportionate

The amendments clarify what a disproportionate allocation is and specifically introduce a guideline of 10% which is to be considered as one of a number of factors in determining whether a violation has occurred. Other factors enunciated include (a) the size of the participation, (b) the offering price of the issue, (c) the amount of securities sold to the restricted accounts, and (d) the price of the securities in the aftermarket.

6. Insubstantiality

The present Interpretation states that certain restricted individuals may be sold hot issues if "the aggregate of the securities so sold is insubstantial and not disproportionate in amount as compared to sales to members of the public, and that the amount sold to any one of such persons is insubstantial in amount." The amendments clarify the fact that insubstantiality is a factor separate and distinct from the concepts of disproportionateness and normal investment practice. Insubstantiality applies to both the aggregate of securities sold to restricted accounts and the individual allocation to each restricted account.

All comments should be addressed to S. William Broka, Secretary, National Association of Securities Dealers, Inc., and received by the Association by April 22, 1982 to receive consideration. All comments will be available for inspection. Questions should be addressed to Andrew McR. Barnes, Associate General Counsel (202) 833-7370.

New Material is Underlined, and Omitted Material is Stricken Through

"Free-Riding and Withholding"

Introduction

The following Interpretation of Article III, Section 1 of the Association's Rules of Fair Practice is adopted by the Board of Governors of the Association pursuant to the provisions of Article VII, Section 3(a) of the Association's By-Laws and Article I, Section 3 of the Rules of Fair Practice.

The Interpretation is based upon the premise that members have an obligation to make a bona fide public distribution at the public offering price of securities of a public offering which immediately after the distribution process is commenced trade at a premium in the secondary market (a "hot issue") 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. The failure to make a bona fide public distribution when there is a demand for an issue can be a factor in artificially raising the price. Thus, the failure to do so, especially when the member may have information relating to the demand for the securities or other factors not generally known to the public, is inconsistent with high standards of commercial honor and just and equitable principles of trade and leads to an impairment of public confidence in the fairness of the investment banking and securities business. Such conduct is, therefore, in violation of Article III, Section 1 of the Association's Rules of Fair Practice and this Interpretation thereof which establishes guidelines in respect to such activity.

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

District Business Conduct Committees and the Board of Governors. Thus, the Interpretation will be applied to a given factual situation by individuals active in the investment banking and securities business who are serving on these committees or on the Board. They will construe this Interpretation to effectuate its overall purpose to assure a public distribution of securities for which there is a public demand.

Interpretation

Except as provided herein, it shall be inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Article III, Section 1 of the Association's Rules of Fair Practice for a member, or a person associated with a member, to fail to make a bona fide public distribution at the public offering price of securities of a public offering which immediately trade at a premium in the secondary market regardless of whether such securities are acquired by the member as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member, or otherwise. Therefore, it shall be a violation of Article III, Section 1 for a member, or a person associated with a member, to:

1. Continue to hold any of the securities so acquired in any of the member's accounts;

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

3. Sell any of the securities to a person who is a finder in 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 a member of the immediate family of any such person;

4. Sell any securities to any senior officer of a bank, savings and loan institution, insurance company, registered investment company, registered investment advisory firm or any other institutional type account, 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 or selling securities for any bank, savings and loan institution, insurance company, registered investment company, registered investment advisory firm, or other institutional type account, domestic or foreign, or to a member of the immediate family of any such person;

5. Sell any securities to any account in which any person specified under paragraphs (1), (2), (3) or (4) hereof has a beneficial interest;

Provided, however, a member may sell part of its securities acquired as described above to:

(a) persons enumerated in paragraphs (3) or (4) hereof; and

(b) members of the immediate family of persons enumerated in paragraph (2) hereof provided that such person enumerated in paragraph (2) does not contribute directly or indirectly to the support of such member of the immediate family; and

(c) any account in which any person specified under paragraph (3) or (4) or subparagraph (b) of this paragraph has a beneficial interest;

if the member is prepared to demonstrate that the securities were sold to such persons in accordance with their normal investment practice, with the member; that the aggregate of the securities so sold is insubstantial and not disproportionate in amount as compared to sales to members of the public, and that the amount sold to any one of such persons is insubstantial in amount.

6. Sell any of the securities, at or above the public offering price, to any other broker/dealer; provided, however, a member may sell all or part of the securities acquired as described above to another member broker/dealer upon receipt from the latter in writing assurance that such purchase would be made to fill orders for bona fide public customers, other than those enumerated in paragraphs (1), (2), (3), (4) or (5) above, at the public offering price as an accommodation to them and without compensation for such.

7. Sell any of the securities to any domestic bank, domestic branch of a foreign bank, trust company or other conduit for an undisclosed principal unless:

(a) An affirmative inquiry is made of such bank, trust company or other conduit as to whether the ultimate purchasers would be persons enumerated in paragraphs (1) through (5) hereof and receives satisfactory assurance that the ultimate purchasers would not be such persons, and that the securities would not be sold in a manner inconsistent with the provisions of paragraph (6) hereof; otherwise, there shall be a rebuttable presumption that the ultimate purchasers were persons enumerated in paragraphs (1) through (5) hereof or that the securities were sold in a manner inconsistent with the provisions of paragraph (6) hereof;

(b) A recording is made on the order ticket, or its equivalent, or on some other supporting document, of the name of the person to whom the

inquiry was made at the bank, trust company or other conduit as well as the substance of what was said by that person and what was done as a result thereof;

(c) The order ticket, or its equivalent, is initialed by a registered principal of the member; and

(d) Normal supervisory procedures of the member provide for a close follow-up and review of all transactions entered into with the referred to domestic bank, trust companies or other conduits for undisclosed principals to assure that the ultimate recipients of securities so sold are not persons enumerated in paragraphs (1) through (6) hereof.

8. Sell any of the securities to a foreign broker/dealer or bank unless:

(a) In the case of a foreign broker/dealer or bank which is participating in the distribution as an underwriter, the agreement among underwriters contains a provision which obligates the said foreign broker/dealer or bank not to sell any of the securities which it receives as a participant in the distribution to persons enumerated in paragraphs (1) through (5) above, or in a manner inconsistent with the provisions of paragraph (6) hereof; or

(b) In the case of sales to a foreign broker/dealer or bank which is not participating in the distribution as an underwriter, the selling member:

(i) makes an affirmative inquiry of such foreign broker/dealer or bank as to whether the ultimate purchasers would be persons enumerated in paragraphs (1) through (5) hereof and receives satisfactory assurance that the ultimate purchasers of the securities so purchased would not be such persons, and that the securities would not be sold in a manner inconsistent with the provisions of paragraph (6) hereof;

(ii) a recording is made on the order ticket, or its equivalent, or upon some other supporting document, of the name of the person to whom the inquiry was made at the foreign broker/dealer or bank as well as the substance of what was said by that person and what was done as a result thereof, and

(iii) the order ticket, or its equivalent, is initialed by a registered principal of the member.

The obligations imposed upon members in their dealings with foreign broker/dealers or banks by this paragraph 8(b) can be fulfilled by having the foreign broker/dealer or bank to which sales falling within the scope of this Interpretation are made execute Form FR-1, or a reasonable facsimile thereof. This form, which gives a blanket assurance from the foreign broker/dealer or bank that no sales will be made in contravention of the provisions of this Interpretation, can be obtained at any District Office of the Association or at the Executive Office. The acceptance of an executed Form FR-1, or other written assurance, by a member must in all instances be made in good faith. Thus, if a member knows or should have known of facts which are inconsistent with the representations received, such will not operate to satisfy the obligations imposed upon him by this paragraph.

Scope and Intent of Interpretation

In addition to the obvious scope and intent of the above provisions, the intent of the Board of Governors in the following specific situations is outlined for the guidance of members.