

# NASD NOTICE TO MEMBERS 94-72

## SEC Approves Elimination Of Access Market-Maker Procedures

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

On July 22, 1994, the Securities and Exchange Commission (SEC) approved an NASD rule change that deletes Part IX, Schedule D to the NASD By-Laws. The deleted provision permitted NASD members to access The Nasdaq Stock Market (Nasdaq) in a market-making capacity without subscribing to Level 3 Nasdaq Workstation Service (Level 3 Service).<sup>1</sup> These access market makers would enter into a contractual arrangement with a Level 3 Service subscriber, who would insert quotes for them. Effective August 1, 1994, member firms may no longer function as Nasdaq market makers without subscribing to Level 3 Service. The text of the deleted language follows the discussion below.

### Background And Description

The SEC recently approved an NASD rule change to eliminate an outmoded procedure that allowed certain NASD member firms to participate in Nasdaq without subscribing to Level 3 Service. Under the deleted provision, Part IX, Schedule D to the NASD By-Laws, member firms that did not receive Level 3 Service could qualify as an access market maker by entering into a suitable arrangement with another member that was a Level 3 Subscriber (entering subscriber).

After the NASD's approval of such an arrangement, the entering subscriber could input two-sided quotations reflecting the dealer interest of the access market maker. These quotations would be displayed with the entering subscriber's market-maker identifier; a special indicator would also be displayed to inform other dealers that an access arrangement existed for the quotations displayed in the subject security. In this circumstance, the entering subscriber

assumed responsibility for executing trades at the displayed bid/offer; yet, both the entering subscriber and the access market maker were jointly responsible for complying with the market-maker obligations in Part V, Schedule D to the NASD By-Laws.

This rule change was prompted in part by the technology migration that the NASD has undertaken to upgrade the Nasdaq market facilities and communications network. After careful analysis of the costs and feasibility of supporting access-market-maker functionality in the new environment, Nasdaq decided not to offer this functionality. Among other things, the staff's analysis revealed that recent changes in market-making practices and procedures had dramatically reduced the use of the access-market-maker arrangement. Indeed, when the NASD filed the proposal with the SEC, no such arrangements were in effect.

Given the lack of arrangements as well as any regulatory purpose, the NASD determined that the access-market-maker functionality did not warrant the expenditure of resources necessary to provide it in the new environment. Consequently, only Level 3 Service subscribers may function as Nasdaq market makers. This rule change took effect on August 1, 1994, the date that the SEC published its approval order in the *Federal Register*. The deleted text appears below. Questions regarding this rule change may be directed to Michael J. Kulczak, Associate General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8811.

### Text Of Part IX, Schedule D Of The NASD By-Laws

(Note: Deleted text is in brackets.)

<sup>1</sup> See Release No. 34-34428, July 22, 1994; 59 FR 38992, August 1, 1994.

**Part IX [Procedures For Access To The Nasdaq System By Non-Nasdaq Market Makers]**

[These procedures permit a registered NASDAQ market maker, upon approval by the Corporation, to enter quotations into the NASDAQ System on behalf of another market maker who does not subscribe to Level 3 NASDAQ Service.]

**[A. Definitions]**

[1. An "access market maker" is a member of the Association who does not subscribe to Level 3 NASDAQ service, but is or intends to be a market maker in a security for which quotations are displayed on the NASDAQ System.]

[2. An "entering subscriber" is a registered NASDAQ market maker who has entered into an arrangement with an access market maker to enter quo-

tations in the NASDAQ System on behalf of such access market maker.]

[B. The entering subscriber may enter quotations in the NASDAQ System on behalf of an access market maker only upon submission and approval by the Association of the following:]

[1. A fully executed copy of the access arrangement agreement which shall contain all agreements and conditions concerning the access arrangement.]

[2. An application for registration as an access market maker for each security.]

[C. Access market makers and entering subscribers shall be limited to one access arrangement in each security.]

[D. Quotations displayed by the entering subscriber on behalf of the access

market maker shall be accompanied by the entering subscriber's market maker identifier and a special symbol designating that an access arrangement exists. The identity of the access market maker must be made available by the entering subscriber upon request.]

[E. All transactions resulting from the display of quotations in the NASDAQ System by the entering subscriber shall be executed by the entering subscriber and he shall be responsible for the transaction. Both the entering subscriber and the access market maker shall be subject to and be responsible for compliance with the provisions of Schedule D.]

[F. Access market makers shall pay to the Corporation an access fee of \$70 per month for the first security and \$52.50 per month for each additional security which is subject to an approved access arrangement.]

# NASD NOTICE TO MEMBERS 94-73

## SEC Approves Clearance And Settlement Proposal For Nasdaq And OTCBB Market Makers

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

On July 28, 1994, the Securities and Exchange Commission (SEC) approved an NASD rule change that deals with clearance and settlement requirements applicable to NASD member firms functioning as market makers in The Nasdaq Stock Market<sup>SM</sup> (Nasdaq) or the OTC Bulletin Board Service (OTCBB<sup>®</sup>).<sup>1</sup> Specifically, the rule change eliminates the "25-mile exception" from Section 7(a) in Part V, Schedule D to the NASD By-Laws and adds a new paragraph (d) to Section 4 of the OTCBB Rules.<sup>2</sup> As a result, Nasdaq and OTCBB market makers must participate in the facilities of a registered clearing agency either directly or through another NASD member. Since most Nasdaq and OTCBB market makers already have clearing arrangements, this rule change affects few firms. The text of the amended language follows the discussion below. This rule change takes effect October 11, 1994.

### Background And Description

The SEC recently approved an NASD rule change requiring market makers to use the facilities of a registered clearing agency to ensure efficient clearance and settlement of securities transactions effected between member firms. For Nasdaq securities, the rule change eliminates the 25-mile exception from Section 7(a) in Part V, Schedule D to the NASD By-Laws. Until now, this exception was only available to market makers that were located more than 25 miles from a clearing facility and that limited their market-making activity to The Nasdaq SmallCap Market<sup>SM</sup> securities that do not participate in the Small Order Execution System (SOES<sup>SM</sup>).<sup>3</sup> Section 7(a) now states that a market maker must clear and settle transactions in Nasdaq securities through a registered clear-

ing agency located within 25 miles of the market maker. In addition, Section 7(b) states that regardless of its proximity to a particular clearing facility, a market maker must clear and settle all SOES transactions via a registered clearing facility that uses a continuous net settlement system. This requirement can be satisfied either by directly participating in such a clearing facility or by entering into a corresponding clearing arrangement with a member that clears through such a facility.

For equity securities quoted in the OTCBB, the NASD had not mandated market-maker participation in a registered clearing agency. A new requirement mandates that market makers participate in a registered clearing agency for transactions in the approximately 95 percent of OTCBB securities that are clearing eligible. Implementation of these requirements will maximize use of the Automated Confirmation Transaction (ACT<sup>SM</sup>) Service for trade-reporting and comparison purposes.

ACT is the primary facility for collecting, processing, and disseminating transaction reports on Nasdaq securities and equity issues quoted in the OTCBB. ACT also facilitates the clearance and settlement of inter-member transactions by locking in trade details for transmission to the National Securities Clearing Corporation (NSCC). By generating

<sup>1</sup> See Release No. 34-34457, July 28, 1994; 59 FR 39797, August 4, 1994.

<sup>2</sup> Part V, Schedule D contains the basic requirements applicable to Nasdaq market makers while Section 4 contains the corresponding requirements for OTCBB market makers.

<sup>3</sup> Although registered market makers in Nasdaq National Market<sup>®</sup> securities must be SOES participants, SOES participation is voluntary for market makers in Nasdaq SmallCap market issues.

locked-in trades, ACT enhances clearing efficiency by virtually eliminating a member's risk exposure from uncomparated trades. These benefits cannot be fully realized, however, unless the broker/dealers on both sides of a trade have some form of participation in a registered clearing agency. In sum, these changes minimize risk exposure from uncomparated trades and foster optimal use of ACT to lock in trades before submission to a registered clearing agency.

The rules take effect on October 11, 1994. Questions regarding this matter may be directed to Michael J. Kulczak, Associate General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8811.

### Approved Amendments To Part V, Schedule D Of The NASD By-Laws

(Note: New text is underlined. Deleted text is in brackets.)

#### Part V

#### Requirements Applicable To Nasdaq Market Makers

Sec. 1-6. No change.

Sec. 7. Clearance and Settlement

(a) A market maker shall clear and settle transactions in [NASDAQ] Nasdaq securities [other than securities in SOES] through the facilities of a registered clearing agency [where clearing facilities are located within 25 miles of the market maker.] that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

(b) [Notwithstanding its proximity to a particular clearing facility, a market maker may also clear and settle its transactions in a security that is not a SOES security through any registered clearing facility using a continuous net settlement system; enter into a correspondent clearing arrangement with a member that clears through a continuous net settlement clearing facility; settle transactions "ex-clearing" provided both parties to the transaction agree; or use direct clearing services.] Notwithstanding paragraph (a), transactions in Nasdaq securities may be settled "ex-clearing" provided that both parties to the transaction agree.

(c) No change.

\*\*\*

### OTC Bulletin Board® Service Rules

Sec. 1-3. No change.

#### Sec. 4. Requirements Applicable to Market Makers

No change.

(a)-(c) No change.

#### (d) Clearance and Settlement

(1) A market maker shall clear and settle transactions in OTCBB-quoted securities through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement applies only to transactions in OTCBB securities that are clearing eligible.

(2) The foregoing requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

(3) Notwithstanding paragraph (d)(1), transactions in OTCBB-quoted securities may be settled "ex-clearing" provided that both parties to the transaction agree.

# NASD NOTICE TO MEMBERS 94-74

## NASAA Publishes Form Revisions For Public Comment: **Comment Period Expires October 1, 1994**

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

The North American Securities Administrators Association (NASAA) has published form revisions in draft format for public comment in the September 1994 edition of the Commerce Clearing House (CCH) *NASAA Reports*. The comment period expires October 1, 1994, and is the first opportunity for the public to comment on revisions to Forms U-4 and U-5. The forms are being revised for implementation scheduled to coincide with the start up of the redesigned Central Registration Depository (CRD). A proposed revision to existing Item 7 of Form BD with disclosure detail that parallels the Form U-4 was also published for comment. NASAA is seeking comment and approval now because these changes are critical to the continuation of the design and construction phases of the new CRD. The NASD urges members to review this Notice and the text of the form revisions. The September *NASAA Reports* will contain a full description of the changes to the forms along with the text of the revisions.

### Background

The NASD has undertaken an extensive redesign effort to improve the CRD and move toward total electronic filing of registration-related forms. Currently scheduled for pilot phase during fall 1995, the redesigned CRD will offer efficient processing of registration-related filings and user friendly access to information contained in those filings for all industry and regulatory participants. Of critical importance to the form revisions and redesign process is the uniform collection and organization of disclosure information. Input at this time will allow the NASD to move forward with the design and construction phases of the new CRD based on the changes made to the uniform forms.

To that end the NASD, NASAA, the Securities and Exchange Commission (SEC), and other self-regulatory organizations have undertaken a joint effort to review and revise the Forms U-4, U-5, and BD. NASAA is publishing the revisions for public comment as part of their form revision approval process. This is the first opportunity the public has to comment on the revised Forms U-4 and U-5 and gain insight into how the information will be collected and stored in the revised CRD.

Implementation of the new forms will coincide with implementation of the redesigned CRD. Prior to implementation the NASD Board must first approve and then the SEC must publish the form revisions for comment and subsequent approval. Members are urged to review and comment at this time. Comments made will be considered for their impact on the form revisions and CRD redesign process.

### Overview Of Disclosure Revisions

The most significant changes relate to the disclosure questions on Forms U-4, U-5, and BD. The revisions will provide more precise detail reporting to support new functionality created by CRD's redesign.

The changes include:

- Item 22, Form U-4, and Item 7, Form BD, and the parallel disclosure items on the Form U-5, have been made consistent with each other to the extent possible.
- The questions relating to disclosure have been categorized to provide a uniform format to collect, display, and sort disclosure detail.
- Each category of disclosure has its own custom Disclosure Reporting Page (DRP) soliciting detail unique to that category.

- Specific data are requested on each custom DRP in detail to provide the information that regulators have indicated they need to make informed registration decisions. The revised DRPs require more detail than the current DRPs, which will reduce the number of requests for additional disclosures that prolong the review and registration process.

### **“Customer Complaint” Question**

Regulators have not yet reached a consensus as to how the current “Customer Complaint” item on the Forms U-4 and U-5 should be revised. Regulatory and industry representatives will continue to develop enhancements to this question. Given the current status, the revised versions of Forms U-4 and U-5 have temporarily retained the current language. Any revised text will be published for public comment as part of the final approval and implementation process.

Other revisions include:

- Expansion of Page 1 of Form U-4 and the parallel items on Form U-5 to

handle the registration of non-members and to accommodate multiple types of registration or notices of termination for Investment Adviser Representative and Agent of Issuer registrations.

- Addition of a statement to Page 4 of Form U-4 that will be executed by the applicant and retained by the member firm, that authorizes the member firm to make electronic filings on behalf of the applicant.

- An option for the applicant and member firm to request on the Form U-4 processing under a Temporary Registration Program. This program is intended to replace the existing Temporary Agent Transfer (TAT) Program. The new program will result in expedited handling for eligible persons including most individuals with “Yes” answers on their Form U-4 who have no new disclosure upon transfer. If there is new disclosure, the applicant may have an opportunity to gain a Temporary Registration while that disclosure is reviewed.

- An opportunity for an individual to provide a summary of the circum-

stances relating to an internal review disclosure submitted by the individual’s former employer on the Form U-5. Individuals already have the opportunity to provide responses to other Form U-5 disclosures on their next U-4 filing upon transfer to a new employer.

Other changes planned for Form BD, but not completed at this time, will be offered for comment before form implementation.

The NASAA comment period will conclude October 1, 1994.

Direct any comments to:

Ms. Renee Erdmann  
Securities Department  
Post Office Box 4009  
Helena, Montana 59604

or FAX at (406) 444-5558.

Questions regarding this Notice should be directed to John F. Vaughn, Assistant Director, NASD Membership Department at (301) 590-6865.

# NASD NOTICE TO MEMBERS 94-75

**NASD Requests  
Comment On  
Standardized Forms  
Proposed For DPP  
Securities; Comment  
Period Expires October  
17, 1994**

## **Suggested Routing**

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

## **Executive Summary**

The NASD® requests comment on a proposal to require the use of Standard Transferor and Transferee Applications for Transfer of Direct Participation Programs (DPP) Securities, Standard Registration Confirmation Form, and modification to the Uniform Practice Code requiring members to accept the use of the forms when transferring a DPP security.

## **Background**

In October 1990, the DPP Committee initiated a study of the nature and function of the secondary market for public partnership securities. Data gathered by the DPP Committee indicated that approximately \$90 billion was invested in public DPPs in the 1970s and 1980s. These funds represent the investments of more than 10 million people. The programs were organized to invest in a variety of industries including, but not limited to, real estate, oil and gas, cable television, commodities, and equipment leasing. Although these securities were not generally intended to be liquid and tradeable, a developing secondary market in partnership securities nevertheless exists. The DPP Committee estimated that approximately two dozen participants (both NASD members and non-members) act as principal or agent for customers in a fragmented secondary market that transfers ownership of an estimated \$250 to \$300 million in public partnership securities annually.

In its report and subsequent *Notice to Members* (NTM 91-69), the DPP Committee stated that one of the major problems in the secondary market for DPP securities is the inefficient transfer of limited partnership interests between investors and on the books and records of members

and partnerships. Transfer problems also have led to delays or mistakes in the allocation of cash distributions between buyers and sellers. There appear to be two primary reasons for these difficulties: (1) general partners and broker/dealers use different forms and procedures, charge varying fees, and effect transfers at undisclosed times; and (2) in many cases, a general partner is disinterested in assisting or facilitating these transfers in a security that was intended to be held for the life of the program (especially when the transfer may take place at a deep discount from the original offering price or may jeopardize the tax treatment of the partnership).

In November 1991, the NASD Board of Governors established the Ad Hoc Committee on Uniform Settlement and Transfer Procedures for Direct Participation Program Securities to study, among other issues, the settlement and transfer procedures of DPP securities. In an effort to eliminate delays and inefficiencies in the settlement and transfer procedure for DPP securities, the Committee and working groups established by the Committee designed standard transfer forms for the transferor and the transferee, as well as the confirmation form to be used by members, general partners, or transfer agents. The goal of the Committee was to develop a standard one-page form that would replace twenty- and thirty-page transfer documents. The purpose of this Notice is to request comment on the forms and on modification to the Uniform Practice Code requiring that members accept the use of the forms when transferring a DPP security.

## **Transferor's (Seller's) Application For Transfer**

The Transferor's (Seller's) Application for Transfer indicates

that the form is to be sent to the general partner or transfer agent together with the Transferee's Form and the required fees (see Instruction number 1 on page 2 of the form) and that it contains an optional transaction reference number for use by the financial services firms to identify and track the transfer as indicated in Instruction number 2. This number should be the same reference number used on the transferee's form.

The first full paragraph on the form indicates also that the transfer of ownership will take place subject to the general partner's approval, and space has been provided on the form for the full name of the partnership. At least one identification item needs to be completed in order to properly identify the unit sold or transferred. Instruction number 3 advises the parties that the NASD symbol needed to complete this form may be obtained from the *NASD Symbol Directory*, a new publication to be issued in conjunction with this endeavor. The quantity section of the form specifically states the number of units (not dollar values) to be transferred and the number of units the transferor (seller) will continue to hold after the transfer is completed. This information will not only ensure that the proper number of units are transferred, but that all books and records of the general partner, transfer agent, and broker/dealers are kept current.

The registration information section of the form requests the exact name of the registered owner as well as custodial information, including the custodian account number and address of record. This section of the form will provide information as to how the partnership interests are currently registered, as well as a Social Security or tax ID number and the custodian/trustees tax ID number (see Instructions 4 and 5). In addition, this portion of the form contains the necessary disclosure

advising California residents of the restrictions on the sale or transfer of their interest without the prior written consent of the Commissioner of Corporations of the state of California.

The broker/dealer information section, which is optional, does not need to be completed by an individual investor involved in a transaction directly with the partnership.

Next, the top of page 2 of the form requires that the transferor certify possession of valid title and all requisite power to assign the interest and to state specifically the reason for the transfer.

Finally, the form requires the exact signature of the registered holder, and the name, address, and capacity of the signer if the signature is by a trustee, executor, administrator, guardian, attorney in fact, agent or officer of the corporation, or someone acting in a fiduciary or representative capacity. This will ensure, as stated in Instruction number 7, that persons acting as a representative or in another fiduciary capacity present satisfactory evidence of their authority to so act. In addition, space has been provided for a signature guarantee by a Medallion stamp.

In addition, the Committee is aware that several major general partners require limited partners, when they sell, to give up any rights that they have under the limited partnership agreement to dividends that have not yet been declared or paid. They accomplish this through a written affirmation that is part of their "transferor" forms. The affirmation is specific in that the seller agrees to give up rights to distributions that they are entitled to under the partnership agreement. Comment is requested on whether such an affirmation would be useful in this form or whether it should be optional.

## **Transferee's (Buyer's) Application For Transfer**

The Transferee's (Buyer's) Application for Transfer is similar to the transferor's form. The form is to be sent to the general partner or transfer agent with the transferor's form and provides space for the optional reference number. Instruction number 2 to the form describes the purpose of the transaction reference number. The first full paragraph of the form indicates that the transferee makes application to transfer and assign, subject to the general partner's rights, all rights and interests to the partnership units as a Substitute Limited Partner/Assignee and agrees to accept all terms and conditions of the partnership agreement and related documents. This is intended to ensure that the general partner reserves the right to deny the transfer. The full name of the partnership is required on this form.

The partnership information section of this form is identical to the transferor's form and requests at least one identification item for the units being acquired. As required on the transferor's form, this form requests the number of units to be acquired but also requests that the transferees indicate if they already own units in the partnership.

The transferee also must indicate the tax status of the requested registration and alert the buyer that additional documentation may be required.

The next section of the form requires information regarding the buyer and how the partnership interests are to be registered. Instruction numbers 3, 4, and 5 refer to this section of the form and indicate that if this is to be a custodial account, the address of record should be that of a custodian/trustee, and that if the purchaser is an individual, only a Social Security number is required.



A secondary address may be provided by the buyer, which may be used to direct distributions to an address other than the address provided in the registration information section. If this is a custodial account, the investor's mailing address is necessary. This section also contains the necessary disclosure advising California residents of the restrictions on the sale or transfer of the interest without the prior written consent of the Commissioner of Corporations of the state of California.

The Certification section of the form requires the transferee to certify the accuracy of the information contained in the form. An additional undertaking by the transferee grants the general partner the power of attorney under the laws of the applicable state. Space has been provided for the transferee's signature and a co-transferee's signature if necessary, and for a signature guarantee by a Medallion stamp. The instructions for these sections indicate that the signatures must correspond with the name of the transferee as it appears in the registration section. Persons signing as representatives or in fiduciary capacities must indicate this capacity when signing and,

unless waived by the partnership or its agent in its sole discretion, must present satisfactory evidence of their authority to so act.

### **Registration Confirmation Form**

The Registration Confirmation Form was developed as an acknowledgment by a general partner or an agent that a registrant has been admitted as a limited partner in the partnership as a result of a purchase, transfer, or account transfer. The first section is standard while the second section contains specific information regarding the admission, the name of the partnership, the number of units held by the limited partner, the effective date of admission, the exact registration, and information about the limited partner and his or her financial services firm. Space for a secondary address was added to the form to provide for a custodian/trustee account. As stated, the form is non-negotiable, and should be kept with the new limited partner's permanent records. The form will replace the variety of instruments used throughout the industry and will help eliminate the need for partnership certificates.

### **Request For Comments**

The NASD asks members and other interested parties to comment on the proposed standard forms.

Comments should be addressed to:

Joan C. Conley  
Office of the Secretary  
National Association of Securities  
Dealers, Inc.  
1735 K St., N.W.  
Washington, D.C. 20006-1506

Comments must be received no later than October 17, 1994. Comments received by this date will be considered by the Board. Prior to becoming mandatory for use by NASD members, the forms must be approved by the Board and the membership and then filed with the Securities and Exchange Commission for approval.

Questions concerning this Notice should be directed to Charles L. Bennett, Director, or Carl R. Sperapani, Assistant Director, Corporate Financing Department, at (301) 208-2700, or Dorothy L. Kennedy, Assistant Director, Nasdaq Market Operations, at (203) 385-6243.

# TRANSFEROR'S (SELLER'S) APPLICATION FOR TRANSFER

TO: \_\_\_\_\_  
 General Partner or Transfer Agent (See instruction #1)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

TRANSACTION REF. NUMBER: \_\_\_\_\_  
 (Optional - See instruction #2)

The transferor hereby makes application to transfer and assign, subject to the general partner's rights, to the transferee all rights and interests, as set forth in the partnership below and for the transferee to succeed to such interest as a Substitute Limited Partner, successor in interest or assignee.

Full name of partnership

<p><b><u>PARTNERSHIP ID INFORMATION</u></b>                  Complete at least one of the following. (See instruction #3)</p> <p>CUSIP #: _____                  NASD SYMBOL: _____                  PARTNERSHIP TAX ID #: _____                  TAX SHELTER ID #: _____</p>
---

QUANTITY	
MUST BE COMPLETED	OPTIONAL
Number of Units to be transferred: _____	Number of Units to be held after transfer: _____

\*\*\*\*\*

**REGISTRATION INFORMATION** Indicate exactly as shown on partnership records (See Instruction #4)  
 Partnership interests are currently registered as follows:

Name of Transferor

\_\_\_\_\_

Address of Record

\_\_\_\_\_

\_\_\_\_\_

Telephone

<p><b><u>TAX IDENTIFICATION INFORMATION</u></b>                  Complete Applicable Sections (See Instruction #5)</p> <p>SOCIAL SECURITY OR TAX ID NUMBER: _____</p> <p>CUSTODIAN/TRUSTEE TAX ID NUMBER: _____</p>
---

Investor ID Number-OPTIONAL (See instruction #6)

**CALIFORNIA RESIDENTS:** It is unlawful to consummate a sale or transfer of limited partnership interests or any interest therein, or to receive any consideration therefore, without the prior written consent of the COMMISSIONER OF CORPORATIONS of the State of California, except as permitted by the Commissioner's rules.

\*\*\*\*\*

**BROKER/DEALER (OPTIONAL)**

Name of Firm

<p><b>REGISTERED REPRESENTATIVE:</b></p> <p>_____</p> <p style="text-align: center;">Name and Number</p> <p>_____</p> <p style="text-align: center;">Address</p> <p>_____</p>	<p>TELEPHONE: _____</p> <p>CLIENT ACCOUNT NUMBER: _____</p> <p>WIRE CODE: _____</p> <p style="text-align: right;">Optional</p>
---	--

**CERTIFICATION**

The transferor hereby certifies and represents possession of valid title and all requisite power to assign such interests and that assignment is in accordance with applicable laws and regulations and further certifies, under penalty of law, the following:

**REASON FOR TRANSFER** (Check one) For certain types of transfer additional documentation may be required.

\_\_\_\_\_ Re-registration (Change of name, divorce/separation, individual to trust, etc.) \_\_\_\_\_ Sale (for consideration)  
\_\_\_\_\_ Death \_\_\_\_\_ Gift \_\_\_\_\_ Other (please specify) \_\_\_\_\_

\*\*\*\*\*

**SIGNATURE EXECUTION** Must be signed by the registered holder(s) exactly as name(s) appear(s) on the Partnership Records. (See Instruction #7)

Transferor Signature \_\_\_\_\_ Date \_\_\_\_\_

Co-Transferor's Signature \_\_\_\_\_ Date \_\_\_\_\_

If signature is by trustee(s), executor(s), administrator(s), guardian(s), attorney(s)-in-fact, agent(s), officer(s) of a corporation or another acting in a fiduciary or representative capacity, please provide the following information.

Name (s) \_\_\_\_\_ Capacity (Full Title) \_\_\_\_\_

\_\_\_\_\_

\*\*\*\*\*

**SIGNATURE GUARANTEE** The signature must be guaranteed by a member of an approved Signature Guarantee Medallion Program.

\_\_\_\_\_

\*\*\*\*\*

**INSTRUCTIONS**

1. **TRANSFER FORMS.** To effect the requested transfer both transferee and transferor forms must be submitted together with the required fees.
2. **TRANSACTION REFERENCE NUMBER.** The use of this space is optional. The number placed in this space shall be internally generated by a broker or agreed upon by two or more brokers and shall correspond to internal records tracking system(s).
3. **PARTNERSHIP IDENTIFICATION.** Partnership Tax ID and Tax Shelter ID Numbers may be obtained from the K-1. The NASD Symbol and/or CUSIP number may be obtained from the Ownership Confirmation Form and/or the NASD Partnership Symbol Directory.
4. **REGISTRATION.** Indicate the exact name of registrant and include any custodial information. If a Custodial account, address of record should be that of the custodian/trustee.
5. **TAX INFORMATION.** If a Custodial Account, Custodian/Trustee's and client's tax numbers should be completed.
6. **PARTNERSHIP ACCOUNT NUMBER.** This is the account number established at the Partnership. It may be obtained from the K-1 or the Ownership Confirmation Form.
7. **SIGNATURE EXECUTION.** The signature must correspond with the name of the registered holder exactly as it appears on the Partnership records. Persons who sign as a representative or other fiduciary capacity must indicate their capacity when signing and, unless waived by the Partnership or its agent in its sole discretion, must present satisfactory evidence of their authority to so act.

**TRANSFeree'S (BUYER'S) APPLICATION FOR TRANSFER**

TO: \_\_\_\_\_  
General Partner or Transfer Agent (See instruction #1)  
\_\_\_\_\_  
\_\_\_\_\_

TRANSACTION Ref. Number: \_\_\_\_\_  
(Optional - See instruction #2)

The transferee hereby makes application to accept and assign, subject to the general partner's rights, from the transferor all rights, title and interests, as set forth in the partnership below, and intends to succeed the transferor as a Substitute Limited Partner or Assignee and agrees to accept all the terms and conditions of the partnership agreement and related documents.

Full name of partnership

**PARTNERSHIP INFORMATION**

Complete at least one of the following. (See Instruction #3)

CUSIP #: \_\_\_\_\_  
NASD SYMBOL: \_\_\_\_\_  
PARTNERSHIP TAX ID #: \_\_\_\_\_  
TAX SHELTER ID #: \_\_\_\_\_

**QUANTITY** (Complete both)

Number of Units Do You Already  
to be Own Units (check one):  
acquired: \_\_\_\_\_ Yes \_\_\_ No \_\_\_

REGISTRATION TYPE (check one) as you want it to appear in the partnership record: For certain types of registration additional documentation may be required.

**TAXABLE TRANSFEEE**

- \_\_\_ Individual
- \_\_\_ Joint Tenants with Right of Survivorship
- \_\_\_ Tenants in Common
- \_\_\_ Tenants by the Entirety
- \_\_\_ Community Property
- \_\_\_ Custodian Under Uniform Gifts/Transfers to Minors
- \_\_\_ Act: State of \_\_\_\_\_

- \_\_\_ Taxable Trust
- \_\_\_ Estate
- \_\_\_ Partnership
- \_\_\_ Corporation
- \_\_\_ Taxable Employee Plan
- \_\_\_ Other \_\_\_\_\_

**TAX DEFERRED/EXEMPT TRANSFEEE**

- \_\_\_ IRA Account
- \_\_\_ Direct Transfer Rollover To IRA
- \_\_\_ Simplified Employee Pension Plan (SEP)  
(Includes KEOUGH)

- \_\_\_ Tax Exempt Trust
- \_\_\_ Tax Exempt Employee Plan
- \_\_\_ Tax Exempt Under IRC 501(c)(3)

REGISTRATION INFORMATION - Account name and address as it is to appear on registration. If Custodial Account (i.e. IRA, etc.), indicate the Custodian's name followed by the Beneficial owner's name and Custodian's address. (See Instruction #4)

Partnership interests are to be registered as follows:

\_\_\_\_\_  
Name of Transferee(s)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Country of Residence

\_\_\_\_\_  
State of Residence

(Check one) \_\_\_ U.S. Citizen \_\_\_ Resident Alien  
\_\_\_ Non-Resident Alien

\_\_\_\_\_  
Telephone

**CALIFORNIA RESIDENTS:** It is unlawful to consummate a transfer or sale of limited partnership interests or any interest therein, or to receive any compensation therefor, without the prior written consent of the COMMISSIONER OF CORPORATIONS of the State of California, except as permitted by the Commissioner's rules.

\*\*\*\*\*

**SECONDARY ADDRESS INFORMATION** If Custodial account, indicate investor's mailing address. If other than custodial account, this address may be used for distribution and other purposes. (See Instruction #4)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

<b>TAX IDENTIFICATION INFORMATION</b>	
Complete applicable sections (See Instruction #5)	
Social Security or Tax ID Number: *	
Custodian/Trustee Tax ID Number: *	

\*\*\*\*\*

**BROKER/DEALER (OPTIONAL)**

Name of Firm	
<b>REGISTERED REPRESENTATIVE:</b>	
Name and Number	TELEPHONE: _____
Address	CLIENT ACCOUNT NUMBER: _____
	WIRE CODE: _____
	Optional

\*\*\*\*\*

**CERTIFICATION (See Instruction #6)**

The transferee certifies, under penalty of law, as to the accuracy of the information contained herein and grants the following durable Power of Attorney: The undersigned hereby irrevocably makes, constitutes and appoints the General Partner with full power of substitution, his true and lawful attorney-in-fact, for him and his name, place and stead and for his use and benefit to execute and acknowledge and, to the extent necessary, to file and record:(a) A Certificate of Limited Partnership, as well as amendments thereto, under the laws of the applicable State and under the laws of any other state in which the General Partner deems it advisable to file such a certificate;(b)Any other instrument which may be required to be filed by the Partnership under the laws of any state or by any governmental agency, or which the General Partner deems it advisable to file;(c)The Partnership Agreement; and (d)Any documents which may be required to effect the continuation of the Partnership, the admission of an additional or substituted Limited or General Partner or the dissolution and termination of the Partnership, provided such continuation, admission or dissolution and termination are in accordance with the terms of the Partnership Agreement.

The foregoing grant of authority:(a)Is a Special Power of Attorney coupled with an interest, is irrevocable and shall survive and not be affected by the subsequent death, incapacity or disability of the undersigned;(b)May be exercised by the General Partner for each Limited Partner by a facsimile signature of one of the officers or with a single signature of one of its officers;(c)Shall be retained by the General Partner; and(d)Shall survive the delivery of any assignment by a Limited Partner of the whole or any portion of his interest in the Partnership; except that where the transferee thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, the Power of Attorney shall survive the delivery of such assignment for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

In the event of any conflict between the provisions of the Partnership Agreement and any document executed or filed by the General Partner pursuant to the power of attorney granted herein, the Partnership Agreement shall govern.

**SIGNATURE EXECUTION (See Instruction #7)**

Name of Transferee	
Transferee's Signature	Date
Co-Transferee's Signature	Date

Must be signed by the transferee as indicated in the REGISTRATION section of this form. If signature is by trustee(s), executor(s), administrator(s), guardian(s), attorney(s)-in-fact, agent(s), officer(s) of a corporation or another acting in a fiduciary or representative capacity, please indicate capacity.

\*\*\*\*\*

**SIGNATURE GUARANTEE** The signature must be guaranteed by a member of an approved Signature Guarantee Medallion Program.

**INSTRUCTIONS**

- TRANSFER FORMS.** To effect the requested transfer both transferees and transferor forms must be submitted together with the required fee.
- TRANSACTION REFERENCE NUMBER.** The use of this space is optional. The number placed in this space shall be internally generated by a broker or agreed upon by two or more brokers and shall correspond to internal records tracking system(s).
- PARTNERSHIP IDENTIFICATION.** Partnership Tax ID and Tax Shelter ID Numbers may be obtained from the K-1. The NASD Symbol and/or CUSIP number may be obtained from the Ownership Confirmation Form and/or the NASD Partnership Symbol Directory.
- REGISTRATION.** Include any custodial information. If a Custodial account, address of record shall be that of the custodian/trustee.
- TAX INFORMATION.** If a Custodial Account, Custodian/Trustee's and investor's tax numbers should be completed. If individual, only Social Security number is required.
- CERTIFICATION.** If Custodial/Trustee account indicate name of Custodian/Trustee and Beneficial owner.
- SIGNATURE EXECUTION.** Transferee(s) must sign their names exactly as they appear in the Registration section. Persons who sign as a representative or other fiduciary capacity must indicate their capacity when signing and, unless waived by the Partnership or its agent in its sole discretion, must present satisfactory evidence of their authority to so act.

# REGISTRATION CONFIRMATION FORM

DATE \_\_\_\_\_

ANY GP (OR TRANSFER AGENT)  
33 WHITEHALL STREET  
NEW YORK, NY 10004  
(212) 858-4000

DEAR INVESTOR:

You have been, or will be, admitted as a Limited Partner in the Partnership indicated below. Information pertaining to your account has been entered, pursuant to the Partnership Agreement, on the Partnership's records as shown below. This documentation informs you of your registration in the Partnership and should be retained with your permanent records.

ANY OTHER TEXT WHICH THE GP WOULD LIKE TO SEE COULD BE ADDED FREE FORM IN THIS AREA.

\_\_\_\_\_  
Name of GP

\*\*\*\*\*  
\*\*\*\*\*

**THIS IS NOT A NEGOTIABLE CERTIFICATE  
LIMITED PARTNER'S REGISTRATION DOCUMENTATION**

\_\_\_\_\_  
Full name of partnership

Complete at least one of the following.

CUSIP NUMBER: \_\_\_\_\_  
NASD SYMBOL: \_\_\_\_\_

PARTNERSHIP TAX ID NUMBER: \_\_\_\_\_

DATE OF ADMISSION: \_\_\_\_\_  
NUMBER OF UNITS: \_\_\_\_\_

PARTNERSHIP ACCOUNT #: \_\_\_\_\_  
TRANSACTION REF. #: \_\_\_\_\_

(If applicable)

\*\*\*\*\*  
Partnership interests have been registered as follows:

\_\_\_\_\_  
Full name of registrant

\_\_\_\_\_  
Address of record

Social Security or Tax ID  
Number: \_\_\_\_\_

Custodian/Trustee Tax ID  
Number: \_\_\_\_\_

\_\_\_\_\_  
Financial Services Firm Account Number

\*\*\*\*\*  
If the above information is incorrect, or if you have any questions, please contact us.

cc: Financial Services Firm (for retail accounts), if applicable.

# NASD NOTICE TO MEMBERS 94-76

## Columbus Day: Trade Date-Settlement Date Schedule

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 10, 1994. On this day, The Nasdaq Stock Market<sup>SM</sup> and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Sept. 29	Oct. 6	Oct. 10
30	7	11
Oct. 3	11	12
4	12	13
5	13	14
6	14	17
7	17	18
10	17	19
11	18	20

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

**Note:** October 10, 1994, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 10, 1994, will be combined with transactions made on the previous business day, October 7, for settlement on October 17. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 10.

Brokers, dealers, and municipal securities dealers should use these settlement dates to clear and settle transactions pursuant to the NASD Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of these settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (203) 375-9609.

# NASD NOTICE TO MEMBERS 94-77

Nasdaq National Market  
Additions, Changes, And  
Deletions As Of August  
29, 1994

## Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

As of August 29, 1994, the following 56 issues joined the Nasdaq National Market<sup>®</sup>, bringing the total number of issues to 3,707:

Symbol	Company	Entry Date	SOES Execution Level
DSYT	Dorsey Trailers, Inc.	7/28/94	500
RFMI	R F Monolithics, Inc.	7/28/94	200
CIMA	CIMA LABS INC.	7/29/94	1000
CSCC	Cascade Communications Corp.	7/29/94	500
MINSF	MiniStor Peripherals International Limited	7/29/94	500
MINWF	MiniStor Peripherals International Limited (Wts 6/20/99)	7/29/94	500
RMCF	Rocky Mountain Chocolate Factory, Inc.	7/29/94	200
WOFC	Western Ohio Financial Corp.	7/29/94	200
BGLV	Bally's Grand, Inc.	8/1/94	200
BGLVW	Bally's Grand, Inc. (Wts exp 8/19/2000)	8/1/94	200
STND	Standard Financial Inc.	8/1/94	200
CAST	Citation Corporation	8/2/94	500
SCALR	Health o Meter Products, Inc. (Rights)	8/2/94	200
MILL	Miller Industries, Inc.	8/2/94	200
MOVI	Movie Gallery, Inc.	8/2/94	500
ARTS	Media Arts Group, Inc.	8/3/94	200
SPCT	Spectrian Corporation	8/3/94	200
TIII	TII Industries, Inc.	8/3/94	200
SYSF	SystemSoft Corporation	8/4/94	200
FACE	Facelifters Home Systems, Inc.	8/8/94	200
TCOMP	Tele-Communications, Inc. (Pfd B)	8/8/94	500
FVNB	First Victoria National Bank	8/9/94	200
ADTN	ADTRAN, Inc.	8/10/94	200
CPSS	Consumer Portfolio Services, Inc.	8/10/94	200
WAVT	Wave Technologies International Inc.	8/10/94	500
GMKTW	Global Market Information Inc. (Wts exp 8/10/97)	8/11/94	500
GMKT	Global Market Information Inc.	8/11/94	500
HMGC	HMG Worldwide Corp.	8/11/94	200
MLFB	MLF Bancorp	8/11/94	1000
ALNK	AmeriLink Corporation	8/12/94	200
HRBF	Harbor Federal Bancorp, Inc.	8/12/94	500
NEOG	Neogen Corporation	8/12/94	200
PMTS	PMT Services, Inc.	8/12/94	200
SIRN	The Sirena Apparel Group, Inc.	8/12/94	200
TWER	Tower Automotive, Inc.	8/12/94	200
MRKR	Marker International	8/16/94	200
FIBC	Financial Bancorp, Inc. (N.Y.)	8/17/94	200
FBST	Fiberstars, Inc.	8/18/94	500
JEBC	Jefferson Bancorp, Inc.	8/18/94	200
TBUD	Team Rental Group, Inc.	8/18/94	200



Symbol	Company	Entry Date	SOES Execution Level
IMMI	Inphynet Medical Management, Inc.	8/19/94	500
MISS	Mississippi Chemical Corporation	8/19/94	500
OFCP	Ottawa Financial Corporation	8/19/94	200
CFON	Target Technologies, Inc.	8/19/94	500
TRCK	Truck Components, Inc.	8/19/94	200
BFSB	Bedford Bancshares, Inc.	8/22/94	200
CHGR	Concord Health Group, Inc.	8/22/94	200
CHGRW	Concord Health Group, Inc. (Wts 4/19/00)	8/22/94	200
CMTTF	Comet Software International Ltd. (Ord. Shrs.)	8/23/94	200
ERLY	ERLY Industries, Inc.	8/23/94	200
TJSY	TJ Systems Corporation	8/23/94	200
PRES	Prime Residential, Inc.	8/24/94	500
LORX	Loronix Information Systems, Inc.	8/25/94	200
VISNZ	NewVision Technology, Inc. (Redeem Wts 8/25/99)	8/25/94	200
VISN	NewVision Technology, Inc.	8/26/94	200
VISNW	NewVision Technology, Inc. (Wts exp 3/30/95)	8/26/94	200

### Nasdaq National Market Symbol and/or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since July 28, 1994:

New/Old Symbol	New/Old Security	Date of Change
CBSA/CBSA	Coastal Bancorp Inc./Coastal Banc Savings Assn.	8/1/94
CBSAP/CBSAP	Coastal Bancorp Inc. (Pfd A)/Coastal Banc Savings Assn. (Pfd A)	8/1/94
BBIOY/BBIOY	British Biotech plc (ADR)/British Biotechnology (ADR)	8/2/94
DFCO/DIDI	Destron Fearing Corporation/Destron/IDI Inc.	8/3/94
SUMX/SUIN	Summa Industries, Inc./Summa Industries, Inc.	8/8/94
COOP/COOP	Cooperative Bankshares, Inc./Cooperative Bank for Savings Inc.	8/9/94
BBOX/MCBX	Black Box Corporation/MB Communications, Inc.	8/11/94
SYLN/SYLN	Sylvan Inc./Sylvan Foods Holdings Inc.	8/11/94
NACC/AGNC	National Auto Credit Inc./Agency Rent A Car Inc.	8/15/94
CSLI/CSLH	Cotton States Life Insurance Company/ Cotton States Life & Health Insurance Company	8/15/94
ITSI/ITSI	International Lottery & Totalizer, Inc./ International Totalizer Systems Inc.	8/25/94
JBOH/RKSF	JB Oxford Holdings, Inc./RKS Financial Group Inc.	8/25/94
LVSB/LVSB	Lakeview Financial Corp./Lakeview Savings Bank	8/26/94

New/Old Symbol	New/Old Security	Date of Change
SHOW/SHOW	Showsan Entertainment, Inc./Showsan Corp.	8/29/94

### Nasdaq National Market Deletions

Symbol	Security	Date
FKFD	Frankford Corporation (The)	8/1/94
FLOGE	Falcon Oil & Gas Company, Inc.	8/2/94
ICSI	International Container Systems, Inc.	8/3/94
MTECQ	Machine Technology, Inc.	8/4/94
LBTYA	Liberty Media Corporation (CI A)	8/5/94
LBTYB	Liberty Media Corporation (CI B)	8/5/94
LBTYP	Liberty Media Corporation (Pfd CI E)	8/5/94
WTXT	Wheatly TXT Corp.	8/8/94
TVXTF	TVX Gold Inc.	8/10/94
CPER	Consolidated Papers, Inc.	8/12/94
IBSC	Image Business Systems Corporation	8/12/94
RESTW	Restore Industries, Inc. (Wts 8/12/94)	8/15/94
LNBC	Liberty National Bancorp, Inc.	8/16/94
STLG	Sterling Bancshares Corporation	8/16/94
SCALR	Health o Meter Products (Rts 8/16/94)	8/17/94
MTIX	Mechanical Technology, Inc.	8/18/94
MVIQC	Media Vision Technology, Inc.	8/18/94
JAVA	Mr. Coffee	8/18/94
PACEE	Pace American Group	8/18/94
LINN	Lincoln Food Service Products, Inc.	8/19/94
PDAS	PDA Engineering	8/19/94
FIBI	First Inter-Bancorp Inc.	8/22/94
ARBC	Republic Bank	8/23/94
SUNT	Sunward Technologies, Inc.	8/23/94
COBAP	Commerce Bancorp Inc. (Ser B Cum.Cov.Pfd)	8/24/94
PTRO	Petrominerals Corporation	8/25/94
STCX	Signal Technology Corporation	8/25/94
CMBK	Cumberland Federal Bancorporation Inc. (The)	8/29/94

Questions regarding this notice should be directed to Mark A. Esposito, Supervisor, Market Listing Qualifications, at (202) 728-8002. Questions pertaining to trade-reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

# NASD NOTICE TO MEMBERS 94-78

## Fixed Income Pricing System Additions, Changes, And Deletions As Of August 29, 1994

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

As of August 29, 1994, the following bonds were added to the Fixed Income Pricing System (FIPS<sup>SM</sup>). These bonds are **not** subject to mandatory quotation:

Symbol	Name	Coupon	Maturity
HNTC.GA	Huntsman Corp.	10.625	3/31/01
SCTI.GA	SCI Tele Inc.	11.000	6/30/05
DTC.GA	Domtar Inc.	12.000	4/15/01
HTI.GC	Healthtrust Hosp.	10.250	4/15/04
USG.GH	USG Corp.	9.250	9/15/01
HNTC.GB	Huntsman Corp.	11.000	3/3/04
JPSA.GA	JPS Auto Motive Prod. Corp.	11.125	4/1/01
SPX.GA	Spx Corp.	11.750	6/1/02
RCCA.GB	Rogers Cablesystems Ltd.	9.625	8/1/02
VDOH.GA	Videotron Holdings Plc.	11.125	7/1/04
WHEN.GA	Wherehouse Entertainment Inc.	13.000	8/1/02
THPY.GA	Thrifty Payless Inc.	12.250	4/15/04
FLES.GB	Food 4 Less	13.750	6/15/01
RVW.GE	Riverwood Intl. Corp.	10.375	6/30/04
FERL.GC	Ferrellgas L.P./Finance	10.000	8/1/01
SQA.GE	Sequa	9.375	12/15/03
GOU.GA	Gulf Canada Resource	9.250	1/15/04
GNV.GB	Geneva Steel Co.	0.000	1/15/04
MFST.GA	MFS Communications	0.000	1/15/04
VIA.GA	Viacom Inc.	8.000	7/7/06
ELPF.GA	El Paso FDG Corp.	10.750	4/1/13
REVL.GE	Revlon Consumer Prods. Corp.	9.375	4/1/01
DLNFGA	Del Norte FDG Corp.	11.250	1/2/14
ERCF.GA	Empress River Casino Fin. Corp.	11.500	10/15/01
KCC.GB	K-III Communications Corp.	10.250	6/1/04
COLA.GE	Collins & Aikman Group	10.000	1/31/05
MESA.GC	Mesa Capital Cp.	12.750	6/30/98
MESA.GD	Mesa Capital Corp.	12.750	6/30/96
CLHB.GA	Clean Harbors	12.500	5/15/01
RPWI.GA	Repap Wisconsin Inc.	9.250	2/1/02

As of August 29, 1994, the following changes to the list of FIPS symbols occurred:

New/Old Symbol	Name	Coupon	Maturity
SGNT.GA/SIGN.GA	Signet	9.625	6/1/99

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to trade-reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

# NASD DISCIPLINARY ACTIONS

## Disciplinary Actions Reported For September

The NASD® has taken 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 Monday, September 19, 1994. 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 edition.

### Firms Suspended, Individuals Sanctioned

**Dolphin Private Offerings, Inc. (South San Francisco, California), Lee James Johnson (Registered Principal, Pacifica, California), Richard Heneberry Delaney (Registered Principal, San Francisco, California), and Ernest Vandever (Registered Principal, San Carlos, California)** submitted an Offer of Settlement pursuant to which the firm was fined \$5,000 and suspended from NASD membership for 10 business days. Johnson, Delaney, and Vandever were each fined \$5,000 and suspended from association with any NASD member 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 the firm, acting through Johnson, Delaney, and Vandever, participated as underwriter in the sale of two best efforts part or none offerings and received investor funds without depositing them into a bank escrow account. The findings also stated that the firm, acting through Johnson, Delaney, and Vandever, represented to investors that their funds would be returned if a minimum sales level was not reached when, in fact, the minimum was reached through an alleged non-

bona-fide sale to Delaney. In addition, the NASD found that the firm, acting through Johnson, failed to file FOCUS Part IIA reports on a timely basis.

### Firms Fined, Individuals Sanctioned

**Gardner Rich & Company (Chicago, Illinois) and Christopher P. Gardner (Registered Principal, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$30,000, jointly and severally. In addition, Gardner was suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Gardner, permitted an individual, barred from association with any NASD member in any capacity, to associate with the firm. The firm, acting through Gardner, also permitted this barred individual to engage in the securities business and to function as a representative without being registered in that or any other capacity with the firm.

In addition, the NASD found that the firm, acting through Gardner, failed to obtain the Form U-5 filed by the individual's previous employer, with any amendments thereto, within 60 days following the individual's filing of his application for registration with Gardner Rich & Company. The findings also stated that the firm, acting through Gardner, failed to comply with the terms of its restrictive agreements with the NASD by maintaining a branch office.

**Global Strategies Group, Inc. (San Francisco, California), Jon Francis Williams (Registered Principal, San Francisco, California), and**

**Kerry H. Spizel (Registered Representative, San Francisco, California)**. The firm and Williams were fined \$13,500, jointly and severally. Spizel was fined \$10,000 and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that the firm, acting through Williams and Spizel, engaged in securities transactions with public customers but failed to use reasonable diligence to ascertain the best interdealer market for the security under the prevailing market condition. In addition, the firm, acting through Williams, failed to make and keep order tickets reflecting the name of each dealer contacted and the quotations received to determine the best interdealer market. Moreover, Spizel acted, and the firm and Williams permitted him to act, without registration with the NASD as a representative. Furthermore, the firm, acting through Williams, effected principal transactions in non-Nasdaq securities, but failed to report price and volume information through the non-Nasdaq reporting system.

#### **Firms Fined**

**Kemper Securities, Inc. (Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that the firm failed to have sufficient controls in place to prevent the execution of transactions between a registered representative of Kemper and the representative's spouse at another member firm.

#### **Individuals Barred Or Suspended**

**Rick D. Althoff (Registered Representative, Yankton, South**

**Dakota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Althoff consented to the described sanctions and to the entry of findings that he signed the name of a public customer to checks totaling \$828.29 and endorsed the checks to an account that was used to fund three disability policies without the customer's knowledge or consent. The NASD also found that Althoff signed customer names to numerous insurance documents.

**Reynaldo Pampo Asuncion (Registered Representative, Pittsburg, California)** was fined \$5,000, barred from association with any NASD member in any capacity, and required to pay \$2,587.31 in restitution to a member firm. The sanctions were based on findings that Asuncion received from two public customers funds totaling \$2,587.31 intended for the purchase of insurance but, instead, misappropriated and converted the funds to his own use and benefit.

**Donald Marquis Bickerstaff (Registered Representative, San Anselmo, California)** was fined \$50,000 and barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) affirmed the action following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Bickerstaff forged a customer's signature on insurance policy change and reinstatement forms. In addition, Bickerstaff prepared and provided to a customer a computer illustration that falsely represented how a single \$85,000 premium would fund the customer's \$400,000 variable appreciable life policy.

Bickerstaff has appealed this action to the Securities and Exchange Commission (SEC) and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**David Lawrence Burgess, Jr. (Registered Representative, Warren, Michigan)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Burgess failed to provide prior written notice to or obtain written approval from his member firm before engaging in private securities transactions with a public customer. In addition, Burgess failed to respond to NASD requests for information.

**Andrew C. Burke (Registered Representative, Cape Elizabeth, Maine)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Burke consented to the described sanctions and to the entry of findings that he negotiated 12 checks drawn against four customers' securities accounts totaling \$18,400. According to the findings, he converted those checks to his own use and benefit without the knowledge or consent of his member firm or the customers.

**Timothy Lane Burkes (Registered Representative, Pleasanton, California)** was fined \$16,200 and suspended from association with any NASD member in any capacity for 180 days. A United States Court of Appeals affirmed the sanctions following review of an April 1993 SEC decision. The sanctions were based on findings that, to make his 1989 sales quota, Burkes caused \$17,514.62 to be credited improperly to his commission account. As a

result, Burkes received credit for funds to which he was not entitled.

**Stephen A. Corbett (Registered Principal, Hamburg, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Corbett failed to provide written notice to or obtain written approval from his member firm prior to participating in private securities transactions.

**Hamid R. Daneshy (Associated Person, Oklahoma City, Oklahoma)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Daneshy consented to the described sanction and to the entry of findings that he violated testing procedures by bringing written materials with him into the testing area for the purpose of assisting him on the examination.

**Brett C. Daniels (Registered Representative, Kokomo, Indiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$30,000, barred from association with any NASD member in any capacity, and required to submit proof of restitution of \$2,000 to a member firm with any future application for association with a member firm. Without admitting or denying the allegations, Daniels consented to the described sanctions and to the entry of findings that he obtained a \$2,000 check made payable to a public customer with instructions to deposit the funds into the customer's account. The findings stated that Daniels failed to follow the customer's instructions, signed and deposited the check in a checking account for which he was the beneficial owner, and used the funds for some purpose other than the benefit of the customer. The

NASD also determined that Daniels failed to respond to NASD requests for information.

**Chester Elwood Dwyer (Registered Representative, San Jose, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$61,033.54 in restitution to a member firm. Without admitting or denying the allegations, Dwyer consented to the described sanctions and to the entry of findings that he booked fictitious securities entries into his securities account at a member firm and sold the positions for \$61,033.54.

**Joanne Mary Emery (Registered Representative, Norwood, Massachusetts)** submitted an Offer of Settlement pursuant to which she was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Emery consented to the described sanctions and to the entry of findings that she misappropriated insurance customer funds totaling \$5,221.67 by forging the customers' signatures and depositing the monies into her personal bank account without the customers' knowledge or consent. In addition, the NASD found that Emery failed to respond to NASD requests for information.

**Edward C. Farni, II (Registered Principal, Chanhassen, Minnesota)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The SEC affirmed the sanctions following appeal of a November 1993 NBCC decision. The sanctions were based on findings that Farni refused to answer NASD staff questions during an investigative interview.

**Gary L. Fogleman (Registered Representative, Knoxville,**

**Tennessee)** was fined \$30,000, barred from association with any NASD member in any capacity, and required to pay \$4,200 in restitution to his member firm. The sanctions were based on findings that Fogleman exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. Fogleman also misrepresented to the same customer the net equity value of the customer's account and failed to respond to NASD requests for information.

**Douglas Terrell Fonteno (Registered Principal, Dallas, Texas)** was fined \$126,244, barred from association with any NASD member in any capacity, and ordered to pay \$50,000 in restitution to a public customer. The sanctions were based on findings that Fonteno made misrepresentations and omissions of material facts in offering and selling a common stock. Fonteno also failed to give written notice to his member firm of his offer and sale of the aforementioned stock and his ownership of and employment by another member firm. Furthermore, Fonteno executed unauthorized securities and options transactions in the accounts of two customers and made misrepresentations of material facts concerning such transactions to the customers.

In addition, Fonteno issued two checks to his member firm's clearing firm in payment of securities transactions and the checks were returned unpaid by his bank. Fonteno also recommended securities and options transactions to a public customer without having reasonable grounds for believing that such recommendations were suitable for the customer. Furthermore, Fonteno failed to respond to NASD requests for information.

**Robert B. Francis (Registered Representative, Little Rock, Arkansas)** submitted an Offer of Settlement pursuant to which he was fined \$12,500 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Francis consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without prior written notice to and approval from his member firm. In addition, the NASD found that Francis failed to respond timely to NASD requests for information.

**Roger Williams Graham (Registered Representative, Mililani, Hawaii)** was fined \$170,000, barred from association with any NASD member in any capacity, and ordered to pay \$100,269 in restitution to a member firm. The sanctions were based on findings that Graham received from a public customer three checks totaling \$100,269 for the purchase of securities and converted the funds to his own use and benefit. In addition, Graham provided the same customer with a fictitious account statement reflecting a purchase of securities that were valued at \$106,096.89. Graham also failed to respond to NASD requests for information.

**Dennis R. Hancock (Registered Representative, Dover, New Hampshire)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hancock consented to the described sanctions and to the entry of findings that he was responsible for misappropriating insurance funds totaling \$5,403.

**Stephen House Herron (Registered Principal, Bellevue, Washington)**

was fined \$120,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Seattle DBCC decision. The sanctions were based on findings that Herron ordered stock for the account of a company he owned but he never paid for the transaction. As a result, his member firm lost \$139,582.50 when it sold out the position. Herron also failed to respond to NASD requests for information.

**Michael Richard Jacks (Registered Representative, San Francisco, California)** submitted an Offer of Settlement pursuant to which he was fined \$28,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Jacks consented to the described sanctions and to the entry of findings that he effected securities transactions in the account of a public customer without the customer's prior knowledge and consent. The findings also stated that Jacks agreed with customers to make up losses suffered in their accounts without the knowledge of his member firm.

**Michael W. Koper (Registered Representative, North Street, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination before becoming associated with any NASD member firm. Without admitting or denying the allegations, Koper consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give prior written notice of his intention to engage in such activities to his member firm.

**Russell F. Laubinger (Registered Representative, Norwell,**

**Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Laubinger consented to the described sanctions and to the entry of findings that he converted \$134,500 from public customers to his own use and benefit without the customers' knowledge or consent.

**Michael James Leiter (Registered Representative, New Canaan, Connecticut)** was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Leiter engaged in a fraudulent course of conduct including the creation of fictitious accounts, falsification of member firm documents, forgery, and unauthorized trading. In addition, Leiter failed to respond to NASD requests for information.

**Carl L. Lewallen (Associated Person, Corbin, Kentucky)** submitted an Offer of Settlement pursuant to which he was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$941,556 in restitution. Without admitting or denying the allegations, Lewallen consented to the described sanctions and to the entry of findings that he received checks from public customers totaling \$941,556 for the purchase of variable insurance products, money market certificates, and a variable annuity product. The NASD also determined that Lewallen converted the funds to his own use and benefit without the customers' knowledge or consent. In addition, the NASD found that Lewallen failed to respond to NASD requests for information.

**David P. Martinelli (Registered Representative, Torrington, Connecticut)** submitted a Letter of

Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Martinelli consented to the described sanctions and to the entry of findings that he accepted customers' checks totaling \$1,972.48 for deposit into their variable life policy and mutual fund accounts; however, Martinelli converted the funds to his own use and benefit.

**Darren David Morhaim (Associated Person, East Northport, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Morhaim arranged to have another individual take the Series 7 examination on his behalf. In addition, Morhaim failed to respond to NASD requests for information.

**Joseph H. O'Brien, II (Registered Principal, New York, New York)** was fined \$5,000, barred from association with any NASD member in any capacity, and required to pay \$7,500 in restitution to a public customer. The SEC affirmed the sanctions following appeal of an August 1993 NBCC decision. The sanctions were based on findings that O'Brien withdrew \$7,500 from the account of a public customer and converted the funds to his own use and benefit without the customer's authorization, knowledge, or consent.

**Gregory E. Opara-nadi (Registered Representative, Jackson, Mississippi)** was fined \$22,500, barred from association with any NASD member in any capacity, and required to pay \$6,458 in restitution to his former member firm. The sanctions were based on findings that Opara-nadi received a \$4,435.92 check made payable to the

beneficiary of a public customer. The check was intended for the purchase of a life insurance policy but Opara-nadi converted the funds to his own use and benefit without the customer's knowledge or consent.

**Bruce R. Rubin (Registered Principal, West Haven, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000, suspended from association with any NASD member as a general securities principal for two years, and barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, Rubin consented to the described sanctions and to the entry of findings that while acting for his member firm, he engaged in a securities business while failing to maintain its required minimum net capital. In addition, the NASD found that Rubin failed to prepare and maintain the firm's books and records.

**Sharon Marie Smith (Registered Representative, San Francisco, California)** was fined \$26,000, barred from association with any NASD member in any capacity, and ordered to pay \$1,000 in restitution to a member firm. The sanctions were based on findings that Smith received \$13,000 from a public customer to purchase stock but converted \$1,000 of the proceeds to her own use and benefit. In addition, Smith failed to respond to NASD requests for information.

**Robert Joseph Suellentrop (Registered Representative, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$42,500, suspended from association with any NASD member in any capacity for five days, and required to pay \$25,000 in restitution to public customers. Without admitting or

denying the allegations, Suellentrop consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, he sold shares of a "hot" issue to restricted persons.

Suellentrop's suspension commenced September 12, 1994.

**Steve C. Wang (Registered Representative, San Francisco, California)** was fined \$2,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination before becoming associated with any NASD member following the suspension. The sanctions were based on findings that Wang failed to respond to NASD requests for information in a timely manner.

**Richard D. Whitman (Registered Representative, Knoxville, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Whitman consented to the described sanctions and to the entry of findings that he executed three unauthorized transactions in the account of public customers without their knowledge or consent. In addition, the findings stated that Whitman exercised discretion in the accounts of public customers without obtaining prior written authorization from the customers and prior written acceptance of the account as discretionary by his member firm.

**Kelly A. Whitsett (Associated Person, Denver, Colorado)** submitted an Offer of Settlement pursuant to which she was fined \$2,500 and barred from association with any NASD member in any capacity for



one year. Without admitting or denying the allegations, Whitsett consented to the described sanctions and to the entry of findings that she was observed away from her testing station in possession of materials pertaining to the Series 27 examination during the period that the examination was in progress.

**Jacob C. Young (Registered Principal, Indiana, Pennsylvania)** was fined \$15,000, suspended from association with any NASD member in any capacity for 10 days (deemed served), and required to requalify by examination as an investment company/variable products representative. The NBCC imposed the sanctions on review of a Philadelphia DBCC decision. The sanctions were based on findings that Young offered and sold to public customers securities that were neither registered with the SEC nor exempt from registration. Moreover, in the offers and sales of the aforementioned securities, Young failed to have an adequate and reasonable basis for believing the securities were suitable for the customers. Furthermore, Young participated in this offer and sale of securities without providing prior written notice to his member firm and after his member firm told him in writing that it disapproved of his participation in the transactions.

#### **Individuals Fined**

**Mark Bachik (Registered Principal, Addison, Texas)** submitted an Offer of Settlement pursuant to which he was fined \$12,040.

Without admitting or denying the allegations, Bachik consented to the described sanction and to the entry of findings that he recommended the purchases of securities to public customers without having reasonable grounds for believing that the transactions were suitable for the customers.

**Klaus Langheinrich (Registered Representative, Murray, Utah)** was fined \$10,000. The SEC affirmed the sanction following appeal of a November 1993 NBCC decision. The sanction was based on findings that Langheinrich accepted four checks totaling \$27,000 from public customers for the purchase of securities without providing prior written notification to his member firm of these private securities transactions.

Langheinrich has filed a Petition for Review with the United States Court of Appeals for the Tenth Circuit.

**Michael Gregory Sweeney (Registered Representative, Spokane, Washington)** was fined \$40,000. The sanction was based on findings that Sweeney executed numerous securities transactions in the accounts of two public customers without their prior knowledge or consent. These transactions were effected exercising discretion granted pursuant to oral authority without obtaining prior written discretionary authorization from the customers and without obtaining written acceptance of such discretionary accounts by his member firm. In addition, Sweeney effected securities transactions in one of the aforementioned

accounts without having reasonable grounds for believing that such transactions were suitable for the customer.

**Kevin Michael Thomas (Registered Representative, Deerfield Beach, Florida)** was fined \$10,000, ordered to disgorge \$892.50 to public customers, and required to requalify by examination before acting in the capacity of a general securities representative. The sanctions were based on findings that Thomas effected transactions in the accounts of public customers without their knowledge or consent.

#### **Individual Whose Registration Was Cancelled/Suspended Pursuant To Article VI Section 2 Of The NASD Code Of Procedure For Failure To Pay An Arbitration Award**

**John Joseph Fassano, Jr.,** Hauppauge, New York (July 29, 1994)

#### **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.

**Carolina Barnes Capital, Inc.,** New York, New York (August 11, 1994)

**Hellmold Associates, Inc.,** New York, New York (July 28, 1994)

# FOR YOUR INFORMATION

## **LA County Bar Association Schedules Regulation Seminar**

The Business & Corporations Law Section of the Los Angeles County Bar Association has announced its 27th Annual Securities Regulation Seminar.

When: October 3, 1994

Where: Biltmore Hotel  
506 South Grand Avenue  
Los Angeles

Cost: \$175 section members  
\$200 non-section members

Top Washington and regional SEC officials, together with leading private practitioners, will present a comprehensive review of current events and developments in the securities field, including an overview of judicial, regulatory, and enforcement developments, and recent trends in the public

and private offering of securities. Featured speakers will include Simon Lorne, SEC General Counsel and the Hon. Stanley Sporkin, U.S. District Judge for the District of Columbia.

For more information or to register, call Gail Emery at (213) 896-6523.

## **Corporate Financing Moves From D.C. To MD**

The NASD Corporate Financing Department is pleased to announce its offices are now located at:

9513 Key West Avenue  
3rd Floor  
Rockville, MD 20850

Main: (301) 208-2700  
Director: (301) 208-2786  
FAX: (202) 728-8454 (until 9/30)

# SPECIAL NASD NOTICE TO MEMBERS 94-79

**NASD Solicits Member  
Comment On Board  
Proposals To Extend  
Customer Limit-Order  
Protection; Comment  
Period Expires  
November 7, 1994**

## Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

## Executive Summary

On September 19, 1994, the Board of Governors approved issuance of a *Notice to Members* soliciting comment on proposals to expand the scope of limit-order protection beyond that presently afforded by member firms to their customers in The Nasdaq Stock Market<sup>SM</sup>.

Currently, the NASD's Interpretation to the Rules of Fair Practice makes it a violation of just and equitable principles of trade for a member firm to trade ahead of its own customer's limit orders. The new proposals would extend this protection to the customer of a firm that sends a limit order of 1,000 shares or less to another member for execution (so-called member-to-member trades). In addition, the proposals would prohibit trading ahead of all other customer limit orders sent from one member to another when the member firm accepting the order trades for its own account at prices that are superior but not equal to the limit order price.

The NASD is soliciting comment on these specific proposals, described in more detail below, as well as any other concerns this action raises for members or interested parties. Comments received on or before November 7, 1994, will be considered by the Board at its November meeting.

## Background

In July 1994, a Limit Order Protection Rule became effective for NASD members accepting limit orders in Nasdaq securities.<sup>1</sup> Under the Limit Order Interpretation to the Rules of Fair Practice, a member firm cannot accept and hold its customer's limit order in a Nasdaq security and continue to trade that security for its own account at prices that would satisfy the customer's limit order without filling that order.

The rule renders such trading activity ahead of the customer's order a violation of just and equitable principles of trade.

When the NASD initially proposed the limit-order rule, it solicited comment from members on the advisability of implementing trading-ahead restrictions for all customer limit orders, including those passed from one member firm to another for execution.<sup>2</sup> The vast majority of members commented that limit-order protection for a firm's own customers was appropriate and beneficial to the market, but several cautioned against the potential adverse impact that could result from application of a rule to member-to-member orders. In recognition of the concerns raised, the Board deferred broader application of the rule and commissioned a special Limit Order Task Force to review the issue.

To gather information on the subject of limit-order protection in the Nasdaq market, the Limit Order Task Force held two roundtables with participation from various segments of the industry including discount brokers, wholesale market makers, integrated broker/dealers, the Security Traders Association (STA), and the STA of New York (STANY). Each of the participants supported the trading-ahead prohibition that would prohibit a market maker from executing transactions for its own account at prices equal to or better than its own customer's limit order. The participants expressed concerns, however, that NASD rulemaking expanding this prohibition to inter-dealer trades would interfere with a market maker's ability to manage risk and would reduce liquidity in the marketplace.

<sup>1</sup>See *Notice to Members 94-58* and Securities Exchange Act Release No. 34279 (June 29, 1994).

<sup>2</sup>See *Notice to Members 93-49* (July 23, 1993).

Roundtable participants believed that dealers would be reluctant to fill large buy orders (by shorting the stock) if their ability to cover short positions was curtailed by the requirement to execute pending customer limit orders before their own buying interest.

The Task Force devoted considerable attention to discussions of the impact such additional rulemaking would have upon the financial viability of the competing dealer system and the potential adverse impacts upon the quality and efficiency of that market structure. To balance the desire to extend limit-order protection to all customer limit orders with the concerns regarding potential disruptive effects of such an action on liquidity and market structure, the Task Force proposed a requirement that members not trade ahead of customer limit orders if members were allowed the opportunity for profit on such trades. Accordingly, the Task Force recommended limit-order protections for member-to-member trades that would make it a violation to trade ahead of customer limit orders when the market makers traded at a price superior to the limit-order price.

## Discussion

The Board of Governors accepted the recommendation of the Limit Order Task Force (which received Trading Committee approval) as it applied to large-sized customer orders. However, its concerns with respect to ensuring protections of all small-investor limit orders led it to its proposal to require equivalent limit-order protection for any customer orders of 1,000 shares or less whether held by the customer's firm or entrusted to another member for execution. The Board took this action after carefully weighing the ramifications of their actions on the liquidity in The Nasdaq Stock Market.

In a competitive dealer environment, institutional customers expect that market makers be willing to deal in large sizes at the best prices displayed in Nasdaq. Limit-order protection, in its broadest sense, means placing the customer's trading interest ahead of the dealer's interest. This is easily accomplished in a monopolistic environment, as an exchange specialist is compensated for its handling of customer limit orders, and the size reflected in the specialist's quote is frequently indicative of a small-customer limit order. There are few institutional expectations of depth or liquidity beyond the size of the displayed quote and customers interested in executing large trades negotiate in an upstairs, dealer environment. Because the Nasdaq dealer market is based on a competitive design rather than a monopolistic model, there is no readily apparent remuneration mechanism for dealers handling a limit order from another broker/dealer over and above potential profit from its trading activity. Removal of profit potential from inter-dealer trading involving large-sized limit orders would constitute a clear disincentive to the handling of limit orders.

Further, requiring dealers to yield precedence in all circumstances to the execution of large-sized customer interest ahead of their own trading position may have a profound effect on the market makers' ability to offer liquidity at the limit-order price. Market makers may not be willing to fill large orders out of their inventory positions since their activity to buy stock back will necessarily trigger obligations to fill limit orders. Thus it is foreseeable that limit-order protection for large-sized orders may cause a reduction in the liquidity currently available to institutional customers.

The Board believes that such restrictions on dealers would be onerous and would not be in the best interests

of investors who rely on the Nasdaq market for depth and liquidity. Accordingly, the Board has determined that it is appropriate to propose limit-order protection standards which appropriately differentiate between small-sized and large-sized customer limit orders. For small limit orders (1,000 shares or less), the Board proposes to implement the same limit-order protection that is currently in place for a market maker's own customers — that a market maker may not trade ahead for its own account at a price that would satisfy the limit-order price. For larger-sized orders, however, the Board believes it is appropriate to impose a different standard. When a member accepts and holds a customer limit order greater than 1,000 shares from another member firm, the dealer's obligation to fill that limit order is triggered when the market maker trades at a price that is superior to the limit order price.

To illustrate, if the inside market in a Nasdaq issue were 20 - 20 1/4 and the market maker accepted a customer buy order from another broker/dealer priced at 20 for 2,000 shares, a firm, buying at any price superior to 20 (that is, purchases at a price lower than a buy limit order, in this example, purchasing at 19 7/8 or 19 15/16), would be required to sell to the customer at 20 or better. Using the same example, if the customer limit order were for 500 shares at 20, the rule would prohibit members from trading ahead at 20 without filling the customer order at 20. Accordingly, the proposal would require protection for orders greater than 1,000 shares when the dealer trades at a superior price, and protection for orders 1,000 shares or less when the dealer trades at a price that would satisfy the limit-order price.

The Board also believes that adopting such an approach to limit-order protection constructively addresses

recent concerns that have been expressed with regard to market structure and competitive issues. It has been argued that mandating limit-order protection for all member-to-member trades will act as an incentive to vertical integration of member firms, to the detriment of non-integrated firms (wholesale dealers), because an integrated firm accepting a limit order from its customer would be able to protect that order at its market-making quote and still retain the opportunity to assess a sales charge on the order. Non-vertically integrated firms, on the other hand, have no privity with the ultimate customer and thus no opportunity to assess a sales charge to cover their expenses.

Similarly, arguments have been advanced that the rule will result in concentrations of orders being placed with large, active market makers because customers will look to maximize the probability that their limit orders will be triggered by market-maker activity. Such concentration of order flow, it could be argued, will create barriers to entry to smaller market makers. Comments have also been received indicating that market makers in less liquid Nasdaq securities may cease their sponsorship in those issues because of the negative impact on dealer profit that may

result if a broader limit-order protection rule were implemented. The Board is concerned with diminution of sponsorship for the less active Nasdaq issues as well as barriers to entry and believes that structuring the limit-order proposals based on the size of the customer's order should respond to these concerns.

The Board also discussed a member request to commission an economic study on expansion of limit-order protection. Because a study reviewing handling of limit orders would necessarily involve many variables that could not be adequately weighted, the Board determined that a study would not provide useful quantitative information. A review of limit-order handling, using data from a time when a rule was not in effect, would not reflect modifications in trading techniques, order-entry firm adjustments to routing mechanisms, or alterations in payment-for-order-flow arrangements. Extrapolations from such a review could not accurately forecast future trading practices or order-routing modifications, nor could the NASD rely on the study to predict economic or structural upheavals. Accordingly, the Board believed that an economic analysis would not provide sufficient justification to defer the Board's recommendations for action. Nevertheless, if

members wish to offer statistical or economic analyses on the issues, the Board will consider such information when making its final determination.

Finally, the Board's proposals for rulemaking reiterate that the proposed Interpretation would not interfere with a member's ability to establish specific terms and conditions with regard to the acceptance of limit orders provided that the member makes those conditions clear to the customer. Similarly, nothing in the proposed Interpretation obligates market makers to accept limit orders from any or all customers or member firms. The Board has also decided that the proposals would be reviewed after one year so that the market impact and economic ramifications of any future actions could be adequately assessed.

### **Request For Comments**

The Board is soliciting comments from members and interested parties so that the proposals under consideration by the Board may be thoroughly reviewed. Comments must be received no later than November 7, 1994, and addressed to Joan C. Conley, Secretary, NASD, 1735 K Street, N.W., Washington, D.C. 20006-1500.

© National Association of Securities Dealers, Inc. (NASD), September 1994. All rights reserved.

NASD is a registered service mark of NASD. Nasdaq, Nasdaq National Market, and OTC Bulletin Board are registered service marks of The Nasdaq Stock Market, Inc. Automated Confirmation Transaction (ACT) Service, The Nasdaq SmallCap Market, and Small Order Execution System (SOES) are service marks of The Nasdaq Stock Market, Inc. NASD *Notices to Members* is published monthly by the NASD Communication Services Department, Thomas Mathers, Editor. NASD Communication Services, 1735 K Street, NW, Washington, D.C. 20006-1500, (202) 728-6900. No portion of this publication may be copied, photocopied, or duplicated in any form or by any means, except as described below, without prior written consent of the NASD. Members of the NASD are authorized to photocopy or otherwise duplicate any part of this publication without charge only for internal use by the member and its associated persons. Nonmembers of the NASD may obtain permission to photocopy for internal use through the Copyright Clearance Center (CCC) for a \$3-per-page fee to be paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923. Annual subscriptions cost \$225; single issues cost \$25. Send a check or money order (payable to the National Association of Securities Dealers, Inc.) to NASD MediaSource,<sup>SM</sup> P.O. Box 9403, Gaithersburg, MD 20898-9403, or to phone in an order using American Express, MasterCard, or Visa charge, call (301) 590-6578, Monday to Friday, 9 a.m. to 5 p.m., Eastern Time. Back issues may be ordered by writing our Administrative Services Department, NASD, 1735 K Street, NW, Washington, DC 20006-1500 or by calling in an order at (202) 728-8302.