

Notice To Members

National Association of Securities Dealers, Inc.

April 1990

Number 90 - 23

Suggested Routing:*

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Senior Management | <input 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 checked="" type="checkbox"/> Registration | <input type="checkbox"/> Trading |
| <input 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: Administrative Conversion of the Series 7 General Securities Representative Examination to PLATO* Computer-Based Delivery

On May 1, 1990, the NASD and the New York Stock Exchange (NYSE), subject to resolving certain contract language, will begin computer administration of the (Series 7) General Securities Registered Representative Examination at expanded PLATO Professional Development Center locations used for the other industry qualification examinations. The conversion of the Series 7 to computerized delivery will allow the NASD and the NYSE to develop more useful grade-reporting systems, make the test available on a daily basis, offer instant test scoring, relocate testing to more professional settings, and almost double the list of cities offering this test.

During May and June 1990, candidates may elect to take their Series 7 examinations on PLATO or at the traditional third Saturday, paper-and-pencil sessions. Thereafter, Series 7 will be offered in the United States only by appointment at the PLATO Development Center locations (foreign sessions will continue as paper-and-pencil centers examinations). The subject-matter content and other specifications of the Series 7 remain unchanged.

With the change in administration on May 1, 1990, the NASD Series 7 Testing Fee will be

raised to \$110 (from \$60). The NYSE Test Development Fee will be raised to \$40 (from \$10). Both fees will be charged when the examination request is entered on the Central Registration Depository. A candidate who applies under the old fee structure before May 1, 1990 and who elects to take the test on PLATO will be charged the \$80 difference between the old and new rates when the score is posted to the Central Registration Depository record. Candidates who make application before May 1, 1990, and who take the Series 7 at a paper-and-pencil site in either May or June 1990 will be charged only the old rate.

Questions regarding this notice may be directed to David Uthe, Senior Qualifications Analyst, at (301) 590-6695; Carole Hartzog, Senior Qualifications Analyst, at (301) 590-6696; or Mark Costley, Qualifications Analyst, at (301) 590-6697.

*PLATO is a registered trademark of The Roach Organization, Inc. (TRO).

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Subject: Good Friday: Trade Date-Settlement Date Schedule

Securities markets and the NASDAQ System will be closed on Good Friday, April 13, 1990.

"Regular way" transactions made on the preceding business days will be subject to the settlement date schedule listed below.

These settlement dates should be used by brokers, dealers, and municipal securities dealers for purposes of clearing and settling transactions pursuant to the NASD Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of these settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (212) 858-4341.

Trade Date	Settlement Date	Reg. T Date*
April 5	12	17
6	16	18
9	17	19
10	18	20
11	19	23
12	20	24
13 Markets Closed	—	—
16	23	25

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

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Subject: NASDAQ National Market System (NASDAQ/NMS) Additions, Changes, and Deletions As of March 15, 1990

As of March 15, 1990, the following 20 issues joined NASDAQ/NMS, bringing the total number of issues to 2,667:

Symbol	Company	Entry Date	SOES Execution Level
FOILP	Forest Oil Corporation (Pfd)	2/12/90	500
CSCO	cisco Systems, Inc.	2/16/90	1000
IMNXW	Immunex Corporation (Wts)	2/16/90	1000
RECP	Receptech Corporation	2/16/90	1000
AMBC	American Bancorporation	2/20/90	200
HFSB	Home Federal Savings Bank	2/20/90	200
IITCF	INTERA Information Technologies Corporation (CI A)	2/20/90	1000
MSEA	Metropolitan Federal Savings & Loan Association	2/20/90	1000
PFKY	Peoples First Corporation	2/20/90	200
ARVX	Aerovox Incorporated	2/26/90	500
DGSD	Digital Sound Corporation	2/27/90	1000
HOLX	Hologic, Inc.	3/1/90	1000
INTS	Integrated Systems, Inc.	3/6/90	500
POEA	Poe & Associates, Inc.	3/6/90	500
CIIF	CII Financial, Inc.	3/7/90	1000
SEQS	Sequoia Systems, Inc.	3/7/90	500
DLFI	Delphia Financial Group, Inc. (CI A)	3/13/90	1000
TUBO	Tuboscope Corporation	3/13/90	1000
MDCOD	Marine Holding Company	3/14/90	1000
VKNG	Viking Office Products, Inc.	3/14/90	1000

NASDAQ/NMS Symbol and/or Name Changes

The following changes to the list of NASDAQ/NMS securities occurred since February 9, 1990.

New/Old Symbol	New/Old Security	Date of Change
FEDF/FEDF	Federated Bank, S.S.B./Federated Financial Savings & Loan Association	2/23/90
HRLY/HRLY	Herley Industries, Inc./Herley Microwave Systems, Inc.	2/26/90
ECLAY/ECLAY	ECC Group PLC/English China Clays PLC	3/1/90
IROQ/CAYB	Iroquois Bancorp Inc./Cayuga Savings Bank	3/2/90
FPUB/FDOS	Franklin Electronic Publishers, Inc./Franklin Computer Corporation	3/5/90
VLMR/WTOY	Value Merchants, Inc./Wisconsin Toy Company, Inc.	3/14/90
TRMK/FCAP	Trustmark Corporation/First Capital Corporation	3/15/90

NASDAQ/NMS Deletions

Symbol	Security	Date
AFGI	Ambassador Financial Group, Inc.	2/13/90
EORR	Empire-Orr, Inc.	2/13/90
HTEK	Hitek Microsystems, Inc.	2/13/90
MDTA	Megadata Corporation	2/13/90
ZENT	Zentec Corporation	2/13/90
CAMBY	Cambridge Instrument Company plc (The)	2/15/90
SGOPP	Seagull Energy Corporation (Pfd)	2/15/90
SPAIB	Strategic Planning Associates, Inc. (Cl B)	2/15/90
PLNS	Plains Resources, Inc.	2/16/90
MCBKB	Merchants Capital Corp. (Cl B)	2/20/90
FLFE	Florida Federal Savings Bank	2/21/90
TLOS	Telos Corporation	2/21/90
RECPZ	Receptech Corporation (Paired Certificates)	2/23/90
OXID	Oxydyne Group Inc. (The)	2/27/90
MGLL	McGill Manufacturing Company Incorporated	2/28/90
COBB	Cobb Resources Corporation	3/1/90
CAUT	Computer Automation, Inc.	3/1/90
GMFD	Germania Bank, A Federal Savings Bank	3/1/90
JAGRY	Jaguar plc	3/1/90
NAPE	National Properties Corporation	3/1/90
RBSN	Robeson Industries Corp.	3/1/90
TMCI	TM Communications, Inc.	3/1/90
UVOL	Universal Voltronics Corporation	3/1/90
NOVR	Novar Electronics Corporation	3/2/90
USBA	United Savings Bank	3/5/90
VLAB	Vipoint Pharmaceutical, Inc.	3/5/90
NFBC	North Fork Bancorporation, Inc.	3/7/90
QEDX	Q E D Exploration, Inc.	3/9/90
CLICC	Clairson International Corporation	3/12/90
PSBF	Pioneer Federal Savings Bank, FSB	3/13/90
GWOX	Goodheart-Willcox Company, Inc. (The)	3/14/90
IMRGA	Imreg, Inc. (Cl A)	3/14/90
MDCO	Marine Drilling Company	3/14/90
OFFI	Old Fashion Foods, Inc.	3/14/90

Symbol	Security	Date
PHAR	PharmaControl Corp.	3/14/90
UNIR	UNITED-GUARDIAN, INC.	3/14/90

Questions regarding this notice should be directed to Kit Milholland, Senior Analyst, Market Listing Qualifications, at (202) 728-8281. Questions pertaining to trade reporting rules should be directed to Leon Bastien, Assistant Director, NASD Market Surveillance, at (301) 590-6429.

Disciplinary Actions

National Association of Securities Dealers, Inc.

April 1990

Disciplinary Actions Reported for April

The NASD is taking disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice, securities laws, rules, and regulations, and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions began with the opening of business on Monday, April 2, 1990. The information relating to matters contained in this notice is current as of the 20th of the month preceding the date of the notice. Information received subsequent to the 20th is not reflected in this publication.

FIRMS EXPELLED, INDIVIDUALS SANCTIONED

North Coast Securities (Woodhaven, New York) and Michael J. Olnick (Registered Principal, Woodhaven, New York) were fined \$37,000, jointly and severally. North Coast was expelled from membership in the NASD, and Olnick was barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Olnick, failed to prepare a monthly balance sheet and net capital computations for several months. Also, the firm, acting through Olnick, failed to respond to the NASD's requests for information, made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Westmont Securities Corporation (Los Angeles, California) and Azar Aslam Kahn (Registered Principal, Northridge, California) were fined \$665,025, jointly and severally. The firm was expelled from membership in the NASD, and Kahn was barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee for District 2. The sanctions were based on findings that, in contravention of the NASD Mark-up Policy, the firm, acting through Kahn, engaged in the sale of securities to public customers at prices that were unfair in relation to the prevailing market, resulting in markups ranging from 5.44 percent to 200 percent. Westmont, acting through Kahn, also engaged in a general securities business while failing to maintain the required minimum net capital. The firm, acting through Kahn, permitted an indi-

vidual to function as a principal without proper registration with the NASD and allowed four other individuals to engage in a securities business without registration in any capacity with the NASD. The firm, acting through Kahn, also maintained inaccurate order tickets for certain purchases by falsely stating that the orders were unsolicited when, in fact, they were solicited. And the firm, acting through Kahn, failed to obtain from the NASD written approval to effect more than an occasional transaction in its investment account, in contravention of business restrictions placed on the firm by the NASD.

FIRMS SUSPENDED AND FINED

Tejas Securities, Inc. (Houston, Texas) was fined \$10,000 and suspended from membership in the NASD for 30 days. The sanctions were based on findings that Tejas Securities violated Schedule C of the NASD By-Laws by failing to employ a financial and operations principal, failed to carry a blanket fidelity bond, failed to prepare and enforce written supervisory procedures, failed to file certain annual audit reports and FOCUS Part IIA reports on a timely basis, failed to file its FOCUS Part IIA reports for certain months, effected securities transactions while failing to maintain required minimum net capital, and failed to maintain an accurate general ledger.

FIRMS SUSPENDED, INDIVIDUALS SANCTIONED

South Richmond Securities, Inc. (New York, New York), Barbara Hosman (Registered Principal, Deer Park, New York), and Herman R. Garcia, Jr. (Registered Principal, Staten Is-

land, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$150,000, jointly and severally. Hosman and Garcia were each suspended from association with any member of the NASD in any capacity for 30 days and required to requalify by examination as general securities principals. The firm was suspended from effecting principal transactions with retail customers for five days. Without admitting or denying the allegations, the respondents consented to the described sanctions and the entry of findings that South Richmond Securities, acting through Hosman and Garcia, sold securities of an affiliate to customers at prices that contained excessive markups ranging from 92 percent to 140 percent over the prevailing market price. It also falsely reflected on confirmations that the firm acted in an agency capacity when, in fact, it was engaging in transactions with customers from inventory as a market maker. In addition, the firm failed to comply with certain requirements of Schedule E of the NASD's By-Laws in relation to the purchase of South Richmond by a public company.

The firm's suspension will commence April 24, 1990, and conclude April 30, 1990; Garcia's suspension began April 2, 1990, and will end May 1, 1990; and Hosman's suspension will begin May 2, 1990, and conclude May 31, 1990.

FIRMS FINED, INDIVIDUALS SANCTIONED

Black & Company, Inc. (Portland, Oregon), Dennis Burton Reiter (Registered Principal, Portland, Oregon), Eugene Phillip Goodrich (Registered Principal, Portland, Oregon), and Arthur Joseph Lewis (Registered Representative, Beaverton, Oregon). The firm, Reiter, and Goodrich were fined \$15,000, jointly and severally, and the firm was fined an additional \$5,000. Lewis was fined \$25,000 and suspended from association with any member of the NASD in any capacity for one year. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision of the District Business Conduct Committee for District 1. The sanctions were based on findings that Lewis exercised effective control over an account of a public customer and recommended to the customer the purchase and sale of securities and options without having reasonable grounds for believing the recommendations were suitable considering the customer's financial situation and investment objectives. The

NASD also found that the firm, acting through Reiter and Goodrich, failed to exercise proper supervision over the activities of Lewis, failed to develop and implement an adequate program for the supervision of customers' options trading, and failed to designate a senior registered options principal to supervise such options trading.

Lewis has appealed this decision to the Securities and Exchange Commission, and the sanctions against him are not in effect pending consideration of the appeal.

Brook Investments, Inc. (Chicago, Illinois) and Peter W. Schellenbach (Registered Principal, Glencoe, Illinois) were fined \$50,000, jointly and severally. Schellenbach was suspended from association with any member of the NASD in any capacity for 60 days; barred in any principal, supervisory, or managerial capacity; and prohibited from maintaining any proprietary interest in any non-publicly traded member of the NASD. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision of the District Business Conduct Committee for District 8. The sanctions were based on findings that the firm, acting through Schellenbach, failed to prepare and maintain accurate books and records, effected transactions in securities while failing to maintain required minimum net capital, prepared and filed inaccurate FOCUS Part I and IIA reports for certain periods, and filed its annual audited report late for one year and failed to file its audited financial statements the following year. The NASD found that Schellenbach engaged in a pattern of activity designed to give the illusion that the firm was in compliance with net capital requirements by engaging in the month-end purchase and subsequent resale of accounts receivable of the firm on four separate occasions. In addition, the NASD determined that the firm, acting through Schellenbach, failed to establish, maintain, and enforce adequate written supervisory procedures and failed to review and provide evidence of approval in writing on all correspondence of its registered representatives pertaining to the solicitation or execution of securities transactions.

Schellenbach has appealed this decision to the Securities and Exchange Commission. The suspension and fine are not in effect pending consideration of the appeal; however, the bar became effective as of the date of the Board of Governors' decision.

INDIVIDUALS BARRED OR SUSPENDED

Brian G. Allen (Registered Representative, Silver Spring, Maryland) was fined \$5,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee for District 10. The sanctions were based on findings that Allen issued a check for \$635 to himself from the account of an affiliate of his member firm, had forged the signature of his supervisor on the check, and had converted the funds to his own use and benefit.

Allen has appealed this decision to the Securities and Exchange Commission, and the fine imposed is not in effect pending consideration of the appeal.

Mitchel J. Anderson (Registered Representative, Minneapolis, Minnesota) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Anderson effected nine unauthorized transactions in the account of a public customer and failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Glen Vincent Benussi (Registered Representative, Astoria, New York) was fined \$17,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Benussi executed transactions in a customer's account at a time when he was not registered in the state where the customer resided and that he had failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Scott F. Casaccio (Registered Representative, Plainview, New York) was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision of the District Business Conduct Committee for District 12. The sanctions were based on findings that Casaccio delayed the processing of order tickets and effected unauthorized transactions in customer accounts. He effected discretionary trades in customer accounts without written authority and without acceptance of the accounts as discretionary by his firm, and converted a customer check for

\$3,500 to his own use and benefit.

Joseph W. Casey, Jr. (Registered Representative, Hoover, Alabama) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Casey executed options transactions without obtaining prior written customer authorization and without having the account accepted as a discretionary account by his member firm. In addition, Casey failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Arrel W. Dietrich (Registered Representative, Novi, Michigan) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Dietrich received a check for \$5,000 from a public customer with instructions to use the funds to pay a premium on a life insurance policy, used only \$900 of the funds as directed, and retained \$4,100 for his own use and benefit. Dietrich also failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Scott Franzen (Registered Representative, Chanhassen, Minnesota) was fined \$5,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD Board of Governors following an appeal of a decision of the District Business Conduct Committee for District 8. The sanctions were based on findings that Franzen purchased shares of common stock for the account of a public customer without the customer's knowledge or consent. Franzen also received five stock certificates from two other customers with instructions to sell the shares, but did not open an account for the customers and failed to sell the securities as directed. Franzen paid the latter customers approximately \$2,000, which he allowed the customers to believe had been derived from the sale of their securities, although the money was paid from Franzen's personal funds.

Joseph Anthony Friscia (Registered Principal, New York, New York) and **Frank John Ruggieri, Jr. (Registered Financial and Operations Principal, Little Neck, New York)** submitted an Offer of Settlement pursuant to which Friscia was fined \$10,000 and suspended from association with any member of the NASD in any principal capacity for two years. Ruggieri was

fined \$10,000 and suspended from association with any member of the NASD as a financial and operations principal for two years. Without admitting or denying the allegations, Friscia and Ruggieri consented to the sanctions and to the entry of findings that they caused a member firm to conduct a general securities business while failing to maintain required minimum net capital, falsified the firm's trial balance and bank reconciliations, and submitted a FOCUS Part I report that overstated the firm's net capital.

Bruce H. Gilbertson (Registered Representative, Whitehall, Pennsylvania) was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Gilbertson sold interests in a limited partnership to a public customer without having provided prior written notification to his member firm of his intent to transact such sales away from his firm, in contravention of the Board of Governors' Interpretation concerning Private Securities Transactions. The findings also included that Gilbertson recommended to a public customer the purchase and sale of index option transactions without having reasonable grounds for believing the recommendations were suitable, considering the customer's financial situation and investment objectives, and failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

John Joseph Harrington (Registered Representative, Westlake Village, California) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Harrington failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice concerning his termination from a member firm.

John Dumas Karras (Registered Representative, San Diego, California) was fined \$257,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Karras solicited and received \$127,000 from four public customers for investment in securities but failed to purchase any securities or return the funds to the customers. The findings also included that Karras agreed to share in the losses in the account of a customer in violation of NASD prohibitions and failed to respond to

NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Brenden James King (Registered Representative, Scotch Plains, New Jersey) was fined \$15,000 and suspended from association with any member of the NASD in any capacity for six months. The sanctions were based on findings that King used a false customer address to circumvent state registration requirements; he effected nine securities transactions in the account of customers when he was not registered in the state where the customers resided; and purchased securities on four occasions for his own account and did not pay for the transactions within seven business days in contravention of Regulation T of the Federal Reserve Board. The findings also included that King sold the securities so purchased without having paid their purchase price in full.

William Preston King, II (Registered Representative, New York, New York) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that King failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice concerning his termination from a member firm.

Lawrence Kobert (Registered Representative, Flanders, New Jersey) was fined \$1,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kobert failed to honor an NASD arbitration award.

Ronnie Anne Martin (Registered Representative, Pomona, New York) was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Martin opened an account on behalf of a public customer using false information and, on two occasions, executed securities purchases in the account without the customer's knowledge or consent. The findings also included that Martin subsequently solicited from the customer a \$26,000 check made payable to her member firm by assuring the customer that the check would not be presented for payment. Martin deposited the check in the customer's account, however, and it was returned for insufficient funds. The findings also stated that Martin failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules

of Fair Practice.

Lilli A. Meaux (Associated Person, Memphis, Tennessee) and Ronald D. Bonds (Registered Representative, Byhalia, Mississippi). Meaux was fined \$15,000 and barred from association with any member of the NASD in any capacity. Bonds was fined \$10,000 and barred from association with any member of the NASD in any capacity. These sanctions were based on findings that Meaux and Bonds misappropriated \$138,050.65 from their member firm in that Meaux falsified payroll checks by substituting Bonds' name as the designated payee, endorsed the checks, and deposited them in an account maintained by Bonds. Meaux also failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Sam Meo (Registered Representative, Brentwood, New York) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Meo failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice concerning his termination from a member firm.

Donato Anthony Minicozzi (Registered Representative, Summit, New Jersey) was fined \$60,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, in connection with three securities purchases that he had solicited, Minicozzi instructed a customer to wire a total of \$464,590 to his personal account. Minicozzi never purchased any securities on the customer's behalf and converted the customer's funds to his own use and benefit. In addition, Minicozzi failed to respond to a request for information made by the NASD pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Thomas J. Morrell (Registered Representative, Franklinville, New Jersey) was fined \$5,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, on two separate occasions, Morrell retained two former insurance agents on the company payroll following their last day of employment, thereby causing the issuance of salary checks totalling \$2,651.26. Morrell deposited these checks into a firm account and converted \$851.54 of those funds to his own use and benefit. Morrell also failed to respond to NASD re-

quests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

David L. Newell (Registered Representative, Mobile, Alabama) was fined \$10,000 and suspended from association with any member of the NASD in any capacity for six months. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision of the District Business Conduct Committee for District 5. The sanctions were based on findings that Newell executed unauthorized options transactions in the account of a public customer and neglected to enter an order ticket for a purchase of call options for the same customer's account.

Trace Edward Paradise (Registered Representative, Arlington, Texas) was fined \$100,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Paradise effected four unauthorized transactions in the account of a customer, made recommendations to the customer without having reasonable grounds for believing that such recommendations were suitable considering the customer's financial situation and investment needs, and fraudulently induced the customer's purchase of securities. Paradise also received a check for \$3,000 from the same customer for the purchase of securities and converted the funds to his own use and benefit. In addition, Paradise failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Norman G. Parker (Registered Representative, Birmingham, Alabama) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Parker sold limited partnership units to a public customer in a private securities transaction without having provided prior written notice to his member firm of his intent to engage in the transactions away from his firm. In connection with this transaction, Parker created a fictitious confirmation on a form misappropriated from his firm, and transmitted this confirmation to his customer. Parker also failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Robert Walter Rada (Registered Representative, Colorado Springs, Colorado) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanc-

tions were imposed by the NASD's Board of Governors following its review of a decision of the District Business Conduct Committee for District 3. The sanctions were based on findings that Rada executed a series of unauthorized transactions in two customer accounts. Rada also failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Reece D. Rogers (Registered Representative, Memphis, Tennessee) submitted an Offer of Settlement pursuant to which he was fined \$2,000 and suspended from association with any member of the NASD in any capacity for two years. Without admitting or denying the allegations, Rogers consented to the described sanctions and to the entry of findings that he purchased and sold securities without prior written authorization from the customers or acceptance of the account as discretionary by his member firm. The findings also included that he recommended the purchase and sale of options to customers without having reasonable grounds for believing that the recommendations were suitable for the customers considering their financial situation and investment needs, and that he failed to respond in a timely manner to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Robert Herman Schumann (Registered Representative, Sabetha, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Schumann consented to the described sanctions and to the entry of findings that he misused customer funds. The findings stated that he collected monies from customers to pay medical insurance premiums, failed to remit the funds as instructed, and used the funds to pay for premiums due from other customers or deposited them in his personal bank account.

Donald L. Stevenson (Registered Representative, Evergreen Park, Illinois) was fined \$5,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Stevenson effected 92 option transactions without having obtained written discretionary authority from the customer or written acceptance of the account as discretionary from

his member firm. Stevenson also failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Robert Douglas Therrell (Registered Representative, Matthews, North Carolina) submitted an Offer of Settlement pursuant to which he was fined \$20,000. Without admitting or denying the allegations, Therrell consented to the described sanctions and to the entry of findings that he participated in the sale of 80 limited-partnership units to public customers without providing prior written notification to his member firm and without receiving prior written authorization from his member firm. Therrell also consented to the entry of findings that he submitted to the NASD an application for securities-industry registration that contained inaccurate information concerning his association with a member firm.

Charles Gary Varesano (Registered Representative, Clifton, New Jersey) was fined \$6,000 and suspended from association with any member of the NASD in any capacity for 15 business days. The sanctions were based on findings that Varesano executed three unauthorized securities transactions.

George J. Wasson (Registered Representative, Minneapolis, Minnesota) was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision of the District Business Conduct Committee for District 8. The sanctions were based on findings that Wasson participated in the improper use of customer funds in that he allowed a customer's \$31,878 check that was received for payment of purchased securities to be deposited in another customer's account instead of depositing the check as instructed. In addition, without the knowledge or consent of the first customer, Wasson allowed \$2,510.50 to be transferred from the customer's account to the account of the second customer. Wasson also failed to respond to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

In a separate decision, Wasson was fined \$12,500 and suspended from association with any member firm in any capacity for five days (the bar noted in the first paragraph supercedes this suspension). The sanctions were based on findings that Wasson falsely represented to a customer that he

had sold shares of stock when, in fact, no shares had been sold. Wasson also failed to respond in a timely manner to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

FIRMS EXPELLED FOR FAILURE TO PAY FINES AND COSTS IN CONNECTION WITH VIOLATIONS

Baron Investments, Inc., Apollo, Pennsylvania
Basic Securities Investment Company, Bloomington, Minnesota
MCG Portfolio Management Corporation, Woodbury, New York
Priority Securities, Inc., Ft. Lauderdale, Florida
Select Line Securities Company, Inc., Chevy Chase, Maryland
UNI-EQ Investment Group, Inc., King of Prussia, Pennsylvania
Wakefield Financial Corporation, New York, New York

FIRMS SUSPENDED

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the authority set forth in Article IV, Section 5 of the NASD Rules of Fair Practice and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after each entry. If the firm has complied with the request for information, the listing also includes the date the suspension concluded.

Alison, Baer Securities, Inc., Boca Raton, Florida (March 9, 1990)
American Equity Securities, Hemet, California (March 9, 1990)
Amtex Financial, Inc., Grapevine, Texas (March 9, 1990)
Avatara Securities, Inc., South Pasadena, California (March 9, 1990)
William M. Cadden & Co., Inc., Woodbury, New York (March 9, 1990)
Capital Group, Inc., Phoenix, Arizona (February 26, 1990)
Concept Investment Planning & Securities, Inc., Louisville, Kentucky (March 9, 1990)
D.R.C. Investment Banking, Inc., Clear-

water, Florida (March 9, 1990)

Dania Securities, Inc., Irvine, California (March 9, 1990)

Marshall Davis, Inc., Denver, Colorado (March 9, 1990)

D'Martine Financial Services, Inc., Rolling Meadows, Illinois (March 9, 1990)

Drake & Company Investment Services, Inc., Madison, Wisconsin (March 9, 1990)

Firm One Securities, Inc., Wichita, Kansas (March 9, 1990)

First Equity Concepts, Inc., Rogers, Arizona (March 9, 1990)

The R.J. Forbes Group, Inc., Coral Springs, Florida (March 9, 1990)

G.G. Hoza & Company, Inc., Bradenton, Florida (March 9, 1990)

Investment & Product Analysis Corporation of America, Inc., Indianapolis, Indiana (March 9, 1990)

Kuhns Brothers & Laidlaw, Inc., New York, New York (March 9, 1990)

J.F. Lowe & Company, Inc., New York, New York (March 9, 1990)

Metta Financial Group, Inc., Boca Raton, Florida (March 9, 1990)

Newfield Securities, Inc., Houston, Texas (March 9, 1990)

Pacific Coast Equities, Inc., Chicago, Illinois (March 9, 1990)

Rainbow Securities, Inc., Memphis, Tennessee (March 9, 1990)

Securities Investors International, Inc., New York, New York (March 9, 1990)

Security Financial Group, Inc., Fort Collins, Colorado (March 9, 1990)

Sheffield & Company, Inc., New York, New York (March 9, 1990)

Simon Securities, Inc., Burlington, Massachusetts (March 9, 1990)

Smith Bellingham International, Inc., San Francisco, California (March 9, 1990)

TXL Securities Corporation, San Francisco, California (March 9, 1990)

Thomas Brothers Securities Corporation, Laguna Hills, California (March 9, 1990)

Trademark Investment Services, Inc., El Cajon, California (March 9, 1990)

The Warwick Corporation, Calabasas,

California (March 9, 1990)

INDIVIDUALS WHOSE REGISTRATIONS WERE REVOKED FOR FAILURE TO PAY FINES AND COSTS IN CONNECTION WITH VIOLATIONS

Ralph J. Ardolino, Allentown, Pennsylvania
 James F. Benton, III, Aurora, Colorado
 Brett Bernstein, Cliffside Park, New Jersey
 John Bethea, Littleton, Colorado
 Floyd J. Collins, Chevy Chase, Maryland
 Devon N. Dahl, Fountain Valley, California
 Dominick DiStasi, Iselin, New Jersey
 Thomas J. Dornbrook, Pittsburgh, Pennsylvania

vania

Daniel J. Duggan, Atlanta, Georgia
 Charles C. Ervin, Jr., South Bend, Indiana
 Joseph E. Fadell, Louisville, Kentucky
 Christopher M. Fiano, North Apollo,

Pennsylvania

Richard L. Fisher, Adamstown, Pennsylvania
 Marshall E. Freeman, New York, New York
 Thomas J. Grebis, King of Prussia, Pennsylvania

vania

David C. Harrington, St. Petersburg, Florida
 Phillip A. Hern, Park Hills, Kentucky
 Robert Humphrey, Boca Raton, Florida
 Jack Kirkland, III, Jacksonville, Florida
 Richard F. Knapp, London, England
 John G. Lambros, Plymouth, Minnesota
 Carl Lombardi, No. Massapequa, New York
 John F. Lukas, Miami, Florida
 Patricia G. Marek, Arlington, Virginia
 Alexander G. Minella, White Plains, New

York

Fernando A. Moreno, San Francisco,

California

Daniel P. O'Brien, Oklahoma City, Oklahoma
 Mark J. Parker, Marlton, New Jersey
 Philip J. Rauch, Oceanside, New York
 Peter C. Rosen, New York, New York
 Louis Sebbio, Hoboken, New Jersey
 William Stirlen, Arlington Heights, Illinois
 Sondra H. White, Las Vegas, Nevada
 Darleen Wodzinski, Morristown, New Jersey
 Duane A. Zolnoski, Pompano Beach, Florida

NASD BARS ONE PRINCIPAL, SUSPENDS ANOTHER, AND FINES THEM \$500,000 FOR MISCONDUCT IN PENNY STOCKS

The NASD has taken disciplinary action against Marc J. Rothenberg and Joseph A. Friscia.

Their misconduct concerned fraudulent markdowns and inadequate supervision with respect to transactions with customers in Advanced Viral Research Corp. units and common stock, non-NASDAQ over-the-counter "penny stocks."

Rothenberg and Friscia were principals of Diversified Equities Corp., a former member of the NASD located in New York City.

The NASD fined Rothenberg and Friscia \$500,000, jointly and severally, barred Rothenberg from association with any member in any capacity, and suspended Friscia from association with any member in any capacity for one year.

The NASD's decision followed a disciplinary hearing and was based on findings that Rothenberg violated various NASD rules, including Section 18 of the NASD's Rules of Fair Practice. Section 18 is the NASD's anti-fraud provision that prohibits the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security.

Diversified Equities underwrote Viral's initial public offering, dated April 25, 1986, and placed 100 percent of the issue with its clients. The NASD found that from the beginning of aftermarket trading on May 14, 1986, through June 13, 1986, the firm, acting through Rothenberg, dominated and controlled the market for Viral securities. In that position, the firm, acting through Rothenberg, engaged in fraudulently excessive markdowns in 125 principal purchases from customers owning Viral units and in six principal purchases from customers owning Viral common stock. The excessive markdowns ranged from 12.5 percent to 60 percent below the prevailing market price of the securities. As a result, customers received approximately \$381,500 less than they should have received in selling Viral securities to the firm. In its decision, the NASD stated that "by charging excessive and fraudulent markdowns, Rothenberg breached his obligation of fair dealing and good faith which he owed to his customers."

The NASD also found that Friscia violated the NASD's rules by failing to supervise adequately the firm's trading to assure compliance with the markup and markdown policies of the NASD. It found that Friscia played a "substantial role" in the excessive markdowns and concluded that he failed to discharge his supervisory responsibilities.

The investigation was carried out by the NASD's Anti-Fraud Department and is part of a

concerted nationwide effort by the NASD to eliminate sales-practice abuses in penny stocks. In addition to carrying out its own investigations, the NASD routinely cooperates with other self-regulatory organizations, the SEC, and criminal law-enforcement agencies. In this case, the NASD referred portions of its investigation to the Atlanta regional office of the SEC, which resulted in a complaint being filed by the SEC on December 14, 1989, against Viral, its president, and its secretary-treasurer, for violations of the federal securities laws. On January 14, 1990, the company and the named individuals, without admitting or denying

the allegations, agreed to be permanently enjoined from violating anti-fraud and other provisions of the federal securities laws.

The NASD disciplinary action was taken by the Market Surveillance Committee, which consists of 12 executives from securities firms across the country. The Committee is responsible for maintaining the integrity of the NASDAQ and over-the-counter markets, and for disciplining members that fail to comply with relevant NASD rules and securities laws.

The suspension will commence on a date to be determined by the President of the NASD.

For Your Information

National Association of Securities Dealers, Inc.

April 1990

NASD Board Approves New Entry, Listing Standards for NASDAQ

The NASD Board on March 16 adopted revised entry and maintenance standards for listing

in the NASDAQ market. The details are explained in the enclosed fact sheet, titled "Important Alert."

Mississippi Increases Registration Fees Effective March 16

Effective March 16, 1990, the Mississippi Securities Division increased registration fees. The new agent fee for transfer registration is now \$50. The broker-dealer registration fee rose to \$200. In addition, the state will be increasing agent and broker-dealer renewal fees for 1991 to \$50 and

\$200, respectively. These new fees will be reflected on the initial renewal invoices sent by the NASD to all firms in November 1990.

For more information regarding these changes, contact NASD Information Services at (301) 590-6500.

Dates, Sites Change for Series 7 Examination

One-Time Date and Location Changes

The April 1990 Series 7 examination in Atlanta will be held April 28 at the Atlanta Merchandise Mart, 240 Peachtree Street, Rooms E through H, Atlanta, Georgia. The Merchandise Mart is located across from the Peachtree Center.

The May 1990 Series 7 examination in Atlanta will be held May 19 at the Sheraton Century Center Hotel, 2000 Century Boulevard, N.E., Atlanta, Georgia.

The April 1990 Series 7 examination in Washington, D.C., will be held April 28 at the Capital Centre, 1 Harry S. Truman Drive, Landover,

Maryland. Candidates should report to the Centraplex.

Permanent Site Changes

Effective April 21, 1990, the Series 7 examination in New Orleans will be administered at the University of New Orleans, Business Administration Building, Room 179, Lakefront Campus, New Orleans, Louisiana.

The Series 7 examination in Minneapolis is now administered at the University of Minnesota, Law Building, Room 25, Lower Level, West Bank Campus, 229 19th Avenue South, Minneapolis, Minnesota.

Districts 4 and 7 Plan Major Conferences, Seminars

The NASD district offices in Kansas City and Atlanta are holding major conferences and seminars in April and May. District 4 is co-sponsoring, along with the University of Kansas School of Law, its 1990 securities conference, titled "A New Decade of Regulatory Issues," at the Allis Plaza Hotel in Kansas City, Missouri, April 18 and 19.

Workshops at the conference cover supervision and compliance, state regulation of the securities industry, "coping with regulation," financial responsibility, arbitration, managing the local and regional firm, advertising, and the "penny stock" market.

Speakers include NASD Vice Chairman Ronald E. Buesinger, NASD President Joseph R. Hardiman, Edward D. Jones & Co. Managing Partner John W. Bachmann, Regional Securities and Exchange Commission (SEC) Administrator T. Christopher Browne, and SEC Assistant Director for Financial Responsibility Michael A. Macchiarolie. Registration, which includes dinner and luncheons, is \$195 (\$170 per person for firms with three or more registrants). Questions concerning the conference should be directed to Cheryl R.

Hackathorn of the NASD at (816) 421-6800; FAX is (816) 421-5029.

District 7 will sponsor its fifth annual Membership Meeting and Educational Seminar at the Hyatt Regency Westshore in Tampa, Florida, May 17 and 18. Seminar topics include the direction of the securities industry in the '90s, broker-dealer compliance, program trading, securities arbitration, and sales-practice rules. Sales supervision is a major emphasis of the seminar.

Speakers include J.C. Bradford & Co. President James C. Bradford, Jr., Raymond James & Associates President Thomas A. James, Twenty-First Securities Corporation President Robert N. Gordon, Securities Investors Protection Corp. President Theodore H. Focht, Securities Traders Association President John L. Watson, III, and NASD Vice Chairman Ronald E. Buesinger. The per-person seminar registration fee is \$240 (\$215 per person for firms registering three or more persons). The fee is \$90 for a person attending only the special all-day training session for arbitrators May 18. For registration and other information, call Deborah Hampel of the NASD at (404) 239-6145; FAX is (404) 237-9290.

Notice To Members

National Association of Securities Dealers, Inc.

April 16, 1990

Number 90 - 26

Suggested Routing:*

- | | | | |
|---|--|--|------------------------------------|
| <input checked="" 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 checked="" 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 Amendments to Subsections (b)(4) and (d) of Article III, Section 26 of the NASD Rules of Fair Practice Re: Regulation of Asset-Based Sales Charges by the NASD; Last Date for Comment: May 31, 1990

EXECUTIVE SUMMARY

The NASD requests comments on proposed amendments to the NASD mutual fund maximum sales charge rule that would subject asset-based sales charges to the provisions of the rule.

Thus, there are now three major methods utilized, either alone or in combination, by mutual funds to finance sales-related expenses. For the purposes of this proposed rule amendment, they are described as front-end, deferred, and asset-based sales charges.

REGULATION OF SALES CHARGES

In 1970, amendments to the Act (Section 22(b)) by the U.S. Congress gave the NASD broad power to prohibit excessive sales charges on mutual fund shares offered by NASD members to investors. At that time, deferred and asset-based sales charges had not been introduced, and the resulting NASD maximum sales charge rule, which was adopted in 1976, was couched in terms of a front-end sales charge. Since then, its provisions also have been applied to deferred but not to asset-based sales charges.

BACKGROUND

Before 1980, the primary method used by mutual funds, the shares of which are offered to the public by NASD members, to finance sales-related expenses was a front-end sales charge deducted from the offering price of shares. In 1980, the Securities and Exchange Commission (SEC) adopted Rule 12(b)-1 under the Investment Company Act of 1940 ("the Act") that permitted mutual funds to use their assets to finance sales-related expenses.

The NASD has always considered that it is anomalous to have a sales charge rule that does not encompass all charges that are sales-related (see letter to the SEC, September 15, 1978, in response to SEC Release IC-10252). The Association viewed with interest proposed amendments to Rule 12(b)(1), published for comment by the SEC in 1988, that, among other things, would require

During the 1980s, a further method of paying for sales and sales promotion expenses — the deferred sales charge on redemption — was introduced. In its most common form — the contingent deferred sales charge (CDSC) — a charge, which declines each year and eventually disappears, is made against redemption proceeds.

mutual fund directors to consider whether asset-based sales charges under Rule 12(b)(1) would exceed the sales charges permitted by the NASD sales charge rule and to disclose in the prospectus if and when this might occur.

In December 1988, in its response to the SEC's request for comments on the proposed Rule 12(b)-1 amendments (see letter dated December 29, 1988), the NASD reiterated its view that the Association should seek to expand the scope of its sales charge rule to govern asset-based sales charges. After researching the legality of such a course of action, the NASD determined that no legal impediment exists to prevent such an expansion of its authority.

If adopted, the proposed amendments will subject asset-based sales charges to the NASD rule, and no NASD member will be permitted to offer the shares of mutual funds that do not comply with the provisions of the amended rule.

THE NASD'S APPROACH TO REGULATION OF ASSET-BASED SALES CHARGES

The thrust of the NASD's approach to the regulation of asset-based sales charges is to ensure, to the extent possible, that a majority of mutual fund shareholders who own shares of funds with asset-based sales charges pay no more for sales and sales-promotion expenses than is permitted by the provisions of the current NASD maximum sales charge rule.

The current rule permits a maximum front-end sales charge of not more than 8.5 percent of the offering price of a mutual fund share graded down to 6.25 percent if one or more of three benefits are not offered. These benefits are dividends reinvested at net asset value, quantity discounts, and rights of accumulation.

When a mutual fund has a front-end sales charge, investors incur, and pay for sales-related expenses at the time of the sale. Funds with only an asset-based and/or a deferred sales charge incur sales-related expenses at the time of the sale, but the revenue stream to defray these expenses is delayed. Underwriters that pay for up-front sales-related expenses incur liability that is amortized eventually by the revenue flowing from asset-based and/or deferred sales charges. Today, many funds use combinations of the three sales charges. Two popular variations are (1) a relatively low front-end sales charge and an asset-based sales

charge and (2) no front-end sales charge, a CDSC, and an asset-based sales charge.

Thus, to achieve approximate economic equivalency with a maximum permitted front-end sales charge, several variables must be considered — e.g., the percentage amount of an asset-based charge on fluctuating net assets, the interest charge on liability incurred by an underwriter that fronts sales expenses, the length of time investors own shares ("shareholder persistency"), and the frequency and amount of sales charges received on redemption.

With so many variables, the time frames during which economic equivalency may be reached are infinite in their variety. For example, economic equivalency with a sales charge of 6.25 percent of gross sales, assuming an annual appreciation rate of 4 percent, interest rate of 10 percent, and asset-based charge of 75 basis points would be reached in 11.8 years. This does not take into account revenue from any deferred sales charges on redemption that would shorten the time period, as would any increase in the appreciation rate. Conversely, a decrease in the appreciation rate would lengthen the time period.

One way to approach the issue would be to require individual shareholder accounting so that, when a shareholder has paid the economic equivalent of a front-end maximum sales charge, he or she would pay no further sales charges — deferred or asset-based. In the example above, when the aggregate of all sales charges exceeded 6.25 percent of the amount invested, no further charges would be assessed. Thus, a person investing \$10,000 would never pay more than \$625 in sales charges.

The alternative would be to require fund-level accounting in which all sales charges terminate when a percentage of gross sales is reached. For example, assume a fund has \$1 million of sales. In the example above, the maximum it could charge for sales-related expenses would be \$62,500.

The difference between the two methods is that, with individual shareholder accounting, each shareholder would never pay more than the economic equivalent of a front-end charge whereas, with fund-level accounting, long-term shareholders might pay more than the economic equivalent.

Requiring mutual funds to introduce individual shareholder accounting would mandate exten-

sive and expensive changes in the record-keeping methods and procedures utilized by mutual funds, disrupt current processing of sales and redemptions, and take several years to achieve. It would, initially, result in there being three classes of a fund's shares — those currently owned, those sold after the rule is adopted, and those owned after a shareholder has paid the maximum sales charge permitted.

The introduction of fund-level accounting could proceed rapidly and would not prevent the investment company industry from moving towards the adoption of individual shareholder accounting eventually. Indeed, the forces of competition might promote such an evolutionary trend.

The NASD Board of Governors recognizes that, if a fund-level accounting requirement is adopted, an unknown and unpredictable minority of long-term shareholders might eventually pay more than the economic equivalent of the maximum sales charge permitted by the current NASD sales charge rule. A study of shareholder persistency, recently conducted by the Wyatt Company for the NASD, indicated that somewhere between 75 percent and 80 percent of mutual fund shareholders are likely to redeem their shares within 15 years of original purchase and that there is no statistically significant difference between the persistency ratios of shareholders in funds with traditional front-end sales charges and those with asset-based sales charges.

The NASD Board of Governors considers that, if fund-level accounting were to be utilized, the fact that long-term shareholders might pay more than the economic equivalent of a front-end sales charge should be prominently disclosed in a mutual fund's prospectus.

Fund-level accounting would, in the NASD Board's opinion, be the most practical and least burdensome way to proceed. It would provide maximum flexibility to the industry in the financing of sales-related expenses and ensure that most investors in mutual funds, regardless of the method of financing used, would pay no more for the expenses incurred for distribution than the current NASD rule permits.

In the Board's view, adopting the proposed amendments to the rule would ensure continued compliance by the NASD and its members with the Congressional intent, expressed in Section 22(b)(1) of the Act, that such a rule "shall allow for

reasonable compensation for sales personnel, broker/dealers and underwriters and for reasonable sales loads to investors."

EXPLANATION

A section-by-section analysis of the proposed amendments to Subsections (b)(4) and (d) of Article III, Section 26 of the NASD Rules of Fair Practice follows:

Definitions Section

(b)(4) The term "any person," as used in the current rule, is changed to "Investor" or "Investors." The current rule defines "any person" as it is defined in Rule 22(d)-1 under the Act, which no longer contains such a definition. The term "investor" is used in Section 22(b)-(1) of the Act, which gives authority to the NASD to regulate excessive sales charges. The proposed amendment defines the term "investor" broadly.

(8) Sales charges are defined in this subsection to include all charges and fees that are used to finance sales-related expenses. Included in the definition are front-end, deferred, and asset-based sales charges. Excluded from the definition are charges that are used to defray ministerial, recordkeeping, or administrative activities, and investment management fees. The definition contemplates that any fee or charge that is used, directly or indirectly, to finance sales-related expenses is a sales charge regardless of how it is charged. For example, a situation in which a charge is described as a management fee in a prospectus and part of the fee is used to pay for sales or sales promotion expenses would fall within the definition of a sales charge.

Nominal charges incurred on redemption of shares for specific services in connection with a redemption are excluded from the definition of deferred sales charges as are redemption charges that are described in a prospectus as being levied to discourage short-term trading within one year of purchase of shares. Such nominal and short-term charges may not be used to pay for sales-related expenses and must be returned to the investment company.

The term "asset-based sales charge" is not defined in terms of a specific rule such as Rule 12(b)-1. It is intended to encompass all charges against net assets that are utilized to pay for sales

and sales promotion expenditures.

(9) A service fee is defined to include a continuing payment, made by an investment company or its affiliates, to a member for personal service to investors who own shares of the investment company. Thus, it is not made in connection with a primary distribution of investment company securities.

Sales Charges

(d) This subsection reiterates the general obligation of the NASD under Section 22(b) of the Act to prevent excessive sales charges. A major restructuring of the rule was required to expand its provisions to include deferred and asset-based sales charges. This was accomplished by dividing the rule into two parts. Part one deals with funds that do not have an asset-based sales charge, and part two deals with funds that have such a sales charge.

(1) Investment Companies Without an Asset-Based Sales Charge

Part one, for the most part, reiterates the current rule with minor changes to expand the rule's provisions to include deferred sales charges. Subsections (1)(E) and (F) are new. Subsection (E) would not permit a member to offer a mutual fund that has an aggregate sales charge of more than 7.25 percent of the offering price if the fund offers a service fee, which could not be more than .25 percent of net assets per annum. Section (F) would not permit a member to receive a service fee from a mutual fund that does not reinvest dividends at net asset value.

These new sections incorporate a principle underlying the sales charge rule that if charges are made for services, or if services are not offered but charges are incurred, an appropriate reduction will be made from the maximum permitted sales charge.

(2) Investment Companies with an Asset-Based Sales Charge

This part is new and expands the rule to govern mutual funds with asset-based sales charges that members offer to the public.

(A) This paragraph places a cap of 6.25 percent of new gross sales, plus an appropriate interest rate, on the total sales charges — asset-based, front-end, and deferred — levied by a mutual fund that offers a service fee to members. The reduction

from 8.5 percent, the maximum permitted sales charge under the rule, to 6.25 percent occurs because asset-based sales charges do not provide quantity discounts or rights of accumulation and because a member is offered a service fee for which a charge, not subject to the cap, is made.

The amount of an appropriate interest rate has not been decided but the prime rate plus .25 percent has been recommended.

(B) This paragraph permits mutual funds that do not offer a service fee to increase the cap described in paragraph 2(A) to 7.25 percent of total new gross sales plus an appropriate interest rate.

(C)(i) This subparagraph would limit the amount of an asset-based sales charge levied by mutual funds sold by NASD members to .75 percent per annum of the net assets of the mutual fund. This would mean that, after the amendments are adopted, no mutual fund offered by NASD members could have an asset-based sales charge in excess of 75 basis points of net assets per annum. Underwriters that have outstanding liabilities from sales, made prior to the date of the adoption of the rule, under which current asset-based sales charges are in excess of 75 basis points of net assets per annum, would probably find that it would take a longer time than anticipated to amortize their prior liability. Essentially, the prior liability and the new cap (under paragraphs 2(A) or (B)) would be combined and amortized over time by an asset-based sales charge of not more than 75 basis points per annum of net assets and any CDSC.

(C)(ii) This subparagraph would require that any deferred sales charges after the maximum caps described in paragraphs 2(A) or (B) are reached must flow into the mutual fund.

(C)(iii) This subparagraph would not permit a member to offer a mutual fund that pays a service fee in excess of 25 basis points per annum of net assets.

(C)(iv) Interest charges on any liability incurred in connection with sales made prior to the date of the adoption of the amendments would not be permitted to be added to the maximum percentages of gross sales described in paragraphs 2(A) and (B).

(d)(3) This subsection would not permit the use of "no load" or "no sales charge" language, orally or in writing, in the offer of a fund that has an asset-based or deferred sales charge. The subsection assumes that no one would claim that a fund

with a front-end sales charge does not have a sales charge.

(4) As explained in the background information section, when fund-level accounting is utilized, it is possible that some long-term shareholders of funds with asset-based charges may pay more than the economic equivalent of the maximum sales charge permitted by the rule. Because of the number of variable factors that affect the length of time it would take to achieve economic equivalency, it is not possible to determine with any accuracy when such instances could occur. Thus, this subparagraph would require funds with asset-based sales charges to disclose that information in prospectuses in an area close to the fee table.

The Board of Governors asks all members and interested persons to comment on the proposed amendment. Comments should be addressed 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 **May 31, 1990**. Amendments to NASD Rules of Fair Practice must be approved by the Board of Governors and by a vote of the membership and filed and approved by the SEC before becoming effective.

Questions concerning this notice may be directed to A. John Taylor, Vice President, Investment Companies/Variable Contracts, at (202) 728-8329.

Proposed Amendments to Subsections (b)(4) and (d) of Article III, Section 26 of the NASD Rules of Fair Practice

(Note: New text is underlined; deleted text is in brackets)

DEFINITIONS SECTION

(b) (4) ["Any person" shall mean "any person" as defined in subsection (a), or "purchaser" as defined in subsection (b), of Rule 22d-1 under the Investment Company Act of 1940.] "Investor" or "Investors" as used in subsection (d) of this section shall mean any natural person or persons, a partnership, a corporation, an association or any other

legal entity.

(8) "Sales charge" and "sales charges" as used in subsection (d) of this section shall mean all charges or fees that are used to finance sales or sales promotion expenses, including front-end, deferred and asset-based sales charges, excluding expenses incurred for ministerial, record-keeping, or administrative activities and management fees.

(A) a "front-end sales charge" is a sales charge that is included in the public offering price of the shares of an investment company.

(B) a "deferred sales charge" is a sales charge that is deducted from the proceeds of the redemption of shares by an investor, excluding any such charges that are nominal and are for services in connection with a redemption, or to discourage short-term trading, that are not used to finance sales-related expenses and that are credited to the net assets of the investment company.

(C) an "asset-based sales charge" is a sales charge that is deducted from the net assets of an investment company.

(9) "Service fees" as used in subsection (d) of this section shall mean payments to a member by an investment company or its affiliates for the provision, by the member, of personal, continuing service to investors in the shares of the investment company.

Sales Charges

(d) No member shall offer or sell the shares of any open-end investment company or any "single payment" investment plan issued by a unit investment trust (collectively "investment companies") registered under the Investment Company Act of 1940 [if the public offering price includes a sales charge which is excessive, taking into consideration all relevant circumstances.] if the sales charges described in the prospectus are excessive. Aggregate [S]sales charges shall be deemed excessive if they do not conform to the following provisions:

(1) Investment Companies Without an Asset-Based Sales Charge

[(1) (A) [The maximum sales charge on any transaction] Front-end and/or deferred sales charges described in the prospectus which may be imposed by an investment company without an asset-based sales charge shall not exceed 8.5% of the offering price.

[(2)(A)] (B) (i) Dividend reinvestment shall be made available at net asset value per share to ["any person"] an investor who requests such reinvestment. [at least ten days prior to the record date subject only to the right to limit the availability of dividend reinvestment to holders of securities of a stated minimum value, not greater than \$1200.]

[(B)] (ii) If dividend reinvestment is not made available [on terms at least as favorable as those] as specified in subparagraph [(2)(A)](B)(i), the maximum aggregate sales charge [on any transaction] shall not exceed 7.25% of the offering price.

[(3)(A)] (C) (i) Rights of accumulation (cumulative quantity discounts) shall be made available to ["any person"] an investor [for a period of not less than ten (10) years from the date of first purchase] in accordance with one of the alternative quantity discount schedules provided in subparagraph [(4)(A)] (D)(i) below, as in effect on the date the right is exercised.

[(B)] (ii) If rights of accumulation are not made available on terms at least as favorable as those specified in subparagraph [(3)(A)](C)(i), the maximum aggregate sales charge [on any transaction] shall not exceed:

[(i)] (a) 8% of the offering price if the provisions of subparagraph [(2)(A)](B)(i) are met; or

[(ii)] (b) 6.75% of the offering price if the provisions of subparagraph [(2)(A)](B)(i) are not met.

[(4)(A)] (D) (i) Quantity discounts shall be made available on single purchases by ["any person"] an investor in accordance with one of the following two alternatives:

[(i)] (a) A maximum aggregate sales charge of 7.75% on purchases of \$10,000 or more and a maximum aggregate sales charge of 6.25% on purchases of \$25,000 or more, or

[(ii)] (b) A maximum aggregate sales charge of 7.50% on purchases of \$15,000 or more and a maximum aggregate sales charge of 6.25% on purchases of \$25,000 or more.

[(B)] (ii) If quantity discounts are not made available on terms at least as favorable as those specified in subparagraph [(4)(A)] (D)(i), the maximum aggregate sales charge [on any transaction] shall not exceed:

[(i)] (a) 7.75% of the offering price if the provisions of subparagraphs [(2)(A)] and [(3)(A)] (B)(i) and (C)(i) are met.

[(ii)] (b) 7.25% of the offering price if the provisions of subparagraph [(2)(A)] (B)(i) are met but the provisions of subparagraph [(3)(A)] (C)(i) are not met.

[(iii)] (c) 6.50% of the offering price if the provisions of subparagraph [(3)(A)] (C)(i) are met but the provisions of subparagraph [(2)(A)] (B)(i) are not met.

[(iv)] (d) 6.25% of the offering price if the provisions of subparagraphs [(2)(A)] and [(3)(A)] (B)(i) and (C)(i) are not met.

(E) If an investment company without an asset-based sales charge offers a service fee, which may not be in excess of .25 of 1% per annum of the net assets of the investment company, the maximum aggregate sales charge shall not exceed 7.25% of the offering price.

(F) If an investment company without an asset-based sales charge reinvests dividends at offering price, it shall not offer or pay a service fee to members.

(2) Investment Companies With an Asset-Based Sales Charge

(A) The aggregate asset-based, front-end and deferred sales charges described in the prospectus which may be imposed by an investment company with an asset-based sales charge, if the investment company or its affiliates have adopted a plan under which service fees are offered or paid to members, shall not exceed 6.25% of total new gross sales (excluding sales from the reinvestment of distributions) plus interest charges on such amount equal to (to be decided).

(B) If an investment company with an asset-based sales charge does not offer a service fee to members, the aggregate sales charge shall not exceed 7.25% of total new gross sales (excluding

sales from the reinvestment of distributions) plus interest charges on such amount equal to (to be decided).

(C) No member shall offer or sell the shares of an investment company with an asset-based sales charge if:

(i) The amount of the asset-based sales charge exceeds .75 of 1% per annum of the net assets of the investment company.

(ii) Any deferred sales charges deducted from the proceeds of a redemption after the maximum cap described in subsections (2)(A) and (B) has been attained are not credited to the net assets of the investment company.

(iii) The investment company offers a service fee in excess of .25 of 1% per annum of the net assets of the investment company, or

(iv) The maximum permitted sales charge described in subsections(2)(A) and (B) are increased by interest charges on any liability incurred in connection with sale of investment company shares prior to (the date of adoption of this rule amendment).

(3) No member or person associated with a member who offers or sells the shares of an investment company shall, either orally or in writing, describe such investment company as being "no load" or as having "no sales charge" if the investment company has an asset-based or deferred sales charge.

(4) The prospectus of an investment company with an asset-based sales charge shall disclose that long-term shareholders may pay more than the economic equivalent of a front-end sales charge. Such disclosure shall be adjacent to the fee table in the front section of a prospectus.