

Notice To Members

National Association of Securities Dealers, Inc.

January 1992

Number 92-7

Suggested Routing:*

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

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

Subject: Nasdaq National Market Additions, Changes, and Deletions as of December 19, 1991

As of December 19, 1991, the following 47 issues joined the Nasdaq National Market, bringing the total number of issues to 2,673:

Symbol	Company	Entry Date	SOES Execution Level
HDVS	H.D. Vest, Inc.	11/25/91	1000
HDVSW	H.D. Vest, Inc. (CI A Wts)	11/25/91	1000
HDVSZ	H.D. Vest, Inc. (CI B Wts)	11/25/91	1000
BROD	Broderbund Software, Inc.	11/26/91	1000
WRLD	World Acceptance Corporation	11/26/91	1000
ARAMZ	Aramed, Inc.	11/27/91	1000
BACH	Bachman Information Systems, Inc.	11/27/91	1000
SLMI	SLM International, Inc.	11/27/91	1000
AAMS	Aames Financial Corporation	12/3/91	1000
CYCL	Century Cellular Corp. (CI A)	12/3/91	1000
CYTR	CytRx Corporation	12/3/91	1000
CYTRZ	CytRx Corporation (CI B Wts)	12/3/91	500
ELGT	Electric & Gas Technology, Inc.	12/3/91	1000
IHHI	In Home Health, Inc.	12/3/91	1000
PSCX	Photographic Sciences Corporation	12/3/91	1000
SYNC	Synalloy Corporation	12/3/91	200
PRET	The Price REIT, Inc.	12/4/91	None
SAML	Sam & Libby, Inc.	12/4/91	1000
JBSS	John B. Sanfilippo & Son, Inc.	12/4/91	1000
FOIOV	Forest Oil Corporation (\$.75 Pfd)(WI)	12/5/91	200
PNUT	Jimbo's Jumbos, Incorporated	12/6/91	500
RETX	Retix	12/10/91	1000
DNXX	DNX Corporation	12/11/91	500
MAGN	Magainin Pharmaceuticals Inc.	12/11/91	1000
MEDS	Medisys, Inc.	12/11/91	1000
VTSS	Vitesse Semiconductor Corporation	12/11/91	200

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Symbol	Company	Entry Date	SOES Execution Level
AMBR	AMBAR, Inc.	12/12/91	500
ARELW	Alpharel, Inc. (Wts)	12/12/91	1000
AMSC	American Superconductor Corporation	12/12/91	200
FOI WV	Forest Oil Corporation (Wts) (WI)	12/12/91	200
FCIN	F & C International, Inc.	12/13/91	1000
INFM	Inforum, Inc.	12/13/91	1000
QCOM	QUALCOMM Incorporated	12/13/91	1000
RIGSR	Riggs National Corporation (Rts)	12/13/91	500
SECX	Southern Electronics Corporation	12/13/91	500
AFMXF	Affymax N.V.	12/17/91	1000
BARZ	BARRA, Inc.	12/17/91	1000
CUSA	CompUSA Inc.	12/17/91	1000
GNTA	Genta Incorporated	12/17/91	1000
IPSCF	IPSCO Inc.	12/17/91	500
NCBE	National City Bancshares, Inc.	12/17/91	200
PRGO	Perrigo Company	12/17/91	1000
HOSE	Sheffield Industries, Inc.	12/17/91	1000
WATR	Tetra Tech, Inc.	12/17/91	200
SYQT	SyQuest Technology, Inc.	12/18/91	200
TRMM	TRM Copy Centers Corporation	12/18/91	1000
VIEW	ViewLogic Systems, Inc.	12/18/91	1000

Nasdaq National Market Symbol and/or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since November 25, 1991:

New/Old Symbol	New/Old Security	Date of Change
DVIC/DVIC	DVI Health Services Corp./DVI Financial Corp.	11/27/91
DVICW/DVICW	DVI Health Services Corp. (Wts)/DVI Financial Corp. (Wts)	11/27/91
LICIA/LICIA	Lilly Industries, Inc. (CI A)/Lilly Industrial Coatings, Inc. (CI A)	12/4/91
RPCH/RPCH	Ameriwood Industries International Corporation/Rospatch Corporation	12/18/91

Nasdaq National Market Deletions

Symbol	Security	Date
BOHM	Bohemia Inc.	11/25/91
BKNTQ	Banker's Note, Inc. (The)	11/27/91
XLDC	XL/Datacomp, Inc.	11/27/91
CHCR	Chancellor Corporation	12/2/91
HIGHC	Highland Superstores, Inc.	12/2/91
NMIC	National Micronetics, Inc.	12/2/91
UAECA	United Artists Entertainment Company (CI A)	12/2/91
UAECB	United Artists Entertainment Company (CI B)	12/2/91
WTDQC	WTD Industries, Inc.	12/2/91
SULCW	Sulcus Computer Corporation (CI A Wts)	12/3/91
WFOR	Washington Federal Savings Bank	12/3/91
FOIPT	Forest Oil Corporation (\$2.125 Pfd)	12/5/91
SCNC	South Carolina National Corporation	12/6/91
ODEP	Office Depot, Inc.	12/11/91

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Symbol	Security	Date
EBPI	Employee Benefit Plans, Inc.	12/12/91
KOSM	Cascade International, Inc.	12/13/91
CTUS	Cetus Corporation	12/13/91
UTRX	Unitronix Corporation	12/16/91
CPSL	CSC Industries, Inc.	12/17/91
INVF	Investors Financial Corporation	12/17/91
OCER	Oceanering International, Inc.	12/17/91
DFII	Duty Free International, Inc.	12/18/91

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 Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

Disciplinary Actions

National Association of Securities Dealers, Inc.

January 1992

Disciplinary Actions Reported for January

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 will begin with the opening of business on Tuesday, January 21, 1992. The information relating to matters contained in this notice is current as of the fifth of this month. Information received subsequent to the fifth is not reflected in this publication.

FIRMS EXPELLED, INDIVIDUALS SANCTIONED

M.D. Advisors, Inc. (San Jose, California) and **Matthew DeStaffany (Registered Principal, San Jose, California)** were fined \$10,000, jointly and severally. In addition, the firm was expelled from membership in the NASD, and DeStaffany was barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm and DeStaffany failed to respond to NASD requests for information concerning promissory notes issued by the firm to its customers.

FIRMS FINED, INDIVIDUALS SANCTIONED

Lanaco Securities Corporation (Burlingame, California) and **Joseph Anthony Atencio (Registered Principal, Burlingame, California)** were fined \$10,000, jointly and severally, and Atencio was barred from association with any member of the NASD in a principal capacity. The sanctions were based on findings that the firm, acting through Atencio, filed false and inaccurate FOCUS Parts I and IIA reports and failed to file certain FOCUS Part IIA reports. In addition, the firm, acting through Atencio, engaged in a securities business while failing to maintain minimum required net capital and neglected to give telegraphic notice to the NASD regarding its net capital deficiency.

Furthermore, Lanaco Securities, acting through Atencio, solicited public customers for the purchase of restricted stock in contravention of SEC Rule 144, and failed to establish written supervisory procedures to prevent this activity. The firm, acting through Atencio, also failed to carry a blanket fidelity bond.

MLB Investments, Ltd. (Denver, Colorado), **Kenneth L. Lucas (Registered Principal, Englewood, Colorado)**, **Jeffrey E. Modesitt, Sr. (Registered Principal, Littleton, Colorado)**, **James W. Magner (Registered Representative, Denver, Colorado)**, **Charles W. Day, Jr. (Registered Principal, Pensacola, Florida)**, **Kristi D. Edwards (Registered Representative, Pensacola, Florida)**, **Raymond R. Parmer, Sr. (Registered Representative, Mobile, Alabama)**, **Kevin R. Smith (Registered Representative, Pensacola, Florida)**, **Orville Baldrige, Jr. (Registered Representative, Pensacola, Florida)**, **Jerry F. Wilson (Registered Representative, North Bergen, New Jersey)**, and **Scott Schaeffer (Registered Principal, Holiday, Florida)**.

The firm was fined \$15,000 and ordered to disgorge \$100,048.74 to the NASD, jointly and severally with Lucas, Modesitt, Magner, and Day. Lucas and Modesitt were also suspended from association with any member of the NASD in any principal capacity for one month. Magner and Day were suspended from association with any member of the NASD in any capacity for one month. In addition, Edwards, Parmer, Smith, Baldrige, and Wilson were suspended from association with any member of the NASD in any capacity for one week. Schaeffer was suspended from association with any member of the NASD in any capacity for one month and ordered to disgorge \$19,982.63 to the NASD. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee (DBCC) for District 5.

The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the

firm, acting through Magner, Day, Edwards, Parmer, Smith, Baldrige, Wilson, and Schaeffer, engaged in securities transactions with public customers on a principal basis at prices that were unfair. In addition, this activity was found to have been fraudulent in nature on the part of the firm, Magner, and Day.

Specifically, the respondents entered into purchase and sale transactions in a common stock that were not reasonably related to the current market price of the securities in that they imposed excessive markups ranging from 10 to 139 percent above the firm's contemporaneous cost. In conjunction with these transactions, the firm, acting through Magner, Day, Edwards, Schaeffer, Parmer, Smith, Baldrige, and Wilson, failed to disclose to investors that excessive markups and markdowns were charged. Furthermore, the firm, acting through Magner and Day, neglected to inform the investors that the firm dominated and controlled the market for the securities and that the prices charged were not determined by an active, competitive market.

Lucas and Modesitt failed to exercise reasonable and proper supervision over the other respondents in connection with the aforementioned activity. In addition, Lucas and Modesitt failed to establish, maintain, and enforce written procedures governing the imposition of markups and markdowns on principal transactions.

Lucas and Modesitt have appealed this action to the Securities and Exchange Commission (SEC), and their sanctions are not in effect pending consideration of the appeal.

FIRMS AND INDIVIDUALS FINED

First Inland Securities, Inc. (Spokane, Washington) and **Glen Lamoyne Ottmar (Registered Principal, Spokane, Washington)** submitted an Offer of Settlement 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, in violation of SEC Rule 15c2-6, the firm, acting through Ottmar, effected numerous purchases of common stock in designated securities on behalf of retail customers prior to obtaining required suitability statements.

INDIVIDUALS BARRED, SUSPENDED, OR FINED

Klaus Langheinrich (Registered Representa-

tative, Murray, Utah), Michael S. Langheinrich (Registered Representative, Salt Lake City, Utah), and Russell R. Haden (Registered Principal, Sandy, Utah). Klaus Langheinrich was fined \$10,000. Michael Langheinrich was fined \$57,500 and barred from association with any member of the NASD in any capacity. Haden was fined \$20,000, barred from association with any member of the NASD as a registered principal, and suspended from association with any member of the NASD in any capacity for 30 days.

The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Michael Langheinrich received from a public customer a \$10,000 check for the purchase of securities. He failed to apply the funds to the purchase and, instead, endorsed the check and deposited the money into a bank account under his control. Michael Langheinrich also failed to respond to NASD requests for information. In addition, Klaus and Michael Langheinrich accepted from public customers four checks totaling \$27,000 intended for the purchase of securities without providing prior written notification of these transactions to their member firm.

Moreover, Haden failed to enforce his member firm's supervisory procedures. Specifically, he allowed customer funds to be deposited into the firm's trading accounts and received funds totaling \$24,000 as capital contributed to the firm, in violation of the provisions of the firm's written supervisory procedures.

INDIVIDUALS BARRED OR SUSPENDED

Timothy E. Alexander (Registered Representative, Powell, Ohio) was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, on behalf of public customers, Alexander submitted false or forged applications to his member firm for the purchase of annuity contracts. In addition, Alexander failed to respond to NASD requests for information.

Clive F. Bamford (Registered Representative, Treasure Island, Florida) was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were based on findings that Bamford effected, or caused to be effected, the purchase and sale of shares of common stock in the accounts of

public customers without the knowledge or consent of the customers.

Val U. Barrutia (Registered Representative, Colorado Springs, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$6,320 and suspended from association with any member of the NASD in any capacity for 30 days. In addition, Barrutia must reimburse two customers \$13,680 and requalify by examination as a registered representative. Without admitting or denying the allegations, Barrutia consented to the described sanctions and to the entry of findings that he made unsuitable recommendations to two public customers in order to induce them to purchase securities. Furthermore, Barrutia falsified two subscription documents relating to these purchases to conceal the fact that the customers did not meet the suitability standards required to purchase these securities, according to the findings.

Gary Dennis Barton (Registered Principal, Englewood, Colorado), Steven Ernest Muth (Registered Representative, Aurora, Colorado), and George Theodore Hellen (Registered Representative, Littleton, Colorado) submitted Offers of Settlement pursuant to which Barton was fined \$10,000 and suspended from association with any member of the NASD in any principal capacity for one year. Muth was fined \$2,500, suspended from association with any member of the NASD in any capacity for 10 business days, and suspended in any principal or ownership capacity for one year. In addition, Hellen was fined \$12,500 and suspended from association with any member of the NASD in any capacity for 10 business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Barton, Muth, and Hellen sold to public customers securities at prices that were unfair, in contravention of the NASD's Mark-Up Policy. According to the findings, markups on these transactions ranged from 25 to 75 percent over the prevailing market price of the securities. Moreover, the NASD determined that the respondents failed to inform investors of the excessive markups in connection with such transactions.

The findings also stated that Barton failed to establish, maintain, and/or enforce adequate written and unwritten supervisory procedures and granted a concession to a non-NASD member firm without obtaining assurances that the firm would

comply with required NASD rules regarding its participation in a fixed-price offering. In addition, the NASD found that Muth and Hellen aided and abetted a scheme to manipulate the market price of a stock and sold unregistered securities to members of the public. Muth also engaged in outside business dealings without providing prior written notice to his member firm, according to the findings.

Barry Alan Bates (Registered Principal, Aurora, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$1,000 and suspended from association with any member of the NASD in any capacity for five business days. Without admitting or denying the allegations, Bates consented to the described sanctions and to the entry of findings that he allowed a member firm to conduct a securities business while failing to maintain minimum required net capital.

Kevin Lloyd Bedford (Registered Representative, St. Louis, Missouri) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Bedford failed to respond to NASD requests for information concerning his termination from a member firm.

Tony Landers Bell (Registered Representative, Salinas, California) was fined \$139,357.52 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Bell received \$23,357.52 from 96 insurance customers for the purchase of insurance and converted the funds to other purposes. In addition, Bell failed to respond to NASD requests for information.

Jason T. Blount (Registered Representative, Monroe, Ohio) was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Blount forged 50 customer signatures on applications to purchase annuities without the knowledge or consent of the customers. He also submitted eight other applications to his member firm on behalf of fictitious customers. In addition, Blount failed to respond to NASD requests for information.

B. Stephen Clay (Registered Representative, Annapolis, Maryland), John Duncan Bowsman (Registered Principal, Jacksonville, Florida), and James Everett Whittenberg, Jr. (Registered Principal, Crownsville, Maryland). Clay was fined \$35,000 and barred from associa-

tion with any member of the NASD in any capacity. The sanctions against Clay were based on findings by the DBCC for District 9. Bowsman and Whittenberg submitted an Offer of Settlement pursuant to which Bowsman was suspended from association with any member of the NASD in any principal capacity for five days, and Whittenberg was suspended from association with any member of the NASD in any principal capacity for three days.

The sanctions were based on findings that Clay recommended to two customers the purchase of low-priced, speculative securities when he knew, or should have known, such securities were not suitable investments for the customers. In addition, Clay effected excessive securities transactions in these customers' accounts, generating gross commissions amounting to 33 and 37 percent of the customers' initial cash investments.

Without admitting or denying the allegations, Bowsman and Whittenberg consented to the described sanctions and to the entry of findings that they failed to supervise Clay's activities properly to prevent the aforementioned violations.

Bruce J. Crabtree (Registered Representative, Waterford, New York) was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Crabtree converted customer funds to his own use and benefit by endorsing and depositing a \$10,700 Individual Retirement Account (IRA) rollover check into his personal account. In addition, Crabtree failed to respond to NASD requests for information.

David D. Curtis (Registered Representative, Casper, Wyoming) was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 30 days. In addition, Curtis must requalify by examination as a general securities representative. The sanctions were based on findings that Curtis guaranteed a public customer against loss in connection with the customer's purchase of stock. Curtis also engaged in private securities transactions without providing prior written notification to his member firm.

Donald Ellis (Registered Representative, Sparks, Nevada) was fined \$78,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Ellis received a total of \$8,500 from a public customer for investment purposes but converted

the funds for other purposes. Ellis also failed to respond to NASD requests for information.

Charles Patrick Hanlon (Associated Person, Chula Vista, California) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hanlon became associated with a member firm when he was barred from association with any member of the NASD and was not eligible to become an associated person.

Marc Alan Hughes (Registered Representative, Kenwood, California) was fined \$72,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hughes received from a public customer a \$2,500 check intended for the purchase of insurance. Hughes misappropriated and converted the proceeds to his own use and benefit. He also failed to respond to NASD requests for information.

Jerry Michael Irwin (Registered Representative, Kansas City, Missouri) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Irwin failed to respond to NASD requests for information concerning customer complaints.

Thomas B. Kennedy (Registered Representative, Warren, Michigan) was fined \$21,964 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kennedy obtained \$1,964 in cash from public customers for the purchase of insurance policies. Kennedy failed to purchase the policies and, instead, misappropriated and converted the funds to his own use. In addition, Kennedy failed to respond to NASD requests for information.

Gary Steven Lishnoff (Registered Representative, Norwalk, Connecticut) was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, without a public customer's authorization, Lishnoff directed that a \$3,651.89 check be drawn on the customer's account. Lishnoff took possession of the check, forged the customer's endorsement, and cashed the check, thereby converting the proceeds to his own use and benefit. In addition, Lishnoff failed to respond to NASD requests for information.

Louis Robert Lund (Registered Representa-

tive, La Jolla, California) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Lund failed to respond to NASD requests for information regarding his termination from a member firm.

James Edward Martin (Registered Representative, Dublin, California) was fined \$10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Martin failed to respond to NASD requests for information.

Glen Ellis McNeese (Registered Representative, Springfield, Missouri) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that McNeese failed to respond to NASD requests for information concerning his termination from a member firm.

Theodore Joseph Meyer (Registered Representative, Redmond, Washington) was fined \$10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Meyer failed to pay a \$700 arbitration award.

Alfred Arthur Napolitano (Registered Representative, Stony Brook, New York) was fined \$5,000, suspended from association with any member of the NASD in any capacity for five business days, and required to requalify by examination as a general securities representative. If Napolitano does not requalify by examination, he will be suspended until such time as he has requalified. The sanctions were based on findings that Napolitano effected purchase transactions in the account of a public customer without the knowledge or consent of the customer. In addition, Napolitano failed to execute an order for the same customer to sell shares of common stock.

Radha Ramachandran Nayar (Registered Representative, Temecula, California) was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Nayar failed to pay a \$119,396.81 arbitration award.

Randy Kenneth Schrader (Registered Representative, Boise, Idaho) submitted an Offer of Settlement pursuant to which he was fined \$24,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Schrader consented to the de-

scribed sanctions and to the entry of findings that he accepted a \$4,000 check from a public customer with instructions to deposit the funds into an IRA. Schrader failed to follow the customer's instructions and, instead, deposited the funds into his personal account.

Jeffrey Alan Schultz (Associated Person, Englewood, New Jersey) was fined \$100,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee for District 10. The sanctions were based on findings that Schultz engaged in a fraudulent scheme whereby he effected a series of purchase and sale transactions in high-yield corporate debt securities with broker/dealers and public customers at prices that were unfair, excessive, and detrimental to his employer member firm. Schultz knowingly entered into these transactions for the purpose of generating profits in accounts of relatives, friends, and acquaintances that resulted in substantial losses for his employer member. In addition, Schultz exercised discretionary authority in a public customer's account without submitting the customer's prior written authorization to his member firm.

Richard Harry Swanson (Registered Representative, Marion, Iowa) submitted an Offer of Settlement 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, Swanson consented to the described sanctions and to the entry of findings that he received from public customers funds totaling \$1,100 for investment purposes. Swanson failed to follow the customers' instructions and, instead, converted the funds to his own use and benefit. In addition, Swanson failed to respond to NASD requests for information.

Fredric J. VanPelt (Registered Representative, Chippewa Lake, Ohio) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that VanPelt failed to respond to NASD requests for information concerning his termination from a member firm.

Paul F. Wickswat (Registered Representative, Issaquah, Washington) was fined \$15,000 and suspended from association with any member of the NASD in any capacity for 15 days. The sanc-

tions were affirmed by the SEC following an appeal of a decision by the NASD's Board of Governors. The sanctions were based on findings that Wickswat exercised discretionary power in a customer's account without receiving prior written discretionary authorization from the customer or approval from his member firm. Wickswat also made unsuitable recommendations to a customer concerning sales of uncovered put options.

Wickswat's suspension commenced January 2, 1990 and concluded January 16, 1990.

Gratian Michael Yatsevitch, III (Registered Principal, Denver, Colorado), Craig Tillman Zerbe (Registered Principal, Falls Church, Virginia), Michael Allen Whelchel (Registered Representative, Great Falls, Virginia), and Louis R. Cerasuolo, Jr. (Registered Representative, Las Vegas, Nevada). Yatsevitch, Zerbe, and Whelchel submitted an Offer of Settlement pursuant to which Yatsevitch was fined \$25,000 and barred from association with any member of the NASD in any principal capacity. Zerbe was fined \$9,500 and barred from association with any member of the NASD in any principal capacity. Whelchel was fined \$15,000 and suspended from association with any member of the NASD in any capacity for 30 days. Cerasuolo was fined \$1,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions against Cerasuolo were based on findings by the DBCC for District 9.

Without admitting or denying the allegations, Yatsevitch, Zerbe, and Whelchel consented to the described sanctions and to the entry of findings that a former member firm, acting through Yatsevitch and Zerbe, failed to make and preserve accurate books and records and conducted a securities business at times when it did not maintain minimum required net capital.

The NASD found that the firm, acting through Yatsevitch and Zerbe, filed inaccurate FOCUS Parts I and IIA reports and, in violation of the SEC's Customer Protection Rule, engaged in certain conduct including, among other things, failure to establish a Special Reserve Bank Account for the Exclusive Benefit of Customers. The firm, acting through Yatsevitch and Zerbe, maintained customer account forms that omitted required information and failed to reflect long or short position notations on order tickets, according to the findings. Furthermore, the NASD determined that

Yatsevitch, Zerbe, and Whelchel disseminated to the public correspondence and sales literature containing false and misleading statements and that Yatsevitch and Zerbe failed to approve in writing and maintain a complete file of all correspondence, advertising, and sales literature. Moreover, the NASD found that Yatsevitch and Zerbe permitted individuals to conduct a general securities business without proper state registration.

The findings also stated that the firm, acting through Yatsevitch, changed its method of doing business in a manner that changed its exempt status under the Customer Protection Rule and began operations that disqualified it from continued exemptions under the rule without obtaining prior written approval of the NASD. In addition, the NASD determined that the firm, acting through Yatsevitch, failed to abide by the terms of its restrictive agreement with the NASD, failed to register a branch office promptly, and failed to complete or amend Uniform Applications for Securities Industry Registration (Form U-4) properly for certain of its registered persons.

Furthermore, the NASD found that the firm, acting through Yatsevitch, failed to maintain adequate supervisory procedures for its branch offices and off-site registered representatives, to supervise the activities of certain associated persons properly, to designate a current municipal securities principal, and to amend its Form BD promptly. Yatsevitch also allowed a statutorily disqualified individual to associate with the firm and permitted another individual to conduct business without proper registration, according to the findings.

The NASD found that Whelchel engaged in a general securities business in Maryland prior to becoming registered in that state. In addition, the NASD determined that Whelchel sold Treasury Interest Accrual Certificates and purchased Certificates of Accrual of Treasury Securities for a customer's account without obtaining the customer's authorization to effect the transactions.

The sanctions against Cerasuolo were based on findings that he sold to a public customer units in a direct participation program without being registered in a capacity that permitted him to sell such securities.

Kathleen Annette Yott (Registered Principal, Torrance, California) and Donald J. Yott (Associated Person, Beverly Hills, California) were each fined \$15,000 and barred from associa-

tion with any member of the NASD in any capacity. The sanctions were based on findings that Kathleen and Donald Yott failed to respond to NASD requests for information concerning customer complaints.

INDIVIDUALS FINED

Gary Edward Bryant (Registered Principal, Costa Mesa, California) and **Stephen Roger Lowry (Registered Representative, Doraville, Georgia)**. Bryant was fined \$15,000 and required to requalify by examination as a general securities principal or to cease association with any member in any capacity. Lowry was fined \$12,000. The sanctions were based on findings that, while associated with a member firm, Bryant conducted a securities business at a time when the firm failed to maintain its required minimum net capital. Bryant also failed to supervise properly the activities of a registered representative to ensure compliance with the NASD's Mark-Up Policy. Furthermore, Lowry effected municipal securities transactions with retail customers as a principal at aggregate prices that were unfair.

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

Allied Equity Group, Bodega Bay, California

Guardian International Securities Corporation, Chicago, Illinois

SUSPENSIONS LIFTED

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

Amerifidelity Securities Corp., Orlando, Florida (December 9, 1991)

Entertainment Securities, Inc., Orlando, Florida (December 3, 1991)

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

Jaime S. Gomez, Chicago, Illinois

Lawrence J. Kouri, Akron, Ohio

Charles W. Marmon, Annapolis, Maryland

Shahin Rezazadeh, Brooklyn, New York

James C. Scheidell, Bountiful, Utah

Arthur W. Weisberg, Mount Kisco, New York

Joyce N. Westmoreland, Baton Rouge,

Louisiana

Michael A. Whelchel, Great Falls, Virginia

Eric L. Witherow, Boulder, Colorado

Gratian M. Yatsevitch, III, Denver, Colorado

For Your Information

National Association of Securities Dealers, Inc.

January 1992

NASD Imposes \$200 Fee for Form 211 Applications

On January 2, 1992, the SEC approved a proposed rule change by the NASD relating to a fee for Form 211 applications filed with the NASD pursuant to Schedule H, Section 4 of the NASD By-Laws. The rule change is effective immediately and, as a result, a \$200 filing fee will be required together with each Form 211 application received on or after January 20, 1992. The fee is not refundable in the event that the member cannot satisfy the requirements of Schedule H, Section 4 or SEC Rule 15c2-11. Members are reminded that this fee, along with any other costs associated with making

a market, must be paid by the member and cannot be passed along to the issuer or other parties.

In connection with this rule change, and consistent with Schedule H, Section 4 of the By-Laws, the NASD will no longer require that members submit a Form 211 to the NASD prior to entering a quotation in the National Quotation Bureau "Pink Sheets" when a valid exception to SEC Rule 15c2-11 is available. For further information, please refer to SEC Release No. 34-30145, *Notice to Members 90-40*, or call the NNOTC Compliance Unit at (202) 728-8149.

NASD Mails New Edition of *Guide to Information and Services*

With this issue of *Notices to Members*, NASD members are receiving the January 1992 edition of the *NASD Guide to Information and Services*. This publication, updated semiannually, is arranged by subject and includes names and phone numbers of

persons whom members may call for information and assistance. A new feature of the guide, found on the inside front cover, is answers to five questions often asked by members.

California Increases Agent Registration and Transfer Fees

Effective January 1, 1992, California increased its agent fees. Agent registration and transfer fees rose from \$10 to \$25. If you have any

questions regarding these changes, call NASD Information Services at (301) 590-6500.

(continued)

Procedures, Fees Change for Unclassifiable (Illegible) Fingerprint Card Submissions

Effective January 2, 1992, the Identification Division of the Federal Bureau of Investigation (FBI) began charging a \$23.50 processing fee for a third fingerprint card submission for an individual whose previous cards were returned as illegible.

Please make sure that the second submission for an individual includes the new and the returned illegible card to avoid a full \$23.50 charge. But do not attach previously processed cards to the *third* submission because they will be rejected by the FBI.

The following fingerprint processing fees be-

came effective January 2, 1992:

Filing Type	Document Requirements	Charge Per Card
Initial submission	Original card	\$23.50
Second submission	New and illegible card	\$1.50
Third submission	New card	\$23.50

If you have any questions about this new procedure, contact the Member Services Phone Center at (301) 590-6500.

Notice To Members

National Association of Securities Dealers, Inc.

January 29, 1992

Number 92-8**Suggested Routing:***

- Senior Management
- Corporate Finance
- Government Securities
- Institutional

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

- Operations
- Options
- Registration
- Research

- Syndicate
- Systems
- Trading
- Training

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

MAIL VOTE

Subject: Proposed Amendment to Rules of Fair Practice, Article III, New Section 46: Short-Sale Rule for Nasdaq/NMS Securities and New Section 47: Primary Nasdaq Market Makers; Last Voting Date: March 13, 1992

EXECUTIVE SUMMARY

The NASD invites members to vote on a new Section 46, Article III of the Rules of Fair Practice regarding adoption of a short-sale rule or "bid test" for Nasdaq National Market System (Nasdaq/NMS) securities. The proposed short-sale rule will prohibit members from effecting short sales at or below the bid for themselves or their customers when the current inside or best bid is below the previous inside bid. The rule will be in effect during normal, domestic market hours (9:30 a.m. to 4 p.m., Eastern Time) and includes an exemption for transactions by qualified Nasdaq market makers. Qualified or "primary" Nasdaq market makers are designated as such if they

comply with the criteria set forth in new Section 47. The three primary criteria relate to dealer spread, time at the inside quotation, and quote changes in relation to trades. A supplemental criterion relates to the share of trading volume accounted for by a market maker. The NASD Board of Governors approved adoption of a short-sale rule in November 1991 and approved the primary market-maker qualifications in January 1992 following a year of comment and discussion among members, issuers, and institutional participants in the Nasdaq market.

The text of the proposed rules follow this notice.

BACKGROUND

In January 1991, the NASD solicited comment from the membership on the concept of a short-sale rule for the Nasdaq market. More than 100 comment letters supporting and opposed to the concept from members and issuers were submitted, along with hundreds of short form responses from

issuers in support of the rule. Thereafter, the issue was referred to appropriate committees for consideration. During the past year, the Corporate Advisory Board and the Issuer Affairs, Institutional Investors, Corporate Financing, Marketing, and Trading Committees discussed the pros and cons of adopting a short-sale rule. In addition, joint meetings were held to address concerns of the different

constituencies and representatives of the market-making community and of professional short sellers met with Board representatives.

Each committee that reviewed the short-sale issue submitted a positive recommendation for such a rule to the Board of Governors. While the committee votes were not unanimous on the issue, the consensus among committees and overwhelming support from Nasdaq issuers for a short-sale rule persuaded the Board to approve the rule.

The short-sale rule developed for the Nasdaq market is comparable to the short-sale rule for listed stocks in many ways. The SEC short-sale rule, Rule 10a-1, was adopted to prevent speculative selling in exchange-listed securities from accelerating a decline in the price of a security and to prevent a form of manipulation known as "bear raiding" or "piling on." Piling on occurs when short sellers exert pressure on a stock's price, forcing the price to drop precipitously, frequently within a single trading day. The SEC rule applies to exchange-listed securities but does not apply to Nasdaq securities.

Because of differences between exchange and Nasdaq markets, the short-sale rule for the Nasdaq market is based on a "bid test" rather than the exchange "tick test." A "tick" means the last reported sale price on the consolidated tape, and the SEC rule prohibits short sales of exchange-listed securities at prices below the previous reported last sale price (minus tick) or at the last sale price if that price is below the previous different last sale price (zero-minus tick). Since the substantial majority of trade reports in most exchange-listed securities occur on a single exchange floor, generally ensuring sequential trade reporting, the SEC short-sale rule is based on the last sale or tick.

Trade reporting in Nasdaq/NMS securities, on the other hand, may involve as many as 50 different market makers in a given stock, reporting trades from different locations to the NASD via computer interface or through Nasdaq WorkstationSM terminals. Although trades are required to be reported within 90 seconds after execution, they do not necessarily appear on the Nasdaq tape in sequential order. For this reason, the Nasdaq short-sale rule was designed as a bid test.

HOW THE NASD SHORT-SALE RULE WORKS

The NASD short-sale rule will operate to pro-

hibit short sales at or below the bid when the current inside bid for a Nasdaq/NMS security is below the previous inside bid in the security. The Nasdaq system calculates the inside bid as the best bid from all market makers in the security, and the system will be configured to indicate on the screen whether the current bid is an "up bid" or a "down bid" so that members will have that information at their fingertips when effecting short sales. The NASD rule will also include many of the same exceptions contained in the SEC's short-sale rule (discussed below).

A sale is considered "short" if the seller does not own the stock, or if the seller owns the stock but delivers borrowed stock to the buyer at settlement. To determine whether the seller is long or short overall, the seller must net all positions in the security just as is required in short sales for listed securities.

The NASD short-sale rule applicable to Nasdaq/NMS securities will:

- (1) be based on the inside bid as displayed in the Nasdaq system;
- (2) prohibit short sales at or below the inside bid when the current inside bid is lower than the preceding bid (short sales could be made at all times by offering stock at prices higher than the bid);
- (3) include exemptions for certain situations comparable to those exemptions available for listed stock in the SEC's short-sale rule;
- (4) include exemptions from the rule's provisions for qualified Nasdaq market makers, with clearly delineated standards or criteria establishing qualifications for exempt Nasdaq market makers;
- (5) prohibit market makers from using their exemption to bypass the rule or to do indirectly what is prohibited directly by the rule;
- (6) include a provision for tracking future exemptions, where applicable, to the SEC short-sale rule for listed securities; and
- (7) be applicable only during normal domestic market hours (9:30 a.m. to 4 p.m., ET).

The Board of Governors has also authorized, simultaneous with adoption of a rule applicable to NASD members, submission of a petition to the SEC to amend its short-sale rule, Rule 10a-1, to include Nasdaq/NMS securities so that short-sale restrictions will apply to all market participants.

COMPARISON WITH SEC SHORT-SALE RULE

In order to reduce compliance burdens for members, the NASD rule incorporates the exemptions in Rule 10a-1 that are relevant to trading in the Nasdaq market. Specifically, the rule exempts:

- (1) a broker/dealer from a sale that is for an account in which it has no interest and that is marked long;
- (2) any sale by a market maker to offset odd-lot orders of customers;
- (3) any sale by a market maker to liquidate a long position, which is less than a round lot, provided the sale does not change the dealer's position by more than one unit of trading (100 shares);
- (4) certain short-sale arbitrage transactions, in special arbitrage accounts by a person who owns another security or presently will be entitled to acquire an equivalent number of securities of the same class as the securities sold (provided the sale, or purchase which the sale offsets, is made for the bona fide purpose of profiting from a current price difference between the security sold and the security owned) and that the right of acquisition was originally attached to the security or was issued to all holders of any class of securities of the issuer;
- (5) transactions made as part of an international arbitrage opportunity. The seller must have a bona fide purpose to profit from the price difference between a security on an international market outside the jurisdiction of the U.S. and a security listed as a Nasdaq/NMS security. For the purposes of this section, a depositary receipt (e.g., ADR) for a security shall be deemed the same as the security represented by the receipt;
- (6) short sales by an underwriter or any member of the distribution syndicate in connection with the over-allotment of securities, or any lay-off sale by a person with a distribution of securities pursuant to a rights offering (Rule 10b-8) or a standby underwriting commitment;
- (7) liquidations of blocks by block positioners that are not currently registered as Nasdaq market makers even if the block positioner does not have a net long position in the security if and to the extent that its net short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

Because the definition of short sale fails to take into account all economically equivalent secu-

rities in defining a long position, the liquidation of index arbitrage positions was covered by the literal language of Rule 10a-1. To alleviate this problem, in 1986 the SEC took a "no action" position that allows broker/dealers to sell short on a down tick while liquidating index arbitrage positions under certain conditions. The SEC stated that a broker/dealer could effect sales of long positions in stocks that are offset by short positions in stock index futures and/or options in connection with the unwinding of index arbitrage positions without regard to the short-sale rule. The exemption applies when the firm has a net short position in any of those stocks that is attributable to unrelated arbitrage, risk arbitrage, or hedge activities.

In 1990, the SEC clarified the application of the 1986 no-action position. Relief is available only when unwinding index arbitrage positions that were established in compliance with Rule 3b-3 (the SEC rule defining short sales that require netting) and Rule 10a-1, and where action is taken to reverse both sides of the position as nearly simultaneously as practicable. The NASD would recognize this exemption. The proposed rule also contains a provision that would allow the NASD to adopt SEC amendments to Rule 10a-1 that are applicable to the Nasdaq market without recourse to membership vote.

EXEMPTION FOR QUALIFIED NASDAQ MARKET MAKER

Since an exemption from the short-sale rule for bona fide market-making activity is considered fundamental to avoid disrupting traditional dealer activity, defining qualifications for exempt Nasdaq market makers is critical to such a rule. The NASD proposal contains an exemption for qualified market makers so that dealer activities that provide liquidity and continuity to the Nasdaq market will continue uninterrupted.

The Trading Committee and its Quality of Markets Subcommittee developed objective, quantitative criteria that could be applied equitably to all market makers regardless of size and, most importantly, that would be within the market maker's ability and control to satisfy. The primary criteria include amount of time at the inside bid or ask quotation, comparison of an individual market maker's spread to the average dealer spread in each stock, and frequency of dealer quotation updates without a corresponding execution in the security.

Using these components, in order to be considered a primary market maker in the Nasdaq system, market makers must satisfy two out of the three specific threshold standards:

(1) a market maker must maintain the best bid or best offer as shown in the Nasdaq system no less than 35 percent of the time;

(2) a market maker must maintain a spread no greater than 102 percent of the average dealer spread; or

(3) no more than 50 percent of a market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading.

In addition, recognizing that overall volume is also indicative of quality market making, the committees added a supplemental test based on proportionate volume which is met if a market maker accounts for 1 ½ times its proportionate share of volume in the stock. That is, if there are 10 market makers in a stock, each dealer's proportionate share should be 10 percent; therefore 1 ½ times proportionate share would mean 15 percent of the overall volume.

Where a market maker meets the proportionate volume test, it may be designated as a primary Nasdaq market maker if it also satisfies one of three criteria set forth above. For example, if a market maker kept its bid or offer at the inside quote at least 35 percent of the time, but maintained a ½ point spread in the stock when the other dealers averaged a ¼ point spread and changed its quote three times on average for every trade, then the market maker would have to meet the proportionate volume test in order to qualify as a primary market maker.

A market maker satisfying these criteria will be designated as a primary market maker in the Nasdaq system, and that "primary" or "P" designation will be displayed on the Nasdaq screen.

The time frame for review of market-maker performance in each criterion under consideration will be a calendar month. Compliance with the criteria will be tracked through the Nasdaq system, which will enable market makers to review their status in each criterion in each stock and will also provide members with notice of their compliance with the standards at set intervals.

The committees also sought to identify situations that warrant special or unique treatment, such as secondary offerings. The NASD believes that

the time period after secondary offerings have been announced is so sensitive to short-selling pressure that special time frames and eligibility criteria for primary market makers are warranted. To be a primary market maker in stocks involved in secondary offerings requires registration in the security prior to announcement or filing of the registration statement for the secondary offering, or the market maker must satisfy the criteria for 40 business days prior to becoming a primary market maker.

Additionally, separate criteria have been developed for other registration situations, such as for qualifying when registering in an existing security, in an initial public offering, or in a merger or acquisition situation. These special criteria permit market makers with a proven track record (e.g., they have primary market maker status in 80 percent of the stocks they have registered in for the past year) to be afforded the primary designation upon initiation of quotations. If dealers cannot meet the 80 percent test, then other avenues are set forth in the proposed rule to permit them to qualify.

If a Nasdaq market maker does not satisfy the qualification criteria, then it remains a market maker in the Nasdaq system, but it is not a primary market maker in the stock, and it cannot take advantage of the exemption from the short-sale rule. The NASD will provide a forum for review if market makers wish to request reconsideration of their failure to meet the primary market-maker standards. Because the standards are objective rather than subjective, however, requests for reconsideration will be limited to consideration of system failures, excused withdrawals, or related activity in derivative or convertible securities that may affect a market maker's compliance with the criteria.

To analyze the effect that the proposed criteria and threshold standards would have on Nasdaq market makers, the committees reviewed members' performance on selected days. If members are interested in reviewing statistical data regarding their performance involving the proposed criteria during the review period, please contact Tim McCormick, Corporate Communications, NASD, 1735 K Street, NW, Washington DC 20006-1506, or call him at (202) 728-6910.

Finally, the NASD is sensitive to the fact that there may be unforeseen consequences or unfavorable treatment to a class of members or investors that may necessitate modifications to the propos-

als. To ensure that the NASD maintains the ability to make adjustments on an expeditious basis, the rule permits the NASD Board to rescind or modify the threshold levels of the criteria if necessary. Similarly, the Board has retained the authority to separately modify the market-maker exemption criteria if necessary to achieve SEC approval of the rule.

SUMMARY

The Board believes that short-sale abuse is not merely a perception problem for issuers. A year ago, qualitative market research conducted among issuers and professional investors indicated that the lack of a short-sale rule in the Nasdaq market was a factor among those who expressed negative attitudes toward Nasdaq. While research and studies may show no difference in long-term short-interest positions between exchange-listed or Nasdaq stocks, issuers are concerned that instances of extreme intraday volatility may inhibit existing shareholders' ability to sell their stock if professional short sellers are in the market before them, exacerbating downward pressure on stocks, and reducing liquidity in the marketplace.

Issuers also report that they feel disadvantaged in secondary offerings on Nasdaq because of the increased potential for short selling to adversely affect the price at which the offering is conducted. Accordingly, the Board believes that adoption of the proposed short-sale rule will assure both issuers and investors that they are subject to at least equivalent protection from inappropriate short selling in the Nasdaq market as they are on an exchange.

The Board recognizes that a short-sale rule must be formulated in a manner to preserve market-maker depth and liquidity in Nasdaq/NMS securities. Qualified market makers must have the unfettered ability to effect short sales to balance their positions at any time during the trading day, and therefore the proposed rule has been designed to include an exemption that does not hamper a dealer's ability to buy and sell stock. Additionally, the Board is committed to implementing a short-sale rule that does not adversely affect a market maker's ability to manage risk. Dealers must be permitted the flexibility to sell short when necessary so that they will not be forced to reduce the number of stocks in which they make markets. The market-maker exemption and the criteria for qualification are firmly embedded in the short-sale rule so that the exemption will not be eroded in the fu-

ture and the rule will not unduly affect the way in which market makers perform their roles.

The Board believes that the new Rules of Fair Practice regarding short sales and primary Nasdaq market makers are necessary and appropriate and recommends that members vote their approval. Please mark the attached ballot according to your convictions and return it in the enclosed, stamped envelope to the Corporation Trust Company. Ballots must be postmarked **no later than March 13, 1992**. Questions concerning this notice may be directed to Gene L. Finn, Chief Economist, at (202) 728-8243, Glen R. Shipway, Senior Vice President, Market Operations, at (212) 858-4448, or Beth E. Weimer, Associate General Counsel, at (202) 728-6998.

TEXT OF PROPOSED RULES

Rules of Fair Practice

(Note: All language is new.)

Section 46 — Short Sales

(a) No member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market System security at or below the current best (inside) bid when the current best (inside) bid as displayed by the Nasdaq system is below the preceding best (inside) bid in the security.

(b) In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all quotation prices prior to the "ex" date may be reduced by the value of such distribution.

(c) The provisions of subsection (a) shall not apply to:

(1) Sales by a qualified market maker registered in the security in the Nasdaq system in connection with bona fide market-making activity. For purposes of this subsection, risk arbitrage, index arbitrage, and other transactions unrelated to normal market-making activity will not be considered bona fide market-making activity.

(2) Sales by a member, for an account in which he has no interest, pursuant to an order to sell which is marked "long" in which the member does not know, or have reason to know, that the beneficial owners of the account have a short position in the security.

(3) Sales by a member to offset odd-lot orders of customers.

(4) Sales by a member to liquidate a long position which is less than a round lot, provided that such sale does not change the position of the member by more than one unit of trading.

(5) Sales by a member of a security for a special arbitrage account if the member then owns another security by virtue of which the member is, or presently will be, entitled to acquire an equivalent number of securities of the same class of securities sold; *provided* such a sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(6) Sales by a member of a security effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on such a securities market subject to the jurisdiction of the United States; *provided* the member at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him in such foreign securities market and intends to accept such offer immediately.

(7) Sales by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights pursuant to SEC Rule 10b-8 or a standby underwriting commitment.

(d) No member shall effect a short sale for the account of a customer or for its own account indirectly or through the offices of a third party for

the purpose of avoiding the application of this section.

(e) No member shall knowingly, or with reason to know, effect sales for the account of a customer or for its own account for the purpose of avoiding the application of this section.

(f) A member that is not currently registered as a Nasdaq market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) For purposes of this section, a depository receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(h) Upon application or on its own motion, the Association may exempt either unconditionally, or on specified terms and conditions, any transaction from the provisions of this section.

(i) From time to time, the Securities and Exchange Commission may amend Rule 10a-1, Rule 3b-3, or Rule 3b-8 under the Securities Exchange Act of 1934. The Board of Governors reserves the authority to alter, amend, modify, or supplement this section in accordance with amendments to Rule 10a-1, Rule 3b-3, or Rule 3b-8 or as otherwise deemed appropriate or necessary for Nasdaq/NMS securities without recourse to membership for approval as required by Article XII to the By-Laws.

(j) Definitions:

(1) The term "short sale" shall have the same meaning as contained in SEC Rule 3b-3, adopted pursuant to the Securities Exchange Act of 1934, reprinted as follows: The term "short sale" means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. A person shall be deemed to own a security if: (1) he or his agent has title to it; or (2) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it but has

not yet received it; or (3) he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or (4) he has an option to purchase or acquire it and has exercised such option; or (5) he has rights or warrants to subscribe to it and has exercised such rights or warrants; *provided, however*, that a person shall be deemed to own securities only to the extent that he has a net long position in such securities.

(2) The term "block positioner" shall have the same meaning as contained in SEC Rule 3b-8 for "Qualified Block Positioner" adopted pursuant to the Securities Exchange Act of 1934, reprinted as follows:

(c) The term "Qualified Block Positioner" means a dealer who: (1) is a broker or dealer registered pursuant to Section 15 of the Act, (2) is subject to and in compliance with Rule 15c3-1, (3) has and maintains minimum net capital, as defined in Rule 15c3-1 of \$1,000,000 and (4) except when such activity is unlawful, meets all of the following conditions: (i) he engages in the activity of purchasing long or selling short, from time to time, from or to a customer (other than a partner or a joint venture or other entity in which a partner, the dealer, or a person associated with such a dealer, as defined in Section 3(a)(18) of the Act, participates) a block of stock with a current market value of \$200,000 or more in a single transaction, or in several transactions at approximately the same time from a single source to facilitate a sale or purchase by such customer, (ii) he has determined in the exercise of reasonable diligence that the block could not be sold to or purchased from others on equivalent or better terms, and (iii) he sells the shares comprising the block as rapidly as possible commensurate with the circumstances.

(3) The term "qualified market maker" shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Article III, Section 47 of the Rules of Fair Practice.

Section 47 — Primary Nasdaq Market Maker

(a) A member registered as a Nasdaq market maker pursuant to Part VI, Schedule D of the NASD By-Laws may be deemed to be a Primary Nasdaq Market Maker in Nasdaq National Market System securities if the market maker complies with threshold standards (as established and published by the Association from time to time) in the following qualification criteria:

- (1) amount of time a dealer maintains a quotation that represents the best bid or best offer as shown in the Nasdaq system;
- (2) relation of individual dealer spread to average dealer spread; and
- (3) frequency of dealer quotation updates without a corresponding execution in the security occurring within three minutes before or after a quotation update.¹

(b) A market maker for a Nasdaq/NMS security must satisfy the threshold standards in at least two of the criteria in section (a) in order to be designated a Primary Nasdaq Market Maker in that security; *provided however*, that if a market maker satisfies only one of the criteria, it may qualify as a Primary Nasdaq Market Maker if it also accounts for a threshold level of proportionate volume in the security (as established and published by the Association from time to time).²

(c) The review period for review of market maker performance in each of the qualification criteria in section (a) shall be one calendar month.

(d) If, after the review period, a market maker does not satisfy the threshold standards for the criteria in section (a), the Primary Nasdaq Market Maker designation shall be withheld commencing

¹The threshold standards initially shall be established as:

- (a) a market maker must maintain the best bid or best offer as shown in the Nasdaq system no less than 35% of the time;
- (b) a market maker must maintain a spread no greater than 102% of the average dealer spread;
- (c) no more than 50% of a market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading.

The NASD Board of Governors reserves the authority to rescind or modify one or more of the threshold standards immediately upon a finding that the standard is operating in a manner that is unfair to a class of investors or members, or that continued imposition of the standard results in a substantial adverse impact on the liquidity or market quality of the Nasdaq market.

²The threshold proportionate volume standard initially shall require a market maker to account for volume of at least 1 1/2 times its proportionate share of overall volume in the stock for the review period.

on the next business day following notice of failure to comply with the standards.

(e) Market makers may requalify for designation as a Primary Nasdaq Market Maker by satisfying the threshold standards for the next review period.

(f) A market maker may request reconsideration of the notice to withhold the Primary Nasdaq Market Maker designation.

(1) Grounds for requests for reconsideration shall be limited to:

- (i) system failure;
- (ii) excused market maker withdrawal status; or
- (iii) where a market maker failed to qualify under the criteria set forth in subsection (a)(3) because of activity in a related derivative or convertible security.

(2) Requests for reconsideration must be sent in writing to Nasdaq Operations within 24 hours of the determination to withhold the Primary Nasdaq Market Maker designation.

(3) Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members.

(g) In registration situations:

(1) To register and immediately become a Primary Nasdaq Market Maker in a Nasdaq/NMS security, a member must be a Primary Nasdaq Market Maker in 80% of the securities in which it has registered during the preceding 12 months. If the market maker is not a Primary Nasdaq Market Maker in 80% of its stocks, it may qualify as a Primary Nasdaq Market Maker in that stock if:

- (i) the market maker registers in the stock but does not enter quotes for five days; or
- (ii) the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(2) Notwithstanding subsection (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a Primary

Nasdaq Market Maker unless it meets the requirements set forth below:

(a) For secondary offerings:

- (i) the secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective; or
- (ii) the market maker has satisfied the qualification criteria for 40 business days.

(b) For initial public offerings:

- (i) the market maker may register in the offering and immediately become a Primary Nasdaq Market Maker if it is a Primary Nasdaq Market Maker in 80% of the securities in which it has registered during the preceding 12 months; *provided however*, that if, at the end of the first review period, the Primary Nasdaq Market Maker has withdrawn on an unexcused basis from the security or has not satisfied the qualification criteria, it shall not be afforded a Primary Nasdaq Market Maker designation on any subsequent initial public offerings for the next 20 business days; or
- (ii) the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(3) Notwithstanding subsection (g)(1) or (g)(2) above, after a merger or acquisition has been publicly announced, a Primary Nasdaq Market Maker in one of the two affected securities may immediately register as a Primary Nasdaq Market Maker in the other merger or acquisition security pursuant to the same-day registration procedures in Part VI, Schedule D to the By-Laws.

(h) The Board of Governors reserves the authority to alter, amend, modify, or supplement this section as deemed appropriate or necessary for Nasdaq/NMS securities without recourse to membership for approval as required by Article XII to the By-Laws.