

# Notice To Members

National Association of Securities Dealers, Inc.

November 1988

## Number 88 - 91

### Suggested Routing:\*

- Senior Management
- Corporate Finance
- Government Securities
- Institutional

- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund

- Operations
- Options
- Registration
- Research

- Syndicate
- Systems
- Trading
- Training

\*These are suggested departments only. Others may be appropriate for your firm.

## REQUEST FOR COMMENTS

**Subject: Proposed Amendment to Article III, Section 21(c) of the Rules of Fair Practice**  
**Re: Customer Account Information; Last Date for Comments: December 1, 1988**

### EXECUTIVE SUMMARY

The NASD requests comments on a proposed amendment to Article III, Section 21(c) of the Rules of Fair Practice that would require NASD members to make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, certain information pertaining to retail customer accounts, including discretionary and corporate accounts. The proposed amendment also would require the member to make reasonable efforts to obtain certain additional information prior to making a recommendation to a customer.

The text of the proposed amendment is attached.

member, partner, officer or manager accepting the account for the member, and a customer's association with or employment by another member. In discretionary accounts, the customer's occupation also is required to be noted under the current procedure, along with the signature of each person authorized to exercise discretion in such account.

The NASD Board of Governors believes that these procedures should be strengthened to require that sufficient information be obtained on each retail customer account to permit the member firm to make more informed determinations as to accounts and investment recommendations.

The Board, upon the recommendation of the Advisory Council and the National Business Conduct Committee, therefore proposes that members be required to request information regarding customers beyond that set forth in the current procedure contained in Section 21(c) of Article III of the Rules. The new proposal requires a member to make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, information deemed applicable to that account. That information would include, in addition to the above-listed information previously required to be obtained, the tax identification or social security number of the customer, and the occupation and

### BACKGROUND AND SUMMARY OF AMENDMENT

Pursuant to Article III, Section 21(c) of the Rules of Fair Practice (Rules), the accounts of customers now are required to be maintained in such form and manner as to show name, address, age, signatures of the introducing representative and

name and address of the employer of each customer for each account. If the customer is a corporation, the member also must obtain the names of any persons authorized to transact business on behalf of the corporation. With respect to discretionary accounts, a member would be under the additional obligation of obtaining the signature of each person authorized to exercise discretion in the account, and the written approval of the member or partner, officer, or manager with respect to each transaction in the account, indicating the time and date of approval.<sup>1</sup>

Moreover, the proposed amendment provides that, prior to making a recommendation to a customer pursuant to Article III, Section 2 of the Rules, a member must make reasonable efforts to obtain information concerning the customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by the member or registered representative.

The Board believes that the proposed amendment to Article III, Section 21(c) of the Rules will provide extra protection for both customers and firms. The Board believes that the requirement of "reasonable effort" can be met by prepared questionnaires for customers to complete and return, or by telephone inquiry. It is not necessary to obtain a written statement from a customer in each instance in order to be in compliance with the rule. The requirement that information be obtained prior to the settlement of the initial transaction also allows for freedom in opening new accounts. In addition, it may be advisable for members to keep a record of efforts that they have made to obtain a customer's tax identification or social security number, as required by section 103.35, Part 103 of Title 31 of the Code of Federal Regulations adopted by the Treasury Department, effective June 1972.

The NASD encourages all members and other interested persons to comment on the proposed amendment. Comments should be directed to:

Mr. Lynn Nellius, Secretary  
National Association of Securities Dealers, Inc.  
1735 K Street, NW  
Washington, DC 20006-1506

Comments must be received no later than **December 1, 1988**. Comments received by this date will be considered by the NASD National Business Conduct Committee and Board of Govern-

ors. Any changes to the NASD Rules of Fair Practice that are approved by the Board must be voted on by the membership and filed with, and approved by, the Securities and Exchange Commission before becoming effective.

Questions concerning this notice may be directed to Deborah F. McIlroy, Attorney, NASD Office of General Counsel, at (202) 728-8816.

### PROPOSED AMENDMENT TO ARTICLE III SECTION 21(C) OF THE NASD RULES OF FAIR PRACTICE

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

¶2171 Books and Records

Sec. 21.

[Information on accounts

(c) Each member shall maintain accounts of customers in such form and manner as to show the following information: name, address, and whether the customer is legally of age; the signature of the registered representative introducing the account and the signature of the member or the partner, officer, or manager accepting the account for the member. If the customer is associated with or employed by another member, this fact must be noted. In discretionary accounts, the member shall also record the age or approximate age and occupation of the customer as well as the signature of each person authorized to exercise discretion in such account.]

#### Customer Account Information

(c) (1) For each account other than an institutional account, each member shall 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:

- (i) customer's name and residence or principal business address;
- (ii) whether customer is of legal age;
- (iii) tax identification or social security number;

- (iv) occupation;
- (v) name and address of employer;
- (vi) signature of the registered representative introducing the account and signature of the member or partner, officer, or manager who accepts the account;
- (vii) whether customer is an associated person of another member; and
- (viii) if the customer is a corporation, the names of any persons authorized to transact business on behalf of the corporation.

(2) For discretionary accounts, in addition to compliance with (1) above, and Article III, Section 15(b) of these rules, the member shall obtain the signature of each person authorized to exercise discretion in the account, and the written approval of the member or partner, officer, or manager duly designated by the member in accordance with Article III, Section 27 of these rules, with respect to each transaction in the account, indicating the time and date of approval.

(3) Prior to making a recommendation to a customer pursuant to Article III, Section 2 of these rules, a member shall also make reasonable efforts to obtain information concerning the

customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by such member or registered representative.

(4) For purposes of this section, the term "institutional account" shall mean the account of an investment company as defined in Section 3(a) of the Investment Company Act of 1940, a bank, an insurance company, or any other institutional-type account.

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<sup>1</sup>The proposed rule also incorporates a cross reference to a member's obligation under Article III, Section 15(b) of the Rules. It requires that "[n]o member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, office, or manager duly designated by the member . . ."

# Notice To Members

National Association of Securities Dealers, Inc.

November 1988

## Number 88 - 92

### Suggested Routing:\*

- |   |  |                                       |                                    |
|---|--|---------------------------------------|------------------------------------|
| <input checked="" type="checkbox"/> Senior Management | <input checked="" type="checkbox"/> Internal Audit     | <input type="checkbox"/> Operations   | <input type="checkbox"/> Syndicate |
| <input checked="" type="checkbox"/> Corporate Finance | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options      | <input type="checkbox"/> Systems   |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal                     | <input type="checkbox"/> Registration | <input type="checkbox"/> Trading   |
| <input type="checkbox"/> Institutional                | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research     | <input type="checkbox"/> Training  |

\*These are suggested departments only. Others may be appropriate for your firm.

## REQUEST FOR COMMENTS

**Subject: Proposed Corporate Financing Rule;**

**Last Date for Comment: December 31, 1988**

### EXECUTIVE SUMMARY

The NASD requests membership comment on a proposed Corporate Financing Rule that, if adopted, would replace the current Interpretation of the Board of Governors Review of Corporate Financing pursuant to Article III, Section 1 of the Rules of Fair Practice. This notice contains a section-by-section analysis and the text of the proposed Corporate Financing Rule.

### BACKGROUND

Article III, Section 1 of the NASD Rules of Fair Practice obligates members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. In the early 1960s, the NASD began reviewing underwriting terms and arrangements of securities offerings in which members were participating to determine whether those terms and arrangements were in compliance with the broad standard of fairness in Article III, Section 1. By 1970, the criteria for determining fairness and reasonableness had become more defined and were incorporated into the Interpretation of the Board of

Governors Review of Corporate Financing (the Interpretation), which made it a violation of NASD rules to participate in any public offering where the underwriting terms and arrangements are unfair and unreasonable.

Although the language of the Interpretation has been amended from time to time, it no longer accurately reflects all current industry practices or the guidelines used by the NASD to determine fairness and reasonableness of underwriting terms and arrangements. In the early 1980s, the NASD developed a Corporate Financing Rule (the "Rule") intended to replace the Interpretation. The proposed Rule, developed by the Corporate Financing Committee (the "Committee") and a Subcommittee during a period of several months, was intended to codify and clarify existing NASD policies and procedures and in some cases to implement new standards of fairness.

On April 15, 1981, the Association published Notice to Members 81-16, which requested comments on the proposed Corporate Financing Rule. Fourteen letters of comment were received and analyzed by the Committee in October 1981, and modifications to the proposed Rule reflected those comments. The Rule was approved by the Board of Governors March 19, 1982 (with subsequent

changes approved March 8, and March 18, 1983), and the membership approved the proposed Rule in May 1983. Then, the NASD sought SEC approval.

On May 31, 1984, the Association received a letter prepared by the SEC's Market Regulation Division staff containing questions and comments on the proposed Rule. The SEC comments, as well as changes that continued to occur in the corporate financing area, prompted a re-review of the entire Rule. In the course of the re-review, it was determined that the proposed Rule should not only be revised to reflect the comments of the SEC staff, but also updated to reflect amendments that had been made to the Interpretation since the original draft, and revised to codify existing policies relating to corporate financing matters.

The form of the Rule now being presented for membership comment incorporates changes to the Interpretation adopted since the original Rule was filed with the SEC, Committee comments and interpretations, and the comments of the SEC staff. The proposed Rule includes a small number of substantive policy changes designed to address problem areas identified by the Corporate Financing Department (the "Department") in the course of its review of public offerings. Except for the small number of policy changes noted, the proposed Rule incorporates the Interpretation and all previous Committee determinations so as to reflect the current policies relating to the NASD review of public offerings.

### EXPLANATION

A section-by-section analysis of the proposed Rule appears below. References to section numbers are to the revised and renumbered sections as they appear in the attached text of the proposed Rule.

#### Subsection (a): Definitions

A specific reference to the definitions contained in Schedule E to the By-Laws has been incorporated into the proposed Rule since a number of terms used in the Rule are already defined within Schedule E. Definitions for "gross dollar amount of the offering," "net offering proceeds," and "offering proceeds" have been included to clarify the differences between the terms as used in the Rule. "Gross dollar amount of the offering" is used only in the calculation of filing fees. The

term "net offering proceeds" excludes from gross proceeds all expenses of issuance and distribution and is used only in the provision regulating offerings in which more than 10 percent of the net offering proceeds are directed to members participating in the distribution of the offering. "Offering proceeds" is defined as the gross proceeds of an offering, exclusive of the proceeds of any over-allotment option, securities to be paid to underwriters and related persons, or securities underlying other securities.

The definition of "underwriter and related persons" in the Interpretation has been restated in the proposed Rule with two modifications: the addition of immediate family members of any person in the definition and the language "any member participating in the public offering." Also, the Rule includes a definition of "participation in an offering" that is intended to specify when a member's activities in connection with a public offering will trigger the filing requirements of the Rule. The definition excludes from "participation" the rendering of an appraisal in a savings and loan conversion or a bank offering, or the issuance of a fairness opinion in a going private transaction.

Subsection (a)(2) defines "institutional investor" for the purpose of determining when certain exemptions in the Rule that rely on a sophisticated market are applicable.

#### Subsection (b): Filing Requirements

The filing requirements subsection codifies existing requirements for the filing of public offerings without substantial change. The place of filing has been specified in Subsection (b)(2) as the Corporate Financing Department at the NASD's Executive Offices, in recognition of the fact that the NASD's multiple offices could create confusion as to where the filing should be made. Subsection (b)(4) is a new provision that states a member may not participate in an offering until the member has received an opinion from the Department as to the fairness and reasonableness of the underwriting terms and arrangements. Members have the opportunity to file modifications to the proposed underwriting arrangements for further review if the Department determines the underwriting terms and arrangements are unfair and unreasonable.

If the proposed underwriting terms and arrangements are not modified, a requirement has been

added to inform other members intending to participate in the offering that the proposed terms and arrangements have not been modified to conform to the standards of fairness and reasonableness so that such members may determine whether or not to participate in the offering.

A provision requiring a timely filing with the Department and a list of the specific items to be filed, along with the number of copies of each, has been included in Subsection (b)(5). Certain information necessary for the Department's review and required to be filed with the documents has been enumerated in Subsection (b)(6) of the proposed Rule.

Subsection (b)(7) contains the list of offerings exempt from filing but still subject to compliance with the Rule, which has been expanded to include the filing exemptions granted since the original drafting of the Rule. The exemption for offerings filed on Form S-3 and offered pursuant to Rule 415 has been expanded to also include offerings filed on Form F-3 and offered pursuant to Rule 415 to provide an exemption for "world class" issuers. Subsection (b)(8) lists offerings not subject to the Rule and exempt from filing. The list of offerings required to be filed included in Subsection (b)(9) tracks the list contained in the Interpretation. Finally, Subsection (b)(10) codifies the proper calculation of the appropriate filing fee, which was increased on October 1, 1988.

#### **Subsection (c): Underwriting Compensation and Arrangements**

Subsection (c)(1) states that no member or person associated with a member shall underwrite or participate in a public offering if the underwriting compensation in connection with the offering is unfair and unreasonable. Subsection (c)(2) prohibits a member from receiving an amount of underwriting compensation that is unfair and unreasonable and requires full disclosure of all underwriting compensation in that portion of the offering document dealing with underwriting or distribution arrangements. Where underwriting compensation is disclosed on the cover page of the offering document, a cross-reference to the section on underwriting or distribution arrangements is required. Subsection (c)(2)(D) discusses the factors considered by the NASD in determining the maximum amount of compensation considered fair and reasonable.

Subsection (c)(3) clarifies the items of compensation that will be viewed as underwriting compensation in connection with an offering. Several modifications to the list in the Interpretation have been made: (1) a right of first refusal has been clarified to have a compensation value of 1 percent of offering proceeds or the amount contractually agreed to by the issuer and the underwriter for the underwriter to waive the right of first refusal; (2) fees paid to a prior underwriter by an issuer for a public offering that was not completed within the 12 months prior to the initial or amended filing of an offering will be included as underwriting compensation; (3) fees of a qualified independent underwriter will be included as underwriting compensation; and, (4) if the NASD filing fee is paid or reimbursed by the issuer, such payment or reimbursement will not be viewed as underwriting compensation.

Subsection (c)(4) enumerates the criteria used by the Department in determining whether any item of value is compensation received in connection with the distribution of an offering. The Interpretation now only specifies factors that may be used to determine whether securities acquired by underwriters and related persons constitute compensation in connection with an offering. The new provision institutes guidelines for determining whether the receipt of securities or compensation not in the form of securities is in connection with the offering and considered underwriting compensation. Subsection (c)(4)(A) provides a presumption that items of value received within six months immediately preceding the filing of the offering will be considered to be underwriting compensation received in connection with the offering. Excepted are cash discounts or commissions received in connection with the successful distribution of the issuer's securities in a prior offering. Subsection (c)(4)(E) provides the basis for which financial consulting and advisory fees may be excluded from underwriting compensation.

Several significant modifications have been made in Subsection (c)(5) of the proposed Rule dealing with the valuation of non-cash compensation received as underwriting compensation. Most importantly, underwriters and related persons would be prohibited by Subsection (c)(5)(A)(i) from receiving a security or warrant for a security as underwriting compensation that is different than the security being offered to the public or that

does not have a bona fide independent market. An NASD notice published in 1981 permitted members to receive securities as underwriting compensation securities that were different from the securities offered to the public or that did not have a bona fide market. The example cited in the notice was the receipt of warrants for common stock in an underwritten debt offering where the warrants could be valued for compensation purposes on the basis of the current market value of the underlying stock, or if no market for the stock exists, on a case-by-case basis taking into account book value and other relevant factors. However, the Department has experienced difficulty in assigning a compensation value to securities which have no market, since such securities are typically acquired at little or no cost and, in the absence of any market value to determine the economic benefit received by the underwriter and related person, any analysis of the compensation value of such securities is highly subjective. The proposed Rule does state that in exceptional and unusual circumstances, upon good cause shown, the Department or the Committee may approve a different arrangement.

Subsection (c)(5)(A)(ii) states that, in unit offerings, underwriters and related persons are permitted to receive an underwriter's warrant based only on the common stock component in a unit composed of common stock and warrants for common stock. They would not be permitted to receive an underwriter's warrant to purchase units or an underwriter's warrant based on the common stock underlying warrants contained in the unit. Currently, members are permitted to receive warrants based on the common stock in the units and on the common stock underlying warrants in the units. A prohibition on receipt of securities as underwriting compensation based on all components of units offered to the public is necessary to limit securities acquired as underwriting compensation to 10 percent of the securities offered to the public pursuant to the Stock Numerical Limitation. The Stock Numerical Limitation, in both the Interpretation and as restated in Subsection (c)(6)(B) of the proposed Rule, requires that securities received as compensation be limited to 10 percent of the securities sold to the public, without consideration of any overallotment option or shares underlying warrants, options, or convertible securities that are part of the proposed offering.

Subsection (c)(5)(C) of the Rule discloses the warrant formula used by the Department to determine the value of options, warrants, or convertible securities received as underwriting compensation. It also states that securities restricted from sale, transfer, assignment, or hypothecation for a period longer than the required one year will receive a discounted compensation value to reflect the extended lockup period.

Subsection (c)(6)(A) on unreasonable underwriting terms and arrangements permits the Department to deem public offering terms and arrangements unfair and unreasonable on the basis of application of the Rule, and for inconsistency with other NASD rules. Subsection (c)(6)(B) includes a prohibition on any non-accountable expense allowance in excess of 3 percent of offering proceeds. The Department has found that non-accountable expense allowances of up to 3 percent are usually justified by members as being reflective of actual out-of-pocket expenses. However, the proposed Rule provides that expense reimbursements in excess of 3 percent of offering proceeds will be required to be on an accountable basis. Accountable expenses do not include general overhead, salaries, supplies, or similar expenses incurred in the normal conduct of business. It will also be deemed an unreasonable arrangement to pay any commissions or reimburse any expenses prior to commencement of a public offering of securities, except for the reimbursement of direct out-of-pocket accountable expenses actually incurred by the underwriter and related persons in preparation for the offering. Further, the proposed Rule clarifies that the payment of any compensation by an issuer or an affiliate to an underwriter or related person in connection with an uncompleted public offering is an unfair and unreasonable arrangement. The only permitted exception would be the reimbursement of actual accountable out-of-pocket expenses paid by the member.

A number of unfair and unreasonable arrangements have been enumerated in Subsection (c)(6)(B) of the proposed Rule to clarify and recodify policies presently applied by the Department. These include a prohibition on: a right of first refusal lasting more than five years from the effective date of the offering; warrants, options, or convertible securities lasting more than five years or exercisable below the public offering price;



more than one demand registration right at the issuer's expense; a demand registration right lasting more than five years from the effective date of the offering; a piggyback registration right lasting more than seven years from the effective date of the offering; the receipt of any item of indeterminate compensation; an over-allotment option greater than 15 percent of the amount of securities being offered; and, the receipt of securities as underwriting compensation in an amount in excess of 10 percent of the securities sold to the public.

The conditions relating to receipt of warrant solicitation fees by underwriters and related persons upon the exercise of warrants contained in unit offerings has been clarified in Subsection (c)(6)(B)(x). This subsection requires disclosure of any arrangements to pay solicitation fees if the arrangements are contemplated or if any agreement exists as to such arrangements at the time of the offering. If no arrangements are contemplated or no arrangement exists at the time of the offering, the disclosure of the warrant solicitation fee must be made in the prospectus or offering circular provided to security holders at the time of exercise or conversion of warrants. Warrant solicitation fees paid within one year of the effective date of an offering are included as underwriting compensation in connection with the offering.

The recently adopted prohibition on the receipt by a member or persons associated with a member of non-cash sales incentive items has been provided in Subsection (c)(6)(B)(xi) of the proposed Rule.

Subsection (c)(6)(B)(xii) considers it an unfair and unreasonable arrangement for a member to participate with an issuer in a public distribution of a non-underwritten issue of securities if the issuer hires persons primarily for distributing or assisting in the distribution of the issue, or for the purpose of assisting in any way in connection with the underwriting, except to the extent that the issuer or those persons associated with the issuer are in compliance with applicable state law and the federal exemption from registration as a broker-dealer.

Subsection (c)(7) clarifies and recodifies the lock-up restrictions on securities deemed to be underwriting compensation. Note that Subsection (c)(7)(A)(iii) states that securities to be received by a member as underwriting compensation shall

be issued only to a member participating in the offering or the bona fide officers and partners thereof. This is to prevent circumvention by members of the one-year lockup period that applies to securities considered as underwriting compensation by directing the issuer to initially issue the securities to shareholders, employees, or other persons associated with the member not normally permitted to receive securities under the lockup provisions.

The Venture Capital Restrictions of the Interpretation have been incorporated into Subsection (c)(7)(C) and updated to clarify the terms of the 1 percent *de minimis* exemption from the lockup provisions currently contained in the Interpretation.

Subsection (c)(8) concerns conflicts of interest and governs members' participation in public offerings where more than 10 percent of the net offering proceeds are intended to be paid to members participating in the distribution of the offering, or associated or affiliated persons of such members, or members of the immediate family of such persons. Such participation would be permitted only in compliance with the provisions of this paragraph, which may require the pricing opinion and due diligence of a qualified independent underwriter. In addition, all offerings subject to this paragraph must disclose the name of the member acting as qualified independent underwriter in the offering document. Subsection (c)(8)(C)(ii) provides conditions under which the pricing recommendation of a qualified independent underwriter would not be required. They are: (1) the securities offered are registered with the SEC pursuant to the Securities Act of 1933; (2) the securities are to be offered or sold pursuant to Rule 415 adopted under the Securities Act of 1933; (3) the securities will be offered or sold from time to time in negotiated transactions; (4) sales by members subject to compliance with this paragraph will be made solely to institutional investors as defined in Subsection (a)(2) of the Rule; and (5) the qualified independent underwriter complies with its due diligence responsibility on a continuous basis as long as the registration statement is effective.

The NASD is aware that members acting as qualified independent underwriters employ different procedures in order to comply with their



obligation to "...exercise the usual standards of 'due diligence'..." in connection with the distribution of a public offering. Members and their counsel must determine which procedures they will use and whether those procedures will permit them to represent to the NASD that they have exercised usual standards of due diligence. The NASD believes that, as long as the registration statement is effective, a member must, at a minimum, receive the following information: all correspondence with the SEC relating to the offering; all press releases; and all other documents customarily reviewed by underwriters in connection with a due diligence review, including quarterly and annual financial statements and reports. The NASD will require that a qualified independent underwriter be contractually obligated to receive this information on a continuous basis, as long as the registration statement is effective, so that it can comply with its due diligence responsibility.

**Subsection (d): Code of Procedure**

The code of procedure outlined in Subsection (d) codifies the present informal procedures for requesting review of Department determinations in connection with the review of public offerings. Only a member aggrieved by a determination of the Department may make application for review of the Department's determination to a hearing committee of a national standing committee of the Board of Governors. With respect to the appeal of a hearing committee's determination, the proposed Rule specifies that such appeal must be requested within 15 business days following issuance of the hearing committee's written determination, which will be issued by the Director of Corporate Financing on behalf of such hearing committee. Subsection (d)(9) clarifies that determinations of hearing committees or standing committees are advisory in nature only and that a finding of a violation of any rule, interpretation or policy shall be made only by a District Business Conduct Committee pursuant to the Code of Procedure for Handling Trade Practice Complaints. Subsection (d)(9) permits a hearing committee to assess the costs of a hearing against the member requesting the hearing.

**Subsection (e): Power of the Board of Governors**

Subsection (e) of the proposed Rule permits the Board to adopt, alter, amend, supplement or

modify the filing requirements under Subsection (b) without prior membership approval.

The NASD encourages all members and other interested persons to comment on the proposed Corporate Financing Rule. Comments should be directed to:

Mr. Lynn Nellius, Secretary  
National Association of Securities Dealers, Inc.  
1735 K Street, NW  
Washington, DC 20006-1506

Comments should be received by **no later than December 31, 1988**. Comments received by this date will be considered by the Corporate Financing Committee and the NASD Board of Governors. Any changes to the NASD Rules of Fair Practice that are approved by the Board must be voted on by the membership and filed with and approved by the Securities and Exchange Commission before becoming effective.

Questions regarding this Notice may be directed to Richard J. Fortwengler, Assistant Director, or Charles L. Bennett, Assistant Director, NASD Corporate Financing Department, at (202) 728-8258.

**PROPOSED  
CORPORATE FINANCING RULE**

Note: All language is new and replaces in its entirety the current Interpretation of the Board of Governors Review of Corporate Financing, Article III, Section 1, of the Rules of Fair Practice (NASD Manual, 2151.02 at pages 2023-2035).

**Underwriting Terms and Arrangements**

Sec. \_\_\_\_\_

**(a) Definitions**

When used in this section, the following terms shall have the meanings stated below. Other words which are defined in the By-Laws and Rules of Fair Practice shall, unless the context otherwise requires, have the meaning as defined therein. In particular, reference should be made to the definitions in Schedule E to the By-Laws.

**(1) Gross Dollar Amount of the Offering** — public offering price of all securities offered to the public and securities included in any overallotment option, the registration price of

securities to be paid to the Underwriter and Related Persons, and the registration price of any securities underlying other securities;

(2) **Institutional Investor** — for purposes of this section, an institutional investor is an investor which comes within any of the following categories:

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

(B) an investment advisor registered under Section 203 of the Investment Advisers Act of 1940, that has more than \$100 million under management; or

(C) an entity (whether a natural person, corporation, partnership, trust or otherwise) with gross assets of at least \$100 million which can demonstrate that it invests in the type and dollar amount of the securities being offered.

(3) **Issuer** — for purposes of this section, the Issuer of the securities offered to the public, any selling securityholders offering securities to the public, any affiliate of the Issuer or selling securityholder, and the officers or general partners, directors, employees and securityholders thereof;

(4) **Net Offering Proceeds** — Offering Proceeds less all expenses of issuance and distribution;

(5) **Offering Proceeds** — Public Offering price of all securities offered to the public, not including any overallotment option, securities to be received by the Underwriter and Related Persons, or securities underlying other securities;

(6) **Participation or Participating in an Offering** — for purposes of this section, participation in the preparation of the offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis, furnishing of customer and/or broker lists for solicitation, or participation in any advisory or consulting capacity to the Issuer related to the offering, but not the preparation of an appraisal in a savings and loan conversion or a bank offering or the preparation of a fairness opinion in a Rule 13e-3 transaction; and

(7) **Underwriter and Related Persons** — for purposes of this section, shall include underwriters, underwriter's counsel, financial consultants and advisors, finders, members of the selling or distribution group, any Member participating in the Public Offering, and any and all other persons associated with or related to and members of the Immediate Family of any of the aforementioned persons.

(b) **Filing Requirements**

(1) **General**

No Member or Person Associated with a Member shall participate in any manner in any Public Offering of securities unless documents and information as specified herein relating to such offering have been filed with and reviewed by the NASD.

(2) **Means of Filing**

Documents or information required by this rule to be filed with the NASD shall be considered to be filed only upon receipt by its Corporate Financing Department at the Executive Offices located at 1735 K Street, NW, Washington, DC 20006.

(3) **Confidential Treatment**

The NASD shall accord confidential treatment to all documents and information required by this section to be filed and shall utilize such documents and information solely for the purpose of review by the Corporate Financing Department to determine compliance with the provisions of this section or for other regulatory purposes deemed appropriate by the NASD.

(4) **Requirement for Filing**

(A) Any Member that anticipates Participating in an Offering of securities subject to this section shall file the documents and information with respect to the offering specified in paragraphs (5) and (6) with the Corporate Financing Department at the NASD's Executive Office on the same business day of the filing of any of such documents: (i) with the Securities and Exchange Commission; (ii) with the state securities commission; (iii) with any other regulatory authority; or (iv) if not filed with any regulatory authority, at least fifteen (15)

business days prior to the anticipated offering date. Members need not file documents and information which have been filed by the Issuer, the managing underwriter, or another Member.

(B) No Member or Person Associated with a Member which anticipates participating in an offering of securities subject to this section shall participate in the offering unless:

- (i) the documents and information specified in paragraphs (5) and (6) have been filed with and reviewed by the NASD; and
- (ii) the Corporate Financing Department has provided an opinion that it has no objections to the proposed underwriting and other terms and arrangements or an opinion that the proposed underwriting and other terms and arrangements are unfair and unreasonable. If an opinion is provided by the Corporate Financing Department that the proposed underwriting and other terms and arrangements are unfair and unreasonable, the Member has the opportunity to file modifications to the proposed underwriting and other terms and arrangements for review by the Corporate Financing Department.

(C) Any Member acting as a managing underwriter or in a similar capacity which has been informed of an opinion by the Corporate Financing Department or a determination of the appropriate standing committee of the Board of Governors, if the opinion of the Corporate Financing Department is reviewed by a committee, that the proposed underwriting terms and arrangements of a proposed offering are unfair or unreasonable, and the proposed terms and arrangements have not been modified to conform to the standards of fairness and reasonableness, shall notify all other Members proposing to participate in the offering of that opinion at a time sufficiently prior to the Effective Date of the offering or the commencement of sales so the other Members will have an opportunity as a result of specific notice to comply with their obligation not

to participate in any way in the preparation or distribution of a Public Offering containing arrangements, terms and conditions which are unfair or unreasonable.

**(5) Documents to Be Filed**

The following documents relating to all proposed Public Offerings of securities shall be filed for review:

- (A) Five (5) copies of the Registration Statement, offering circular, offering memorandum, notification of filing, notice of intention, application for conversion and/or any other document used to offer securities to the public;
- (B) Three (3) copies of any underwriting agreement, agreement among underwriters, selected dealers agreement, agency agreement, purchase agreement, letter of intent, consulting agreement, partnership agreement, underwriter's warrant agreement, escrow agreement, and any other document which describes the underwriting or other arrangements in connection with or related to the distribution, and the terms and conditions relating thereto; and any other information or documents which may be material to or part of the said arrangements, terms and conditions and which may have a bearing on the Committee's review;
- (C) Five (5) copies of each pre- and post-effective amendment to the Registration Statement or other offering document, one copy marked to show changes; and three (3) copies of any other amended document, one copy marked to show changes; and
- (D) Three (3) copies of the final registration statement or other offering document and a list of the members of the underwriting syndicate, if not indicated therein; one (1) copy of the final underwriting documents and any other document submitted to the NASD for review.

**(6) Information Required to Be Filed**

Any person filing documents pursuant to paragraph 4 shall provide the following information with respect to the offering:

- (A) an estimate of the maximum Public Offering price;

(B) an estimate of the maximum underwriting discount or commission; maximum reimbursement of underwriter's expenses, and underwriter's counsel's fees (except for reimbursement of blue sky fees); maximum financial consulting and/or advisory fees to the Underwriter and Related Persons; maximum finder's fees; and a statement of any other type of compensation which may accrue to the Underwriter and Related Persons;

(C) a statement of the association or affiliation with any Member of any officer, director or securityholder of the Issuer in an initial Public Offering of equity securities, and with respect to any other offering provide such information only with respect to securityholders of five percent or more of any class of the Issuer's securities, to include:

- (i) the identity of the person,
- (ii) the identity of the Member and a statement of whether such Member is participating in any capacity in the Public Offering, and
- (iii) the number of equity or the face value of debt securities owned by such person, the date such securities were acquired, and the price paid for such securities;

(D) a statement addressing the factors in subparagraphs (c)(4)(C) and (D), where applicable;

(E) a detailed explanation of any other arrangement entered into during the 12-month period immediately preceding the filing of the offering which arrangement provides for the receipt of any item of value and/or the transfer of any warrants, options, or other securities from the Issuer to the Underwriter and Related Persons; and

(F) Any person filing documents pursuant to paragraph (5) shall file with the NASD written notice that the offering has been declared effective or approved by the Securities and Exchange Commission or other agency within 12 hours following such declaration or approval or that the offering has been withdrawn or abandoned within three business days

following the withdrawal or decision to abandon the offering.

**(7) Offerings Exempt From Filing**

The provisions of paragraph (1) notwithstanding, documents and information related to the following Public Offerings need not be filed with the NASD for review, unless subject to the provisions of Schedule E to the By-Laws, provided, however, it shall be deemed a violation of Article III, Section 1 of the Rules of Fair Practice, or Appendix F to Article III, Section 34 of the Rules of Fair Practice if a direct participation program, for a Member to participate in any way in such Public Offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this section or Appendix F as applicable:

- (A) securities offered by a corporate, foreign government or foreign government agency Issuer which has unsecured non-convertible debt with a term of issue of at least 4 years, or unsecured non-convertible preferred securities, rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories, except that the initial Public Offering of the equity of an Issuer is required to be filed;
- (B) non-convertible debt securities and non-convertible preferred securities rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories;
- (C) securities registered with the Securities and Exchange Commission on Registration Statement Form S-3 or F-3 and offered pursuant to Rule 415 adopted under the Securities Act of 1933, as amended;
- (D) securities offered pursuant to a redemption standby "firm commitment" underwriting arrangement registered with the Securities and Exchange Commission on Form S-3; and
- (E) financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

**(8) Offerings Exempt From Section**

The provisions of paragraph (1) notwithstanding, the following offerings are exempt from this section and documents and information relating to such offerings need not be filed for review:

- (A) securities exempt from registration with the Securities and Exchange Commission pursuant to the provisions of Sections 4(1), 4(2) and 4(6) of the Securities Act of 1933, as amended, and pursuant to Rule 504 (unless considered a Public Offering in the states where offered), Rule 505 and Rule 506 adopted under the Securities Act of 1933, as amended;
- (B) securities which are defined as "exempt securities" in Section 3(a)(12) of the Securities Exchange Act of 1934, as amended;
- (C) securities of investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as "closed-end company" in Section 5(a)(2) of that Act;
- (D) variable contracts as defined in Article III, Section 29(b)(1) of the Rules of Fair Practice;
- (E) offerings of municipal securities as defined in Section 3(a)(29) of the Securities Exchange Act of 1934, as amended;
- (F) tender offers made pursuant to Regulation 14D adopted under the Securities Exchange Act of 1934, as amended; and
- (G) securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the Public Utility Holding Company Act of 1935, as amended.

**(9) Offerings Required to be Filed**

Documents and information relating to all other Public Offerings including, but not limited to, the following must be filed with the NASD for review:

- (A) direct participation programs as defined in Article III, Section 34(d)(2) of the Rules of Fair Practice;

- (B) mortgage and real estate investment trusts;
- (C) rights offerings;
- (D) securities exempt from registration with the Securities and Exchange Commission pursuant to Section 3(a)(11) of the Securities Act of 1933, as amended, which is considered a Public Offering in the state where offered;
- (E) securities exempt from registration with the Securities and Exchange Commission pursuant to Rule 504 adopted under the Securities Act of 1933, as amended, which is considered a Public Offering in the states where offered;
- (F) securities offered by a bank, savings and loan association, church or other charitable institution, or common carrier even though such offering may be exempt from registration with the Securities and Exchange Commission;
- (G) securities offered pursuant to Regulation A or Regulation B adopted under the Securities Act of 1933, as amended;
- (H) securities offered pursuant to Regulation B adopted under the Securities Act of 1933, as amended; and
- (I) any offerings of a similar nature.

**(10) Filing Fees**

- (A) The initial documents relating to any offering filed with the NASD pursuant to this section shall be accompanied by a filing fee equal to \$500 plus .01% of the Gross Dollar Amount of the Offering, not to exceed a fee of \$15,500. The amount of filing fee may be rounded to the nearest dollar.
- (B) Amendments to the initially filed documents which increase the number of securities being offered shall be accompanied by any additional amount of filing fee equal to .01% of the increase in the amended Gross Dollar Amount of the Offering; not to exceed \$15,500 when aggregated with all fees previously paid.
- (C) Filing fees shall be paid in the form of check or money order payable to the National Association of Securities Dealers, Inc.
- (D) The provisions of Rule 457 adopted

under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this rule, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with subparagraphs (10)(A), (B) or (C).

**(c) Underwriting Compensation and Arrangements**

**(1) General**

No Member or Person Associated with a Member shall participate in any manner in any Public Offering of securities in which the underwriting or other terms or arrangements in connection with or relating to the distribution of the securities, or the terms and conditions related thereto, are unfair or unreasonable.

**(2) Amount of Underwriting Compensation**

(A) No Member or Person Associated with a Member shall receive an amount of underwriting compensation in connection with a Public Offering which is unfair or unreasonable and no Member or Person Associated with a Member shall underwrite or participate in a Public Offering of securities if the underwriting compensation in connection with the Public Offering is unfair or unreasonable.

(B) For purposes of determining the amount of underwriting compensation, all items of value received or to be received from any source by the Underwriter and Related Persons which are deemed to be in connection with or related to the distribution of the Public Offering as determined pursuant to paragraph (c)(3) and (c)(4) shall be included.

(C) All items of underwriting compensation shall be disclosed in detail in the section on underwriting or distribution arrangements in the prospectus or similar document and, if the underwriting compensation includes items of compensation in addition to the commission or discount disclosed on the cover page of the prospectus or similar document, a footnote to the offering proceeds table on the cover page of the prospectus or

similar document shall include a cross-reference to the section on underwriting or distribution arrangements.

(D) For purposes of determining the currently effective guideline on the maximum amount of underwriting compensation considered fair and reasonable, the following factors, as well as any other relevant factors and circumstances, shall be taken into consideration:

- (i) the Offering Proceeds;
- (ii) the amount of risk assumed by the Underwriter and Related Persons, which is determined by (a) whether the offering is being underwritten on a "firm commitment" or "best efforts" basis and (b) whether the offering is an initial or secondary offering; and
- (iii) the type of securities being offered.

(E) The amount of compensation (stated as a percentage of the dollar amount of the Offering Proceeds) which is considered fair and reasonable generally will vary directly with the amount of risk to be assumed by the Underwriter and Related Persons and inversely with the dollar amount of the Offering Proceeds.

**(3) Items of Compensation**

(A) For purposes of determining the amount of underwriting compensation received or to be received by the Underwriter and Related Persons pursuant to paragraph (c)(2), the following items and all other items of value received or to be received by the Underwriter and Related Persons in connection with or related to the distribution of the offering as determined pursuant to paragraph (c)(4) shall be included:

- (i) discount or commission;
- (ii) reimbursement of expenses to or on behalf of the Underwriter and Related Persons;
- (iii) fees and expenses of underwriter's counsel;
- (iv) finder's fees;
- (v) wholesaler's fees;
- (vi) financial consulting and advisory

fees, whether in the form of cash, securities, or any other item of value; (vii) stock, options, warrants, and other securities, including securities received as underwriting compensation, for example; (a) in connection with a private placement of securities for the Issuer; (b) for providing or arranging bridge financing for the Issuer; (c) as a finder's fee; (d) for consulting services to the Issuer; and (e) securities purchased in a private placement by the Issuer;

(viii) special sales incentive items in compliance with paragraph

(c)(6)(B)(xi);

(ix) any right of first refusal provided to the Underwriter and Related Persons to underwrite or participate in future offerings by the Issuer, which will have a compensation value of one percent of the offering proceeds or that dollar amount contractually agreed to by the Issuer and underwriter to waive the right of first refusal;

(x) compensation to be received by the underwriter or person nominated by the underwriter as an advisor to the Issuer's board of directors in excess of that received by Members of the board of directors;

(xi) commissions, expense reimbursements, or other compensation to be received by the Underwriter and Related Persons as a result of the exercise or conversion within 12 months following the Effective Date of the offering of warrants, options, convertible securities, or similar securities distributed as part of the offering;

(xii) fees of a Qualified Independent Underwriter; and

(xiii) compensation, including expense reimbursements, paid in the 12 months prior to the initial or amended filing of the prospectus or similar documents to any Member or Person Associated with a Member for a Public Offering that was not completed.

(B) Expenses customarily borne by an Issuer, such as printing costs, fees, shall be excluded

from underwriter's compensation whether or not paid through an underwriter.

**(4) Determination of Whether Compensation Is Received in Connection With the Offering**

(A) All items of value received or to be received by the Underwriter and Related Persons during the 12-month period immediately preceding the filing of the Registration Statement or similar document, and at the time of and subsequent to the Public Offering, from the Issuer will be examined to determine whether such items of value are underwriting compensation in connection with the offering and, if received during the 6-month period immediately preceding the filing of the Registration Statement or similar document, will be presumed to be underwriting compensation received in connection with the offering, provided, however, that such presumption may be rebutted on the basis of evidence satisfactory to the NASD to support a finding that the receipt of an item is not in connection with the offering and shall not include cash discounts or commissions received in connection with a prior distribution of the Issuer's securities.

(B) Items of value received by an Underwriter and Related Person more than 12 months immediately preceding the date of filing of the Registration Statement or similar document will be presumed not to be underwriting compensation, provided, however, that items received prior to such 12-month period may be included as underwriting compensation on the basis of evidence to support a finding that receipt of the item is in connection with the offering.

(C) For purposes of determining whether any item of value received or to be received by the Underwriter and Related Persons is in connection with or related to the distribution of the Public Offering, the following factors, as well as any other relevant factors and circumstances, shall be considered:

(i) the length of time between (a) the date of the receipt of the item of value, (b) the date of any contractual agreement for services for which the item of value was or is to be received, and (c) the date the performance of the service commenced; and



the date of filing of the Registration Statement or similar document, with a shorter period of time tending to indicate that the item is received in connection with the offering;

(ii) the details of the services provided or to be provided for which the item of value was or is to be received;

(iii) the relationship between the services provided or to be provided for which the item of value was or is to be received and

(a) the nature of the item of value, (b) the compensation value of the item of value, and (c) the proposed Public Offering;

(iv) the presence or absence of arm's-length bargaining or the existence of any affiliate relationship between the Issuer and the recipient of the item of value, with the absence of arm's length bargaining or the presence of any affiliation tending to indicate that the item of value is received in connection with the offering.

(D) For purposes of determining whether securities received or to be received by the Underwriter and Related Persons are in connection with or related to the distribution of the Public Offering, the factors in subparagraph (C) and the following factors shall be considered:

(i) any disparity between the price paid and the offering price or the market price, if any, at the time of acquisition, with a greater disparity tending to indicate that the securities constitute compensation;

(ii) the amount of risk assumed by the recipient of the securities, as determined by (a) the restrictions on exercise and resale; (b) the nature of the securities (e. g. warrant, stock, or debt); and (c) the amount of securities, with a larger amount of readily marketable securities without restrictions on resale or a warrant for securities tending to indicate that the securities constitute compensation; and

(iii) the relationship of the receipt of the securities to purchases by unrelated purchasers on similar terms at approximately the same time with an absence of similar purchases tending to indicate that

the securities constitute compensation.

(E) Notwithstanding the provisions of subparagraph (3)(A)(vi) hereof, financial consulting and advisory fees may be excluded from underwriting compensation upon a finding by the NASD, on the basis of evidence satisfactory to it, that an ongoing relationship between the Issuer and the Underwriter and Related Person has been established at least 12 months prior to the filing of the Registration Statement or similar document with the NASD or that the relationship, if established subsequent to that time, was not entered into in connection with the offering, and that actual services have been or will be rendered which were not or will not be connected with or related to the offering.

#### (5) Valuation of Non-Cash Compensation

For purposes of determining the value to be assigned to securities received as underwriting compensation, the following criteria and procedures shall be applied:

(A) No Underwriter and Related Person may receive a security or a warrant for a security as compensation in connection with the distribution of a Public Offering that is different than the security to be offered to the public or that does not have a bona fide independent market, provided, however, that

(i) in exceptional and unusual circumstances, upon good cause shown, such arrangement shall be permitted by the Corporate Financing Department or the appropriate standing committee of the Board of Governors; and

(ii) in offerings of units, the Underwriter and Related Persons may only receive a warrant for the common stock in a unit composed of common stock and a warrant(s) for common stock, but may not receive a warrant for the common stock underlying the unit warrant.

(B) securities shall be valued on the basis of the difference between the cost of such securities to the recipient and either (i) the proposed (and actual) Public Offering price or, (ii) where a bona fide independent market exists for the security the market price on the date of acquisition;

(C) options, warrants or convertible

securities, shall be valued on the basis of the following formula:

- (i) the proposed (and actual) Public Offering price multiplied by .65 (65%);
- (ii) minus the difference between the conversion price and either the market price on the date of acquisition, where a bona fide independent market exists for the security, or the proposed (and actual) Public Offering price;
- (iii) divided by two (2);
- (iv) multiplied by the number of convertible securities received or to be received as underwriting compensation;
- (v) less the price paid for the securities; and
- (vi) divided by the Offering Proceeds.

(D) a lower value of 80% and 60% of the value calculation shall be assigned if securities, and, where relevant, underlying securities, are, or will be, restricted from sale, transfer, assignment or other disposition for a period of one and two years, respectively, beyond the one-year period of restriction required by paragraph (c)(7)(A)(i).

**(6) Unreasonable Terms and Arrangements**

(A) No Member or Person Associated with a Member shall participate in any manner in a Public Offering of securities in which any arrangement proposed in connection with the Public Offering, and the terms and conditions relating thereto, is determined to be unfair and unreasonable pursuant to this Rule or inconsistent with any By-Law or any Rule of Fair Practice, or other rule or regulation, of this NASD.

(B) Without limiting the generality of the foregoing paragraphs hereof, the following terms and arrangements, when proposed in connection with the distribution of a Public Offering of securities, shall be unfair and unreasonable:

- (i) any accountable expense allowance granted by an Issuer to the Underwriter and Related Persons which includes payment for general overhead, salaries, supplies, or similar expenses of the underwriter incurred in the normal conduct of business;

- (ii) any non-accountable expense allowance in excess of three % of Offering Proceeds;
- (iii) any payment of commissions or reimbursement of expenses directly or indirectly to the Underwriter and Related Persons prior to commencement of the public sale of the securities being offered, except the reimbursement of out-of-pocket accountable expenses actually incurred by the Underwriter and Related Persons;
- (iv) the payment of any compensation by an Issuer or an affiliate to an underwriter or related person in connection with an offering of securities which is not completed according to the terms of agreement between the Issuer and underwriter; provided, however, that the reimbursement of out-of-pocket accountable expenses other than sales commissions actually incurred by the underwriter or related person shall not be presumed to be unfair or unreasonable under normal circumstances;
- (v) any right of first refusal regarding future Public Offerings, private placements or other financings which has a duration of more than five years from the Effective Date of the offering;
- (vi) the receipt by the Underwriter and Related Persons of underwriting compensation consisting of any option, warrant or convertible security which:
  - (1) has a duration of more than five years from the Effective Date of the offering;
  - (2) is exercisable or convertible at a price below either the Public Offering price of the underlying security or, if a bona fide independent market exists for the security or the underlying security, the market price at the time of receipt;
  - (3) is not in compliance with subparagraph (c)(5)(A);
  - (4) has more than one demand registration right at the Issuer's expense;
  - (5) has a demand registration right which has a duration of more than five years from the Effective Date of the offering;

- (6) has a piggy-back registration right which has a duration of more than seven years from the Effective Date of the offering; or
- (7) is convertible or exercisable or otherwise is on terms more favorable than the terms of the securities being offered to the public;
- (vii) the receipt by the Underwriter and Related Persons of any item of compensation for which a value cannot be determined at the time of the offering;
- (viii) when proposed in connection with the distribution of a Public Offering of securities on a "firm commitment" basis, any overallotment option providing for the overallotment of more than fifteen percent of the amount of securities being offered, computed excluding any securities offered pursuant to the overallotment option;
- (ix) Stock Numerical Limitation — the receipt by the Underwriter and Related Persons of securities which constitute underwriting compensation in an aggregate amount greater than ten percent of the number or dollar amount of securities being offered to the public, which is calculated to exclude:
  - (1) any securities deemed to constitute underwriting compensation;
  - (2) any securities issued or to be issued pursuant to an overallotment option;
  - (3) in the case of a "best efforts" offering, any securities not actually sold; and
  - (4) any securities underlying warrants, options, or convertible securities which are part of the proposed offering;
- (x) the receipt, pursuant to an agreement entered into at any time before or after the Effective Date of a Public Offering of warrants, options, convertible securities or units containing such securities, by a Member or Person Associated with a Member, of any compensation or expense reimbursement in connection with the exercise or conversion of any such warrant, option, or convertible security in any of the following circumstances:
  - (1) the market price of the security into which the warrant, option, or convertible security is exercisable or convertible is lower than the exercise or conversion price;
  - (2) the warrant, option, or convertible security is held in a discretionary account at the time of exercise or conversion;
  - (3) the arrangements whereby compensation is to be paid are not disclosed (a) in the prospectus or offering circular by which the warrants, options, or convertible securities are offered to the public, if such arrangements are contemplated or any agreement exists as to such offering circular provided to securityholders at the time of exercise or conversion; or
  - (4) the exercise or conversion of the warrants, options or convertible securities is not solicited by the underwriter or related person, provided however, that any request for exercise or conversion will be presumed to be unsolicited unless the customer states in writing that the transaction was solicited and designates in writing the broker/dealer to receive compensation for the exercise or conversion;
- (xi) for a Member or Person Associated with a Member to accept, directly or indirectly, any non-cash sales incentive item including, but not limited to, travel bonuses, prizes and awards, from an Issuer or an affiliate thereof in excess of \$50 per person per Issuer annually. Notwithstanding the foregoing, a Member may provide non-cash sales incentive items to its associated persons provided that no Issuer, or an affiliate thereof, including specifically an affiliate of the Member, directly or indirectly participates in or contributes to providing such non-cash sales incentive; or
- (xii) for a Member to Participate with an Issuer in the public distribution of a non-underwritten issue of securities if the Issuer hires persons primarily for the purpose of distributing or assisting in the

distribution of the issue, or for the purpose of assisting in any way in connection with the underwriting, except to the extent in compliance with 17 C.F.R. §240.3a4-1 and applicable state law; or

(C) In the event that the Underwriter and Related Persons receive securities deemed to be underwriting compensation in an amount constituting unfair and unreasonable compensation pursuant to subparagraph (B)(ix) hereof, the recipient shall return any excess securities to the Issuer or the source from which received at cost and without recourse, except in exceptional and unusual circumstances, upon good cause shown, a different arrangement may be permitted by the Corporate Financing Department or the appropriate standing Committee of the Board of Governors.

**(7) Restrictions on Securities**

(A) No Member or Person Associated with a Member shall Participate in Any Public Offering which does not comply with the following requirements:

- (i) securities deemed to be underwriting compensation shall not be sold, transferred, assigned, pledged or hypothecated by any person, except as provided in subparagraph (B) for a period of one year following the Effective Date of the offering for which the securities were received; provided, however, that securities deemed to be underwriting compensation may be transferred to any Member Participating in the Offering and the bona fide officers or partners thereof and securities which are convertible into other types of securities or which may be exercised for the purchase of other securities may be so transferred, converted or exercised if all securities so transferred or received remain subject to the restrictions specified herein for the remainder of the initially applicable time period;
- (ii) certificates or similar instruments representing securities restricted pursuant to subparagraph (i) hereof shall bear an appropriate legend describing the restriction and stating the time period for which the restriction is operative; and

(iii) securities to be received by a Member as underwriting compensation shall only be issued to a Member Participating in the Offering and the bona fide officers or partners thereof.

(B) The provisions of subparagraph (A) notwithstanding, the transfer of any security by operation of law or by reason of reorganization of the Issuer shall not be prohibited by this paragraph.

(C) Venture Capital Restrictions — when a Member participates in the initial Public Offering of an Issuer's securities, such Member or any officer, director, general partner, controlling shareholder or subsidiary of the Member or subsidiary of such controlling shareholder or a member of the Immediate Family of such persons, who beneficially owns any securities of said Issuer at the time of filing of the offering, shall not sell such securities during the offering or sell, transfer, assign or hypothecate such securities for ninety days following the Effective Date of the offering unless:

- (i) the price at which the issue is to be distributed to the public is established at a price no higher than that recommended by a Qualified Independent Underwriter, who does not beneficially own five percent or more of the outstanding voting securities of the Issuer, who shall also participate in the preparation of the Registration Statement and the prospectus, offering circular, or similar document and who shall exercise the usual standards of "due diligence" in respect thereto; or
- (ii) the aggregate amount of such securities held by such Member and its related persons enumerated above would not exceed one percent of the securities being offered

**(8) Conflicts of Interest**

(A) Proceeds Directed to a Member — no Member shall Participate in a Public Offering of an Issuer's securities where more than 10 percent of the Net Offering Proceeds, not including underwriting compensation, are intended to be paid to Members Participating in the Distribution of the Offering or associated or affiliated person of such

members, or members of the Immediate Family of such persons, unless the price at which an equity issue or the yield at which a debt issue is to be distributed to the public is established at a price no higher or yield no lower than that recommended by a Qualified Independent Underwriter, who shall participate in the preparation of the Registration Statement and the prospectus, offering circular, or similar document and who shall exercise the usual standards of "due diligence" in respect thereto.

(i) All offerings included within the scope of this paragraph shall disclose in the underwriting or plan of distribution section of the Registration Statement, offering circular or other similar document that the offering is being made pursuant to the provisions of this paragraph, the name of the Member acting as Qualified Independent Underwriter, and that such Member is assuming the responsibilities of acting as a Qualified Independent Underwriter in pricing the offering and conducting due diligence.

(ii) The provision of this paragraph which requires that the price of the securities be established based on the recommendation of a Qualified Independent Underwriter shall not apply to an offering if:

- (1) the securities are registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended;
- (2) the Registration Statement pertains only to securities which are to be offered or sold pursuant to Rule 415 adopted under the Securities Act of 1933, as amended;
- (3) the securities will only be offered or sold from time to time in negotiated transactions;
- (4) sales by Member(s) (where the Member, its associated or affiliated persons or Immediate Family members thereof are subject to this subparagraph due to the fact that they are to receive a portion of the offering proceeds) will be made solely to Institutional Investors; and

(5) the Qualified Independent Underwriter complies with all other provisions of this paragraph on a continuous basis throughout the effectiveness of the Registration Statement.

(iii) The provisions of this paragraph shall not apply to:

- (1) an offering of a class of equity securities for which a bona fide independent market exists as of the date of the filing of the Registration Statement and as of the Effective Date thereof;
- (2) an offering of a class of securities rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories;
- (3) an offering otherwise subject to the provisions of Schedule E to the By-Laws;
- (4) an offering of securities exempt from registration with the Securities and Exchange Commission under Section 3(a)(4) of the Securities Act of 1933;
- (5) an offering of a real estate investment trust as defined in Section 856 of the Internal Revenue Code; or
- (6) an offering of securities subject to Appendix F to Article III, Section 34 of the Rules of Fair Practice, unless the Net Offering Proceeds are intended to be paid to the above persons for the purpose of repaying loans, advances or other types of financing utilized to acquire an interest in a pre-existing company.

**(d) Code of Procedure for Corporate Financing and Direct Participation Program Matters**

**(1) Purpose**

The purpose of this Code of Procedure is to provide a procedure for review of determinations by the NASD's staff regarding compliance with NASD rules relating to corporate financing and direct participation program matters by which any Member is aggrieved.

**(2) Application by Aggrieved Member**

Any Member aggrieved by a determination

of the Corporate Financing Department rendered pursuant to any rule or regulation of the NASD relating to underwriting terms or arrangements may make application for review of such determination. In exceptional or unusual circumstances, a Member may request conditionally or unconditionally an exemption from such rules or regulations. The Director of the Corporate Financing Department may, of his own initiative, request review of the fairness or reasonableness of any terms and arrangements proposed in documents filed pursuant to this section. Applications for review will be accepted only with respect to offerings for which a Registration Statement or similar document has been filed with the appropriate federal or state regulatory agency; provided, however, that a hearing committee may waive the requirement for filing prior to review upon a finding that such review is appropriate under the circumstances.

**(3) Application for Review**

Any Member making application for review pursuant to paragraph (d)(2) (hereinafter referred to in this subsection as "applicant") shall request such review in writing and shall specify in reasonable detail the source and nature of the aggrievement and the relief requested. The applicant shall state whether a hearing is requested and shall sign the written application. All applications shall be directed to the Corporate Financing Department at the NASD's Executive Office.

**(4) Notice of Hearing**

Any applicant shall have a right to a hearing before a hearing committee constituted as provided in paragraph (5). The hearing committee may request a hearing on its own motion. A hearing shall be scheduled as soon as practicable, at a location determined by the hearing committee. Written notice of the hearing shall be sent to the applicant at the earliest practicable date, stating the date, time, and location of the hearing.

**(5) Hearing Committee and Procedure**

(A) Any hearing pursuant to this section shall be before an individual or

individuals designated by the NASD, who shall be current or past Members of the appropriate standing committee of the Board of Governors, i.e. the "hearing committee." Any applicant shall be entitled to appear at, and participate in, the hearing, to be represented by counsel, and to submit any relevant testimony or evidence. A representative of the NASD shall be entitled to appear at, and participate in, the hearing, to be represented by counsel, and to submit any relevant testimony or evidence. Upon agreement of the applicant, representatives of the NASD, and the hearing committee, a hearing may be conducted by means of a telephonic or other linkage which permits all parties to participate simultaneously in the proceeding.

(B) In the event that the applicant waives a hearing before the appropriate hearing committee, the hearing committee shall review the matter on the record before it. Any applicant and the NASD shall be entitled to submit any relevant written testimony or evidence to the hearing committee.

**(6) Requirement for Written Determination**

The hearing committee shall render a determination as to all issues which the committee finds to be relevant as soon as practicable following conclusion of the hearing or, in cases in which a hearing is not requested, completion of the committee's review of the record. The hearing committee may determine whether the proposed underwriting or other terms and arrangements in connection with or relating to the distribution of the securities, or the terms and conditions related thereto, taking into consideration all elements of compensation and all of the relevant surrounding factors and circumstances, are fair and reasonable and in compliance with applicable rules and regulations. The determination of the hearing committee shall be issued in writing by the Director, Corporate Financing. A copy of the determination shall be sent to each applicant.

**(7) Review by Committee of Board**

(A) Any Member aggrieved by a determination of a hearing committee shall have a right to have that determination reviewed by the appropriate standing committee of the Board of Governors. With respect to matters relating to offerings other than equity offerings of direct participation programs, the Corporate Financing Committee shall be the appropriate committee. With respect to matters relating to equity offerings of direct participation programs, the Direct Participation Programs Committee shall be the appropriate committee. There may be circumstances where a different standing committee of the Board of Governors may be appropriate.

(B) Any Member seeking a review of a determination of a hearing committee shall submit a written request for such review to the NASD within fifteen business days following issuance of the hearing committee's written determination. Any such Member shall submit with the written request for review a written statement specifying the portion of the hearing committee's determination for which review is requested and the relief sought. Any such Member may submit written testimony or evidence for consideration by the committee. Representatives of the NASD may also submit written testimony or evidence to the committee.

(C) Pursuant to a request duly made, the appropriate standing committee of the

Board of Governors will review the determination of a hearing committee, giving consideration to all parts of the record which the Board committee finds relevant. The Board committee shall render a determination as to all issues which the committee finds to be relevant. The determination of the Board committee shall be issued in writing by the Director, Corporate Financing. A copy of the determination shall be sent to each Member requesting review.

**(8) Assessment of Costs**

A hearing committee may, in its discretion, assess costs of a hearing against any Member requesting the hearing.

**(9) Nature of Determination**

Any determination by a hearing committee or standing committee rendered pursuant to this section shall constitute the opinion of that committee as to compliance with applicable NASD rules, interpretations or policies and shall be advisory in nature only. No such determination shall constitute a finding of a violation of any rule, interpretation or policy. A finding of a violation shall be made only by a District Business Conduct Committee pursuant to the Code of Procedure for Handling Trade Practice Complaints.

**(e) Power of the Board of Governors**

The Board of Governors shall have the power to adopt, alter, amend, supplement or modify the provisions of paragraph (b) of this section from time to time without recourse to the membership for approval.



# Notice To Members

National Association of Securities Dealers, Inc.

November 1988

## Number 88 - 93

### Suggested Routing:\*

- |   |  |  |  |
|---|--|--|--|
| <input checked="" type="checkbox"/> Senior Management | <input checked="" type="checkbox"/> Internal Audit     | <input checked="" type="checkbox"/> Operations | <input type="checkbox"/> Syndicate           |
| <input type="checkbox"/> Corporate Finance            | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options               | <input type="checkbox"/> Systems             |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal                     | <input type="checkbox"/> Registration          | <input checked="" type="checkbox"/> Trading  |
| <input checked="" type="checkbox"/> Institutional     | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research              | <input checked="" type="checkbox"/> Training |

\*These are suggested departments only. Others may be appropriate for your firm.

## Subject: SEC Approval of Amendment to Free-Riding Interpretation Concerning Sales to Investment Partnerships and Corporations

### EXECUTIVE SUMMARY

NASD members are advised that the Securities and Exchange Commission (SEC) has approved an amendment to the NASD Board of Governors' "Free-Riding and Withholding" Interpretation that would provide members with an alternative means of complying with the Interpretation for sales of new issues to the accounts of investment partnerships and investment corporations and similar type accounts.

The text of the amendment is attached.

### BACKGROUND

The amendment to the NASD Board of Governors' "Free-Riding and Withholding" Interpretation (Interpretation) approved by the Securities and Exchange Commission is intended to provide members with an alternative means of compliance with the existing requirements of the Interpretation in making sales of "hot issue" securities to the accounts of investment partnerships and corporations, including hedge funds,

investment clubs, and other similar accounts. Under the heading "Investment Partnerships and Corporations," the Interpretation now provides, with no alternative means of compliance, that members and their associated persons are prohibited from selling securities of a new issue that trades at a premium ("hot issue" securities) to any investment partnership, corporation, or similar account unless "the member receives from such account, prior to the execution of the transaction, the names and business connections of all persons having any beneficial interest in the account." If the information discloses that a restricted person has a beneficial interest in the account, the transaction can be effected only in compliance with the restrictions of the Interpretation.

The Interpretation has been construed strictly by the NASD. It is intended to protect the integrity of the public offering system by ensuring that underwriters make a bona fide public distribution of "hot issue" securities and do not retain those securities for their own benefit or use those securities to favor persons who can direct future business to the firm. Without restricting purchases by investment partnerships, the provisions of the Interpretation could be evaded easily.

Because the existing provision was the exclusive means of compliance, the NASD National

Business Conduct Committee (NBCC) and the NASD Board of Governors determined that it would be appropriate to propose an alternative means for members to comply with the Interpretation when selling "hot issue" securities to investment partnerships and similar accounts. Because of concern that members can encounter difficulty in complying with the requirements of the provision (since persons responsible for the management of investment partnerships and similar accounts may be hesitant to release the names of persons holding beneficial interests in such accounts), the NASD proposed in Notice to Members 86-40 (May 23, 1986) that a member or associated person would be presumed to be in compliance with the requirements of the Interpretation's section on investment partnerships either by obtaining the list of actual names pursuant to the existing requirement or by receiving from the account manager specific written representations that none of the beneficial owners are restricted persons.

Following review of comments received, the NBCC concluded that the amendment's reliability would be determined by the time and effort expended by the account manager to understand and properly apply the complex provisions of the Interpretation. As a result, the NBCC determined that it should consider other approaches to provide members with an effective means of ensuring that restricted accounts are not recipients of "hot issue" securities in violation of the Interpretation. The NBCC appointed a subcommittee to consider alternatives to amending the Interpretation, including the May 1986 proposal and subsequent proposed modifications to it, as well as a new proposal to establish a "safe harbor" procedure by requiring a member to obtain an opinion of counsel through the account manager.

Based on the subcommittee's study of alternative proposals, the NBCC and Board of Governors concluded that the original proposal should be rejected as a less effective means of ensuring that members are advised correctly of the restricted status of an account than is offered by an opinion-of-counsel approach, which is the approach contained in the amendment recently approved by the SEC. The NBCC also concluded that an assurance by the account manager may be accurate in many situations, but does not offer as positive an assurance as does the opinion of counsel. In par-

ticular, the NBCC also noted that account managers are not directly subject to NASD jurisdiction. In NASD Notice to Members 87-73 (November 4, 1987), the opinion-of-counsel proposal was released for member comment. Following review of the comments, the NBCC and Board concluded that an opinion of counsel has the advantage of building a "safe harbor" procedure with a greater degree of accountability than does a blanket representation of the account manager.

#### EXPLANATION OF AMENDMENT

The amendment is intended to provide an alternative means for members to comply with the Interpretation when selling "hot issue" securities to investment partnerships and similar accounts. The amendment provides that a member or associated person of a member may not sell "hot issue" securities to the types of accounts specified unless, prior to executing a transaction with the account, the member has obtained a copy of a current opinion from counsel stating that counsel reasonably believes that no person with a beneficial interest in the account is a restricted person under the Interpretation and stating that, in providing such opinion, counsel:

- 1) has reviewed and is familiar with the Interpretation;
- 2) has reviewed a current list of all persons with a beneficial interest in the account supplied by the account manager;
- 3) has reviewed information supplied by the account manager with respect to each person with a beneficial interest in the account, including identity, employment, and any other business connections of such persons; and
- 4) has requested and reviewed other documents and other pertinent information and made inquiries of the account manager and received responses thereto if counsel determines that such further review and inquiry are necessary and relevant to determine the correct status of such persons under the Interpretation.

As the amendment offers only an alternative means of compliance, members may continue to

comply with the current requirements of the Interpretation's section on investment partnerships by obtaining a list of the names and business connections of all persons having a beneficial interest in the account from the account manager in the case of both domestic and foreign accounts. The amendment, however, eliminates the present alternative for foreign investment partnership and foreign investment companies' accounts in countries having secrecy laws that now allow a member to obtain a blanket representation from his account manager that none of the beneficial owners are restricted persons. Thus, foreign investment accounts must in the future provide either a list of the names and business connections of the beneficial owners or an opinion from counsel who is required to be an attorney admitted to practice in the United States.

In addition, the amendment requires members to maintain in their files a copy of the opinion of counsel or a list of names of the beneficial owners for at least three years following the member's last sale of a new issue to that account.

Finally, the amendment requires that, irrespective of which means of compliance a member selects, the list of names or opinion of counsel shall be deemed current only for a period of 18 months after which a new list or a new opinion of counsel must be obtained.<sup>1</sup>

The amendment is effective on the date of SEC approval (August 29, 1988).

Questions concerning this notice can be directed to the NASD Office of General Counsel, at (202) 728-8294 or John F. Mylod, Assistant General Counsel, at (202) 728-8288.

### AMENDMENT TO FREE-RIDING INTERPRETATION

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

The section under the heading "Investment Partnerships and Corporations" of the Board of Governors' Interpretation is amended as follows:  
**Investment Partnerships and Corporations**

A member may not sell securities of a public offering that trade at a premium in the secondary market whenever such secondary market begins ("hot issue"), to the account of any investment partnership or corporation, domestic or foreign (except companies registered under the Investment

Company Act of 1940) including, but not limited to, hedge funds, investment clubs, and other like accounts unless the member complies with either of the following alternatives:

(A) [receives from such account,] prior to the execution of the transaction, the member has received from the account a current list of the names and business connections of all persons having any beneficial interest in the account, and if such information discloses that any person enumerated in paragraphs (1) through (4) hereof has a beneficial interest in such account, any sale of securities to such account must be consistent with the provisions of this Interpretation [; provided, however, that if the disclosure of such information by the account is prohibited by law, then, in such case, the member must receive written assurance from the account that no person enumerated in paragraphs (1) through (4) hereof has a beneficial interest in such account], or

(B) prior to the execution of the transaction, the member has obtained a copy of a current opinion from counsel admitted to practice law before the highest court of any state stating that counsel reasonably believes that no person with a beneficial interest in the account is a restricted person under this Interpretation and stating that, in providing such opinion, counsel:

(1) has reviewed and is familiar with this Interpretation;

(2) has reviewed a current list of all persons with a beneficial interest in the account supplied by the account manager;

(3) has reviewed information supplied by the account manager with respect to each person with a beneficial interest in the account, including the identity, the nature of employment, and any other business connections of such persons; and

(4) has requested and reviewed other documents and other pertinent information and made inquiries of the account manager and received responses thereto, if counsel deter-

mines that such further review and inquiry are necessary and relevant to determine the correct status of such persons under the Interpretation.

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 opinion of counsel 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 section, a list or opinion 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.

The term beneficial interest means not only ownership interests, but every type of direct financial interest of any persons enumerated in paragraphs (1) through (4) hereof in such account, including, without limitation, management fees based on the performance of the account.

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<sup>1</sup> The SEC in its approval correctly noted that neither the existing compliance procedure nor the opinion of counsel alternative provides a "safe harbor" presumption of compliance if a member has actual knowledge that a restricted person has a beneficial interest in the account. Securities Exchange Act Release No. 26039 (August 29, 1988).

# Notice To Members

National Association of Securities Dealers, Inc.

November 1988

## Number 88 - 94

### Suggested Routing:\*

- |   |  |  |                                    |
|---|--|--|------------------------------------|
| <input type="checkbox"/> Senior Management            | <input type="checkbox"/> Internal Audit                | <input checked="" type="checkbox"/> Operations | <input type="checkbox"/> Syndicate |
| <input checked="" type="checkbox"/> Corporate Finance | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options               | <input type="checkbox"/> Systems   |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal                     | <input type="checkbox"/> Registration          | <input type="checkbox"/> Trading   |
| <input type="checkbox"/> Institutional                | <input type="checkbox"/> Mutual Fund                   | <input checked="" type="checkbox"/> Research   | <input type="checkbox"/> Training  |

\*These are suggested departments only. Others may be appropriate for your firm.

### Subject: NASDAQ National Market System Additions as of October 18, 1988

As of October 18, 1988, the following 48 issues joined the NASDAQ National Market System, bringing the total number of issues in NASDAQ/NMS to 2,913:

Symbol	Company	Entry Date	SOES Execution Level
BAIB	Bailey Corporation	9/20/88	500
CMLE	Casual Male Corporation (The)	9/20/88	500
CHMXZ	Chemex Pharmaceuticals, Inc. (Wts)	9/20/88	200
CLDRP	Cliffs Drilling Company (Pfd)	9/20/88	200
CSOL	Convergent Solutions, Inc.	9/20/88	1000
CSOLW	Convergent Solutions, Inc. (Wts)	9/20/88	500
FPRY	First Federal Savings Bank of Perry	9/20/88	200
NVLS	Novellus Systems, Inc.	9/20/88	1000
TDCX	Technology Development Corporation	9/20/88	200
WHLSP	Wholesale Club, Inc. (The) (Pfd)	9/20/88	500
DFSE	DFSoutheastern, Inc.	9/23/88	1000
ADTLY	ADT Limited	9/28/88	1000
LMRK	Landmark Graphics Corporation	9/28/88	1000
NGAS	Associated Natural Gas Corporation	9/29/88	1000
FYBR	Critical Industries, Inc.	10/4/88	1000
GWOX	Goodheart-Willcox Company, Inc.	10/4/88	200
HTWN	Hometown Bancorporation, Inc.	10/4/88	500
MIKA	Medical Imaging Centers of America, Inc.	10/4/88	1000
OSBN	Osborn Communications Corporation	10/4/88	1000
TWRX	Software Toolworks, Inc. (The)	10/4/88	500
VMORZ	VMS Mortgage Investors L.P. III	10/4/88	1000
WWTK	Weitek Corporation	10/4/88	1000
SLFX	Selfix, Inc.	10/5/88	500

Notice to Members 88-94

PACCA	Provident Life and Accident Insurance Company of America (CI A)	10/11/88	1000
LINZ	Lindsay Manufacturing Company	10/12/88	1000
KPCI	Key Production Company, Inc.	10/13/88	1000
ARIX	ARIX Corporation	10/18/88	500
ASIX	Assix International, Inc.	10/18/88	1000
ASIXW	Assix International, Inc. (Wts)	10/18/88	1000
BULKF	B & H Bulk Carriers Ltd.	10/18/88	1000
BIAC	BI Incorporated	10/18/88	1000
BGENW	Biogen, Inc. (Wts)	10/18/88	200
CLZR	Candela Laser Corporation	10/18/88	1000
CANX	Cannon Express, Inc.	10/18/88	1000
CNBL	Centennial Beneficial Corp.	10/18/88	200
CBNB	CommerceBancorp	10/18/88	500
CNPGF	Cornucopia Resources Ltd.	10/18/88	200
ECGC	Essex County Gas Company	10/18/88	200
GNUC	GNI Group, Inc. (The)	10/18/88	1000
HEAL	Healthwatch, Inc.	10/18/88	1000
MRAC	Microamerica, Inc.	10/18/88	1000
PNCR	Pancretec, Inc.	10/18/88	1000
STIZ	Scientific Technologies, Incorporated	10/18/88	1000
SHOW	Showscan Film Corporation	10/18/88	500
SIER	Sierra On-Line, Inc.	10/18/88	1000
SGHI	Silk Greenhouse, Inc.	10/18/88	1000
UGNE	Unigene Laboratories, Inc.	10/18/88	1000
UGNEW	Unigene Laboratories, Inc. (Wts)	10/18/88	200

**NASDAQ/NMS Pending Additions**

The following issues have filed for inclusion in NASDAQ/NMS on effectiveness of their registration statements with the SEC or other appropriate regulatory authority. Their inclusion may commence prior to the next regularly scheduled phase-in date.

Symbol	Company	Location	SOES Execution Level
RODS	American Steel & Wire Corporation	Cuyahoga Heights, OH	500
DUBO	DuBose Steel, Inc.	Roseboro, NC	500
METC	Metcalf & Eddy Companies, Inc.	Branchburg, NJ	500
MTBS	Metro Bancshares, Inc.	Jericho, NJ	1000
SOFS	Softsel Computer Products, Inc.	Englewood, CA	1000
VSBC	VSBC Bancorp, Inc.	Closter, NJ	500

### NASDAQ/NMS Symbol and/or Name Changes

The following changes to the list of NASDAQ/NMS securities occurred since September 16, 1988.

New/Old Symbol	New/Old Security	Date of Change
TJCO/TJCO	TJ International, Inc./Trus Joist Corporation	9/19/88
RENT/NVIS	Rentrak Corporation/National Video, Inc.	9/22/88
CLRXL/CLRXL	Colorocs Corporation (CI D 10/25/88 Wts)/ Colorocs Corporation (CI D 10/4/88 Wts)	9/26/88
CCURD/MSCP	Concurrent Computer Corp. (New)/ Massachusetts Computer Corp.	9/28/88
MAXEW/MAXEW	Max & Erma's Restaurants, Inc. (10/7/89 Wts)/ Max & Erma's Restaurants, Inc. (10/7/88 Wts)	9/29/88
BSBN/BING	BSB Bancorp, Inc./Binghamton Savings Bank	9/30/88
SOSA/SOSA	Somerset Bankshares, Inc./Somerset Savings Bank	10/3/88
WRNB/WFCS	Warren Bancorp, Inc./Warren Five Cents Savings Bank	10/3/88
APIO/APIO	American Pioneer, Inc./American Pioneer Savings Bank	10/4/88
MHCI/MHCI	Maione Corporation/Maione-Hirschberg Companies, Inc.	10/4/88
PFCP/PASB	Perpetual Financial Corporation/ Perpetual Savings Bank, FSB	10/4/88
PFCPP/PASBP	Perpetual Financial Corporation (Pfd)/ Perpetual Savings Bank, FSB (Pfd)	10/4/88
CHMXW/CHMXW	Chemex Pharmaceuticals, Inc. (5/29/89 Wts)/ Chemex Pharmaceuticals, Inc. (10/31/88 Wts)	10/13/88

### NASDAQ/NMS Deletions

Symbol	Security	Date
KNMC	Knutson Mortgage Corporation	9/19/88
BKFR	Baker, Fentress & Company	9/20/88
NAHL	North American Holding Corporation	9/20/88
NAHAK	North American Holding Corporation (CI A NV)	9/20/88
WELB	Welbilt Corporation	9/20/88
CYPM	Cypress Minerals Company	9/21/88
FWCHW	First World Cheese, Inc. (Wts)	9/21/88
SMSI	Scientific Micro Systems, Inc.	9/21/88
VGINY	Virgin Group, plc	9/23/88
IECE	IEC Electronics Corporation	9/26/88
SYSM	System Industries, Inc.	9/26/88
TCBY	TCBY Enterprises, Inc.	9/26/88
CCUR	Concurrent Computer Corp.	9/28/88
FFSH	Farm Fresh, Inc.	9/28/88
PAYN	Pay 'n Save, Inc.	9/28/88
PTMI	Precision Target Marketing, Inc.	9/28/88
PTMIW	Precision Target Marketing, Inc. (Wts)	9/28/88
DRES	Dresher, Inc.	9/29/88



Notice to Members 88-94

MICS	Micom Systems, Inc.	9/29/88
AAICA	Albany International Corp. (CI A)	9/30/88
CPAP	Century Papers, Inc.	9/30/88
COMI	Computer Microfilm Corp.	9/30/88
NATG	National Guardian Corp.	9/30/88
WFSA	Western Federal Savings & Loan Association	9/30/88
BERK	Berklinc Corp.	10/3/88
COMD	Command Airways, Inc.	10/3/88
EGAS	Energas Company	10/3/88
HRMR	Hunter Melnor, Inc.	10/3/88
SBFS	Southstate Bank for Savings	10/3/88
TWAXP	Trans World Airlines, Inc. (Pfd)	10/3/88
EPSC	EPSCO, Inc.	10/4/88
EGLAW	Eagle Telephonics, Inc. (CI A 10/12/88 Wts)	10/6/88
DRAN	Dranetz Technologies, Inc.	10/7/88
HABEZ	Haber, Inc. (CI B Wts)	10/10/88
LFBR	Longview Fiber Company	10/12/88
VMSI	VM Software, Inc.	10/13/88
ACSN	Acuson Corporation	10/14/88
RGIS	Regis Corporation	10/14/88
CYPR	Cypress Semiconductor Corp.	10/17/88
TTCOP	Trustcorp, Inc. (Pfd)	10/18/88

Questions regarding this notice should be directed to Kit Milholland, Senior Analyst, NASDAQ Operations, at (202) 728-8281. Questions pertaining to trade-reporting rules should be directed to Leon Bastien, Assistant Director, NASD Market Surveillance, at (202) 728-8192.

# For Your Information

National Association of Securities Dealers, Inc.

November 1988

## New PLATO Test Centers in California, Illinois, and Nebraska

The PLATO Learning Center nationwide network of test facilities is being expanded to add new locations in California, Illinois, and Nebraska by about November 1, 1988. The new test locations are as follows.

### California:

Control Data PLATO Development Center  
6390 Greenwich Drive, Suite 105  
San Diego, California 92122  
(619) 558-1164

### Illinois:

Control Data PLATO Development Center  
211 Landmark Drive, Suite 3

Normal, Illinois 61761  
(309) 452-4788

### Nebraska:

Control Data PLATO Development Center  
Century Building, Suite 100  
11213 Davenport Street  
Omaha, Nebraska 68154

(Phone number not available at press time)

Because of the opening of a PLATO Test Center in Nebraska, the first Saturday test facility in Lincoln, Nebraska will remain open only through the December session.

## NASD Manual to Be Updated Quarterly

In the future, the NASD will publish updates to the *NASD Manual* on a quarterly basis. The next edition will be in January 1989. Beginning with the first quarter of 1989, branch offices will receive paperback editions of the manual, which will include the list of members, twice yearly.

Branches wishing to retain the full sub-

scription services may do so by sending a check for \$70 payable to the NASD to:

NASD Book Order Department  
P.O. Box 9403  
Gaithersburg, Maryland 20898

Full service subscriptions are provided free of charge to each NASD member.

## Note: Test Center Locations for November and December

Please note the following test center location changes in *November*.

**Houston Series 7** will be held at:

INNOVA Center  
20 Greenway Plaza  
Houston, Texas 77046

INNOVA is located one block west of the Summit Sports Arena. Free parking is available at the center.

The **Alaska** examinations on the first and third Saturdays have been relocated. The examinations will be held at:

Alaska Pacific University  
Grant Hall, Room, 215  
Anchorage, Alaska

Please note the following test center location changes in *December*.

All first Saturday December test sessions **nationwide** will be conducted on December 10th, the second Saturday of the month, instead of the standard first Saturday.

Members are reminded that the required appointments for their candidates must be made prior to 5 p.m. on November 30 to meet the deadline of eight business days.

**Houston Series 7** will be held at:  
Holiday Inn/Hobby Airport  
Atrium Hotel & Convention Center  
9100 Gulf Freeway  
Houston, Texas 77017

Parking is available on the hotel grounds and signs to direct candidates to the examination will be posted prominently inside the hotel.

**For Your Information**

Candidates for the Minnesota Series 7 examination held in December should report to:  
University of Minnesota  
1994 Buford Avenue  
Classroom Office Building, Room B25  
St. Paul, Minnesota 55455

The December Series 7 test sessions in Rochester, New York, and Washington, DC, will be conducted December 10th instead of the normal third Saturday date.