

ALERT

NASD Expels Corna and Co., Bars and Fines Principal

The NASD's Cleveland District Business Conduct Committee for District 9 has taken disciplinary action against Corna and Co., Inc., a member firm with its principal place of business in Columbus, Ohio, and against David A. Corna, owner and President of the firm.

Pursuant to an Offer of Settlement, and without admitting or denying the allegations of the Complaint, Corna and Co. was censured, expelled from membership in the NASD, and fined \$100,000. Corna was censured, barred from association with any member in any capacity, and fined \$150,000. The sanctions are effective immediately.

The firm and Corna consented to findings that they violated various provisions of the federal securities laws and the rules of the NASD that prohibit the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security.

There were 20 separate causes of complaint brought against the firm and Corna. Among the most serious charges were those relating to "parking" of securities and unauthorized trades by respondents.

The Committee found that the respondents engaged in parking and/or unauthorized trades "on hundreds of occasions" between 1985 and 1989.

Parking Defined

"Parking" is a scheme to conceal beneficial ownership of securities by transferring securities to another person with the understanding that they will be reacquired by the original owner in the future

with no loss to the person accommodating the parking scheme.

An unauthorized trade is executed without the knowledge or consent of the person in whose account the transaction is occurring. In February and March of 1988, Corna and Co. took a large short position in First World Cheese, Inc., units and common stock, which were NASDAQ[®] securities.

Price Didn't Drop

In selling First World short, the firm expected that the price of the securities would decline. Instead, the securities rose dramatically in price, creating an unrealized loss for the firm that at times exceeded \$200,000 and that created immediate net capital deficiencies typically exceeding \$100,000 at the end of each month from February 1988 through September 1988.

Instead of ceasing operations as it was required to do under the federal securities laws, Corna and

Co. continued to effect securities transactions without adequate net capital. The firm was able to remain in business as a result of a scheme involving a series of parking transactions and/or unauthorized trades effected by Corna.

By virtue of these fictitious trades, the firm ostensibly transferred its short position to customers, thereby reducing or eliminating securities' positions from its books and records.

Hence it appeared as if the firm had adequate net capital when, in fact, it still held the short position in these securities, and, as a result, incurred related net capital deficiencies.

According to the complaint, 19 different customer accounts were involved in the scheme between February 1988 and January 1989.

Apart from this misconduct, Corna was charged with other instances of parking and unauthorized trades, including the creation of two fictitious customer accounts.

Record Falsification

This included assigning these accounts fictitious Social Security

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numbers, which defrauded the firm through which Corna and Co. cleared its business and resulted in the falsification of books and records in order to mislead the NASD and other regulatory bodies.

The Committee further found that, in response to NASD requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice, Corna submitted to the NASD edited account statements for the fictitious accounts that did not include all of the activity in those accounts.

Nature of Accounts

According to the Committee, Corna's conduct was an attempt to mislead the NASD about the nature of the activity in these two fictitious accounts.

The Committee also stated that "it is entirely unacceptable for a member knowingly to submit false information to the Association. Self-regulation as it is known and practiced in the securities industry would not work if the Association could not rely upon the authenticity of the documents which it requests from its members in the ordinary course of their business."

In addition, Corna hid order tickets and confirmations of non-bona fide trades, and instructed the operations manager to remove customer account statements from the usual place where they were maintained at or about the time Corna and Co. was being examined by the NASD.

Corna is also charged with forging the signature of several customers and/or former employees to various documents.

In connection with the fictitious transactions in First World Cheese and other securities, it appears that Corna submitted to the firm's clearing firm two W-9 forms, which bore the forged signatures of two customers.

These forms were in turn submitted to the Internal Revenue Service by the clearing firm.

In addition, the Committee found that Corna forged the signature

of a former employee to a stock certificate and a letter of authorization in order to transfer ownership of the stock to the firm.

In conclusion, the Committee stated that "the conduct at issue represents some of the most serious violations of the federal securities laws and the rules of the Association that can be committed by a member or an associated person. Parking securities, effecting unauthorized trades, creating and using fictitious customer accounts, falsifying documents submitted to the NASD, concealing tickets and related documentation, and forging customers' signatures cannot be tolerated in the securities industry, which depends upon the integrity of its members and associated persons."

Customers who maintained accounts with Corna and Co. will, for the present, continue to be serviced by its existing clearing firm.

NASD Sanctions Gant, Orders Disgorgement of \$200,000

The NASD recently sanctioned J.W. Gant & Associates, Inc., of Englewood, Colorado; Salvatore A. Venezia, a Vice President and General Securities Principal; and James S. Gad, the firm's trader.

The firm's and Gad's misconduct allegedly involved fraudulently excessive markups in the trading of non-NASDAQ, over-the-counter "penny stocks" of a small food producer.

Venezia's misconduct, the NASD said, involved failing to supervise Gad to prevent his misconduct. The NASD also sanctioned the firm for failing to qualify and register two persons who acted as branch office managers.

The NASD censured Gant, Gad, and Venezia and ordered the disgorgement of \$195,788.87 in excess markups charged to the firm's customers who purchased the food producer's securities between December 18, 1986, and January 30, 1987.

Refunds to customers will be made within the next 45 days.

Gant was also fined an additional \$30,000 and suspended from market-making and principal transactions in non-NASDAQ securities, except where a component of such security is traded on the NASDAQ National Market until February 5, 1991.

Venezia, and Gad were suspended from association with any NASD member in any capacity for 15 calendar days.

Independent Consultant

In addition, Gant agreed to hire an independent consultant to review the firm's current and prospective markup policies and related issues concerning low-priced securities.

Gant has agreed to remedy any deficiencies found by the independent consultant and will adopt any additional measures the consultant recommends. The NASD's decision was based on the acceptance of an Offer of Settlement submitted by the firm, Venezia, and Gad.

Without admitting or denying the allegations, the respondents consented to findings that they violated various NASD rules, including, for Gant and Gad, Section 18 of the NASD's Rules of Fair Practice. Section 18 is the NASD's anti-fraud provision, which prohibits the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security.

Gant underwrote the subject issuer's initial public offering, selling 92 percent of the issue to its own clients. The units sold in the offering were composed of common stock and warrants.

Domination and Control

The NASD's Market Surveillance Committee, which considered the case, found that Gant, acting through Gad, dominated and controlled the aftermarket in the issuer's units, common stock, and warrants from the start of trading on December 18, 1986, through January 30, 1987. The committee said Gant's "domination and control were extensive and long-lasting" and resulted in

Gant's marking up almost 600 unit, common stock, and warrant trades by amounts ranging from 11 to 184 percent over the firm's contemporaneous wholesale and retail cost.

The NASD investigation was carried out by its Anti-Fraud Department and is part of a continuing nationwide effort by the NASD to eliminate sales-practice abuses in penny stocks.

Committee's Action

The disciplinary action was taken by the NASD's Market Surveillance Committee, which consists of 12 securities industry executives from across the country.

The committee is responsible for maintaining the integrity of the NASDAQ and non-NASDAQ markets and for disciplining members that fail to comply with relevant NASD rules and securities laws.

Quicker Change Notification Proposed

At its recently concluded meeting, the NASD Board of Governors approved for submission to the SEC a proposal that members notify the Association no later than 10 business days after certain events affecting the ownership or control of a member. Currently, such notification must occur within 30 days through the filing of an amended Form BD.

By receiving prompt notification of a merger, purchase, or change of ownership of a member, the NASD would be better able to evaluate the need for a new pre-membership interview. Such an interview, if needed, would help determine if the newly structured entity continues to satisfy the requirements of membership.

Specifically, one or more of the following events would trigger the prompt notification rule:

- The merger of a member.
- An acquisition by a member.
- An acquisition of a member or substantially all of its assets.

■ A change that results in one person or entity owning more than 50 percent of the member's equity or partnership capital.

Board Adjusts Proposed Listing Standards for NASDAQ

The NASD Board recently approved several changes to its proposed maintenance standards for NASDAQ securities. The revised proposals are currently pending approval by the Securities and Exchange Commission (SEC).

These changes were in response to approximately 80 letters of comment from members, issuers, and others to the SEC's publication of the NASD's proposals in April 1990.

The proposed entry standards for companies seeking to list on NASDAQ are unaffected by these changes.

NASDAQ entry and maintenance standards, both current and proposed, are basic minimums and as such have no effect on the generally higher listing standards of the NASDAQ National Market.

The most significant change amends the proposed maintenance requirement that a NASDAQ security have a minimum bid price of not less than \$1.

The revised proposal permits continued listing on NASDAQ of any such issue if the market value of the public float is at least \$1 million and the company has \$2 million in equity.

This change recognizes that adverse market conditions may temporarily cause a company's share price to fall below \$1 without having any serious impact on that company's financial health or its future as a NASDAQ company.

Original Proposal

As originally proposed, an issuer's failure to maintain a public float of \$200,000 or a minimum bid price of \$1 for 10 consecutive days

would have required requalification within 90 calendar days of the deficiency at the higher entry standards, set at \$1 million public float and \$3 minimum bid, respectively.

With the proposed change, companies can requalify to remain on NASDAQ by meeting the lower maintenance standards rather than entry standards.

One new change, however, involves a tightening of the proposed standards regarding the two-market-maker requirement.

Instead of 90 days, issuers would have only 30 days to recompile with the maintenance requirement of two market makers.

In the Board's view, 30 days is long enough for an issuer to get the support of a second market maker.

To give current issuers time to obtain board and/or shareholder approval of necessary changes, the maintenance standards will become effective July 1, 1991, or six months following SEC approval of the revised standards, whichever comes later.

PORTALSM Resale Restrictions Would End Under NASD Proposal

Characterizing them as burdensome and unnecessary, the NASD has asked the SEC to eliminate restrictions on the resale of PORTAL Market securities to accounts outside The PORTAL Market.SM

PORTAL is the NASD's three-month-old market for trading designated foreign and domestic securities through an automated quotation and communications system that facilitates private offerings, resales, trading, clearance, and settlement by PORTAL participants.

As proposed, the changes would delete requirements that:

- PORTAL participants file an Exit Transaction Report, including in certain cases an opinion of counsel, with the NASD for each exit transac-

tion and transfer from The PORTAL Market.

■ PORTAL dealers and brokers submit separate supervisory procedures to enforce PORTAL exit restrictions as a condition of designation.

■ Exit transactions be made in compliance with a list of enumerated exit provisions in the PORTAL rules.

The NASD included these restrictions in PORTAL to accommodate a provision in the last proposed version of SEC Rule 144A.

This provision would have imposed such restrictions on certain securities sold under Rule 144A. However, the final version of Rule 144A, approved by the SEC, did not include the provision.

In light of this, the NASD views the continuation of these restrictions in its PORTAL rules as "inappropriate. . . and act as a significant barrier to the NASD's ability to attract PORTAL participants in light of the lack of such restrictions on non-PORTAL transactions."

Surveillance to Continue

However, the NASD will continue its regulatory oversight of PORTAL securities exiting into the non-PORTAL market. PORTAL brokers or dealers will continue to input into the PORTAL system a transaction report for any PORTAL transaction or qualified exit transfer.

PORTAL-qualified investors must still provide the NASD any requested data needed to verify compliance with the definition of qualified exit transaction or transfer.

PORTAL will remain a "closed system" in that all investors and securities will have to meet the requirements of Rule 144A to be part of PORTAL.

Therefore, participants that trade the securities between segregated PORTAL accounts will benefit from the NASD enforcement of the requirements of Rule 144A.

Segregated Accounts

Under PORTAL's rules, participants must maintain separate accounts, with their agents providing

them access to a PORTAL depository or clearing organization. These accounts are in addition to the ones already maintained at the depository and clearing organizations.

The NASD has proposed also eliminating these segregated agent accounts, which it considers unnecessary and costly since they only process cash in connection with PORTAL transactions.

Because participants must continue to maintain their segregated depository and clearing accounts, elimination of the segregated agent accounts will not affect the NASD's ability to audit the movement of PORTAL securities.

These proposals will not be effective until published for comment

SEC Gives OK to NASD Summary Remedial Actions

The Securities and Exchange Commission (SEC) recently approved an amendment to the NASD Code of Procedure to permit suspension or conditioning of a firm's membership or a person's association with a firm if either has engaged and there is a reasonable likelihood either will again engage, in acts or practices inconsistent with just and equitable principles of trade.

The NASD proposed this change in light of instances where members or associated persons, found in violation of securities regulations and advised to cease such violations, continued to operate and failed to comply. Before the change, the NASD could not address the situation expeditiously.

Avenues of Actions

The amendment lets the NASD take several actions against a member or associated person for ongoing violations.

These include limiting, conditioning, or suspending the firm's membership or the person's registration.

With this range of permissible actions, the NASD can develop a

response that is tailored to each situation.

The firm or person subject to such a proceeding has the right to a hearing before the NASD takes any action and, following Board review, may appeal the result to the SEC.

Under the new procedure, the NASD Executive Committee has to determine that the action is needed to protect the public interest.

NASD Notification

The NASD will notify the respondent of the time and place of the hearing.

A District or Market Surveillance Committee hearing panel consisting of at least three persons will consider the matter, and this panel will render its decision within five business days of the hearing.

Any party aggrieved by the decision, or the Board itself, may ask a committee of the Board of Governors to review the decision. However, such a request will not stay the district panel's decision.

Within five business days of the application for review, a Special Hearing Committee of the Board will convene a hearing.

This Special Hearing Committee's decision will be final but may be appealed to the SEC.

All decisions will be in writing, and any member or person may appear at the hearing, submit any relevant evidence, and be represented by counsel.

Expanded Notice Rule Proposed For Accounts of Employees

Under a NASD proposal recently circulated for comment, an associated person would be required to provide written notice to and obtain approval from the employing member prior to opening or trading in a securities account with another member.

In addition, the individual would have to provide notice in writ-

ing to the executing member of the employment relationship with the employing member.

The NASD now requires associated persons, before opening an account or executing trades at a firm other than the employing member, to inform the executing member of their status as associated persons.

Such notice is not currently required to be in writing, nor do the individuals have to inform their employer that they are executing trades through another firm.

The proposal is designed to address both of these areas.

Notification Responsibility

It is the executing member's duty to notify the employing member and to provide duplicate confirmations or such other information as the employing member may require.

In addition, many firms already require employees to notify them of such arrangements.

Regulatory Aid

However, the Board believes the proposal provides additional assurances that the associated person, the employing member firm, and the executing member firm have fulfilled their regulatory obligations.

More importantly, the proposals may allow members to more directly detect possible rule violations, including potential insider trading by associated persons, because the employing member would be made aware of the existence of the account with another member.

Code Changes Affect Disciplinary Hearing Process

The Securities and Exchange Commission (SEC) has approved changes to the NASD's Code of Procedure ("Code") that significantly revise the disciplinary hearing process.

The amendments modify existing and add new procedures for hearings before a District Business Conduct Committee, Market Surveillance

Committee, or an Extended Hearing Committee ("committee"), and for Board of Governors' reviews of the disciplinary actions taken by these committees.

The amendments set the requirements for submitting documentary evidence and the names of witnesses before a hearing.

Other amendments convert Board reviews of committee decisions into more appellate-type proceedings and codify practices as to matters reviewed on the basis of the written record.

Although the amendments became effective August 1, they apply only to proceedings resulting from new complaints issued on or after that date. Complaints issued prior to August 1 will continue to be processed under the procedures then in place.

Respondent Participation

Under the Code, respondents can fully participate, and produce evidence, in proceedings before a committee, and committees may conduct a full review of each matter.

As a result of the amendments, respondents and the committee staff or complainant (if other than a committee) must, upon request, submit documentary evidence and the names of witnesses to each other no later than five business days before a hearing.

Remaining unchanged is the ability of respondents in a committee disciplinary action to appeal the action to the NASD's Board of Governors, or for the Board, on its own motion, to call a matter for review.

Either way, respondents may attend or waive a hearing before a hearing panel of the Board.

The amended Code, however, now limits Board hearings to 30-minute oral arguments by the parties, unless the panel extends the hearings for good cause.

Respondents may not introduce additional evidence except in exceptional circumstances and after demonstrating good cause for failing to introduce the evidence before a committee.

Time Limit for Review

Parties to the review must apply to the Board no later than 10 business days before the hearing for permission to introduce additional evidence.

However, the Board may, on its own, supplement the record with any additional evidence it deems relevant.

The amendments also address situations where the appealing party did not participate in the proceedings before a committee.

They do this by permitting the Board to remand such matters to a committee only in those circumstances where the appealing party showed good cause for the failure to participate.

If the appealing party fails to show good cause, the Board will consider the matter based on the committee's written record, including briefs submitted to the Board.

Requesting Hearings

Parties that failed to request a hearing before a committee as provided for in the Code may request a hearing before the Board.

While such parties may ask to introduce additional evidence, they must demonstrate good cause for failing to introduce the evidence before a committee.

The changes also permit the Board to dismiss as abandoned any application for review in which the appealing party fails to advise the Board of the basis for seeking review or fails to provide the Board with responses to requests for information in a timely manner.

NASD Members Vote on Proposed Expansion of Sales-Charge Rule

The NASD this month published for member vote a revised proposal to apply the NASD's sales-charge rule to asset-based sales charges of mutual funds.

Originally issued in April for member comment, the proposal generated 58 member comments,

with the majority favoring the proposal.

A number of commenters' recommendations for changes are included in the revised proposal.

The key changes from the original proposal involve a broader definition of service fees, clarification on the treatment of management fees, maximum front-end and deferred sales charges for individual transactions, and the treatment of exchanges of shares, prior sales, and unreimbursed expenses.

Members have until October 5 to mail their ballots.

Under existing rules, funds may impose 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.

The NASD's approach to regulating asset-based sales charges is to ensure 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.

To accomplish this, the NASD has endorsed fund-level accounting for funds with asset-based sales charges under which the maximum permitted sales charges are related to gross sales.

In addition, NASD members would not be permitted to sell shares of a fund with an asset-based sales charge in excess of .75 percent per annum or a service fee in excess of .25 percent per annum of net assets.

Proposals Would Limit Net Capital Withdrawals

The Securities and Exchange Commission (SEC) recently asked for comment on proposed changes to its net capital

rule, Rule 15c3-1. The proposals would impose additional limits on the withdrawal of equity capital from a broker-dealer. The comment period expires October 22.

Such withdrawals include return of capital contributions, prepayment of subordinated loans, dividend distributions, stock redemptions, unsecured advances or loans to stockholders, partners, sole proprietors, affiliates, or employees.

However, they do not include required tax payments or the payment of reasonable compensation to partners.

Specifically, the proposal requires stockholders, partners, or affiliates of a member to notify the SEC at least two business days before taking any action to withdraw capital from a member if:

- The projected withdrawal, added to other withdrawals over the preceding 30 days, equals or exceeds 20 percent of the firm's excess net capital; or,

- 30 percent of the member's excess net capital was withdrawn over the preceding 90 days.

Following notification, the SEC may restrict the proposed withdrawal for 20 days during which time the SEC could assess its impact on the member. The SEC could then permit the withdrawal entirely or partially, prohibit it, or extend the restriction in 20-day increments.

To provide smaller firms with the flexibility to transfer funds in the ordinary course of business, withdrawals of less than \$50,000 would not trigger the notification requirement.

However, this exemption does not apply to limits on withdrawals imposed by the net capital rule's other early warning provisions.

The proposal would add another early warning provision based on proprietary haircuts (i.e., prescribed percentages deducted from the market value of inventoried securities).

Any proposed withdrawal that reduces the firm's net capital to less than 30 percent of the haircut deduction would not be permitted.

NASD-Published Guidelines Make OTC Reporting Easier

The NASD recently published guidelines to help members comply with Schedule H of its By-Laws.

Under Schedule H, members have to report certain transactions in domestic and foreign equity securities that are not listed on NASDAQ or a national securities exchange (OTC securities).

During the time since the schedule became fully effective on September 1, 1989, members have raised questions about reporting on foreign securities and foreign securities transactions.

The NASD's guidelines both address these questions and clarify the general application of Schedule H.

Specifically, Schedule H requires members to report price and volume information for principal transactions in OTC securities whenever a member's activity in the security exceeds daily thresholds of 50,000 shares or \$10,000 on either side.

Schedule H Guidelines

Members should be aware of the following when determining the applicability of Schedule H:

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

- The term "OTC security" includes all foreign equity securities, American Depositary Receipts, or shares not traded on NASDAQ or a national securities exchange. For purposes of Schedule H, the term "national securities exchanges" does *not* include foreign exchanges; thus, transactions in a security that is also traded on a foreign exchange are not, *per se*, excluded from the Schedule's coverage.

- Schedule H applies to transactions in foreign securities executed in the U.S., regardless of the country where clearance and settlement occurs.

■ Schedule H does *not* apply 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).

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

■ The currency in which the trade is effected or settled has no bearing on whether the trade is reportable under Schedule H.

■ Members must report all trades under Schedule H in U.S. dollars with the method for currency conversion left to the NASD member.

■ The time the 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 also published guidelines on the general application of Schedule H. These are:

■ 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.

■ Schedule H does not apply to bonds, including convertible bonds.

■ 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. However, the Schedule will apply to transactions in the equity components when they become detached and trade separately.

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

SEC Approves Short-Sale, Customer Account Rules

The SEC has approved an NASD proposal concerning short selling by members for their own accounts and a proposal expanding customer account information.

Except as otherwise allowed, effective September 1, a member selling short for its own account has to make an affirmative determination that it can borrow or otherwise provide for delivery of the securities.

The exceptions are as follows:

■ Bona fide market-making transactions by a member in NASDAQ securities for which it is a registered market maker.

■ Bona fide market-maker transactions in non-NASDAQ securities in which the market maker publishes a two-sided quotation in an independent quotation medium.

■ Transactions in corporate debt securities.

■ Transactions that result in fully hedged or arbitrated positions.

Customer Accounts

The other SEC-approved rule change requires that, after January 1, 1991, NASD members make reasonable efforts to expand their customer-account information.

The additional information to be requested of customers should be obtained before *settling* the initial transaction in a noninstitutional customer account.

It includes the customer's tax identification or Social Security number and occupation, as well as the name and address of each customer's employer for each account.

For a customer that is not a "natural person," the member must also request the names of any persons authorized to effect business for the entity.

For discretionary accounts, the member needs the signature of per-

sons with discretionary authority and the date the authority was granted.

Before *executing* a recommended transaction for a noninstitutional customer, the member has to ascertain the customer's financial status, tax status, investment objectives, and other information used or needed to make recommendations to the customer.

Under the rule, members can meet the "reasonable efforts" requirement by preparing questionnaires for customers to complete and return or by telephone inquiry.

Firms Approve Proposal on Limit Orders

By a nearly 11-to-1 margin, members have approved the NASD's proposal for handling customer limit orders. The SEC has published the proposal for public comment.

Depending on comments and with SEC approval, the measure will become part of the NASD's Rules of Fair Practice.

This proposal addresses an issue that has long concerned the NASD and supports the position it has consistently taken that a member accepting a customer limit order assumes a fiduciary obligation in handling the order.

As a result, when making a market in a security that is subject to a limit order, the member cannot trade for its own account at prices more favorable than the customer limit order unless the member lets the customer know in advance that this may occur.

An SEC ruling in an NASD disciplinary matter supported the NASD position.

The proposed requirement applies only to a member that accepts and holds unexecuted customer limit orders while continuing to trade in the security subject to the order for its own market-maker account at prices equal to or better than the limit price.

As proposed, this practice would be permitted only if the member provides existing and new customers with a written statement clearly disclosing the circumstances under which the firm accepts limit orders as well as its policies and procedures for handling those orders.

The proposal also provides for additional disclosure in the form of a separate statement distributed annually or enclosed with confirmations of limit-order transactions. In addition, the proposal would require a member to file nonstandardized disclosure documents with the NASD at or before the time they are first used.

While NASD would not preapprove the documents, it would review them for compliance.

The proposal contains the following text of a model disclosure statement for a firm to use to comply with the proposal:

"By accepting your limit order for transactions in securities in the NASDAQ or over-the-counter market, we undertake to monitor the interdealer market and to seek to execute your order only if the inside bid (in the case of a limit order to sell, the highest price at which a dealer is being quoted as willing to buy securities) or the inside asked (in the case of a limit order to buy, the lowest price at which a dealer is being quoted as willing to sell securities) reaches your limit price. We reserve the right, while your limit order remains unexecuted, to trade for our own market-maker account at prices equal to or better than your limit order price and not to execute your order against incoming orders from other customers. For example, if the inside market is 10 bid, 10¼ asked and you place a limit order to sell securities at 10½, we will seek to execute your order only if the inside bid reaches your limit price of 10½ (exclusive of any markdown or commission equivalent that we may charge in connection with the transaction), and while your order remains unex-

ecuted we may continue to sell securities for our market-maker account at prices at or above 10½."

Board Approves New Insurance Committee

At its July meeting, the NASD's Board of Governors approved the establishment of an Insurance Affiliated Member Committee.

Originally suggested by the American Council of Life Insurance, the new committee will consist of representatives of NASD members that are insurance companies or that are owned by insurance companies or their holding companies. The committee, to be established in January 1991, will advise the Board on policy matters related to the regulation of insurance-affiliated members.

NASD Reminds Members to File DPP Literature

NASD rules require members to file with its Advertising Department within 10 days of first use any advertising and sales literature for public direct participation programs sold or traded in the secondary market. Article III, Section 35(a) of the Rules of Fair Practice define "advertising" and "sales literature."

The filing requirement, in effect since 1986, applies to all public programs, but does not distinguish between material used in an offering and that used in the secondary market. However, the rule language requires members to file both types of material. The Direct Participation Programs/Real Estate Committee recently clarified the filing requirement by agreeing that the material needs to be filed with and reviewed by the Advertising Department.

Form U-4 Change Would Reduce Duplication

A recent NASD proposal pending action by the SEC would permit registered individuals to certify the completeness and accuracy of the facts in their disciplinary files and thereby eliminate full resubmissions if they join another firm.

The Central Registration Depository (CRD) contains thousands of disciplinary items on firms and individuals reported by official regulatory bodies or submitted by registrants.

Whenever an individual transfers to a new firm, the transfer filing must include full details of reportable disciplinary matters, even when there are no additional details.

To streamline this process, the NASD has proposed new language for the Form U-4.

This change received approval from the North American Securities Administrators Association (NASAA) earlier this year.

The proposed language permits individuals to certify that they have reviewed copies of their disclosure information in the CRD system and that the information is accurate, complete, and in Disclosure Reporting Page (DRP) format.

The proposal lists three choices for certification:

1. Certify there is nothing new to add to the file.
2. Certify previously provided data but report something additional by filing a new DRP.
3. Certify previously provided information and update a specific matter.

Use of the certification process would be available only to persons already registered with the NASD and those with DRPs on file for all previously disclosed information.