NASD

Notice To Members

National Association of Securities Dealers, Inc. September 1990

Number 90 - 56

Suggested Routing:*

✓Senior Management	__Internal Audit	✓Operations	__Syndicate
✓Corporate Finance	✓Legal & Compliance	__Options	__Systems
__Government Securities	__Municipal	__Registration	__Trading
__Institutional	✓Mutual Fund	__Research	__Training

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

MAIL VOTE

Subject: Proposed Amendments to Subsections (b) ("Definitions") and (d) ("Sales Charge Rule") of Article III, Section 26 of the NASD Rules of Fair Practice Re: Regulation By the NASD of Mutual Fund Asset-Based Sales Charges; Last Voting Date: October 5, 1990

EXECUTIVE SUMMARY

The NASD invites members to vote 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. The last voting date is October 5, 1990. The text of the amendments follows this notice.

BACKGROUND

In *Notice to Members 90-26* (April 16, 1990), the NASD distributed for comment proposed amendments to subsections (b) and (d) of Article III, Section 26 of the NASD Rules of Fair Practice. If adopted, they would subject asset-based sales charges of mutual funds to the provisions of the NASD's maximum sales charge rule. Currently, the rule governs only front-end and deferred sales charges.

Fifty-eight comment letters were received from members and other interested persons. Twenty-five of the commenters were not in favor of the adoption of the amendments. The remainder, who expressed varying degrees of support for the proposals, made a number of constructive comments, many of which have been incorporated into the proposed amendments.

Several comments from those who do not support the amendments dealt with service fees. Most of these commenters consider that the proposals do not make adequate provision for service fees. The Board notes that the amendments provide for a continuing service fee to persons of up to a maximum of .25 percent per annum of the average annual net asset value of shares sold by such persons that is not subject to the asset-based sales charge caps in other sections of the proposed amendments. Thus, subject to arrangements made with a mutual fund or its underwriter, a member could continue to receive a fee for servicing mutual fund accounts it introduced for as long as such accounts are in existence. This is the rationale for defining "sales charges" and "service fees" separately in the proposal. The Board wishes to encourage members to give continuing service to their customers after the sale and believes that this activity deserves the reasonable continuing compensation provided for in the proposed amendments.

The following are the changes to the

proposed amendments, suggested by commenters and recommended by the NASD Investment Companies Committee ("Committee"), which have been approved by the Board of Governors.

Definition of "Person"

In the proposed amendments, the term "investor" was used in lieu of the term "person." A number of commenters noted that an adequate definition of a person is contained in the Investment Company Act of 1940, and this definition has been added to subparagraph (b)(4) of the Definitions section. "Investor" has been changed to "person" throughout the proposal.

Management Fees

The Board wishes to clarify that investment management fees and profits are not subject to the jurisdiction of the Association. Consequently, members will not be required to verify whether such fees or profits are being used, directly or indirectly, to finance sales-related expenses. Members will be able to rely on disclosures in prospectuses for information about sales-related fees and charges. Subparagraph (b)(8) of the Definitions section has been amended.

Service Fees

Several commenters felt that the definition of service fees in the proposal is too narrow. For example, it does not cover payments of service fees to nonmembers such as banks or foreign broker-dealers. The definition of service fees in subparagraph (b)(9) therefore has been broadened to permit service fees to be used for a wide variety of services provided by members and other entities to mutual fund shareholders. Service fees as defined do not include transfer agent or custodian fees paid by mutual funds. Subparagraph (b)(8)(C) has also been amended to define more clearly the distinction between "sales charges" and "service fees" in the proposal.

The Committee decided not to use the term "maintenance fee" in lieu of "service fee" as recommended by some commenters because it lacks the connotation of personal service that the Committee wishes to encourage.

The service fee limit in various parts of the proposed amendments is defined to be not more than .25 percent per annum of the average annual net assets of an investment company. This could mean that some members might receive more than .25 percent per annum of a mutual fund's assets for which they were responsible while others might receive less — the overall amount being not more than the maximum percentage of the total net assets permitted.

The Committee believes that the maximum percentage permitted should apply to all recipients and has amended the proposal to relate the maximum percentage of .25 percent per annum to the shares sold by any person. Thus, if the proposal is adopted, a recipient would be able to receive a service fee of not more than .25 percent per annum of the average annual net asset value of the shares it sold to customers. New section (d)(5) has been added.

As originally proposed, subparagraph (d)(1)(F) would not have permitted a mutual fund without an asset-based sales charge that reinvests dividends at the offering price to pay a service fee. The Committee feels that, with an appropriate haircut, such a prohibition should not apply. Accordingly, it has amended the subparagraph to permit such a service fee if the maximum aggregate sales charge does not exceed 6.25 percent of the offering price.

Maximum Front-End and Deferred Sales Charges

Subsection (d)(2) of the proposal deals with mutual funds that have an asset-based sales charge. Many such companies also have front-end and/or deferred sales charges. Since the caps in subparagraph (2)(A) and (2)(B) are a percentage of total new gross sales, it is possible to construct a scenario whereby some investors who make large investments might pay a minimal front-end sales charge while other investors might be required to pay a very high sales charge per individual transaction even though the overall sales charges related to the net assets of the fund are within the required maximum percentages. For example, a person investing $1 million might have to pay no front-end sales charge while a person investing $10,000 might have to pay an excessive front-end sales charge even though the aggregate sales charges by the fund were within the maximum percentages of total new gross sales permitted by the proposal. The Committee has amended both subparagraphs to set maximum front-end and/or deferred sales charges per individual transaction.

Exchanges

A number of commenters asked how exchanges of shares between companies in the same complex, between companies with multiple classes, and between series shares of a series investment company, should be treated, i.e., should they be treated as new sales for purposes of the maximum caps. The Committee believes that such exchanges should not be treated as new sales primarily because the extensive record-keeping that would be required would be an expensive and difficult burden for many mutual funds. However, if a mutual fund wishes to keep such records, the practice would be permitted provided that the increase in the maximum aggregate sales charges for the receiving mutual fund is deducted from the maximum aggregate sales charges of the redeeming company. Subparagraphs (2)(A) and (B) have been amended, and new subparagraph (D) has been added.

Treatment of Prior Sales and Unreimbursed Expenses

Several commenters remarked that the proposal does not deal adequately with unreimbursed sales-related expenses incurred in the past that would be amortized by asset-based and/or deferred sales charges after the amendments are adopted. They also pointed out that there is no provision for interest payments on the financing necessary to fund such expenses.

A new subparagraph (d)(2)(C) has been added to the proposed amendments that would apply the maximum permitted sales charges of 6.25 percent or 7.25 percent retroactively, on sales made prior to the effective date of the proposed amendments, to the time when a mutual fund first adopted an asset-based sales charge. An interest rate of prime plus one percent per annum would be added to the amount so calculated, and the total would be reduced by any front-end, asset-based, and deferred sales charges received prior to the effective date of the proposed amendments as a result of such sales. The net total would be added to the maximum aggregate sales charges on new gross sales calculated as described in subparagraphs (d)(2)(A) and (B). The grand total would be continually reduced by sales charges received by the investment company after the effective date of the proposed amendments. The interest rate of the prime rate plus one percent per annum would be applied to the fluctuating grand total over time.

"No Load" Designation

The proposed amendments would have prohibited members or their associated persons from describing an investment company with a deferred or an asset-based sales charge as "no load." The Committee considers that this prohibition should apply to a mutual fund that has a front-end or a deferred sales charge and to a fund that has an asset-based and/or a service fee that together exceed .25 percent of its average annual net assets. Subparagraph (d)(3) has been amended.

Tax Question

Some commenters believe that the requirement in subparagraph (2)(E)(ii) that excess deferred sales charges be credited to the net assets of an investment company may imperil a mutual fund's status as a regulated investment company under the provisions of the Internal Revenue Code. One commenter suggested excising the term "net assets" from the subparagraph. That has been done. The NASD does not wish to adversely affect the tax status of mutual funds by any provision of the rule and is continuing to study this area. If necessary, appropriate amendments will be made prior to the adoption of the proposal.

The following recommendations made by some commenters were not adopted.

Nonconforming Mutual Funds — Procedures for Exemption

Several commenters suggested that the NASD adopt procedures for the review and approval of sales charge structures that do not conform to the provisions of the proposed amendments. The Board of Governors is unwilling, at this time, to consider including exemptive provisions in the rule. It considers that the provisions of the amended rule will provide ample scope for innovation in the financing of sales-related expenses of mutual funds.

However, the Board would be willing, in view of the importance of the proposed amendments to the mutual fund industry and the fact that the NASD has yet to experience the effect of their implementation, to consider whether any changes are necessary after the NASD has had one year's experience in administering the new provisions.

Service Fees

Some commenters suggested a sliding, increasing scale of service fees with appropriate further haircuts to the maximum sales charge caps of 7.25 percent or 6.25 percent of gross new sales. Others commented that if a mutual fund did not offer the maximum service fee of .25 percent per annum of a fund's net asset value, the excess should be permitted to be added to the maximum asset-based sales charge of .75 percent.

The Board of Governors considers the maximum asset-based sales charge proposed of .75 percent per annum of average net assets and the maximum service fee of .25 percent of a fund's average annual net assets to be adequate to finance sales-related expenses and to provide compensation for continued service to mutual fund shareholder accounts. In addition, the Board does not wish to add further complexity to an already complex rule.

Application of the Proposed Amendments — Multiple Classes of Shares

Some commenters requested that the proposal be amended to clarify how the maximum caps should be applied when an investment company has multiple classes of shares or is a series investment company. The Board considers each class of shares and each series to be a separate investment company for purposes of the sales charge rule. In addition, the caps will apply to each class and each series and not to the investment company as a whole. The NASD has always applied its rules governing investment companies in this way, and the Board sees no reason to further amend the proposed amendments.

Grace Period

A number of commenters recommended that a grace period of one year be permitted, after the SEC approves the rule, before the rule is implemented. It is the intention of the NASD that such a provision will be provided for in the NASD's rule filing seeking SEC approval after member approval has been obtained. The membership will be notified of the effective date after SEC approval.

Technical Amendments

In addition to the changes described above that have been made to the proposed amendments, a number of technical changes have been made to clarify certain terms and to ensure uniformity in the language used.

EXPLANATION

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

Definitions Section

(b) (4) The current rule defines "person" as it is defined in Rule 22(d)-1 under the Investment Company Act of 1940 ("the Act"), which no longer contains such a definition. The amendment defines "person" as it is defined in the definitions section of the Act.

(8) Sales charges are defined in this subsection to include all charges and fees, described in the prospectus, that are used to finance sales-related expenses. Included in the definition are front-end, deferred, and asset-based sales charges. Excluded are investment management fees and charges or fees that are used to defray ministerial, record-keeping, or administrative expenses. The provisions of the rule govern only sales-related charges described as such in the mutual fund prospectus, and members may rely on such prospectus disclosure for purposes of this section.

Nominal (i.e., small or minimal) charges incurred by shareholders on redemption of mutual fund shares for special services are excluded from the definition of deferred sales charges, as are redemption charges described in a prospectus to discourage short-term trading generally 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 mutual fund.

The term "asset-based sales charge" is not defined in terms of a specific rule, such as Rule 12(b)-1 under the Act. It is intended to encompass charges against net assets, disclosed in the prospectus, that are used to pay for sales-related expenses.

(9) A service fee is defined to be a payment by a mutual fund for a broad variety of services after the sale provided by members and other entities to mutual fund shareholders. The term "service fee" does not include transfer agent, custodian, or similar fees paid by mutual funds.

(10) The prime rate is the most preferential

rate of interest charged by the largest commercial banks on loans to their corporate clients. It appears daily in *The Wall Street Journal.*

Sales Charges

(d) This subsection contains the general obligation of the NASD under Section 22(b) of the Act to prevent excessive sales charges on mutual funds sold by its members. 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, and Part Two deals with funds that do have an asset-based sales charge.

(d)(1) Part One, for the most part, reiterates the provisions of the current rule with minor changes to extend the rule's provisions to govern deferred sales charges. New subsection (d)(1)(E) would permit a fund without an asset-based sales charge to pay a service fee provided the aggregate front-end and/or deferred sales charges do not exceed 7.25 percent of the offering price. New subsection (d)(1)(F) would permit a fund without an asset-based sales charge that reinvests dividends at the offering price to pay a service fee provided (1) the aggregate front-end and/or deferred sales charges do not exceed 6.25 percent of the offering price and (2) the fund offers quantity discounts and rights of accumulation.

(d)(2) This part is new and expands the rule to govern mutual funds with asset-based sales charges offered by members to the public.

(d)(2)(A) This subsection places a cap of 6.25 percent of new gross sales, plus an interest rate equal to the prime rate plus one percent per annum, on the total sales charges — asset-based, front-end, and deferred — levied by a mutual fund that pays a service fee. 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 service fee, not subject to the cap, is paid.

The term "new gross sales" does not include sales resulting from the reinvestment of investment income or capital gains or from exchanges of shares between mutual funds in a complex of funds or between classes of shares in a fund with multiple classes or between series of a series fund. If a fund with an asset-based sales charge also has a front-end and/or a deferred sales charge, the latter two charges cannot exceed 6.25 percent of the amount invested by any person.

(d)(2)(B) This subsection permits a fund that has an asset-based sales charge and that does not pay a service fee to increase the cap described in subsection (d)(2)(A) to 7.25 percent of new gross sales plus an interest rate equal to the prime rate plus one percent, per annum. Front-end and/or deferred sales charges cannot exceed 7.25 percent of the amount invested by any person.

(d)(2)(C) Subsections (d)(2)(A) and (B) refer to sales made after the proposed amendments are adopted. This subsection would permit a mutual fund that has had an asset-based sales charge in the past to apply the appropriate cap of 6.25 percent or 7.25 percent retroactively to new gross sales from the time it first adopted an asset-based sales charge until the proposed amendments are implemented.

The amount thus calculated would be increased by an interest rate equal to the prime rate plus one percent per annum and reduced by any sales charges — front-end, deferred, or asset-based — on such sales or from net assets resulting from such sales. The net total would be added to the total calculated by the application of the provisions of subsections (d)(2)(A) or (B). The grand total would be reduced over time by sales charges received after the proposed amendments are implemented. This subsection permits past unreimbursed sales-related expenses to be accommodated within the provisions of the sales charge rule and provides for their gradual amortization.

(d)(2)(D) Despite the exclusion of exchanges from the definition of total new gross sales in the previous subsections, some mutual funds may wish to keep records of exchanges between mutual funds in the same complex, between classes of shares of mutual funds with multiple classes, and between series shares of series mutual funds. Such mutual funds may increase the maximum aggregate sales charges permitted under the previous sections by including such exchanges as new gross sales provided the maximum aggregate sales charges of the mutual fund, class, or series of the redeeming mutual fund are reduced by the amount of such increase.

(d)(2)(E)(i) This subsection would prohibit a member from offering the shares of a mutual fund that has an asset-based sales charge in excess of .75 percent of its average annual net assets.

(d)(2)(E)(ii) If the maximum cap described in subsections (d)(2)(A), (B), (C), and (D) is reduced to zero and a mutual fund still continues to receive deferred sales charges on redemption, such sales charges may not be used to pay for sales-related expenses.

(d)(3) No person associated with an NASD member may describe, orally or in writing, a mutual fund as "no load" or as having "no sales charge" if the fund has a front-end or deferred sales charge or if it has an asset-based sales charge that exceeds .25 percent of average net assets per annum.

(d)(4) Since the proposed amendments contemplate fund-level accounting rather than individual shareholder accounting, it is probable that long-term shareholders in a mutual fund that has an asset-based sales charge may pay more in total sales charges than they would have paid if the mutual fund did not have an asset-based sales charge. Members may not offer or sell shares of such mutual funds if the fund does not disclose this information near the fee table at the front of a prospectus.

(d)(5) A member may not offer or sell the shares of a mutual fund if it pays a service fee in excess of .25 percent of its average annual net assets. No person or entity can be paid a service fee by a mutual fund that exceeds .25 percent of the average annual net asset value of the shares of the fund that were sold originally by such a person or entity.

REQUEST FOR VOTE

The NASD Board of Governors believes that the proposed rule amendments will assist the NASD in meeting its obligation, under the mandate given to it by the U.S. Congress, to prevent excessive sales charges on mutual fund shares sold to the public by NASD members.

Thus, the Board considers the proposed amendments necessary and appropriate and recommends that members vote their approval. Please mark the attached ballot according to your convictions and mail it in the enclosed, stamped envelope to The Corporation Trust Company. Ballots must be postmarked no later than October 5, 1990.

Questions concerning this notice should be directed to A. John Taylor, Vice President, Investment Companies/Variable Contracts, at (202) 728-8328.

PROPOSED AMENDMENTS TO SUBSECTIONS (B) 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

(b) (4) Person ["any person"] shall mean "person" ["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.

(8) "Sales charge" and "sales charges" as used in subsection (d) of this section shall mean all charges or fees that are paid to finance sales or sales promotion expenses, including front-end, deferred and asset-based sales charges, excluding charges and fees for ministerial, recordkeeping or administrative activities and investment management fees. For purposes of this section, members may rely on the sales-related fees and charges disclosed in the prospectus of an investment company.

(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 (i) nominal and are for services in connection with a redemption or (ii) 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 and does not include a service fee.

(9) "Service fees" as used in subsection (d) of this section shall mean payments by an investment company for personal service and/or the maintenance of shareholder accounts.

(10) "Prime rate" as used in subsection (d) of this section shall mean the most preferential interest rate on corporate loans at large U.S. money center commercial banks.

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 sales charges described in the prospectus are excessive. [if the public offering price includes a sales charge which is excessive, taking into consideration all relevant circumstances.] 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) 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 [The maximum sales charge on any transaction] shall not exceed 8.5% of the offering price.

[(2)(A)] (B) (i) Dividend reinvestment may [shall] be made available at net asset value per share to any person 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 as specified [on terms at least as favorable as those] in subparagraph (B)(i) [(2)(A)], 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) may [shall] be made available to any person [for a period of not less than 10 years from the date of first purchase] in accordance with one of the alternative quantity discount schedules provided in subparagraph (D)(i) [(4)(A)] 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 (C)(i)[(3)(A)] the maximum aggregate sales charge [on any transaction] shall not exceed:

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

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

[(4)(A)] (D) (i) Quantity discounts, if offered, shall be made available on single purchases by any person 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

(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 (D)(i) [(4)(A)] the maximum aggregate sales charge [on any transaction] shall not exceed:

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

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

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

[(iv)] (d) 6.25% of the offering price if

the provisions of subparagraphs (B)(i) and (C)(i) [(2)(A) and (3)(A)] are not met.

(E) If an investment company without an asset-based sales charge pays a service fee, 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 unless it offers quantity discounts and rights of accumulation and the maximum aggregate sales charge does not exceed 6.25% of the offering price.

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

(A) Except as provided in subparagraphs (2)(C) and (2)(D), 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 has adopted a plan under which service fees are paid, shall not exceed 6.25% of total new gross sales (excluding sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes of shares of an investment company with multiple classes of shares or between series shares of a series investment company) plus interest charges on such amount equal to the prime rate plus one percent per annum. The maximum front-end or deferred sales charge resulting from any transaction shall be 6.25% of the amount invested.

(B) Except as provided in subparagraphs (2)(C) and (2)(D), if an investment company with an asset-based sales charge does not pay a service fee, the aggregate asset-based, front-end and deferred sales charges described in the prospectus shall not exceed 7.25% of total new gross sales (excluding sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes of shares of an investment company with multiple classes of shares or between series shares of a series investment company) plus interest charges on such amount equal to the prime rate plus one percent per annum. The maximum front-end or deferred sales charge resulting from any transaction shall be 7.25% of the amount invested.

(C) The maximum aggregate sales charge on total new gross sales set forth in subparagraphs (2)(A) and (B) may be increased by an amount calculated by applying the appropriate percentages of 6.25% or 7.25% to total new gross sales which occurred after an investment company first adopted an asset-based sales charge until the (effective date of these amendments) plus interest charges on such amount equal to the prime rate plus one percent per annum less any front-end, asset-based or deferred sales charges on such sales or net assets resulting from such sales.

(D) The maximum aggregate sales charges of an investment company in a single complex, a class of shares issued by an investment company with multiple classes of shares or a separate series of a series investment company, may be increased to include sales of exchanged shares provided that such increase is deducted from the maximum aggregate sales charges of the investment company, class or series which redeemed the shares for the purpose of such exchanges.

(E) 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 average annual net assets of the investment company.

(ii) Any deferred sales charges deducted from the proceeds of a redemption after the maximum cap described in subpara-

graphs (2)(A), (B), (C) and (D) has been attained are not credited to the investment company.

(3) No member or person associated with a member shall, either orally or in writing, describe an investment company as being "no load" or as having "no sales charge" if the investment company has a front-end or deferred sales charge or whose total charges against net assets to provide for sales related expenses and/or service fees exceed .25 of 1% of average net assets per annum.

(4) No member or person associated with a member shall offer or sell the securities of an investment company with an asset-based sales charge unless its prospectus discloses that long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this section. Such disclosure shall be adjacent to the fee table in the front section of a prospectus.

(5) No member or person associated with a member shall offer or sell the securities of an investment company if the service fees paid by the investment company, as disclosed in the prospectus, exceed .25 of 1% of its average annual net assets or if a service fee paid by the investment company, as disclosed in the prospectus, to any person who sells its shares exceeds .25 of 1% of the average annual net asset value of such shares.

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Suggested Routing:*

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

Subject: Implementation of Amendment to Rules of Practice and Procedures for the Small Order Execution System Re: Market Makers' Entry of Agency Orders into SOES, Effective July 27, 1990

EXECUTIVE SUMMARY

Effective July 27, 1990, the NASD implemented a new rule for NASDAQ's Small Order Execution System (SOES) that prohibits a market maker from entering agency orders into SOES in a security in which it is registered as a market maker, unless the market is locked or crossed. The rule emphasizes the market maker's continuing obligations of best execution for agency orders, even when use of SOES is prohibited. The text of the new rule follows this notice.

BACKGROUND

On July 26, 1990, the SEC approved an NASD rule change that prohibits market makers from entering agency orders into SOES in securities in which they make markets, and emphasizes a market maker's obligation to obtain best execution for its customer orders.[1] The new rule became effective July 27, 1990.

The new rule prohibits a market maker from receiving its own customers' orders and reviewing them, deciding not to act as market maker for those orders, and sending them into SOES for an automatic execution on an order-entry basis. An exception to the rule exists when the prevailing market is locked or crossed. In such instances, a market maker will be permitted to submit its own customer orders into SOES on an agency basis so that the locking market maker will refresh its quotes. At all other times, market makers are prohibited from entering agency orders in securities in which they are registered as market makers.

SOES is designed to facilitate the efficient and economical execution and comparison of small, retail orders in NASDAQ securities. SOES is available only for retail customer orders of specified size, and the SOES rules enumerate certain market-maker and order-entry participant obligations to ensure that SOES operates efficiently. The Association believes that the new rule furthers these goals by reemphasizing a market maker's obligation to execute its customers' orders, either in its own right as a market maker or through telephone negotiation. Furthermore, the change relieves SOES market makers from the burden of executing those orders emanating from a

[1] See Release No. 34-28268, 55 FR 31,273; File No. SR-NASD-89-52.

competing market maker's customer base and entered as agency orders for execution in an automated SOES environment. Finally, the new rule specifically establishes that a market maker's duty to provide best execution to its customer is in no way diminished by the unavailability of a SOES execution.

TEXT OF AMENDMENT TO THE RULES OF PRACTICE AND PROCEDURES FOR THE SMALL ORDER EXECUTION SYSTEM

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

c) PARTICIPATION OBLIGATIONS IN SOES

* * * * * *

2. Market Makers

(A) through (C) No Change

(D) For each security in which a Market Maker is registered, the Market Maker may not enter orders on an agency basis into SOES, unless a locked or crossed market as defined in Part IV, Section 2(e) of Schedule D to the NASD By-Laws, exists for that security. This prohibition against use of SOES does not obviate the Market Maker's duty to give its agency orders orders best execution in the prevailing market, according to the NASD Board of Governors' Interpretation on Executions of Retail Transactions.

(E) [(D)] No change

(F) [(E)] No change

(G) [(F)] No change

(H) [(G)] No change

(I) [(H)] No change

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__Senior Management	__Internal Audit	✓Operations	__Syndicate
__Corporate Finance	✓Legal & Compliance	__Options	__Systems
__Government Securities	__Municipal	__Registration	✓Trading
__Institutional	__Mutual Fund	__Research	__Training

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

Subject: Clarification of Schedule H Reporting Requirements

EXECUTIVE SUMMARY

Effective August 1, 1989, the requirement to report daily price and volume in non-NASDAQ over-the-counter equity securities ("non-NASDAQ securities") pursuant to Schedule H to the NASD By-Laws was extended to the entire universe of such securities, including foreign issues. Since that time, questions have been raised concerning the applicability of the schedule to foreign securities and foreign securities transactions. Accordingly, the NASD is publishing guidelines regarding the application of Schedule H to such securities and transactions. In addition, the NASD is publishing guidelines regarding the general application of the Schedule.

BACKGROUND

Schedule H, which became fully effective August 1, 1989, requires the reporting of price and volume information for principal transactions in non-NASDAQ securities whenever a member exceeds the minimum daily thresholds of 50,000 shares or $10,000, on either side, in a given non-NASDAQ security. All non-NASDAQ equity securities, including foreign securities, are subject to the requirements of Schedule H. Since its effectiveness, questions have been raised regarding the applicability of the Schedule to foreign securities and certain foreign securities transactions. The NASD has decided to publish the following guidelines to clarify the requirements and to assist members in complying with the Schedule.

1. Schedule H applies only to principal transactions effected by NASD members.

2. The term "non-NASDAQ security" includes all foreign equity securities, American Depositary Receipts, or shares traded in the U.S. other than on NASDAQ or on a national securities exchange. Foreign exchanges are not "national securities exchanges," as that term is used in the Schedule H definition of non-NASDAQ security. Therefore, the fact that a foreign security is also traded on a foreign exchange does not, *per se*, exclude all transactions in that security from the Schedule's coverage.

3. Schedule H is applicable to transactions in foreign securities executed in the U.S., regardless of the country where clearance and settlement occur.

4. Schedule H is *not* applicable to any transaction involving a foreign security that is executed outside the U.S. and cleared and settled in the U.S. *if* the transaction is reportable, and is reported, to a foreign regulatory securities authority (e.g., The Securities Association in the United Kingdom).

5. Schedule H is *not* applicable to transactions in foreign securities executed on and reported to a foreign securities exchange (e.g., the International Stock Exchange, the Tokyo Stock Exchange, Toronto Stock Exchange, Stock Exchange of Singapore, Hong Kong Stock Exchange, etc.).

6. The type of currency in which the trade is effected or in which the trade settles has *no* bearing on whether the trade is reportable under Schedule H.

7. All trades reported under Schedule H must be reported in U.S. dollars. The method employed for currency conversion will be left to the NASD member.

8. The time a trade is effected, whether during or outside U.S. market hours, has *no* bearing on whether the trade is reportable under Schedule H.

The NASD is also clarifying the general application of the requirement in the following circumstances.

1. Schedule H does *not* apply to transactions in "restricted securities" as defined in Rule 144(a)(3) of the Securities Act of 1933, including transactions made pursuant to Rule 144A.

2. Schedule H does *not* apply to bonds, including convertible bonds.

3. Schedule H does *not* apply to "junk bonds" with rights attached or any combination of securities of which a debt instrument is an integral part. Schedule H will apply to transactions in the equity components when they become detached and trade separately.

4. Schedule H does apply to preferred stock, rights, and warrants.

Questions regarding CUSIP numbers and/or security symbols should be directed to Dorothy Kennedy, Manager, Uniform Practice, at (212)858-4340. Other questions regarding this notice should be directed to Katherine Malfa, Senior Regional Attorney, Market Surveillance, at (301) 590-6445 or to Michael Kulczak, Associate General Counsel, at (202) 728-8811.

NASD

Notice To Members

National Association of Securities Dealers, Inc. September 1990

Number 90 - 59

Suggested Routing:*

__Senior Management	✔Internal Audit	✔Operations	✔Syndicate
__Corporate Finance	✔Legal & Compliance	__Options	✔Systems
__Government Securities	✔Municipal	__Registration	✔Trading
__Institutional	__Mutual Fund	__Research	__Training

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

Subject: Columbus Day: Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 8, 1990. On this day, the NASDAQ system and the exchange markets will be open for trading. However, it will not be a settlement date since many of the nation's banking institutions will be closed in observance of Columbus Day.

Trade Date	Settlement Date	Reg. T Date*
September 27	October 4	October 8
28	5	9
October 1	9	10
2	10	11
3	11	12
4	12	15
5	15	16
8	15	17
9	16	18

Note: October 8, 1990, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 8, will be combined with transactions made on the previous business day, October 5, for settlement on October 15. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 8.

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.

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*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."

NASD

Notice To Members

National Association of Securities Dealers, Inc. September 1990

Number 90 - 60

Suggested Routing:*

__Senior Management	✓Internal Audit	✓Operations	__Syndicate
__Corporate Finance	__Legal & Compliance	__Options	✓Systems
__Government Securities	__Municipal	__Registration	✓Trading
__Institutional	__Mutual Fund	__Research	__Training

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

Subject: NASDAQ National Market System (NASDAQ/NMS) Additions, Changes, and Deletions As of August 13, 1990

As of August 13, 1990, the following 35 issues joined NASDAQ/NMS, bringing the total number of issues to 2,641:

Symbol	Company	Entry Date	SOES Execution Level
NLCO	Environmental Elements Corporation	7/13/90	1000
ADDDF	Alias Research Inc.	7/17/90	1000
BHICW	Baker Hughes Incorporated (Wts)	7/17/90	1000
LMTS	LaserMaster Technologies, Inc.	7/17/90	1000
MSIC	Microscience International Corporation	7/17/90	200
OSHSF	OSHAP Technologies Ltd.	7/17/90	1000
OSHWF	OSHAP Technologies Ltd. (Wts)	7/17/90	500
PCTL	PictureTel Corporation	7/17/90	1000
PCTLW	PictureTel Corporation (Wts)	7/17/90	1000
PRST	Presstek, Inc.	7/17/90	1000
ISAN	In-Store Advertising, Inc.	7/19/90	1000
MECA	MECA Software, Inc.	7/19/90	1000
MODT	Modtech, Inc.	7/19/90	1000
CHUX	O'Charley's Inc.	7/19/90	1000
TRMB	Trimble Navigation Limited	7/20/90	1000
CROPP	Crop Genetics International Corporation (Pfd)	7/24/90	500
IKOS	IKOS Systems, Inc.	7/25/90	1000
COHO	Coho Resources, Inc.	7/26/90	1000
MOLXA	Molex Incorporated (Cl A)	7/26/90	1000
ACLB	Allied Clinical Laboratories, Inc.	7/31/90	1000
BMTI	Bird Medical Technologies, Inc.	8/2/90	1000
CBCL	Capitol Bancorp Ltd.	8/7/90	200
CSYI	Circuit Systems, Inc.	8/7/90	1000
DVIC	DVI Financial Corporation	8/7/90	1000

Symbol	Company	Entry Date	SOES Execution Level
DREAF	Dreco Energy Services Ltd. (Cl A)	8/7/90	1000
ESBB	ESB Bancorp, Inc.	8/7/90	200
KEEN	Keene Corporation	8/7/90	1000
MGXI	Micrografx, Inc.	8/7/90	1000
OSII	Orthopedic Services, Inc.	8/7/90	1000
REPH	Republic Health Corporation	8/7/90	500
BSBL	Score Board, Inc. (The)	8/7/90	1000
VRETS	Vanguard Real Estate Fund II	8/7/90	500
EASL	Easel Corporation	8/9/90	1000
SMRKV	Southmark Corporation (WI)	8/13/90	1000
SMRPV	Southmark Corporation (Pfd)(WI)	8/13/90	500

NASDAQ/NMS Symbol and/or Name Changes

The following changes to the list of NASDAQ/NMS securities occurred since July 13, 1990.

New/Old Symbol	New/Old Security	Date of Change
APTS/LEDA	Apertus Technologies, Inc./Lee Data Corp.	7/20/90
CUBN/LCNB	CU Bancorp/Lincoln Bancorp	8/2/90
HFOX/HFOX	Ultra Bancorp/Home Federal Savings Bank	8/6/90

NASDAQ/NMS Deletions

Symbol	Security	Date
ASII	Automated Systems, Inc.	7/13/90
BRLNE	Brooklyn Savings Bank (The)	7/16/90
EBKC	Eliot Savings Bank	7/16/90
SCAPY	Svenska Cellulosa Aktiebolaget SCA	7/17/90
ATTWZ	Attwoods plc (Rts)	7/18/90
LIVE	LIVE Entertainment Inc.	7/18/90
PFTS	Profit Systems, Inc.	7/18/90
INTCZ	Intel Corporation (Wts)	7/19/90
TCGN	Tecogen Inc.	7/19/90
BOGO	Bogert Oil Company	7/20/90
HEIC	HEI Corporation	7/23/90
DSTS	DST Systems, Inc.	7/24/90
MAJL	Michael Anthony Jewelers, Inc.	7/24/90
CFIXW	Chemfix Technologies, Inc. (Wts)	7/31/90
PMBK	PrimeBank, Federal Savings Bank	7/31/90
NOWT	North-West Telecommunications, Inc.	8/1/90
PSPA	Pennview Savings Association	8/1/90
AASQE	Action Auto Stores, Inc.	8/2/90
DOSKQ	Doskocil Companies, Inc.	8/2/90
ITGN	Integon Corporation	8/2/90
PACE	Pacesetter Homes, Inc.	8/2/90
GRGI	Greenery Rehabilitation Group, Inc.	8/3/90
CPLSZ	Care Plus, Inc. (Cl A Wts)	8/7/90
INCL	Intellicall, Inc.	8/8/90
CCARQ	CCAIR, Inc.	8/9/90

Symbol	Security	Date
CPTC	CPT Corporation	8/9/90
VIPTS	Vinland Property Trust	8/9/90
WTWQE	Wall to Wall Sound & Video, Inc.	8/9/90
USBK	United Savings Bank	8/13/90
WWBC	Washington Bancorporation	8/13/90

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.

NASD
Disciplinary Actions
National Association of Securities Dealers, Inc. September 1990

Disciplinary Actions Reported for September

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 Tuesday, September 4, 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

Vautrain Nelson Lefevre, Endsley and Durham, Inc. (Fort Worth, Texas) and **Lynn D. Vautrain (Registered Principal, Fort Worth, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $25,000 and expelled from membership in the NASD, and Lynn D. Vautrain was fined $10,000 and suspended from association with any member of the NASD in any capacity for two weeks. Without admitting or denying the allegations, they consented to the described sanctions and to the entry of findings that the firm executed 124 government securities purchase and sale transactions that resulted in losses of $752,662.24 in the account of an institution. These transactions were excessive in size and frequency and unsuitable given the institution's investment objectives, financial situation, and needs, according to the findings. The findings also stated that the firm intentionally or recklessly failed to disclose the speculative nature of the transactions to the institution's directors or senior officers, and charged excessive markups to public customers in six transactions involving the sale of government securities. In addition, the findings stated that Vautrain failed to properly supervise a former associated person involved in the aforementioned activities.

FIRM SUSPENDED, INDIVIDUALS SANCTIONED

International Currency Execution, Inc. (Chicago, Illinois) and **Vincent Mills (Registered Principal, Chicago, Illinois)** were fined $10,000, jointly and severally. The firm was suspended from membership in the NASD in any capacity for 15 business days, and Mills was suspended from association with any member of the NASD in any capacity for 15 business days. The sanctions were based on findings that International Currency, acting through Mills, effected transactions in securities when it failed to maintain required minimum net capital. Mills altered a bank statement to show that the firm had sufficient net capital when, in fact, it did not. Also, the firm, acting through Mills, filed inaccurate FOCUS Parts I and II reports and failed to maintain accurate books and records.

FIRMS FINED, INDIVIDUALS SANCTIONED

Fundamental Brokers International, Inc. (New York, New York) and **Michael E. Beirne (Registered Principal, Rockville Centre, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Beirne failed to enforce the firm's written supervisory procedures with regard to the registration and qualification of four individuals prior to their engaging in the securities business.

Hugo Marx & Co., Inc. (Birmingham, Alabama) and **V. Hugo Marx, Jr. (Registered Municipal Principal, Birmingham, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Marx, underwrote and

sold municipal securities using official statements that contained material misrepresentations, including the failure to disclose certain information and the reporting of misleading or inaccurate information.

PaineWebber Incorporated (New York, New York), Joseph Patrick Tota (Registered Principal, Flower Hill, New York), and **Nilda Rubiera Zim (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which the firm and Tota were fined $30,000, jointly and severally. In addition, Tota was suspended from association with any member of the NASD in any principal capacity for five business days, and Zim was fined $125,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Zim recommended and executed transactions in a public customer's account without having reasonable grounds to believe such transactions were suitable for the customer in light of her financial situation and investment objectives. The NASD also found that PaineWebber, acting through Tota, failed to implement its supervisory procedures to detect and prevent Zim's misconduct.

Providence Securities, Inc. (Providence, Rhode Island), Thomas L. DePetrillo (Registered Principal, Providence, Rhode Island), Albert Kopech (Registered Principal, Cranston, Rhode Island), and **Thomas J. Leahy (Financial and Operations Principal, Cranston, Rhode Island).** Providence was fined $50,000; DePetrillo was fined $16,000, suspended from association with any member of the NASD in any capacity for 30 days, suspended from association with any member of the NASD in a principal capacity for six months, and required to requalify by examination as a general securities principal; Kopech was fined $10,000, suspended from association with any member of the NASD in any capacity for 15 days, suspended from association with any member of the NASD in any principal capacity for six months, and required to requalify by examination as a registered principal; and Leahy was fined $500, suspended from association with any member of the NASD in any capacity for five days, and required to requalify by examination as a financial and operations principal. 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 13. The sanctions were based on findings that Providence, acting through DePetrillo and Leahy, engaged in a securities business while failing to maintain minimum required net capital. In addition, Providence, acting through DePetrillo and Kopech, failed to supervise the activities of the firm's registered representatives located in branch offices and to enforce the firm's written supervisory procedures, engaged in an options business while failing to have the appropriate principals, and conducted a municipal securities business when the firm lacked a municipal securities principal.

Underhill Associates, Incorporated (Red Bank, New Jersey), Jerome U. Burke (Registered Principal, Little Silver, New Jersey), Kevin J. Burke (Registered Principal, Westfield, New Jersey), Patricia S. Burke (Registered Financial Principal, Little Silver, New Jersey), and **William T. Baettcher (Registered Principal, Pine Beach, New Jersey).** Underhill and Patricia Burke were fined $25,000, jointly and severally, and Jerome Burke, Kevin Burke, Patricia Burke, and Baettcher were each barred from association with any member of the NASD in any principal, managerial, supervisory, or proprietary capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision rendered by the District Business Conduct Committee for District 11. The sanctions were based on findings that Underhill, acting through Patricia Burke, effected securities transactions while failing to maintain required minimum net capital, failed to prepare accurate books and records, filed an inaccurate FOCUS Part I report, and failed to send telegraphic notice regarding its capital deficiency. The firm, acting through Kevin Burke and Jerome Burke, charged unfair and unreasonable markups on transactions in municipal securities. Underhill, acting through Baettcher, effected transactions with public customers in equity securities with markups or markdowns that were unfair. Furthermore, the firm, acting through Baettcher, failed to disclose the markup or markdown on customer confirmations for 93 simultaneous principal transactions. And the firm, acting through Jerome Burke and Kevin Burke, failed to designate a qualified municipal securities principal to be responsible for the overall supervision of the firm's

municipal securities activities.

Respondents Kevin Burke, Jerome Burke, and Baettcher have appealed this decision to the Securities and Exchange Commission, and the sanctions against them, other than bars, are not in effect pending consideration of the appeal. The bars became effective June 20, 1990.

FIRM FINED

Shearson Lehman Hutton, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $15,000. Without admitting or denying the allegations, Shearson consented to the described sanctions and to the entry of findings that, in contravention of the Interpretation of the Board of Governors with respect to Free-Riding and Withholding, the firm sold shares of a new issue that traded at a premium in the immediate aftermarket ("hot issue") to a nonmember broker-dealer and to a person associated with a nonmember broker-dealer. In connection with its participation in underwritings of the "hot issues," the NASD found that the firm effected sales to investment partnerships, corporations or like accounts, and domestic and foreign banks without obtaining the necessary information. The NASD determined that Shearson failed to effect final settlement within the required time frame with the syndicates involved in each of five corporate underwritings. The findings also stated that the firm failed to properly follow buy-in procedures or request extensions of time for deficit securities positions recorded as "failed to receive" for more than 30 calendar days. In connection with certain municipal underwritings, the NASD found that the firm was unable to show that it delivered a copy of the final official statement to certain customers who purchased the issues. Of those statements that were delivered, some were sent up to 21 days late, according to the findings.

INDIVIDUALS BARRED OR SUSPENDED

Jeffrey L. Amburn (Registered Representative, Quincy, Illinois) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Amburn failed to respond to NASD requests for information regarding a customer complaint.

David W. Appel, Jr. (Registered Principal, Garden City, New York) was fined $5,000, jointly and severally with a former member firm, suspended from association with any member of the NASD in a principal capacity for three months, and required to requalify by examination as a financial and operations principal. 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 12. The sanctions were based on findings that a former member firm, acting through Appel, conducted a securities business while failing to maintain required minimum net capital. In addition, Appel failed to obtain the permission of the NASD or the Securities and Exchange Commission regarding three partial prepayments made to a creditor towards a subordinated loan agreement in contravention of the terms of the agreement. In connection with an equity subordination loan agreement, Appel failed to disclose to the NASD that a supplementary agreement concerning the payment method had been executed.

Rickey D. Baker (Registered Representative, LaPaz, Indiana) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Baker received checks totaling $8,550.19 from public customers with instructions to purchase shares of a mutual fund. Baker failed to follow the customer's instructions and, instead, deposited the funds in an account in which he had a beneficial interest and converted the funds to his own use and benefit. Baker also failed to respond to NASD requests for information.

Nathan Chad Barlow (Registered Representative, Medford, Oregon) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Barlow consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the accounts of three customers.

Frank Joe Bierekoven (Registered Representative, Birmingham, Michigan) was fined $1,000 and barred from association with any member of the NASD in any capacity until he has satisfied the arbitration award that was the subject of the complaint or has received a release from the award. The sanctions were based on findings that

Bierekoven failed to honor an arbitration award in the amount of $15,481.43 to be paid to a member firm.

Robert Brand (Registered Principal, Bayonne, New Jersey) and Allen Green (Registered Principal, Scarsdale, New York) were each fined $10,000 and suspended from association with any member of the NASD in a principal capacity for two years. The sanctions were based on findings that Brand and Green failed to respond to NASD requests for information concerning certain records that were to be made available for inspection following their member firm's filing of Form BDW.

Victor J. Camasta (Registered Representative, Clifton, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Camasta consented to the described sanctions and to the entry of findings that he collected six monthly life insurance premiums totaling $534.90 from a public customer, but failed to remit the payments to his member firm and, instead, retained the funds for his own use and benefit.

Leaford S. Cameron (Registered Representative, Bensalem, Pennsylvania) was fined $7,500 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 11. The sanctions were based on findings that Cameron received three checks totaling $10,000 from two customers for investment in interest-bearing securities. Cameron invested only $5,000 of the funds and retained the remainder. He also presented a forged document to the customers in order to mislead them regarding the disposition of their funds.

Charles O. Coberly (Registered Representative, Madison, Wisconsin) and **Eric N. Egerstrand (Registered Representative, Berwyn, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which Coberly was fined $5,000 and suspended from association with any member of the NASD in any capacity for 30 days, and Egerstrand was fined $10,000 and suspended from association with any member of the NASD in any capacity for 60 days. Without admitting or denying the allegations, Coberly and Egerstrand consented to the described sanctions and to the entry of findings that they participated in private securities transactions without providing prior written notice to their member firm.

Scott D. Cochrane (Registered Representative, Brighton, Michigan) was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Cochrane misappropriated $19,000 in customer funds, effected the unauthorized sale of securities in a customer account, and failed to respond to NASD requests for information.

Michael A. Connolly (Registered Principal, Chicago, Illinois) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Connolly received $2,015 from a public customer with instructions to invest the funds in an Individual Retirement Account. Connolly failed to follow the customer's instructions and instead used the money for his personal benefit. Connolly also failed to respond to NASD requests for information.

Anthony R. Domanico (Registered Representative, Whitesboro, New York) 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 on review of a decision by the District Business Conduct Committee for District 13. The sanctions were based on findings that Domanico falsely represented to a public customer that, in order for her to receive the surrender value of an insurance policy, she would have to share the proceeds with him. He presented the customer with a check for $1,543.40 representing the proceeds from the insurance policy and accepted $770 in cash from the customer.

David Lloyd Earls (Registered Representative, Lewisville, Texas) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, in connection with the sale of securities, Earls exercised discretion in the account of a customer without obtaining written discretionary authorization from the customer and without written acceptance of the account as discretionary by his member firm. In addition, Earls failed to respond to NASD requests for information.

Sheldon Fried (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 imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee for District 12. The sanctions were based on findings that Fried executed unauthorized transactions in four customer accounts. He also engaged in a private securities transaction with a customer without having provided his member firm prior written notice. As a result of the transaction, Fried received a check for $5,000 from the customer and used the proceeds for his own benefit.

Timothy N. Gehring (Registered Representative, Evansville, Indiana) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Gehring failed to respond to NASD requests for information regarding a customer complaint and about his termination from a member firm.

Robert Abraham Hall (Registered Representative, Cave Creek, Arizona) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hall failed to respond to NASD requests for information concerning his termination from a member firm.

Richard Carl Herbst (Registered Representative, New York, 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 Herbst received a money order for $485 from a public customer for the purpose of purchasing securities. Herbst instead negotiated and converted the proceeds to his own use and benefit. He also failed to respond to NASD requests for information.

Richard Hofland (Registered Principal, Madison, Wisconsin) was fined $5,000 and barred from association with any member of the NASD as a financial and operations principal. The sanctions were based on findings that a former member firm, acting through Hofland, effected transactions in securities when it failed to maintain minimum net capital, failed to file its FOCUS Part IIA reports and its annual audit report on a timely basis, and failed to maintain accurate books and records.

Sharon Lynn Johnson (Registered Representative, Oakland, New Jersey) was fined $15,000 and suspended from association with any member of the NASD in any capacity for 20 business days. The sanctions were based on findings that Johnson placed orders in a customer account without the customer's authorization or without written third-party discretionary authorization.

Michael Allen Jurinske (Registered Principal, Diamond Bar, California) was fined $40,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Jurinske received $8,900 from two public customers for the purchase of an annuity through an affiliate of his member firm. He failed to forward the funds to the affiliate or his member firm, failed to return the funds to the customers, and instead converted the funds to his own use and benefit. Jurinske also failed to respond to NASD requests for information.

Gary J. Macko (Registered Representative, Binghamton, New York) submitted an Offer of Settlement 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, Macko consented to the described sanctions and to the entry of findings that he obtained a firm check for $596.64, drawn on the account of two customers, forged their signatures, endorsed the check, and misappropriated the funds to his own use and benefit.

Rebecca Mercer (Registered Representative, Lexington, Kentucky) submitted an Offer of Settlement pursuant to which she was fined $500 and suspended from association with any member of the NASD in any capacity for two years and one day. Without admitting or denying the allegations, Mercer consented to the described sanctions and to the entry of findings that she failed to disclose on her application for securities industry registration, Form U-4, several prior misdemeanor convictions. The NASD also found that Mercer failed to respond to NASD requests for information.

Robert J. Pettit (Registered Representative, Reading, Pennsylvania) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Pettit failed to respond to NASD requests for information.

Randall Mark Phillips (Registered Principal, Spokane, Washington) and **Rex Maxwell Phillips (Associated Person, Spokane,**

Washington) were barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Randall and Rex Phillips effected the sale of an investment in a limited partnership to a public customer in a private securities transaction without prior written notification to their member firm. They also failed to respond to NASD requests for information.

Steven Alexander Reta (Registered Representative, Las Vegas, Nevada) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Reta failed to respond to NASD requests for information concerning his termination from a member firm.

Ronald Dennis Robbins (Registered Representative, Gahanna, Ohio) was fined $50,000 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 9. The sanctions were based on findings that Robbins improperly endorsed a $4,502.56 check received from two public customers, deposited it into his wife's bank account, and later transferred the funds to his own securities account at his member firm. Robbins improperly endorsed another $910 customer check and, more than three months later, wired the same amount to his member firm. He made misrepresentations to a public customer in the sale of a one-unit debenture issued by an affiliate of his member firm, and failed to provide written notice to his member firm in connection with his proposed role in this transaction.

Jerome Sharpe (Registered Representative, Crown Point, Indiana) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Sharpe received funds totaling $337 from two public customers with instructions to use the funds to pay premiums on insurance policies. Sharpe failed to follow the customers' instructions and instead used the funds for his personal benefit. Sharpe also failed to respond to NASD requests for information.

Charles E. Sorensen (Registered Representative, Salt Lake City, Utah) was fined $15,000 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 3. The sanctions were based on findings that Sorensen misappropriated more than $16,000 belonging to his member firm through a series of transactions following an accounting error made in a customer's account. He failed to remit the funds involved until his actions were discovered by his firm's auditors.

Bernard Branuel Standard (Registered Representative, Hopkinsville, Kentucky) submitted an Offer of Settlement pursuant to which he was fined $15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Standard consented to the described sanctions and to the entry of findings that he made applications for consumer loans through his member firm on behalf of 11 fictitious customers and received checks totaling $33,950.58, which he negotiated and used to make payments on pre-existing defaulted or delinquent consumer loans. The NASD also found that Standard misappropriated a total of $31,370.81 from at least eight customers and applied the funds to make payment on other consumer loans. In addition, he failed to respond to NASD requests for information.

Frederick Leland Stanford (Registered Representative, Austin, Texas) and **Keith Douglas Feldhacker (Registered Representative, Norman, Oklahoma)**. Stanford was fined $300,000 and suspended from association with any member of the NASD in any capacity for three years, and Feldhacker was fined $350,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Stanford was the registered representative for an account maintained for a state treasury at his member firm. Without the knowledge or consent of his member firm or the state, Stanford shared commissions generated from this account with Feldhacker, who was married to the employee authorized to act as agent for the state treasury. During a 10-month period, the payments from Stanford to Feldhacker representing such commissions exceeded $600,000.

David R. Strother (Registered Representative, Shreveport, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any member of the NASD in any

capacity for one week. Without admitting or denying the allegations, Strother consented to the described sanctions and to the entry of findings that he represented himself as an investment advisor at a time when he was not registered as such, and participated in the sale of interest in an accounts-receivable factoring venture and an equipment-leasing investment program without notifying his member firm in writing of his intention to engage in private securities transactions. The NASD also found that Strother failed to amend his securities industry application for registration form (Form U-4) in order to disclose his ownership of an investment advisory firm.

Edward J. Stuart (Registered Representative, Morton, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $30,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Stuart consented to the described sanctions and to the entry of findings that he received funds totaling $17,679.73 from a public customer for the purchase of investment company shares, but instead converted $17,579.73 of the funds to his own use and benefit. The NASD also found that Stuart failed to respond to NASD requests for information.

Peter Claver Tosto (Registered Representative, Atlanta, Georgia) was fined $15,000, suspended from association with any member of the NASD in any capacity for six months, and required to requalify by examination. The sanctions were based on findings that Tosto solicited customers to purchase and sell units in an initial public offering prior to providing his member firm with written notice regarding these private securities transactions. He failed to deliver $5,000 of the units to the customers' account and thereafter told the customers that he had made arrangements to have a third party purchase the units. Tosto later presented the customers with a check drawn on insufficient funds for $5,000. In addition, Tosto refused to answer questions posed by the NASD concerning his involvement in the aforementioned transactions.

Brian Lee Williamson (Registered Representative, Austin, Texas) was fined $50,000 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 6. The sanctions were based on findings that Williamson received cashier's checks from a public customer totaling $257,442 for the purchase of securities, and converted these funds to his own use and benefit.

Joseph W. Zaehringer (Registered Representative, Waukesha, Wisconsin) submitted an Offer of Settlement pursuant to which he was fined $50,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Zaehringer consented to the described sanctions and to the entry of findings that he received $52,834 from six public customers with instructions to purchase securities. The findings also stated that Zaehringer failed to follow the customers' instructions, commingled the funds in an account in which he had a beneficial interest, and retained $49,334 of the funds. In addition, the NASD found that he obtained $8,824 from five public customers with instructions to use the funds to pay premiums on insurance policies, but instead retained the funds for his personal use and benefit. Zaehringer also failed to respond to NASD requests for information.

Peter J. Zoppi (Registered Representative, Cheshire, Connecticut) was fined $10,000 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 13. The sanctions were based on findings that Zoppi forged the signatures of two customers on three loan disbursement request forms that authorized loans totaling $3,200 to be issued against the customer's insurance policies. He misappropriated $550 of the funds to his own use and benefit and applied the balance of the loan proceeds towards insurance contracts for the benefit of the customer.

INDIVIDUALS FINED

Yasar Samarah (Registered Principal, Chicago, Illinois) was fined $10,000. The sanctions were based on findings that a former member firm, acting through Samarah, conducted a securities business while failing to maintain required minimum net capital, failed to maintain accurate books and records, and failed to file a FOCUS Part IIA report and an annual audit report on a timely

basis. Also, Samarah failed to make accurate disclosures on a form requesting financial information.

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

Dunhill Lord and Company, Fort Lauderdale, Florida

Homestead Securities Incorporated, Shrewsbury, New Jersey

M.H. Novick & Company, Inc., Minneapolis, Minnesota

Pan Oceanic Investments, Inc., Days Creek, Oregon

Sheffield Securities, Inc., Fort Lauderdale, Florida

Snider-Lund Securities, Inc., Reno, Nevada

Sun Empire Securities, Inc., Denver, Colorado

Wall Street Financial, Incorporated, Oak Brook, Illinois

FIRMS SUSPENDED

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of 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 began is listed after each entry. If the firm has complied with the request for information, the listing also includes the date the suspension concluded.

First Equities Investments, Inc., Atlanta, Georgia (July 26, 1990)

W. J. Shaw & Company, Inc., Lake Zurich, Illinois (July 26, 1990)

SUSPENSIONS LIFTED

The NASD has lifted suspensions from membership on the dates shown for the following firms, since they have complied with formal written requests to submit financial information.

G.L. Leavitt Financial Group, Orem, Utah (August 2, 1990)

Sutter Street Securities, San Francisco, California (August 2, 1990)

Windsor Capital Markets Corp., New York, New York (July 17, 1990)

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

Anne Marie Armitage, Santa Barbara, California

Lyle D. Baldridge, Fort Worth, Texas

Elliot L. Bellen, Boca Raton, Florida

Ronald Irwin Brill, Tampa, Florida

David M. Droubay, Denver, Colorado

Jeffrey A. Dunster, Honolulu, Hawaii

Paul D. Enright, Littleton, Colorado

Randal C. Forman, Boca Raton, Florida

Gerald A. Hammer, Bloomington, Minnesota

Steven B. Highfill, Jacksonville, Florida

Stephen Franklin Hilsenroth, Sarasota, Florida

Wayne E. Humphreys, Orlando, Florida

Salvatore D. Interdonato, Jr., Minneapolis, Minnesota

Brenden James King, Scotch Plains, New Jersey

Joseph Buckmon Largen, Jacksonville, Florida

John F. LaSala, Pompano Beach, Florida

Monte S. Mongreig, Kalamazoo, Michigan

Philip Robert Napoliton, III, Fort Lauderdale, Florida

Ronald L. Olexy, Jackson, Mississippi

Jeffrey M. Pedersen, Oil City, Pennsylvania

Donald C. Pinkus, North Miami Beach, Florida

Evelyn R. Pinkus, North Miami Beach, Florida

Niles A. Prestage, Jr., Huntsville, Alabama

Reece D. Rogers, Memphis, Tennessee

Pamela L. Rutherford, Boca Raton, Florida

Wayne T. Shipp, Vancouver, Washington

John R. Shoup, Harrison, Maine

Mark S. Simon, Brooklyn, New York

David Norwood Snider, Reno, Nevada

Israel I. Sonenreich, Denver, Colorado

Paul M. Spiller, Philadelphia, Pennsylvania

Randy M. Starr, Denver, Colorado

Jeffrey J. Thompson, Tampa, Florida

Charles G. Varesano, Clifton, New Jersey

Eric G. Vincent, Brooklyn, New York

Harold R. Vizethann, Palm Beach, Florida

Allen Weinstein, Hollywood, Florida

Robert L. Westmoreland, Jr., Honolulu, Hawaii

Richard F. Zamora, San Diego, California

NASD

For Your Information

National Association of Securities Dealers, Inc. September 1990

NASD Fingerprint Filing Fee Increases to $23.50 on October 1

Effective October 1, 1990, in accordance with Schedule A, Section 14 of the NASD By-Laws (page 1510 of the *NASD Manual*), the processing fee for initial fingerprint submissions will increase by $2 per card to $23.50 per card. The fee for resubmissions resulting from illegible cards will remain at $1.50 per resubmission.

The change is necessary as a result of an increase in the fee charged by the Federal Bureau of Investigation for the processing of fingerprint cards submitted to it for noncriminal licensing and employment purposes.

Administrator of NASD-Sponsored Bond Buying Programs Changes Name

The name of Marsh & McLennan Group Associates, the firm that administers the NASD-sponsored fidelity and surety bond buying programs, has been changed to Seabury and Smith. The firm continues to be a member of the Marsh & McLennan group of companies, and its location and phone number remain the same. For applications, rates, and claim information, contact Seabury and Smith at 1255 23rd Street, NW, Washington, DC 20037, or call (202) 296-9640.

Sites, Dates Change for NASD Examinations in U.S., Tokyo

Date Changed for Tokyo Regular Foreign Session

The date for the September 1990 regular foreign session in Tokyo, Japan, has been changed to September 22, 1990, because of a Japanese holiday on September 15, 1990.

First Saturday Examination Set for Anchorage, Great Falls

Effective October 6, 1990, the Series 7 General Securities Registered Representative Examination will be offered in a paper-and-pencil format on the first Saturday of each month to candidates in Anchorage, Alaska, and Great Falls, Montana. Appointments will be necessary for all candidates who wish to take an examination and can be made by calling the NASD Member and Market Data Services Department at (301) 590-6500.

In Great Falls, Montana, the test center is located at the College of Great Falls, 1301 20th Street South, Building C206, Great Falls, Montana. The test center in Anchorage, Alaska, is located at the University of Alaska, 3211 Providence Drive, Building C110, Anchorage, Alaska.

Date Set for September First Saturday Examination

The first Saturday examination for September in Hawaii will be held September 8, 1990. The test center is located at the University of Hawaii, Kapiolani Community College, 4303 Diamond Head, Ohia Cafeteria, Honolulu, Hawaii.