NASD NOTICE TO MEMBERS 97-34

Depository Trust Company To Launch Initial Public Offering Tracking System

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 June 2, 1997, The Depository Trust Company (DTC) will launch its Initial Public Offering (IPO) Tracking System. Starting June 2, managing underwriters should be aware that for securities to be eligible for listing on The Nasdaq Stock Market, Inc., they must be "depository eligible" under NASD® Rules 4310(c)(23) and 11310(d). Managing underwriters will no longer be able to delay designating a security as depository eligible after it begins trading after an IPO in the immediate secondary market. Transactions will be required to settle by book-entry rather than by physical delivery.

Discussion

In 1993, in response to the recommendations of the Legal and Regulatory Subgroup of the U.S. Working Committee, Group of Thirty Clearance and Settlement Project (Subgroup), the NASD and the national securities exchanges adopted rules requiring members to settle transactions in depository eligible securities via book-entry through a securities depository.

To encourage the move toward book-entry settlement of all transactions, the Subgroup recommended that securities be depository eligible as a condition for listing on The Nasdaq Stock Market℠ and the exchanges. In 1995, the SEC approved amendments to the Nasdaq® listing requirements to require a domestic security to be depository eligible and, therefore, required to settle by book-entry to be listed on The Nasdaq Stock Market. The other exchanges and DTC adopted similar requirements. In addition, the NASD's Uniform Practice Code requires that a depository eligible security be settled by book-entry. The approval of the rule change was announced in *Notice to Members 95-55*.

When the requirement was adopted, however, underwriters asked that newly issued securities be exempted from the depository eligible, book-entry settlement requirement because they often required physical delivery settlement in the immediate aftermarket following an IPO to monitor repurchases of distributed shares by the underwriting syndicate (flipping). Accordingly, when the listing requirement for depository eligible securities was adopted, IPO securities were required to have a CUSIP number as an indicia of their depository eligibility, but were not deemed to be depository eligible until designated by the managing underwriter or three months had elapsed, whichever was earlier. This exemption now disappears by its terms as a result of DTC's development of an automated system for monitoring flipping.

Piloted since June 1996, the IPO Tracking System (which successfully tracked 38 issues during the pilot phase) is now ready for roll-out to the entire market and will provide managing underwriters with an automated method for monitoring flipping. Accordingly, under the terms of Rule 4310(c)(23), to be eligible for listing on Nasdaq on and after June 2, 1997, new issue securities must be depository eligible and required to be settled by book-entry on the date secondary market trading begins. In addition, under the terms of Rule 11310(d), unlisted securities that are depository eligible must be settled by book-entry on the date secondary market trading begins. Because transactions in such securities must be book-entry settled under NASD and exchange Rules, managing underwriters will no longer be able to track IPOs via physical delivery.

DTC published a memorandum to its Participants dated April 21, 1997, advising them of the roll-out of the

IPO Tracking System. Members should refer to that memorandum, and the contact numbers listed therein, if they have any questions concerning the IPO Tracking System. A copy of the memorandum follows this *Notice*.

Questions regarding the application of NASD Rules may be directed to Dorothy L. Kennedy, Assistant Director, Nasdaq Market Operations, The Nasdaq Stock Market, at (203) 385-6243; or Elliott R. Curzon, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

THE DEPOSITORY TRUST COMPANY

IMPORTANT

Important Executive Notice

B#: 0737-97

DATE: April 21, 1997

TO: All Participants

FROM: Glenn E. Mangold, Executive Vice President

ATTENTION: Managing Partner/Director; Cashier; Syndicate and Operations Managers

SUBJECT: Implementation of DTC's Initial Public Offering (IPO) Tracking System

On June 2, 1997, DTC will bring to full implementation its IPO Tracking System, which monitors "flipping" in an automated fashion. In Important Notice B# 1906-96, dated October 31, 1996, DTC stated that DTC anticipated full implementation in mid-1997 if the pilot was successful.

As the system has tracked 38 issues successfully, the pilot stage will conclude on May 30. The pilot began in June 1996 and has slowly increased in scope, with more issues being tracked simultaneously.

On and after June 2, lead managers will be bound by the rules of the securities exchanges and the National Association of Securities Dealers, Inc. (NASD) that require new issues to be distributed by book-entry through a registered securities depository in order to be listed for trading on the exchanges or made eligible for inclusion in Nasdaq. As a result, lead managers will no longer have the ability to track issues physically.

It is imperative, then, that every lead manager be prepared to properly use the system. **To uphold the integrity of the system by minimizing inaccurate use of the system, DTC requires that lead managers successfully process at least one distribution in test mode before using the system for an actual IPO. Lead managers that have not tested with the IPO Tracking System will therefore not be able to track IPOs through any means on or after June 2.**

Lead managers have indicated to DTC in response to a telephone survey that they are prepared to differing degrees. To date:

- 22% of lead managers have tracked or are in the process of tracking issues during the pilot phase in a production environment.
- 10% of lead manager have successfully tested in a test environment.
- 13% of lead managers are service bureau users waiting for their service bureaus to test.
- 10% of lead managers have indicated they will test before the end of April.

- 11% of lead managers have indicated they will test during May.
- 29% of lead managers have been advised by DTC personnel to set up a test but have not yet done so.
- 5% of lead managers are in special situations that make testing unnecessary.

Lead managers that have successfully tested account for approximately 71% of new issuances. DTC anticipates that by June 2 this figure will approximate 90%.

If your organization acts as a lead manager for IPOs and has not already tested with the system, call DTC's Underwriting Department immediately, at the number noted below, to set up a test.

All Participants—not just those acting as lead managers—should be ready to interface with DTC relative to all aspects of the system. Documentation is available on the automated interfaces to the system as well as the PTS update and inquiry capabilities.

Participants can direct calls on IPOs to various departments, depending on the nature of the specific inquiry. The following is a guide:

"Work-in-progress" (urgent) calls (help with IPO functions)	DTC's Training Department, 1-800-545-1276, outside New York State and (212) 709-1135 in New York
Testing/setting up new issues	DTC's Underwriting Department at (212) 898-3705
Basic information calls	Your Participant Services representative; DTC's Underwriting Department at (212) 898-3705
Business issue calls (major proposals, project history, regulatory mandates)	Catherine Brown, (212) 709-1687, Sheryl Kort, (212) 709-1040, Val Stevens, (212) 709-1110, Product Development; or Melissa Rosenberg, (212) 709-1105, Participant Services
Computer-to-Computer Facility	Sandy Weinberger, Participant Interface Planning, (212) 558-2699
Settlement questions	DTC's Settlement Department, (212) 558-5816

On June 2 and for an appropriate time thereafter, DTC will have staff designated specifically to answer IPO-related inquires.

NASD NOTICE TO MEMBERS 97-35

Treasury's Foreign Assets Control Office Updates List Of Specially Designated Persons And Entities

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

As requested by the Department of Treasury (Treasury) the NASD® provides members with information from the Office of Foreign Assets Control (OFAC) about persons and entities identified as "Specially Designated Nationals and Blocked[1] Persons." On April 17, 1997, OFAC updated its master list, adding 46 blocked persons and 11 blocked entities designated by the President of the United States for their significant role in international narcotics trafficking centered in Columbia, or have been determined to be owned or controlled by, or to act for or on behalf of, other blocked persons on the list. The new list also contains revised information concerning 25 individuals.

Background

The U.S. government mandates that all financial institutions located in the United States, overseas branches of these institutions and, in certain instances, overseas subsidiaries of the institutions comply with OFAC regulations governing economic sanctions and embargo programs regarding the accounts and other assets of countries identified as threats to national security by the President of the United States. This always involves accounts and assets of the sanctioned countries' governments, and it may also involve the accounts and assets of individual nationals of the sanctioned countries. Also, these regulations prohibit unlicensed trade and financial transactions with such countries.

Under these regulations, financial institutions must block identified assets and accounts when such property is located in the United States, is held by U.S. individuals or entities, or comes into the possession or control of U.S. individuals or entities. The definition of assets and property is very broad and covers direct, indirect, present, future, and contingent interests. In addition, Treasury identifies certain individuals and entities located worldwide that are acting on behalf of sanctioned governments, and these must be treated as if they are part of the sanctioned governments.

OFAC may impose criminal or civil penalties for violations of these regulations. Criminal violations may result in corporate fines of up to $500,000 and personal fines of up to $250,000 and 10 years in jail; civil penalties of up to $11,000 per violation also may be imposed. To ensure compliance, OFAC enlists the cooperation of various regulatory organizations and recently asked the NASD to remind its members about these regulations.

Foreign Assets Control Regulations

OFAC currently administers sanctions and embargo programs against Libya, Iran, Iraq, the Federal Republic of Yugoslavia (Serbia and Montenegro), Serb-controlled areas of Bosnia and Herzegovina and Bosnian Serb military and civilian leaders, North Korea, and Cuba. In addition, it prohibits certain exports to the UNITA faction in Angola and prohibits transactions with terrorists threatening to disrupt the Middle East peace process.

Broker/dealers cannot deal in securities issued from these target countries and governments and must block or freeze accounts, assets, and obligations of blocked entities and individuals when this property is in their possession or control.

According to OFAC, broker/dealers need to establish internal compliance programs to monitor these regulations. OFAC urges broker/dealers to review their existing customer accounts and the securities in their

custody to ensure that any accounts or securities blocked by existing sanctions are being treated properly. Broker/dealers also should review any other securities that may represent obligations of, or ownership interests in, entities owned or controlled by blocked commercial or government entities identified by OFAC.

Broker/dealers must report blockings within 10 days by fax to OFAC Compliance Division at (202) 622-1657. Firms are prohibited from making debits to blocked customer accounts, although credits are authorized. Blocked securities may not be paid, withdrawn, transferred (even by book transfer), endorsed, guaranteed, or otherwise dealt in.

OFAC has issued general licenses authorizing continued trading on the national securities exchanges on behalf of blocked Cuban and North Korean customer accounts under conditions preserving the blocking of resulting assets and proceeds. Secondary market trading with respect to certain Yugoslav debt securities issued pursuant to the "New Financing Agreement" of September 20, 1988, also are authorized; however, certain restrictions and reporting requirements apply.

List Of Sanctioned Governments And Individuals

Whenever there is an update to its regulations, an addition or removal of a specifically designated national, or any other pertinent announcement, OFAC makes the information available electronically on the U.S. Council on International Banking's INTERCOM Bulletin Board in New York and the International Banking Operations Association's Bulletin Board in Miami. The information also is immediately uploaded onto Treasury's Electronic Library (TEL) on the FedWorld Bulletin Board network. In addition, the information is available through several other government services provided free of charge to the general public.

NASD members are urged to review their procedures to ensure compliance with OFAC regulations.

Questions concerning this Notice may be directed to OFAC at (202) 622-2490. Additional information is available from OFAC's Web site: *www.ustreas.gov/treasury/services/fac/fac.html*. Members also may refer to *NASD Notices to Members 96-23*, *95-97*, and *97-4*.

Endnote

[1] Blocking, which also may be called freezing, is a form of controlling assets under U.S. jurisdiction. While title to blocked property remains with the designated country or national, the exercise of the powers and privileges normally associated with ownership is prohibited without authorization from OFAC. Blocking immediately imposes an across-the-board prohibition against transfers or transactions of any kind with respect to the property.

NASD NOTICE TO MEMBERS 97-36

NASD Interpretive Letters

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 Office of General Counsel, NASD Regulation, Inc. (NASD Regulation℠) and Office of General Counsel, The Nasdaq Stock Market, Inc. (Nasdaq®) have prepared a compilation of select interpretive letters that have been issued by the respective NASD®, NASD Regulation, and Nasdaq Offices of General Counsel (OGC), as well as other departments within NASD Regulation and Nasdaq. The compilation includes a broad sample of interpretive letters covering significant and reoccurring interpretive issues presented to the NASD over the last several years. These select interpretive letters will be made available to the members and the public upon written request, and will also reside on the NASD Regulation Web page (*www.nasdr.com*). Included with this *Notice*, as Exhibit A, is an index, by NASD rule number, of select interpretive letters as of May 1997.

Interpretive Letter Process

As part of its regulatory responsibilities, the OGC of the NASD, NASD Regulation, and Nasdaq and other departments within NASD Regulation and Nasdaq issue written responses to select interpretive requests seeking interpretive guidance to NASD Rules, NASD By-Law provisions, and procedural rules. These letters are considered staff advisory letters and reflect the opinions of the staff and should be helpful to persons requesting interpretive guidance. Since these letters reflect staff opinions only, they are not binding on the respective Boards of the NASD, NASD Regulation, and
Nasdaq. See NASD Regulation and Nasdaq interpretive letter disclaimer which is included as Exhibit B to this *Notice*. Furthermore, all interpretative letters issued since the reorganization of the NASD into separate operating subsidiaries originate from either the staff of NASD Regulation or Nasdaq. All interpretive letters issued prior to that time were issued by the staff of the NASD.

Policy Issues—Confidentiality Policy

The OGC staff of NASD Regulation and Nasdaq will select certain interpretive letters from time to time and make them available to the members and the general public. In general, to preserve confidentiality prior to the announcement of this policy, previously issued interpretive letters by the OGC of NASD, NASD Regulation, and Nasdaq and other departments have been afforded confidential treatment, that is, the member-specific information has been redacted from the staff's response.

As of May 20, 1997, all future interpretive letters written by the OGC of NASD Regulation and Nasdaq and other departments will not receive confidential treatment, unless a special request is made to the staff. This special request should accompany the interpretive request and must describe the reasons supporting confidential treatment. The staff will make the confidentiality determination and communicate its response to the requester prior to preparing the interpretive response. All interpretive letter requests received by the staff prior to this date will be made publicly available in a redacted format, that is, the name of the firm, requester, and other sensitive or propriety information will be deleted from the letter prior to publication. Please note that this confidentiality policy only applies to the interpretive letter project and protects only voluntary disclosure of information by the OGC staff of NASD Regulation, Nasdaq, and other departments.

Public Availability

Interpretive letters included in the

index of select interpretive letters will be made available to NASD members and the public, upon written request. All written requests should be submitted to:

Interpretive Letter Administrator
Office of General Counsel,
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006.

In addition, the staff of NASD Regulation has published selected interpretive letters on the NASD Regulation Web page (*www.nasdr.com*) and plans to supplement this database with new letters on a periodic basis. Nasdaq anticipates publishing their index and select list of interpretive letters sometime in June 1997.

Questions regarding this *Notic*e may be directed to John Ramsay or David A. Spotts, Office of General Counsel, NASD Regulation, at (202) 728-8071, or Thomas Gira or Andrew Margolin, Office of General Counsel, Nasdaq, at (202) 728-8294.

Exhibit A

NASD Regulation, Inc.
Index of Interpretive Letters
May 1997

I. MEMBERSHIP AND REGISTRATION RULES

NASD Rule 1020 (Formerly Schedule C, Part II) - Registration of Principals

02/19/97 Registration requirements of a member if a registered principal begins consulting relationship with the member as a compliance officer.

11/27/95 Registration requirements of a member for persons responsible for actively supervising the employees of member broker/dealer.

II. CONDUCT RULES

NASD Rule 2110 (formerly Article III, Section 1)

Free-Riding and Withholding

01/28/97 Holding period requirement under the Free-Riding and Withholding Interpretation for common stock purchased through a directed share program by employees, directors, and associated persons of the member and its subsidiaries.

11/15/96 Participation of U.S. underwriters in the multinational offering of shares under NASD IM-2110-1(b)(8) and NASD Rules 2740(c) and 2750.

Business Conduct and Selling Concessions

12/22/88 Cash rebates issued to pension plan customers with respect to secondary market transactions in outstanding securities.

NASD Rule 2310 (Formerly Article III, Section 2)

Recommendations to Customers

03/04/97 Staff clarification of *NASD Notice to Members 96-60* regarding a member's suitability obligation under NASD Rule 2310 with respect to certain investment company transactions.

01/23/97 Staff clarification of *NASD Notice to Members 96-60* regarding a member's suitability obligation under NASD Rule 2310.

01/23/97 Staff clarification of *NASD Notice to Members 96-60* regarding a member's suitability obligation under NASD Rule 2310.

Recommendations and Books & Records

05/18/93 Suitability responsibilities of a discount broker/dealer when a customer is trading in options contracts.

11/13/90 Application of *NASD Notice to Members 90-52* to member firms who do not recommend securities transactions to their customers, but limit their business to accepting unsolicited orders from customers.

NASD Rule 2420 (Formerly Article III, Section 25)

Dealing with Non-Members

04/11/97 Requirements of NASD Rule 2420 to broker/dealer arrangement to pay certain commissions and SEC Rule 12b-1 fees to accounts of various employee benefit plan customers.

NASD Rule IM-2420 (Formerly Article III, Section 25)

Continuing Commissions Policy

12/23/96 Staff interpretation of the continuing commissions policy codified in NASD IM-2420.

11/20/96 Staff interpretation of the continuing commissions policy codified in NASD IM-2420.

NASD Rule 2440 (Formerly Article III, Section 4)

Fair Prices and Commissions

05/02/96 Member's use of minimum commissions per trade or per share and the use of standardized commission schedules.

NASD Rule 2740 (Formerly Article III, Section 24)

Business Conduct, Selling Concessions, and Dealing with Non-Members

11/15/96 Participation of U.S. underwriters in the multinational offering of shares under NASD IM-2110-1(b)(8) and NASD Rules 2740(c) and 2750.

NASD Rule 2860 (Formerly Article III, Section 33)

02/24/93 Whether a proposed standby purchase agreement entered into between affiliate of a member and an issuer in connection with a public offering of the issuer's common stock could constitute an option.

NASD Rule 3010 (Formerly Article III, Section 27)

04/11/97 Application of NASD Rules to the sale of group variable products.

08/13/96 Requirements of member firms to establish a schedule for and conduct inspections of Offices of Supervisory Jurisdiction and branch offices.

08/09/96 Minimum requirements under NASD Rule 3010 if a member centralizes its supervisory oversight function over the firm's employees who are both acting as registered representatives and as investment advisers.

NASD Rule 3110 (Formerly Article III, Section 21)

Business Conduct and Books & Records

11/01/95 Requirements of member firms in maintaining do-not-call lists under NASD Rule 3110.

NASD Rule 3030 (Formerly Article III, Section 43)

Transactions for or by Associated Persons, Private Securities Transactions and Outside Business Activities

09/15/94 Requirements under NASD Rule 3030 with investment seminar activities conducted by dually registered persons that charge fees from participants.

NASD Rule 3040 (Formerly Article III, Section 40)

Business Conduct, Supervision, Private Securities Transactions, and Outside Business Activities

12/16/96 Applicability of NASD Rules to registered representatives of subsidiary bank of member broker/dealer.

Private Securities Transactions

07/23/96 The applicability of NASD Rule 3040 to situations in which associated persons are proposing to receive selling compensation.

Transactions for or by Associated Persons, Private Securities Transactions and Outside Business Activities

09/27/94 The applicability of Section 40 (Rule 3040) to situations in which a financial plan is delivered to a customer without an execution of a securities transaction.

08/05/94 Clarification of *NASD Notice to Members 94-44* to situations in which a dually registered person maintains discretionary trading authority, determines portfolio changes, and prepares trade instructions for customer accounts and charges the accounts an asset-based fee.

NASD Rule 3070 (Formerly Article III, Section 50)

05/28/96 Applicability of NASD Rule 3070 to the operations of a mutual fund variable product distributor broker/dealer with a separately registered transfer agent.

05/28/96 Applicability of Rule 3070 to the operations of a mutual fund and variable product distributor broker/dealer.

NASD Rule 3370 (Formerly Article III, Section 1)

09/18/96 Affirmative determination for short sales under NASD Rule 3370.

Exhibit B

NASD Regulation and Nasdaq Interpretive Letters Disclaimer:

In an effort to assist member firms, securities professionals, lawyers, and others having an interest in the rules administered by the National Association of Securities Dealers, Inc., and its subsidiaries, the staff of NASD Regulation, Inc. and Nasdaq have selected for publication a number of staff interpretive and general informational letters. In publishing these letters, NASD Regulation and Nasdaq have not attempted to identify or publish all letters that have been issued on a particular subject. Similarly, NASD Regulation and Nasdaq do not attempt to review letters, once they have been published, for the purpose of identifying or removing those that may have become outdated or superseded.

All interpretive positions are staff positions, unless, otherwise indicated. Staff-issued interpretive letters express staff views and opinions only and are not binding on the NASD, Nasdaq, or NASD Regulation, their respective Boards of Directors/Governors; any representation to the contrary is expressly disclaimed. The letters are provided only for the purpose of providing general guidance on the staff's views as to the application of particular NASD rules under specific circumstances. Members, associated persons, and their counsel should consider the need for further guidance as to the application of NASD rules to their own unique circumstances.

To reflect current policy, all interpretive letters selected for publication after May 20, 1997, generally will be published in their entirety without redaction. All letters published prior to that date will reflect the redaction of certain personal, confidential, or identifying information (e.g., name and addresses of persons and organizations, names of member customers, amounts of transactions, financial data, etc.).

NASD NOTICE TO MEMBERS 97-37

NASD Regulation Requests Comment On Proposed Definition Of Correspondence For Rules Regarding Communications With The Public; **Comment Period Expires July 15, 1997**

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

In the following document, NASD Regulation, Inc. (NASD Regulation℠) requests comment on proposed amendments to NASD® Rule 2210 to require that written or electronic communications prepared for a single customer be subject to the general and specific standards, but not the filing and review requirements, of NASD Rules regarding communications with the public.

Questions concerning this *Request For Comment* may be directed to Thomas A. Pappas, Associate Director, Advertising Regulation, NASD Regulation, at (202) 728-8330; or Robert J. Smith, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Request For Comment

The NASD encourages all interested parties to comment on the proposed amendments. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500;

or e-mailed to:
pubcom@nasd.com.

Comments must be received **by July 15, 1997**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

NASD Regulation Request For Comment 97-37

Executive Summary

NASD Regulation, Inc. (NASD Regulation℠) requests comment on proposed amendments to NASD® Rule 2210 to require that written or electronic communications prepared for a single customer be subject to the general and specific standards, but not the filing and review requirements, of NASD Rules regarding communications with the public.

Background

In several recent disciplinary decisions, NASD Regulation considered the issue of whether correspondence to a single customer constitutes "sales literature" subject to the requirements of NASD Rule 2210 regarding communications with the public.[1] NASD Regulation recognizes that communications prepared by member firms or associated persons for a single customer have in the past contained information that could be considered exaggerated, unwarranted, or misleading by the standards of Rule 2210. To clarify the obligations of members and associated persons with regard to individual correspondence, the proposed amendments herein would subject such correspondence to the general and specific substantive standards, but not the filing and review requirements, of Rule 2210.

Description

NASD Regulation believes that individual correspondence may give rise to the dangers of misleading or unwarranted statements to which the substantive standards of Rule 2210 are addressed. NASD Regulation specifically solicits comments as to whether these concerns are best addressed by a rule change or through some other means, including supervision of correspondence.[2]

The proposed definition of "correspondence" in Rule 2210 is consistent with positions taken by NASD Regulation in several disciplinary decisions. Those decisions (cited above) consistently found that material or correspondence prepared for use with a single customer and not for dissemination to the general public was not "sales literature."

The inclusion of "correspondence" in the category "communications with the public," subjects correspondence in written or electronic form to the general and specific substantive standards of paragraphs (d) and (f) to Rule 2210, but not to the approval and recordkeeping requirements of paragraph (b) nor the filing and review requirements of paragraph (c) of the rule, since paragraphs (b) and (c) apply only to sales literature or advertising. In addition, a cross reference under the proposed definition of correspondence has been added stating that rules concerning review and endorsement of correspondence are found in paragraph (d) to NASD Rule 3010.[3]

Paragraph (d) to Rule 2210 contains general and specific standards for communications with the public, and paragraph (f) to Rule 2210 contains general and specific standards applicable to the use and disclosure of a member's name in communications with the public. Under paragraph (d), correspondence will be subject to the general standards that such communications: (i) be based on principles of fair dealing and not omit material information, and (ii) not be exaggerated, unwarranted or misleading. Under paragraph (d), correspondence also will be subject to the specific standards that such communications: (i) contain certain necessary data; (ii) conform to certain requirements when containing a recommendation to buy or sell a security; (iii) not contain promises of specific results or unwarranted claims; (iv) conform to certain requirements if they are testimonials; (v) conform to certain

requirements if they contain offers of free services, claims for research facilities or hedge clauses; (vi) conform to certain requirements when discussing periodic investment plans, making references to regulatory organizations, identifying sources of research and information and making claims of tax free or tax deferred returns; (vii) contain certain information when making comparisons that makes the comparison fair and balanced; and (viii) not contain predictions or projections of investment results.

Paragraph (f) contains general and specific standards for the disclosure of members' names. Under the proposed rule, correspondence would be subject to all of these standards, which include, among other things, that names of members are set forth clearly and prominently, that names of members and non-member entities are clearly distinguished, that names do not imply the offering of a product not available from the company named, and that certain derivative, generic, and "doing business as" names conform to certain specific standards.

The inclusion of "correspondence" in the category of "communications with the public," also subjects correspondence to paragraph (e) of the rule, which requires that all members' communications with the public shall conform to all applicable rules of the Securities and Exchange Commission (SEC).

The amendments also propose to delete certain references to the "District Business Conduct Committee" in subparagraphs (c)(4)(A) and (B) and to replace that phrase with "Department." This change vests authority in the Advertising Regulation Department, rather than a District Business Conduct Committee, to require under certain circumstances that a member pre-file advertising or sales literature with the Department for review. This change is consistent with the view of NASD Regulation that similar functions should be performed by staff in the first instance. [4]

Questions concerning this *Request For Comment* may be directed to Thomas A. Pappas, Associate Director, Advertising Regulation, NASD Regulation, at (202) 728-8330; or Robert J. Smith, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Request For Comment

The NASD encourages all interested parties to comment on the proposed amendments. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500;

or e-mailed to:
pubcom@nasd.com.

Comments must be received **by July 15, 1997**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

Text Of Proposed Rule

*(**Note:** Proposed new language is underlined; proposed deletions are bracketed.)*

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications with the Public

a) Definitions - Communications with the public shall include:

1) Advertisement—For purposes of this Rule and any interpretation thereof, "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, telephone directories (other than routine listings), electronic or other public media.

2) Sales Literature—For purposes of this Rule and any interpretation thereof, "sales literature" means any written or electronic communication distributed or made generally available to customers or the public, which communication does not meet the foregoing definition of "advertisement." Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, telemarketing scripts, seminar texts, and reprints or excerpts of any other advertisement, sales literature or published article.

3) Correspondence—For purposes of this Rule and any interpretation thereof, "correspondence" means any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public.

***Cross Reference** - Rules Concerning Review and Endorsement of Correspondence are Found in paragraph (d) to Conduct Rule 3010.*

b) Approval and Recordkeeping

1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member.

2) A separate file of all advertisements and sales literature, including the name(s) of the person(s) who pre-

pared them and/or approved their use, shall be maintained for a period of three years from the date of each use.

c) Filing Requirements and Review Procedures

1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of paragraph (c)(2), and public direct participation programs (as defined in Rule 2810) shall be filed with the Association's Advertising/Investment Companies Regulation Department (Department) within 10 days of first use or publication by any member. The member must provide with each filing the actual or anticipated date of first use. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this paragraph (c) that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933, and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The member must provide with each filing the actual or anticipated date of first use. Any member filing any investment company advertisement or sales literature pursuant to this paragraph shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.

3)(A) Each member of the Association which has not previously filed advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this Rule) shall file its initial advertisement with the Department at least ten days prior to use and shall continue to file its advertisements at least ten days prior to use for a period of one year. The member must provide with each filing the actual or anticipated date of first use.

B) Except for advertisements related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, members subject to the requirements of paragraph (c)(3)(A) [or (B)] of this Rule may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in [those] <u>that</u> subparagraph[s], with any registered securities exchange having standards comparable to those contained in this Rule.

4)(A) Notwithstanding the foregoing provisions, [any District Business Conduct Committee of the Association] <u>the Department</u>, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department [and/or the District Committee], at least ten days prior to use. The member must provide with each filing the actual or anticipated date of first use.

B) The [Committee] <u>Department</u> shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure as contained in the Rule 9000 Series.

5) In addition to the foregoing requirements, every member's [advertising] <u>advertisements</u> and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and, except for material related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, the procedure will not be applied to

members who have been, within the Association's current examination cycle subjected to a spot-check by a registered securities exchange or other self-regulatory organization using procedures comparable to those used by the Association.

6) The following types of material are excluded from the foregoing filing requirements and spot-check procedures:

A) Advertisements or sales literature solely related to changes in a member's name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member;

B) Advertisements or sales literature which do no more than identify the Nasdaq symbol of the member and/or of a security in which the member is a Nasdaq registered market maker;

C) Advertisements or sales literature which do no more than identify the member and/or offer a specific security at a stated price;

D) Material sent to branch offices or other internal material that is not distributed to the public;

E) Prospectuses, preliminary prospectuses, offering circulars and similar documents used in connection with an offering of securities which has been registered or filed with the Commission or any state, or which is exempt from such registration, except that an investment company prospectus published pursuant to SEC Rule 482 under the Securities Act of 1933 shall not be considered a prospectus for purposes of this exclusion;

F) Advertisements prepared in accordance with Section 2(10)(b) of the Securities Act of 1933, as amended, or any rule thereunder, such as SEC Rule 134, unless such advertisements are related to direct participation programs or securities issued by registered investment companies.

7) Material which refers to investment company securities or direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Act) solely as part of a listing of products and/or services offered by the member, is excluded from the requirements of subparagraphs (1) and (2).

d) Standards Applicable to Communications with the Public

1) General Standards

A) All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered. No material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause the [advertising or sales literature] communication to be misleading.

B) Exaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members. In preparing such [literature] communications, members must bear in mind that inherent in investments are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no member shall, directly or indirectly, publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

C) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of paragraphs (d) and (f) of this Rule.

D) In judging whether a communication or a particular element of a communication may be misleading, several factors should be considered, including but not limited to:

i) the overall context in which the statement or statements are made. A statement made in one context may be misleading even though such a statement could be [perfectly] appropriate in another context. An essential test in this regard is the balance of treatment of risks and potential benefits.

ii) the audience to which the communication is directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed, and the ability of the member given the nature of the media used, to restrict the audience appropriately. If the statements made in a communication would be applicable only to a limited audience or a single customer, or if additional information might be necessary for other audiences, it should be kept in mind that it is not always possible to restrict the readership of a particular communication.

iii) the overall clarity of the communication. A statement or disclosure made in an unclear manner [obviously] can result in a lack of understanding of the statement, or in a serious misunderstanding. A complex or overly technical explanation may be [worse] more confusing than too little information. Likewise, material disclosure relegated to legends or footnotes [realistically] may not enhance the reader's understanding of the communication.

2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply to communications with the public:

A) Necessary Data. [Advertisements and sales literature] Communications with the public shall contain the name of the member, unless such [advertisements and sales literature] communications comply with paragraph (f). Sales literature and correspondence shall contain the name of the person or firm preparing the material, if other than the member, and the date on which it is first published, circulated or distributed. If the information in the material is not current, this fact should be stated.

B) Recommendations.

i) In making a recommendation, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose any of the following situations which are applicable:

a. that the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, [and/]or that the member or associated persons will sell to or buy from customers on a principal basis;

b. that the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;

c. that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.

ii) The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.

iii) A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.

iv) Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in subparagraph (iii). Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

C) Claims and Opinions. Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts.

D) Testimonials. In testimonials concerning the quality of a firm's investment advice, the following points must be clearly stated in the communication:

i) The testimonial may not be representative of the experience of other clients.

ii) The testimonial is not indicative of future performance or success.

iii) If more than a nominal sum is paid, the fact that it is a paid testimonial must be indicated.

iv) If the testimonial concerns a technical aspect of investing, the person making the testimonial must have knowledge and experience to form a valid opinion.

E) Offers of Free Service. Any statement to the effect that any report, analysis, or other service will be furnished free or without any charge must not be made unless such report, analysis or other service actually is or will be furnished entirely free and without condition or obligation.

F) Claims for Research Facilities. No claim or implication may be made for research or other facilities beyond those which the member actually possesses or has reasonable capacity to provide.

G) Hedge Clauses. No cautionary statements or caveats, often called hedge clauses, may be used if they are misleading or are inconsistent with the content of the material.

H) Recruiting Advertising. Advertisements in connection with the recruitment of sales personnel must not contain exaggerated or unwarranted claims or statements about

opportunities in the investment banking or securities business and should not refer to specific earnings figures or ranges which are not reasonable under the circumstances.

I) Periodic Investment Plans. Communications with the public should not discuss or portray any type of continuous or periodic investment plan without disclosing that such a plan does not assure a profit and does not protect against loss in declining markets. In addition, if the material deals specifically with the principles of dollar-cost averaging, it should point out that since such a plan involves continuous investment in securities regardless of fluctuating price levels of such securities, the investor should consider his or her financial ability to continue his or her purchases through periods of low price levels.

J) References to Regulatory Organizations. Communications with the public shall not make any reference to membership in the Association or to registration or regulation of the securities being offered, or of the underwriter, sponsor, or any member or associated person, which reference could imply endorsement or approval by the Association or any federal or state regulatory body. References to membership in the Association or Securities Investors Protection Corporation shall comply with all applicable By-Laws and Rules pertaining thereto.

K) Identification of Sources. Statistical tables, charts, graphs or other illustrations used by members in [advertising or sales literature] communications with the public should disclose the source of the information if not prepared by the member.

L) Claims of Tax Free/Tax Exempt Returns. Income or investment returns may not be characterized as tax free or exempt from income tax where tax liability is merely postponed or deferred. If taxes are payable upon redemption, that fact must be disclosed. References to tax free/tax exempt current income must indicate which income taxes apply or which do not unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds may be subject to state or local income taxes, this should be stated, or the illustration should otherwise make it clear that income is free from federal income tax.

M) Comparisons. In making a comparison, either directly or indirectly, the member must make certain that the purpose of the comparison is clear and must provide a fair and balanced presentation, including any material differences between the subjects of comparison. Such differences may include investment objectives, sales and management fees, liquidity, safety, guarantees or insurance, fluctuation of principal and/or return, tax features, and any other factors necessary to make such comparisons fair and not misleading.

N) Predictions and Projections. Investment results cannot be predicted or projected. Investment performance illustrations may not imply that gain or income realized in the past will be repeated in the future. However, for purposes of this Rule, hypothetical illustrations of mathematical principles are not considered projections of performance; e.g., illustrations designed to show the effects of dollar cost averaging, tax-free compounding, or the mechanics of variable annuity contracts or variable life policies.

e) Application of SEC Rules

In addition to the provisions of paragraph (d) of this Rule, members' public communications shall conform to all applicable rules of the Commission, as in effect at the time the material is used.

Cross Reference *- SEC Rules Concerning Investment Company Sales Literature and Advertising (SEC Rules and Regulation T Tab)*

f) Standards Applicable to the Use and Disclosure of the Association Member's Name

1) In addition to the provisions of paragraph (d) of this Rule, members' public communications shall conform to the following provisions concerning the use and disclosure of member names. The term "communication" as used herein shall include any item defined as either "advertising," [or] "sales literature" or "correspondence" in paragraph (a). The term "communication" shall also include, among other things, business cards and letterhead.

2) General Standards

A) Any communication used in the promotion of a member's securities business must clearly and prominently set forth the name of the Association member. This requirement shall not apply to so-called "blind" advertisements used for recruiting personnel or to those communications meeting the provisions of paragraph (f)(3).

B) If a non-member entity is named in a communication in addition to the member, the relationship, or lack of relationship, between the member and the entity shall be clear.

C) If a non-member entity is named in a communication, in addition to the member and products or services identified, no confusion shall be created as to which entity is offering which products and services. Securities products and services shall be clearly identified as being offered by the member.

D) If an individual is named in a communication containing the names of the member and a non-member entity, the nature of the affiliation or relationship of the individual with the member shall be clear.

E) Communications that refer to individuals may not include, with respect to such individuals, references to nonexistent or self-conferred degrees or designations, nor may such communications make reference to bona fide degrees or designations in a misleading manner.

F) If a communication identifies a single company, the communication shall not be used in a manner which implies the offering of a product or service not available from the company named.

G) The positioning of disclosure can create confusion even if the disclosures or references are entirely accurate. To avoid confusion, a reference to an affiliation (e.g., registered representative) shall not be placed in proximity to the wrong entity.

H) Any reference to membership (e.g., NASD, SIPC, etc.) shall be clearly identified as belonging to the entity that is the actual member of the organization.

3) Specific Standards

The foregoing standards set forth in subparagraphs (1) and (2) shall apply to all communications unless at least one of the following special circumstances exists, in which case the standards set forth herein would supersede the standards in subparagraphs (1) and (2).

A) Doing Business As. An Association member may use a fictional name in communications provided that the following conditions are met:

i) Non-Required Fictional Name. A member may voluntarily use a fictional name provided that the name has been filed with the Association and the Commission, all business is conducted under that name and it is the only name by which the firm is recognized.

ii) Required Fictional Name. If a state or other regulatory authority requires a member to use a fictional name, the following conditions shall be met:

a. The fictional name shall be used to conduct business only within the state or jurisdiction requiring its use.

b. If more than one state or jurisdiction requires a firm to use a fictional name, the same name shall be used in each, wherever possible.

c. Any communication shall disclose the name of the member and the fact that the firm is doing business in that state or jurisdiction under the fictional name, unless the regulatory authority prohibits such disclosure.

B) Generic Names. An Association member may use an "umbrella" designation to promote name recognition, provided that the following conditions are met:

i) The name of the member shall be clearly and prominently disclosed;

ii) The relationship between the generic name and the member shall be clear; and

iii) There shall be no implication that the generic name is the name of a registered broker/dealer.

C) Derivative Names. An Association member may use a derivative of the firm name to promote certain areas of the firm's business, provided that the name of the member is clearly and prominently disclosed. Absent such disclosure, the following conditions must be met:

i) The name used to promote a specific area of the firm's business shall be a derivative of the member name; and

ii) The derivative name shall not be misleading in the context in which it is being used.

D) "Division of." An Association member firm may designate an aspect of its business as a division of the firm, provided that the following conditions are met:

i) The designation shall only be used by a bona fide division of the member. This shall include:

a. a division resulting from a merger or acquisition that will continue the previous firm's business; or

b. a functional division that conducts or will conduct one specialized aspect of the firm's business.

ii) The name of the member shall be clearly and prominently disclosed.

iii) The division shall be clearly identified as a division of the member firm.

E) "Service of/Securities Offered Through." An Association member firm may identify its brokerage service being offered through other institutions as a service of the member, provided that the following conditions are met:

i) The name of the member shall be clearly and prominently disclosed.

ii) The service shall be clearly identified as a service of the member firm.

F) Telephone Directory Line Listings, Business Cards and Letterhead. All such listings, cards or letterhead shall conform to the provisions of Rule 3010(g)(2).

Endnotes

[1] *See, In the Matter of Peter Stuart Bevington*, Complaint No. C8A940021 (March 5, 1997); *In the Matter of William Stafford Thurmond*, Complaint No. C06930051 (Feb. 1, 1996); *In the Matter of Jeffery Steven Stone*, Complaint No. C06940036 (Feb. 1, 1996); and *In the Matter of Micah C. Douglas*, Complaint Nos. C06920046 and C06930068 (Sept. 19, 1995).

[2] Currently, paragraph (d) to Rule 3010 requires that each member establish procedures for the review and endorsement of all transactions and correspondence of its registered representatives pertaining to the solicitation or execution of any securities transaction.

[3] Amendments to Rule 3010 that would, among other things, apply certain review and approval requirements to all incoming and outgoing written and electronic correspondence, have been approved by the NASD and published for comment by the Securities and Exchange Commission. *See*, Securities and Exchange Rel. No. 34-38548 (04/25/97); 62 FR 24147 (05/02/97).

[4] The staff will recommend at a later date global changes to NASD Rules to accomplish this result. However, pending a determination of the appeal rights that will be proposed in connection with the revision of such quasi-adjudicative functions, the amendments continue to preserve in subparagraph (c)(4)(B), temporarily, the appellate function of the District Business Conduct Committee with respect to a determination made by the Department that a member must pre-file its materials.

NASD NOTICE TO MEMBERS 97-38

SOES Tier Levels Set To Change July 1, 1997

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

Effective July 1, 1997, tier sizes for 592 Nasdaq National Market® securities will be revised in accordance with NASD® Rule 4710(g).

For more information, please contact Nasdaq® Market Operations at (203) 378-0284.

Description

Under Rule 4710, the maximum Small Order Execution System℠ (SOES℠) order size for a Nasdaq National Market security is 1,000, 500, or 200 shares depending on the trading characteristics of the security. The Nasdaq Workstation II™ indicates the maximum SOES order size for each Nasdaq National Market security in its bid/offer quotation display. The indicator "NM10," "NM5," or "NM2" is displayed to the right of the security name, corresponding to a maximum SOES order size of 1,000, 500, or 200 shares, respectively.

The criteria for establishing SOES tier sizes are as follows:

• A 1,000-share tier size was applied to those Nasdaq National Market securities that had an average daily non-block volume of 3,000 shares or more a day, a bid price that was less than or equal to $100, and three or more market makers.

• A 500-share tier size was applied to those Nasdaq National Market securities that had an average daily non-block volume of 1,000 shares or more a day, a bid price that was less than or equal to $150, and two or more market makers.

• A 200-share tier size was applied to those Nasdaq National Market securities that had an average daily non-block volume of less than 1,000 shares a day, a bid price that was less than or equal to $250, and less than two market makers.

In accordance with Rule 4710, Nasdaq periodically reviews the SOES tier size applicable to each Nasdaq National Market security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of March 31, 1997, pursuant to the aforementioned standards. The SOES tier-size changes called for by this review are being implemented with three exceptions.

• First, issues were not permitted to move more than one tier-size level. For example, if an issue was previously categorized in the 1,000-share tier, it would not be permitted to move to the 200-share tier, even if the formula calculated that such a move was warranted. The issue could move only one level to the 500-share tier as a result of any single review. In adopting this policy, the NASD was attempting to maintain adequate public investor access to the market for issues in which the tier-size level decreased and to help ensure the ongoing participation of market makers in SOES for issues in which the tier-size level increased.

• Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced.

• Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

In addition, with respect to initial public offerings (IPOs), the SOES tier-size reranking procedures provide that a security must first be traded on Nasdaq for at least 45 days before it is eligible to be reclassified.

Thus, IPOs listed on Nasdaq within the 45 days prior to March 31, 1997, were not subjected to the SOES tier-size review.

Following is a listing of the 592 Nasdaq National Market issues that will require a SOES tier-level change on July 1, 1997.

Nasdaq National Market SOES Tier-Size Changes

All Issues In Alphabetical Order By Security Name
(Effective July 1, 1997)

Symbol	Company Name	Old Tier Level	New Tier Level
TDDDF	3DLABS INC LTD	200	500
TDXT	3DX TECHNOLOGIES INC	200	500
A			
AFCX	A F C CABLE SYS INC	1000	500
ALZAW	A L Z A CP WTS	500	1000
ASVI	A S V INC	500	1000
ARONA	AARON RENTS INC CL-A	500	1000
ASTM	AASTROM BIOSCIENCES	200	500
ABDR	ABACUS DIRECT CP	500	1000
AANB	ABIGAIL ADAMS NATL	1000	500
ABRI	ABRAMS INDS INC	200	500
ACLY	ACCELER8 TECH CORP	200	500
ACLR	ACCENT COLOR SCIENCE	200	500
ACCB	ACCESS BEYOND INC	200	500
ADECY	ADECCO SA ADR	500	200
ADVP	ADVANCE PARADIGM INC	500	1000
AASI	ADVANCED AERO CL A	200	500
AASIW	ADVANCED AERO WT A	200	500
AASIZ	ADVANCED AERO WT B	200	500
ADIC	ADVANCED DIG INFO CP	500	1000
AFCI	ADVANCED FIBRE ##	500	1000
ADVH	ADVANCED HEALTH CORP	500	1000
ARTT	ADVANCED RADIO TELE	500	1000
AFED	AFSALA BANCORP INC	500	1000
ATAC	AFTERMARKET TECH CP	200	500
ALGO	ALGOS PHARMACEUTICAL	500	1000
ALLE	ALLEGIANT BNCP INC	500	200
ALFC	ALLIED LIFE FINL CP	500	1000
ALLN	ALLIN COMMUNICATIONS	500	1000
ASFN	ALLSTATE FINL CP	500	1000
ALET	ALOETTE COSMETICS	1000	500
ALYN	ALYN CORP	500	1000
AMBC	AMER BNCP OHIO	200	500
AMCE	AMER CLAIMS EVALUAT	1000	500
AUGIW	AMER UN GLOBAL WT	500	200
ABFI	AMERICAN BUS FIN SVC	200	500
AMCN	AMERICAN COIN MERCH	500	1000
AMCI	AMERICAN MEDSERV CP	500	1000
AMRS	AMERUS LIFE HLDGS	200	500
AMSN	AMSCAN HLDGS INC	200	500
ANCO	ANACOMP INC	500	1000
ADCC	ANDEAN DEV CORP	500	1000
ADCCW	ANDEAN DEV CORP WTS	500	1000
ANDR	ANDERSEN GROUP INC	500	200
ASIGF	ANSALDO SIGNAL NV	200	500
AICX	APPLIED IMAGING CORP	500	1000
AQLA	AQUILA BIOPHARMACEUT	500	1000
ARSD	ARABIAN SHIELD DEV	1000	500
ARMXF	ARAMEX INTL LTD	200	500
ARQL	ARQULE INC	500	1000
ARTW	ART S WAY MFG CO INC	500	200
GOAL	ASCENT ENTER GROUP	500	1000
ATRC	ATRIA COMMUNITIES	500	1000
ATRI	ATRION CP	500	1000
AURM	AURUM SOFTWARE INC	500	1000
ABND	AUTOBOND ACCEPT CP	500	1000
AIII	AUTOLOGIC INFO INTL	1000	500
AVIR	AVIRON	500	1000
AWRD	AWARD SOFTWARE INTL	500	1000
AXYS	AXSYS TECHS INC	200	500
B			
BFEN	B F ENTERPRISES INC	200	500
BHIKF	B H I CORP	1000	500
BWINB	BALDWIN LYONS CL B	1000	500
BPAO	BALDWIN PIANO ORGAN	1000	500
BGLVW	BALLY'S GRAND INC WT	500	200
BTEK	BALTEK CP	500	200
BANF	BANCFIRST CP	500	1000
BCIS	BANCINSURANCE CP	500	1000
BKCT	BANCORP CONN INC	1000	500
BMCCP	BANDO MCGLOC PFD A	200	500
BCOM	BANK OF COMMERCE(CA)	500	1000
BKLA	BANK OF LOS ANGELES	200	500
BBHF	BARBERS HAIRSTYLING	200	500
BNTT	BARNETT INC	500	1000
BNHNA	BENIHANA INC A	1000	500

Symbol	Company Name	Old Tier Level	New Tier Level
BGAS	BERKSHIRE GAS CO	500	1000
BEVB	BEVERLY BANCORP INC	500	1000
BCORY	BIACORE INTL AB ADR	200	500
BFFC	BIG FOOT FIN CORP	200	500
BEERF	BIG ROCK BREWERY LTD	1000	500
BLSC	BIO LOGIC SYS CP	1000	500
BIORY	BIORA AB ADR	200	500
BSTE	BIOSITE DIAGNOSTIC	200	500
BTRN	BIOTRANSPLANT INC	1000	500
BMAN	BIRMAN MANAGED CARE	200	500
BITS	BITSTREAM INC	500	1000
BOSA	BOSTON ACOUSTICS INC	500	1000
BBII	BOSTON BIOMEDICA INC	500	1000
BWLN	BOWLIN OUTDOOR ADVER	200	500
BOXXA	BOX ENERGY CP CL A	500	200
BOYD	BOYD BROS TRANS INC	200	500
BRID	BRIDGFORD FOODS CP	500	1000
BBIOY	BRITISH BIO-TECH ADR	1000	500
BTIC	BRUNSWICK TECHS INC	200	500
BLGMY	BUFFELSFONTEIN ADR	500	1000
BPFB	BUSINESS & PRO BANK	500	1000

C

CBCG	C B COMM REAL ESTATE	200	500
CNIT	C E N I T BNCP INC	500	1000
CERB	C E R B C O INC	500	1000
CFCI	C F C INTL INC	500	1000
CNBF	C N B FINANCIAL CP	200	500
COLTY	C O L T TELECOM ADR	200	500
CUNO	C U N O INC	500	1000
CVTX	C V THERAPEUTICS INC	200	500
CALGL	CAL FED SEC LIT INT	500	1000
CALM	CAL-MAINE FOODS INC	200	500
CAFI	CAMCO FINANCIAL CP	500	1000
CNDL	CANDLEWOOD HOTEL CO	500	1000
CAII	CAPITAL ASSOC	1000	500
CCBG	CAPITAL CITY BANK GR	200	500
CCOW	CAPITAL CP OF WEST	200	500
CRBO	CARBO CERAMICS INC	1000	500
CBNJW	CARNEGIE BANCORP WTS	1000	500
CFNC	CAROLINA FINCORP INC	200	500
FLWR	CELEBRITY INC	1000	500
CNDS	CELLNET DATA SYSTEMS	500	1000
CSBC	CENTRAL &STHN HLD GA	500	1000
CSBI	CENTURY SOUTH BKS	1000	500
CERS	CERUS CORP	200	500
CFBXL	CFB CAPITAL I CUM	200	500
CHNL	CHANNELL COML CORP	500	1000
CHFC	CHEMICAL FIN CP	500	1000
CNBA	CHESTER BANCORP INC	500	1000
CNRMF	CINRAM LIMITED	500	200
CINS	CIRCLE INCOME SHARES	500	1000
CICS	CITIZENS BKSH INC	500	1000
CHCO	CITY HOLDING CO	500	1000
CLSR	CLOSURE MEDICAL CORP	500	1000
CDEN	COAST DENTAL SVCS	200	500
MOKA	COFFEE PEOPLE INC	500	1000
CWTR	COLDWATER CREEK INC	200	500
CBMD	COLUMBIA BANCORP MD	500	1000
CLBK	COMMERCIAL BANKSHRS	500	1000
CTWS	CONN WATER SVCS INC	500	1000
CFWY	CONS FREIGHTWAYS CP	500	1000
CFIN	CONSUMERS FIN CP	500	200
SNSR	CONTROL DEVICES INC	500	1000
CSCQW	CORRECTIONAL SVCS WT	500	200
CLTR	COULTER PHARM INC	200	500
CRRC	COURIER CP	1000	500
CMSS	CREDIT MGMT SOLU	200	500
CRYSF	CRYSTAL SYSTEMS SOL	200	500
CBST	CUBIST PHARMACEUTCLS	500	1000
CYBR	CYBERMEDIA INC	500	1000
CYMI	CYMER INC	500	1000

D

DAOU	D A O U SYSTEMS INC	200	500
DBTO	D B T ONLINE INC	500	1000
DNAP	D N A P HLDG CP	500	1000
DATX	DATA TRANSLATION	200	500
DTAM	DATAMARK HOLDING INC	200	500
DOCP	DELAWARE OTSEGO CP	500	1000
DLIA	DELIA*S INC	200	500
DCBI	DELPHOS CITIZENS BCP	200	500
DCBK	DESERT COMMUNITY BK	200	500
DCRNW	DIACRIN INC WT	500	1000
DHMS	DIAMOND HOME SVCS	500	1000
DITI	DIATIDE INC	1000	500
DDRX	DIEDRICH COFFEE	500	1000
DIGX	DIGEX INC	500	1000
DIGL	DIGITAL LIGHTWAVE	200	500
DPNR	DIGNITY PARTNERS INC	1000	500
DOCX	DOCUMENT SCI CP	500	1000
DEZI	DONNELLY ENT SOLUTIO	500	1000
SOLLY	DR SOLOMON'S GRP ADR	200	500
DROOY	DURBAN ROODEPOOR ADR	500	1000
DXCPN	DYNEX CAPITAL PFD C	500	1000

Symbol	Company Name	Old Tier Level	New Tier Level
E			
ELTKF	E L T E K LTD	200	500
ELXS	E L X S I CP	1000	500
EMCI	E M C INSURANCE GP	500	1000
EPIX	E P I X MEDICAL INC	200	500
EDSE	E S E L C O INC	200	500
EGLB	EAGLE BANCGROUP INC	500	1000
EUSA	EAGLE USA AIRFREIGHT	500	1000
ELNK	EARTHLINK NETWORK	200	500
ECSGY	ECSOFT GROUP PLC ADR	200	500
EDMC	EDUCATION MGMT CORP	500	1000
EIDSY	EIDOS PLC ADR	200	500
EMITF	ELBIT MED IMAGING	200	500
ESLTF	ELBIT SYSTEMS LTD	200	500
ELGT	ELECTRIC & GAS TECH	200	500
ELSE	ELECTRO SENSORS INC	500	200
ESCP	ELECTROSCOPE INC	1000	500
ELET	ELLETT BROTHERS INC	1000	500
ELRWF	ELRON ELEC INDS WTS	500	200
EIRE	EMERALD ISLE BANCORP	500	1000
EMER	EMERGENT GROUP INC	500	1000
EFBC	EMPIRE FED BANCORP	200	500
ENML	ENAMELON INC	500	1000
EONE	ENVIRONMENT ONE CP	500	1000
EPTO	EPITOPE INC	200	500
ERGB	ERGOBILT INC	200	500
ESCA	ESCALADE INC	500	1000
F			
FCNB	F C N B CP	500	1000
FDPC	F D P CP	500	1000
FLAG	F L A G FINANCIAL CP	500	1000
FMCO	F M S FINANCIAL CP	500	200
FPBN	F P BANCORP INC	500	1000
FCPY	FACTORY CARD OUTLET	200	500
FAXX	FAXSAV INC	500	1000
ROMN	FILM ROMAN INC	500	1000
FSAT	FIN SVCS ACQ CORP	500	1000
FSATW	FIN SVCS ACQ CP WT A	500	1000
FMST	FINISHMASTER INC	1000	500
FATS	FIREARMS TRAINING	200	500
FAHC	FIRST AMER HEALTH	1000	500
FBSI	FIRST BANCSHARES INC	200	500
FBNKP	FIRST BKS CUM PFD C	200	500
FTFN	FIRST FIN CP (RI)	500	1000
FSPG	FIRST HOME BNCP INC	200	500
FKFS	FIRST KEYSTONE FIN	500	1000
FMAR	FIRST MARINER BNCP	200	500
FRME	FIRST MERCHANTS CP	500	1000
FNGB	FIRST NORTHERN CAP	500	1000
FBNKO	FIRST PFD CAP TR PFD	200	500
FSNJ	FIRST SAV BK OF NJ	500	1000
FSTH	FIRST SO BCSHS INC	1000	500
FVNB	FIRST VICTORIA NATL	200	500
FVHI	FIRST VIRTUAL HLDGS	200	500
FFDP	FIRSTFED BANCSHARES	500	1000
FFSW	FIRSTFEDERAL FINL	500	1000
FAME	FLAMEMASTER CP THE	200	500
FLCHF	FLETCHER'S FINE FOOD	200	500
PUCK	FLORIDA PANTHERS HLD	500	1000
FNBF	FNB FINANCIAL SVC CP	200	500
FORR	FORRESTER RESEARCH	200	500
FBHC	FORT BEND HLDG CORP	500	200
FRTG	FORTRESS GROUP INC	500	1000
FPWR	FOUNTAIN PWRB IND	500	1000
FOUR	FOUR MEDIA COMPANY	200	500
FTNB	FULTON BANCORP INC	500	1000
G			
GGEN	GALAGEN INC	1000	500
GOYL	GARGOYLES INC	500	1000
GENBB	GENESEE CP B	500	200
GEOC	GEOTEL COMMUN CP	200	500
GIGA	GIGA TRONICS INC	1000	500
GFCO	GLENWAY FIN CP	200	500
GLDB	GOLD BANC CORP INC	200	500
GLTB	GOLETA NATL BANK	200	500
GNCNF	GORAN CAPITAL INC	500	1000
GRDL	GRADALL INDS INC	500	1000
GPFI	GRAND PREMIER FIN	500	1000
GFNL	GRANITE FINANCIAL	500	1000
GTRN	GREAT TRAIN STORE CO	500	1000
GWALY	GREAT WALL ADR	500	200
GBBK	GREATER BAY BANCORP	500	1000
GMCR	GREEN MT COFFEE INC	500	1000
H			
HFFC	H F FINANCIAL CP	1000	500
HPSC	H P S C INC	500	1000
HNBC	HARLEYSVILLE NATL CP	1000	500
HGMCY	HARMONY GOLD MNG ADR	500	1000
HFGI	HARRINGTON FIN GRP	1000	500
HVFD	HAVERFIELD CP	500	1000
HAYS	HAYES WHEELS INTL	500	1000
HPWR	HEALTH POWER INC	1000	500
HCFP	HEALTHCARE FIN PTRS	200	500
HECHB	HECHINGER CO CL B	1000	500

Symbol	Company Name	Old Tier Level	New Tier Level
HAHIW	HELP AT HOME INC WTS	500	1000
HERS	HERITAGE FINL SVC IL	500	1000
HIBB	HIBBETT SPORTING	500	1000
HPFC	HIGH POINT FINL CORP	200	500
HBNK	HIGHLAND FEDERAL BK	1000	500
HIHOF	HIGHWAY HLDGS LTD	200	500
HIHWF	HIGHWAY HLDGS WTS	200	500
HILI	HILITE INDS INC	1000	500
HIFS	HINGHAM INSTI SAVING	500	200
HLGRF	HOLLINGER INC	1000	500
HBEI	HOME BANCP ELGIN	500	1000
HOMF	HOME FEDERAL BANCORP	500	1000
HMGT	HOMEGATE HOSPITALITY	500	1000
HOTT	HOT TOPIC INC	500	1000
HYDEB	HYDE ATHLETIC INDS B	1000	500
I			
IACP	I A CORPORATION I	500	1000
ILOGY	I L O G ADR	200	500
IGYN	IMAGYN MEDICAL INC	500	1000
IBCPP	INDEP BK CP CUM PFD	200	500
IBCP	INDEP BK CP MI	500	1000
IUBC	INDIANA UNITED BNCP	200	500
IGRP	INDUS GROUP INC THE	500	1000
IMIC	INDUSTIR-MATEMATIK	500	1000
IHIIL	INDUSTRIAL HLDG WT C	200	500
ITCC	INDUSTRIAL TRAINING	1000	500
IMRS	INFO MGMT RESOURCES	500	1000
INLD	INLAND CASINO CP	500	200
ISER	INNOSERV TECH INC	1000	500
ILABY	INSTRUMENTATION ADR	500	1000
ILCC	INTEGRATED LIVING	500	1000
IMRI	INTEGRATED MED RES	500	1000
INTC	INTEL CP #1	1000	500
INTD	INTELIDATA TECHS ##	500	1000
ITIG	INTELLIGROUP INC	500	1000
IHCC	INTENSIVA HLTHCR CP	500	1000
INDQB	INTL DAIRY QUEEN B	200	500
INSS	INTL NETWORK SVCS	500	1000
POST	INTL POST LIMITED	1000	500
ISCA	INTL SPEEDWAY CL A	500	1000
ITDS	INTL TELECOM DATA	500	1000
INVN	INVISION TECH INC	500	1000
IPSW	IPSWICH SAV BK	500	1000
IRWNP	IRWIN FIN CUM TR PFD	200	500
ILDCY	ISRAEL DEVEL LTD ADR	200	500
J			
JPEI	J P E INC	1000	500
JTAX	JACKSON HEWITT INC	500	1000
JCORZ	JACOR COMM INC WTS	500	1000
JAKK	JAKKS PACIFIC INC	500	1000
JUDG	JUDGE GROUP INC	200	500
K			
KPSQ	KAPSON SNR QUARTERS	500	1000
KARR	KARRINGTON HEALTH	1000	500
KAYE	KAYE GROUP INC	500	200
KOGCP	KELLEY OIL & GAS PFD	1000	500
KWIC	KENNEDY-WILSON INTL	500	200
KVCO	KEVCO INC	500	1000
KTTY	KITTY HAWK INC	500	1000
VLCCF	KNIGHTSBRIDGE TANKER	200	500
L			
BOOT	LACROSSE FOOTWEAR	500	1000
LMAR	LAMAUR CORP	500	1000
LARK	LANDMARK BSCHS INC	200	500
LANV	LANVISION SYS INC	1000	500
LARS	LARSCOM INC CL A	200	500
LSON	LASON INC	500	1000
LEPI	LEADING EDGE PACKAGI	200	500
LEAP	LEAP GROUP (THE)	500	1000
LTBG	LIGHTBRIDGE INC	500	1000
LMTR	LITHIA MOTORS INC	200	500
LFUSW	LITTELFUSE INC WTS	500	200
LIVE	LIVE ENTERTAIN INC	1000	500
LOFSY	LONDON & OVERSEA ADR	200	500
LEIX	LOWRANCE ELECTRONICS	1000	500
M			
MBLF	M B L A FINL CORP	500	200
MDSIF	M D S I MOBILE DATA	200	500
MFBC	M F B CORP	1000	500
MVSI	M V S I INC	500	1000
MVSIW	M V S I INC WTS A	200	500
MACC	MACC PRIVATE EQU INC	500	200
MACD	MACDERMID INC	500	1000
MANC	MANCHESTER EQUIP CO	200	500
MAKL	MARKEL CP	1000	500
MFAC	MARKET FACTS INC	500	1000

Symbol	Company Name	Old Tier Level	New Tier Level
MWHX	MARKWEST HYDROCARBON	500	1000
MSDX	MASON-DIXON BCSHS	1000	500
MAST	MASTECH CORPORATION	200	500
MTXC	MATRIX CAP CORP	500	1000
MAZL	MAZEL STORES INC	200	500
MGRC	MCGRATH RENT CP	1000	500
MBRK	MEADOWBROOK REHAB A	500	200
MEDJ	MEDI-JECT CORP	500	1000
MDLK	MEDIALINK WORLDWIDE	200	500
MAII	MEDICAL ALLIANCE INC	500	1000
MMGR	MEDICAL MGR CORP	200	500
MDMD	MEDIRISK INC	200	500
MMGC	MEGO MORTGAGE CP	200	500
MBRS	MEMBERWORKS INC	500	1000
MEMCF	MEMCO SOFTWARE LTD	500	1000
MIGI	MERIDIAN INS GP INC	500	1000
MRET	MERIT HOLDING CP	500	1000
MTRS	METRIS COMPANIES INC	500	1000
MISI	METRO INFO SVCS INC	200	500
MTNT	METRO NETWORKS INC	500	1000
MTON	METRO ONE TELECOMM	500	1000
METZ	METZLER GROUP INC	500	1000
MINT	MICRO-INTEGRATION CP	1000	500
MSFTP	MICROSOFT CV PFD	200	500
MVIS	MICROVISION INC	500	1000
MVISW	MICROVISION WTS	500	1000
MAME	MOBILE AMER CP NEW	500	1000
MCRI	MONARCH CASINO	1000	500
MONEP	MONEY STORE PFD	500	1000
MORP	MOORE PRODUCTS CO	200	500
LABL	MULTI COLOR CP	500	1000
N			
NCOG	N C O GROUP INC	500	1000
NFOR	N F O RESEARCH INC	500	1000
NSAI	N S A INTL INC	500	1000
NAFI	NATIONAL AUTO FIN CP	200	500
NCBE	NATL CITY BANCSHARES	500	1000
NATI	NATL INSTRUMENTS CP	500	1000
NAIG	NATL INSURANCE GP	500	1000
NPBC	NATL PENN BSCHS INC	500	1000
NSSX	NATL SANITARY SUPPLY	200	500
NAII	NATURAL ALTERNATIVES	200	500
NEOT	NEOTHERAPEUTICS INC	500	1000
NEOTW	NEOTHERAPEUTICS WTS	500	1000
NECSY	NETCOM SYSTEMS ADR	200	500
NECB	NEW ENGLAND COMM A	500	1000
NYBS	NEW YORK BAGEL ENT	500	1000
NMTI	NITINOL MED TECHS	500	1000
NOLD	NOLAND CO	200	500
NPSI	NORTH PITTSBURGH SYS	200	500
NEIB	NORTHEAST IND BNCP	1000	500
NSCF	NORTHSTAR COMPUTER	200	500
NWTL	NORTHWEST TELEPROD	1000	500
NMTXW	NOVAMETRIX MED WTS A	500	200
NGPSF	NOVATEL INC	200	500
NUCM	NUCLEAR METALS INC	200	500
NFLIW	NUTRITION FOR LFE WT	1000	500
O			
OTRX	O T R EXPRESS INC	1000	500
OGAR	O'GARA COMPANY (THE)	500	1000
OAKF	OAK HILL FIN INC	500	200
OHSC	OAK HILL SPORTSWEAR	1000	500
OCENY	OCE VAN GRINTEN ADR	200	500
OCWN	OCWEN FINANCIAL CP	500	1000
OEDC	OFFSHORE ENERGY DEV	500	1000
OGLE	OGLEBAY NORTON CO	200	500
OLGR	OILGEAR CO	500	200
OSBC	OLD SECOND BNCP INC	200	500
OMEF	OMEGA FINL CP	500	1000
OMGR	OMNI INSURANCE GP	500	1000
ONCO	ON COMMAND CORP	500	1000
ONDI	ONTRACK DATA INTL	500	1000
OGNB	ORANGE NATL BNCP	200	500
P			
PJAM	P J AMERICA INC	500	1000
PBSF	PACIFIC BANK NATL CA	500	1000
PABN	PACIFIC CAPITAL BNCP	200	500
PBFI	PARIS CORP	500	200
PRLX	PARLEX CP	200	500
PATI	PATIENT INFOSYSTEMS	200	500
PRLS	PEERLESS SYSTEMS CP	500	1000
PGTV	PEGASUS COMMUNICATIO	500	1000
PPLS	PEOPLES BK CP OF IND	200	500
PMFI	PERPETUAL MIDWEST	1000	500
PLIT	PETROLITE CP	500	1000
PNTGF	PETROMET RES LTD	200	500
PHXX	PHOENIX INTL LTD	500	1000
PECX	PHOTOELECTRON CORP	200	500
SIGN	PLASTI LINE INC	1000	500
PWAV	POWERWAVE TECHS INC	200	500
PBKC	PREMIER BKSHS	500	1000
PRWW	PREMIER RESEARCH	200	500
PENG	PRIMA ENERGY CP	500	1000
PSAB	PRIME BNCP INC	500	1000

Symbol	Company Name	Old Tier Level	New Tier Level
PRMX	PRIMEX TECHS INC	200	500
PRTL	PRIMUS TELECOM GROUP	500	1000
PNBC	PRINCETON NATL BNCP	200	500
PRTW	PRINTWARE INC	500	1000
PRCM	PROCOM TECH INC	200	500
PICM	PROFESSIONALS INS CO	500	1000
PSDS	PROSOURCE INC	500	1000
PSFI	PS FINANCIAL INC	200	500
PULS	PULSE BANCORP INC	200	500
PUMA	PUMA TECHNOLOGY INC	200	500
Q			
QEPC	Q E P CO INC	500	1000
QLIX	QUALIX GROUP INC	200	500
R			
RGFC	R & G FINANCIAL CORP	500	1000
RMHT	R M H TELESERVICE	500	1000
RADS	RADIANT SYSTEMS INC	200	500
RAIL	RAILAMERICA INC	500	1000
RLLYW	RALLY'S HAMBURGER WT	500	1000
RAVE	RANKIN AUTO GP	200	500
RARB	RARITAN BANCORP INC	500	200
RFTN	REFLECTONE INC	500	1000
RELV	RELIV INTL INC	500	1000
RSVC	RENTAL SERVICE CORP	500	1000
RIDG	RIDGEVIEW INC	500	1000
RIMG	RIMAGE CP	500	1000
GRLL	ROADHOUSE GRILL INC	200	500
RSHX	ROCKSHOX INC	500	1000
RSTI	ROFIN-SINAR TECHS	500	1000
RWAV	ROGUE WAVE SOFTWARE	200	500
RSLN	ROSLYN BANCORP INC	200	500
RBPAA	ROYAL BSCHS OF PA A	500	1000
RGLD	ROYAL GOLD INC	500	1000
ROYL	ROYALE ENERGY INC	500	1000
S			
SEEC	S E E C INC	500	1000
SLAB	SAGE LABS INC	500	200
SCAI	SANCHEZ COMPUTER ASS	500	1000
SABB	SANTA BARBARA BNCP	500	1000
SAVB	SAVANNAH BNCP INC	500	200
SMIT	SCHMITT INDS (OR)	500	1000
SAVO	SCHULTZ SAV O STORES	500	1000
STIZ	SCIENTIFIC TECH INC	1000	500
SCOT	SCOTT AND STRINGFELL	200	500
SEAC	SEA CHANGE INTL INC	500	1000
SEMD	SEA M E D CORP	200	500
SEAM	SEAMAN FURNITURE CO	500	200
SEWY	SEAWAY FOOD TOWN INC	500	1000
SBHC	SECURITY BK HLDG CO	500	1000
SNFCA	SECURITY NATL FINL A	200	500
SELAY	SELECT APPT PLC ADR	200	500
SLCTY	SELECT SOFTWARE ADR	500	1000
SENEB	SENECA FOODS CP B	200	500
SERX	SERVICE EXPERTS INC	500	1000
SFXBW	SFX BROADCASTING WTS	1000	500
SGNS	SIGNATURE INNS INC	200	500
SGNSP	SIGNATURE INNS PFD A	200	500
SLGN	SILGAN HOLDINGS INC	200	500
SFNCA	SIMMONS FIRST NATL A	1000	500
SMCI	SIMULATION SCIENCES	500	1000
SKYM	SKYMALL INC	200	500
SWLDY	SMALLWORLDWIDE ADR	500	1000
SMTK	SMARTALK TELESVCS	500	1000
SOMR	SOMERSET GP INC THE	200	500
SSFC	SOUTH STREET FIN CP	500	1000
SMBC	SOUTHERN MO BNCP INC	500	1000
SWBT	SOUTHWEST BANCP TX	200	500
SWBI	SOUTHWEST BANCSHARES	200	500
OKSB	SOUTHWEST BNCP INC	500	1000
SCNI	SPECIALTY CARE NETWK	200	500
CTLG	SPECIALTY CATALOG CP	500	1000
SPLH	SPLASH TECH HLDGS	500	1000
STAF	STAFFMARK INC	500	1000
STGE	STAGE STORES INC	500	1000
SFSW	STATE FINL SVCS CL A	200	500
STLD	STEEL DYNAMICS INC	200	500
STNRF	STEINER LEISURE LTD	500	1000
SRCL	STERICYCLE INC	500	1000
SWBC	STERLING WEST BNCP	200	500
EASY	STORM TECH INC	500	1000
STYL	STYLING TECH CORP	200	500
SBCN	SUBURBAN BNCP	500	1000
SOSC	SUBURBAN OSTOMY SUPP	500	1000
SUBK	SUFFOLK BNCP	500	1000
SMMT	SUMMIT DESIGN INC	500	1000
SNHY	SUN HYDRAULICS CORP	200	500
SUPC	SUPERIOR CONSULTANT	500	1000
SPPR	SUPERTEL HOSPITALITY	1000	500
SIGC	SYMONS INTL GROUP	500	1000
SIND	SYNTHETIC INDS INC	500	1000
T			
TALX	T A L X CORP	500	1000

Symbol	Company Name	Old Tier Level	New Tier Level
TSATA	T C I SAT ENT SER A	200	500
TMAM	T E A M AMERICA CORP	200	500
THNK	T H I N K NEW IDEAS	200	500
TMPW	T M P WORLDWIDE INC	200	500
TTILF	T T I TEAM TELECOM	200	500
THQI	T*HQ INC	500	1000
TMAI	TECHNOLOGY MODELING	500	1000
TCOMP	TELE COMMUN PFD B	500	200
TMPL	TEMPLATE SOFTWARE	200	500
TESOF	TESCO CORP	200	500
TKTM	TICKETMASTER GROUP	200	500
TEXP	TITAN EXPLORATION	200	500
TKIOY	TOKIO MARINE ADR	500	1000
TCIX	TOTAL CONTAINMENT	500	200
TTRRW	TRACOR INC WTS A	1000	500
TCAM	TRANS CP OF AMER INC	500	1000
TRNI	TRANS INDS INC	1000	500
TACT	TRANSACT TECH INC	500	1000
TRII	TRANSCRYPT INTL INC	200	500
TKTX	TRANSKARYOTIC THERAP	500	1000
VIRS	TRIANGLE PHARMACEUTS	500	1000
TMRK	TRIMARK HLDGS INC	500	1000
TISX	TRUSTED INFO SYS ##	500	1000
TWLB	TWINLAB CORP	500	1000
U			
UOLP	U O L PUBLISHING INC	200	500
USAK	U S A TRUCK INC	500	1000
USFS	U S FRANCHISE SYS A	500	1000
USLM	U S LIME & MINERALS	1000	500
USPH	U S PHYSICAL THERAPY	500	1000
UNDG	UNIDIGITAL INC	1000	500
UPCPO	UNION PLANTERS PFD E	500	1000
UNBCZ	UNIONBANCAL CP DEP	1000	500
UBMT	UNITED FINANCIAL CP	200	500
UNFI	UNITED NAT FOODS INC	500	1000
UNBJ	UNITED NATL BNCP	500	1000
USTR	UNITED STATIONERS	500	1000
UPEN	UPPER PENINSULA ERGY	1000	500
UROH	UROHEALTH SYSTEMS	200	500
UROQ	UROQUEST MEDICAL CP	500	1000
V			
VONE	V-ONE CORP	500	1000
VDRY	VACU DRY CO	500	200
VMSI	VENTANA MED SYSTEMS	500	1000
VRSA	VERSA TECH INC	1000	500
VERS	VERSATILITY INC	200	500
VSAT	VIASAT INC	200	500
VYTL	VIATEL INC	500	1000
VUTKW	VIEW TECH INC WTS	500	1000
VISG	VIISAGE TECH INC	500	1000
VPHM	VIROPHARMA INC	200	500
VTCH	VITECH AMERICA INC	500	1000
VVID	VIVID TECHS INC	200	500
VTEK	VODAVI TECHNOLOGY	1000	500
VOXW	VOXWARE INC	500	1000
W			
WALBP	WALBRO CAP TR CV PFD	200	500
WAMUO	WASHINGTON MUT PFD C	500	1000
WTRS	WATERS INSTRUMENTS	500	200
WEFC	WELLS FINANCIAL CP	500	1000
WJCO	WESLEY JESSEN VISION	200	500
WTSC	WEST TELESERVICES CP	200	500
WCBI	WESTCO BANCORP	500	1000
WEHO	WESTWOOD HOMESTEAD	500	1000
WEYS	WEYCO GP INC	200	500
WPNE	WHITE PINE SOFTWARE	500	1000
OATS	WILD OATS MARKETS	500	1000
WLFC	WILLIS LEASE FIN CP	500	1000
WFSG	WILSHIRE FIN SVCS GR	200	500
WGOV	WOODWARD GOVERNOR CO	200	500
WCOMP	WORLDCOM DEP SHS	200	500
X			
XION	XIONICS DOC TECHS	500	1000
XLCT	XLCONNECT SOLUTIONS	500	1000
XOMD	XOMED SURG PRODS INC	500	1000
Y			
YURI	YURIE SYSTEMS INC	200	500
Z			
ZAGIF	Z A G INDS LTD	500	1000
ZSEV	Z SEVEN FUND INC THE	200	500
ZHOM	ZARING HOMES INC	500	1000
ZILA	ZILA INC	500	1000
ZOMX	ZOMAX OPTICAL MEDIA	500	1000

NASD NOTICE TO MEMBERS 97-39

Independence 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

Independence Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market℠ and the securities exchanges will be closed on Friday, July 4, 1997, in observance of Independence Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
June 30	July 3	July 8
July 1	7	9
2	8	10
3	9	11
4	Markets Closed	—
7	10	14

*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 five 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 titled "Reg. T Date."

NASD NOTICE TO MEMBERS 97-40

Fixed Income Pricing System Additions, Changes, And Deletions As Of May 22, 1997

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ■ Corporate Finance
- ☐ Government Securities
- ■ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ■ Municipal
- ☐ Mutual Fund
- ■ Operations
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As of May 22, 1997, the following bonds were added to the Fixed Income Pricing System℠ (FIPS℠).

Symbol	Name	Coupon	Maturity
HSRS.GB	HS Resources Inc	9.250	11/15/06
HYPT.GA	Hyperion Telecomm Inc	13.000	4/15/03
ADVN.GB	Advanta Corp	7.000	5/1/01
HARC.GA	HarCor Energy Inc	14.875	7/15/02
BNKU.GA	Bank United Corp	8.875	5/1/07
ACNS.GA	Amer Commun Svs Inc	12.750	4/1/06
KSAC.GC	Kaiser Alum & Chem Corp	10.875	10/15/06
WCII.GA	WinStar Comm Inc	14.000	10/15/05
CCMH.GA	Coinmach Corp	11.750	11/15/05
DICA.GA	Dime Capital Trust Inc	9.330	5/6/27
KCS.GA	KCS Energy Inc	11.000	1/15/03
SPNI.GB	Spinnaker Industry Inc	10.750	10/15/06
CLNG.GB	Cole National Grp Inc	9.875	12/31/06
RCAR.GA	RC/Arby's Corp	9.750	8/1/00
MXGH.GA	Maxxam Grp Hldgs Inc	12.000	8/1/03
PRIM.GA	Prime Succession Inc	10.750	8/15/04
ASRP.GA	Astor Corp	10.500	10/15/06
KFIN.GC	K & F Industry Inc	10.375	9/1/04
CMS.GC	CMS Energy Corp	8.125	5/15/02
USC.GA	U.S. Can Corp	10.125	10/15/06
ILHF.GA	Intl Home Foods Inc	10.375	11/1/06
CLEC.GA	CalEnergy Co Inc	9.500	9/15/06
PRDE.GA	Pride Petroleum Srvs Inc	9.375	5/1/07
DRFL.GA	Drummond Financial Corp	0.000	7/31/08
HWCO.GA	Hawk Corp	10.250	12/1/03
ONSI.GB	Orion Network Systems Inc	11.250	1/15/07
OI.GI	Owens - ILL Inc	7.850	5/15/04
OI.GJ	Owens - ILL Inc	8.100	5/15/07
APH.GB	Amphenol Corp	9.875	5/15/07
SCOM.GA	Shared Tech Fairchild Com Corp	12.250	3/1/06
CTYA.GF	Century Commu Co	8.875	1/15/07
CTFC.GA	Central Tractor Farm & Ctry Inc	10.625	4/1/07
BNDK.GA	Benedek Commu Co	13.250	5/15/06
PKBR.GA	Park Broadcasting Inc	11.750	5/15/04
BFPT.GA	Brooks Fiber Properties Inc	11.875	11/1/06
UPC.GA	Union Planters Capital Trust	8.200	12/15/26

As of May 22, 1997, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
CTYA.GA	Century Communications Corp	11.875	10/15/03
WLV.GA	Wolverine Tube Inc	10.125	9/1/02
CVDF.GA	CVD Financial Corp	8.500	7/31/08
BIBB.GA	BIBB Co	14.000	10/1/99
NTCP.GA	NTC Group Inc	13.875	8/1/99
TUBO.GA	Tuboscope Vetco Intl Inc	10.750	4/15/03
ENQ.GA	Amer Media Operations Inc	0.000	5/15/97

Symbol	Name	Coupon	Maturity
SBK.GA	Bank of VA Co	5.628	5/15/97
MORT.GB	Marriott Corp	8.875	5/1/97
PNM.GA	Public Service Co N Mex	5.875	5/1/97
OIL.GA	Triton Energy Corp	0.000	11/1/97
OIL.GB	Triton Energy Corp	9.750	12/15/00

As of May 22, 1997, changes were made to the names and symbols of the following FIPS bonds:

New Symbol	New Name	Coupon	Maturity	Old Symbol	Old Name
JMI.GA	Johns Manville Intl Grp Inc	10.875	12/15/04	SHUL.GA	Schuller Intl Grp
HOVV.GB	Hovnanian Enterprises Inc	11.250	4/15/02	KHEF.GA	KHE Finance Inc

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASD Regulation℠ Market Regulation, at (301) 590-6451.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq® Market Operations, at (203) 385-6310.

DISCIPLINARY ACTIONS

Disciplinary Actions Reported For June

NASD Regulation, Inc. (NASD Regulation℠) has taken disciplinary actions against the following firms and individuals for violations of NASD® rules; federal 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, June 16, 1997. The information relating to matters contained in this *Notice* is current as of the end of May 23. Information received subsequent to the end of May 23 is not reflected in this edition.

Firms Expelled, Individuals Sanctioned

Coastline Financial, Inc. (Mission Viejo, California) and **Donald Allyson Williams (Registered Principal, Mission Viejo, California)** were fined $50,000, jointly and severally. In addition, the firm was expelled from NASD membership and ordered to repay, with interest, any notes mentioned in the complaint that remain outstanding. Williams was barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a Los Angeles District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Williams, induced the purchase of 63 secured promissory notes totaling $1,101,260.89 in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

The action has been appealed to the Securities and Exchange Commission (SEC) and the sanctions, other than the expulsion and bar, are not in effect pending consideration of the appeal. However, the firm is permitted to effect unsolicited transactions on behalf of its existing customers during the pendency of the appeal.

Hartland Financial Management Corporation (Austin, Kentucky) and **Paul C. Hayden (Registered Representative, Glasgow, Kentucky)** submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership and Hayden was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hayden, conducted a securities business while failing to maintain its minimum required net capital. Furthermore, the NASD determined that, in an attempt to bring the firm's net capital into compliance, Hayden made capital contributions from his personal bank account when he did not have sufficient funds in his account. The findings also stated that Hayden became the sole shareholder and president of the firm and failed to become registered as a general securities principal within the requisite time period. Hayden also failed to respond to NASD requests for information.

Firm Suspended, Individual Sanctioned

Hartman Securities, Inc. (Houston, Texas) and **Allen Robert Hartman (Registered Principal, Houston, Texas)** were fined $20,000, jointly and severally. In addition, the firm was suspended from NASD membership for two weeks and Hartman was suspended from association with any NASD member in any capacity for two weeks. The NBCC imposed the sanctions following appeal of a Dallas DBCC decision. The sanctions were based on findings that the firm, acting through Hartman, failed to deposit and retain all customer funds in an escrow account during the offering of limited partnership interests until the contingencies specified in the offering memorandum

had been met. Furthermore, the firm, acting through Hartman, violated its restrictive agreement with the NASD by effecting securities transactions in limited partnerships and conducting a securities business when it had agreed not to.

Firm Fined, Individual Sanctioned

Covato/Lipsitz, Inc. (Pittsburgh Pennsylvania) and **Alfred I. Lipsitz (Registered Principal, Pittsburgh, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent and an Offer of Settlement pursuant to which they were fined $40,000, jointly and severally. In addition, Lipsitz was barred from association with any NASD member in any principal capacity and from performing any principal, supervisory, or managerial functions with any NASD member. Lipsitz is also barred from maintaining a proprietary interest in any NASD member except that he may maintain (1) a non-controlling, investment interest in a member whose stock is publicly traded and subject to the reporting requirements of Section 12(g) of the Securities Exchange Act of 1934, (2) an investment interest in an employee stock ownership plan or similar plan which does not confer voting rights upon individual participants in the plan or provided he relinquishes any individual voting rights, and (3) a non-voting interest in Covato/Lipsitz, Inc. or any successor to the firm if he sells or transfers a portion of the stock of the firm representing total voting control of the corporation to another person or entity and if he is still the sole owner of the stock, he is required to place all of the stock in a voting trust. Furthermore, Lipsitz must requalify by exam as a general securities representative.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Lipsitz, effected securities transactions when the firm failed to maintain its minimum required net capital, failed to reflect certain liabilities on its books and records, prepared an inaccurate net capital computation, and filed inaccurate FOCUS Part I reports. Furthermore, the NASD found that the firm, acting through Lipsitz, failed to timely notify the SEC or the NASD on each occasion when it failed to maintain the minimum required net capital and engaged in a fraudulent course of conduct whereby they intentionally or recklessly failed to record on the firm's books and records the outstanding balance on a line of bank credit the firm maintained. The NASD also found that the firm, acting through Lipsitz, failed to record on its books and records the existence of and balance in a bank account, failed to reflect on its books and records that the bank held a security interest in a $37,000 CD as collateral for advances made to the firm on the line of credit it maintained at the bank, and failed to properly treat the face amount of the encumbered CD as a non-allowable asset in preparing the firm's monthly net capital computations. The findings stated that the firm, acting through Lipsitz, failed to disclose in an offering memorandum or in any supplement thereto that the general partner and/or affiliates of the general partner could purchase units in the offering, the maximum amount of units the general partner could purchase or that purchases by the general partner and/or affiliates of the general partner could be used to close the offering. The NASD also determined that the firm, acting through Lipsitz, failed to conduct an in-person compliance meeting or interview with two representatives of the firm.

Firms and Individuals Fined

D.H. Brush & Associates, Inc. (Chicago, Illinois) and Robert John Uhe (Registered Principal, Winnetka, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $97,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Uhe, allowed associated persons to be actively involved in the securities business without proper registration. The findings also stated that the firm retained $72,000 in gross commissions generated by the associated persons.

Harrison Douglas, Inc. (Aurora, Colorado), Douglas Wayne Schriner (Registered Principal, Aurora, Colorado), and **Stephen John Hrynik (Registered Principal, Aurora (Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally, and required to offer recession of monies raised from five non-accredited investors. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with a private offering for which the firm acted as underwriter, the firm, acting through Schriner and Hrynik, failed to sell exclusively to accredited investors as required under the exemption from registration in Section 4(2) and 4(6) of the Securities Act of 1933. The findings also stated that the firm, acting through Schriner and Hrynik, failed to disclose in the private offering memorandum that Hrynik, who signed the review contained in the memorandum, was not independent because he was employed at the firm as its chief financial officer.

Firms Fined

ACAP Financial, Inc. (Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver and Consent

pursuant to which the firm was fined $10,800, required to remit $250 in profits relating to transactions, and required to revise its written supervisory procedures relating to short sales. When the new supervisory procedures have been developed, the firm must conduct training sessions on the revised procedures with all relevant personnel. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions of a Nasdaq National Market® security and failed to make affirmative determinations and report the trades to the Automated Confirmation Transaction Service℠ (ACT℠) with short-sale indicators.

Fahnestock & Company, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it did not retain the original trade information that was reported to ACT in its history file. The NASD also determined that the firm reported the time for transactions to ACT prior to the execution time on the order ticket. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to detect and deter trade reporting violations.

Gordon & Co. (Newton, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $25,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings it failed to file any conventional option position reports with the NASD as required by NASD Rule 2860(b)(5)(A) for its customers and/or proprietary accounts.

Hamilton Partners L.P. (Hamilton, Bermuda) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it exceeded the allowable options position limits. The findings also stated that the firm failed to maintain and enforce supervisory procedures to prevent the violations described above.

Herzog Heine Geduld, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $15,000 and required to conduct a rule education class for its traders. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it entered quotations in securities on The Nasdaq Stock Market℠ that exceeded the parameters for maximum allowable spreads pursuant to NASD Rule 4613(d).

Mayer & Schweitzer, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $18,500, required to attend a compliance conference with NASD Regulation staff, and required to conduct a rule education class for its traders. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it entered quotations in securities on The Nasdaq Stock Market that exceeded the parameters for maximum allowable spreads pursuant to NASD Rule 4613(d).

Morgan Stanley & Co., Inc. (New York, New York) submitted an Offer of Settlement pursuant to which the firm was fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to report conventional options positions for any of its accounts as required by the NASD.

O'Connor & Company (Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it entered a series of transactions into the Small Order Execution System℠ (SOES℠) that, when aggregated, exceeded the SOES maximum order size requirements. The findings also stated that the firm failed to establish, maintain, and enforce supervisory procedures that would have enabled it to ensure compliance with NASD rules.

PFS Investments, Inc. (Duluth, Georgia) submitted an Offer of Settlement pursuant to which the firm was fined $25,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to establish, maintain, and/or enforce adequate written procedures that were reasonably designed to achieve compliance with NASD rules concerning private securities transactions or to otherwise supervise adequately its registered representatives and associated persons.

SC Securities Corporation (Dallas, Texas) submitted an Offer of Settlement pursuant to which the firm was fined $100,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to establish and maintain an effective supervisory system, to enforce supervisory procedures, and to reasonably supervise its registered representatives.

Schonfeld Securities, Inc. (Jericho, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined

$9,700, ordered to remit $8,115 in profits relating to transactions, and required to revise its written supervisory procedures relating to short-sale rules and conduct training sessions on the revised procedures with all relevant personnel after they have been developed. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to designate sales as short sales and failed to indicate on order tickets that these transactions were short sales.

Trimark Securities, L.P. (White Plains, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $20,000 and required to submit to the NASD all procedures and steps that it will implement to ensure compliance with the NASD's trade reporting regulations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report trades to ACT when in fact, these trades were done with other member firms and ACT participants. Furthermore, the findings stated that the firm reported an incorrect buy/sell indicator in transactions and reported trades that were not required to be reported.

Troster Singer Corporation (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $22,500 and required to conduct a rule education class for its traders. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it entered quotations in securities on The Nasdaq Stock Market that exceeded the parameters for maximum allowable spreads pursuant to NASD Rule 4613(d).

Troster Singer Corporation (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $16,000 and required to conduct a rule education class for its traders. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it entered or maintained quotations in The Nasdaq Stock Market that caused a locked and/or crossed market condition to occur in eight securities.

Windsor Reynolds Securities, Inc. (New York, New York) was fined $10,000. The sanction was based on findings that the firm opened 97 customer accounts in its New York office and effected 98 purchases and sales on behalf of customers before receiving required approval from the NASD to change its business.

Individuals Barred Or Suspended

Elliot Krausz Adler (Registered Representative, San Francisco, California) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adler received funds totaling $1,350 from a public customer for the purchase of securities and failed to use the proceeds to purchase securities. Adler also failed to respond to NASD requests for information.

John D. Attalienti (Registered Representative, Mt. Kisco, New York), Havard H. Lee (Registered Principal, Clarksburg, New Jersey), Randolph E. Beimel (Registered Principal, N. Kingstown, Rhode Island), Rodney D. Cooper (Registered Representative, Olivette, Missouri), and **Brendan D. Hart (Registered Principal, Norwood, Massachusetts)** submitted Offers of Settlement pursuant to which Attalienti was fined $100,000 and barred from association with any NASD member in any capacity, Lee was fined $250,000 and barred from association with any NASD member in any capacity, Beimel was fined $150,000 and barred from association with any NASD member in any capacity, Cooper was fined $100,000 and barred from association with any NASD member in any capacity, and Hart was fined $150,000 and barred from association with any NASD member in any capacity.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Lee, Beimel, Cooper, and Hart recruited and trained inexperienced registered representatives to aggressively telemarket low-priced, speculative securities recommended by their member firm to the public. According to the findings, Attalienti, Lee, Beimel, Cooper, and Hart then directed, fostered, or induced the registered representatives to engage in abusive sales practices by including baseless price predictions about the stock, making material misrepresentations and omitting negative material information during sales presentations to customers, discouraging or prohibiting registered representatives from independently researching the stocks, and by discouraging or prohibiting registered representatives from processing unsolicited customer sell orders. Moreover, the NASD found that Beimel, Cooper, and Hart individually engaged in the abusive sales practices during presentations to their customers. The findings also stated that Lee, Beimel, and Hart directed registered representatives whom they supervised to engage in unauthorized trading and Beimel and Hart directly engaged in unauthorized trading. The NASD also determined that Lee, Beimel, Cooper, and Hart failed to establish, implement, and enforce reasonable procedures to deter or prevent the abusive sales practices by the registered representatives.

Mark P. Augustine (Registered

Principal, Englewood, Colorado) was fined $5,000, jointly and severally, with a member firm, suspended from association with any NASD member as a financial and operations principal for 10 days, and required to requalify by exam as a financial and operations principal. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that a member firm, acting through Augustine, conducted a securities business while failing to maintain its minimum required net capital and filed an inaccurate FOCUS Part I report.

This action has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

Thomas P. Battista (Registered Representative, Springfield, Vermont) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Battista consented to the described sanctions and to the entry of findings that, without the knowledge or consent of the customers or his member firm, he failed to remit policyholder payments totaling $932 from four public customers intended for automobile insurance premiums and converted the monies to his own use and benefit.

Robert F. Blake (Registered Representative, Evergreen, Colorado) submitted an Offer of Settlement pursuant to which he was fined $7,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Blake consented to the described sanctions and to the entry of findings that he disseminated sales literature that failed to conform with the standards for communications with the public. The findings also stated that Blake made misrepresentations, exaggerated and unwarranted statements and claims, and omitted to disclose risks associated with investments in the stock and warrants of a drug company.

Blake's suspension will commence June 30, 1997 and will conclude July 7, 1997.

Wayne D. Butler (Registered Representative, Tualatin, Oregon) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Butler consented to the described sanctions and to the entry of findings that he recommended and sold to a public customer shares of stock and in connection with such sales, failed to provide prior written notice to his member firm describing in detail the proposed transactions and his proposed role therein and stating whether he had or might receive selling compensation in connection with the transactions.

Donald Peter Carnaghi (Registered Representative, Clinton Twp., Michigan) submitted an Offer of Settlement 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, Carnaghi consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed and neglected to give prior written notice to and obtain written authorization from his member firm to engage in such activities.

Thomas James Clem (Registered Representative, Mt. Clemens, Michigan), Thomas Roy Mazza (Registered Representative, Clinton Twp., Michigan), Brian Jerome Kurtz (Registered Representative, Sterling Hts., Michigan), and **Michael Anthony Duby (Registered Principal, Brighton, Michigan)**. Clem was fined $47,100 and barred from association with any NASD member in any capacity. Mazza was fined $56,300 and barred from association with any NASD member in any capacity. Kurtz was fined $19,800 and barred from association with any NASD member in any capacity. Lastly, Duby was fined $38,050 and barred from association with any NASD member in any capacity.

The sanctions were based on findings that Clem, Mazza, Kurtz, and Duby participated in private securities transactions and failed to give prior written notice to and obtain written authorization from their member firm to engage in such activities.

Guy G. Clemente (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Clemente consented to the described sanctions and to the entry of findings that he shared in losses incurred in the account of a public customer.

Michael L. Cooperstock (Registered Representative, Whitmore Lake, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cooperstock consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed and neglected to give prior written notice to and obtain written autho-

rization from his member firm to engage in such activities.

Martin J. Cunnane, Jr. (Registered Representative, Yonkers, New York) was fined $40,000 and suspended from association with any NASD member in any capacity for three years. The NBCC affirmed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Cunnane opened accounts for three public customers and executed purchase transactions in a common stock without the customers' authorization and consent.

This action has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

Joseph M. Darovec (Registered Representative, Bloomingdale, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Darovec consented to the described sanctions and to the entry of findings that he participated in outside business activities while failing to give prompt written notice to his member firm of his participation in such activities.

John J. Fiero (Registered Principal, Jersey City, New Jersey) was fined $20,000 and suspended from association with any NASD member in any capacity for six months. The NBCC imposed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Fiero failed to provide on-the-record testimony to the Market Regulation Committee.

This action has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

Herbert G. Frey (Registered Principal, Cincinnati, Ohio) was suspended from association with any NASD member in any capacity for 180 days. The NBCC imposed the sanction following appeal of a Cleveland DBCC decision. The sanction was based on findings that Frey failed to pay an arbitration award entered in 1990.

This action has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

Brian L. Gibbons (Registered Principal, Scottsdale, Arizona) was fined $10,000 and suspended from association with any NASD member in any capacity for 30 days. The U.S. Court of Appeals affirmed the sanctions following appeal of a May 1996 SEC decision. The sanctions were based on findings that Gibbons provided inaccurate and misleading information to the NASD staff in response to NASD requests for information.

Ramon Guichard, Jr. (Registered Representative, Gretna, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $7,500, barred from association with any NASD member in any capacity, and required to pay $1,457 in restitution. Without admitting or denying the allegations, Guichard consented to the described sanctions and to the entry of findings that he received $1,457 from public customers as insurance premiums, failed to submit these funds to his member firm on the customers' behalf and, instead, converted the funds to his own use and benefit without the customers' knowledge or consent.

Neil Guthrie (Registered Representative, Gretna, Virginia) 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, Guthrie consented to the described sanctions and to the entry of findings that he failed to notify and obtain approval from his member firm regarding his solicitation and acceptance of monies from three customers to invest in investments unrelated to his member firm. The findings also stated that Guthrie prepared and provided receipts to two customers that misrepresented the true investments of the customers' monies. Furthermore, the NASD determined that Guthrie diverted customer funds to his personal home appliance and apparel wholesale business and other unspecified investments contrary to his verbal and written representations to the customers.

Jeffrey J. Haddad (Registered Representative, Old Bridge, New Jersey) submitted an Offer of Settlement pursuant to which he was fined $5,100 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Haddad consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the account of a public customer.

James R. Hayes (Registered Representative, Kingston, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Hayes consented to the described sanctions and to the entry of findings that, in connection with the purchase of a variable appreciable life insurance

contract, he sent correspondence to public customers that misrepresented that the premiums on the insurance contract would be paid for with the cash value and dividends from the customer's other insurance policies, when in fact, additional premium payments might have been required in the future. The findings also stated that Hayes submitted disbursement request forms to his member firm on behalf of a public customer and signed the customer's name to the forms without the customer's knowledge or consent.

Mark Andrew Heitner (Registered Representative, Forest Hills, New York) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Heitner consented to the described sanctions and to the entry of findings that he engaged in manipulative, deceptive, and fraudulent conduct by intentionally and recklessly causing Nasdaq® trades to be reported late. The findings also stated that Heitner backed away from an order to buy stock.

John Thomas Higley (Registered Representative, Folsom, California) was fined $20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Higley failed to respond to NASD requests for information

Jerry A. Hurni, Jr. (Registered Representative, Melbourne, Florida) was fined $15,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by exam. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Hurni made recommendations to a public customer that were not suitable for the customer based upon the facts disclosed by the customer as to his tax status, investment objective, financial situation, and needs. Furthermore, contrary to a public customer's instructions, Hurni utilized margin in the customer's account to purchase additional shares of stock without the customer's knowledge or authorization.

The action has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

Hagos Kafil (Registered Representative, Kalamazoo, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $125,000, barred from association with any NASD member in any capacity, and required to pay $21,000 in restitution. Without admitting or denying the allegations, Kafil consented to the described sanctions and to the entry of findings that he received checks totaling $21,107.20 from public customers for investment purposes, failed to follow the customers' instructions, and used the funds for some purpose other than the benefit of the customers. The findings also stated that Kafil failed to respond to NASD requests for information.

David Kippins (Registered Representative, Brooklyn, New York) was fined $270,594 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kippins recommended transactions to a public customer when he did not have a reasonable basis to believe that the recommendations were suitable for the customer in light of the customer's stated investment objectives and financial needs. Furthermore, Kippins induced a public customer to sign a letter authorizing the redemption of shares of a government fund and converted $38,500 of the proceeds to his own use and benefit without the prior knowledge or consent of the customer. Kippins also failed to respond timely to NASD requests for information.

Edward Stevenson Kirris, III (Registered Representative, Minneapolis, Minnesota) submitted an Offer of Settlement pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kirris consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information. The findings also stated that Kirris engaged in private securities transactions without giving prior written notice to and receiving prior approval from his member firm.

Joseph Frank Lerario (Registered Principal, Bloomingdale, Illinois) submitted an Offer of Settlement 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, Lerario consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Hayden James Lockhart, III (Registered Representative, Mililani, Hawaii) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lockhart created a fictitious insurance application for a public customer, forged an insurance agent's signature to the application, and submitted the application to his member firm. Furthermore, Lockhart forged a public customer's name to an insurance application and submitted the

application to his member firm. Lockhart also failed to respond to NASD requests for information

Kevin Patrick Lynch (Registered Representative, Onalaska, Wisconsin) 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 15 days. Without admitting or denying the allegations, Lynch consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers on an annuity application and a financial planning agreement without the customers' knowledge or consent. The findings also stated that Lynch failed to disclose to the beneficiaries of the estate of a public customer the fees associated with preparing a financial plan and that by consenting to a financial plan, the amount of the beneficiaries' gifts would be reduced by said fees.

David Paelet (Registered Principal, Madison, Connecticut) 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, Paelet consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to his member firm of such transactions.

David J. Ramsdale (Registered Representative, Aurora, Colorado) was fined $675,000, barred from association with any NASD member in any capacity, and ordered to pay $135,000 in restitution to customers. The sanctions were based on findings that Ramsdale obtained funds totaling $135,000 from public customers for investment purposes, failed to follow the customers' instructions to purchase securities and, instead, used the funds for his own benefit. Furthermore, Ramsdale reimbursed a public customer with a promissory note for losses incurred in the customer's securities account. Ramsdale also failed to respond to NASD requests for information.

Ruslan Rapoport (Registered Representative, Brooklyn, New York) was fined $7,500, suspended from association with any NASD member in any capacity for three years, and required to requalify by exam. The sanctions were based on findings that Rapoport failed to respond to NASD requests to appear for an on-the-record interview.

Rogelio Davila Salazar (Registered Representative, Harlingen, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Salazar consented to the described sanction and to the entry of findings that he effected a private securities transaction and failed to timely and completely respond to NASD requests for information.

Todd Scheel (Registered Representative, Orland Park, Illinois) submitted an Offer of Settlement pursuant to which he was fined $22,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Scheel consented to the described sanctions and to the entry of findings that he permitted an individual to engage in the securities business and paid commissions to the individual when the individual was not effectively registered with the NASD. The findings also stated that Scheel failed to respond to NASD requests for information.

Jeffrey M. Schoenfield (Registered Representative, Kodak, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000, barred from association with any NASD member in any capacity, and required to pay $7,431.11 in restitution. Without admitting or denying the allegations, Schoenfield consented to the described sanctions and to the entry of findings that he recommended and engaged in the purchase of securities in the account of a public customer and failed to disclose to the customer that the investments carried contingent deferred sales charges. The findings also stated that Schoenfield failed to fully, completely, and timely respond to NASD requests for information.

Albert J. Scibilia (Registered Representative, Hagerstown, Maryland) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Scibilia consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in customer accounts.

William G. Sellens (Registered Representative, Greeley, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $6,250, suspended from association with any NASD member in any capacity for 10 business days, and required to pay $4,987.75 in restitution to a customer. Without admitting or denying the allegations, Sellens consented to the described sanctions and to the entry of findings that he recommended to a public customer the purchase of securities on margin when such recommendation was not suitable for the customer given her financial situation, needs, and investment objectives.

Robert L. Stark (Registered Representative, Scottsdale, Arizona)

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, Stark consented to the described sanctions and to the entry of findings that he deposited public customers' funds totaling $494,329.67 into a personal savings account that he maintained for his benefit.

William David Stephens (Registered Representative, Redwood City, California) was fined $220,000, barred from association with any NASD member in any capacity, and ordered to pay $41,585.98 in restitution to a member firm or customers. The sanctions were based on findings that Stephens received $41,585.98 from public customers and misappropriated and converted the funds to his own use and benefit. Stephens also failed to respond to NASD requests for information.

Nicholas F. Stranges (Registered Representative, Harrisburg, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $11,700, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Stranges consented to the described sanctions and to the entry of findings that he submitted to his member firm annuity applications for public customers on which he had recorded incorrect birth dates to secure the payment of larger commissions than otherwise would have been paid on the annuity purchases.

Gerald D. Vesner (Registered Representative, Doylestown, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $88,000, barred from association with any NASD member in any capacity, and required to pay $17,570.84 in restitution to a member firm. Without admitting or denying the allegations, Vesner consented to the described sanctions and to the entry of findings that he received checks totaling $17,570.84 payable to a public customer representing withdrawals from two variable annuity contracts and payment from an insurance policy maintained by the customer. The NASD found that Vesner endorsed his name or that of the customer on the checks, failed to remit the proceeds to the customers, and instead, retained the funds for his own use and benefit.

Barry Charles Wilson (Registered Principal, Bloomfield, New Jersey) was fined $25,000 and barred from association with any NASD member as a financial and operations principal. The sanctions were based on findings that a member firm, acting through Wilson, conducted a securities business while failing to maintain minimum required net capital, filed an inaccurate FOCUS Part I report, failed to maintain the required minimum balance in the firm's customer reserve account, and failed to immediately notify the NASD of its net capital deficiencies.

Individuals Fined

Robert Ignacio Burnham (Registered Representative, San Francisco, California) was fined $10,000. The sanction was based on findings that Burnham signed the names of public customers to a delivery receipt and to checks totaling $24,908.83 and submitted them to an insurance company.

Steven F. Perdie (Registered Principal, Port Jefferson Station, New York) submitted an Offer of Settlement pursuant to which he was fined $7,000 and required to pay $15,000 in restitution to public customers. Without admitting or denying the allegations, Perdie consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to and obtain written authorization from his member firm to engage in such activities. The findings also stated that Perdie failed to give prompt written notice to his member firms that he was employed by and/or accepted compensation from outside business activities. Furthermore, the NASD determined that Perdie failed to promptly and accurately update his Form U-4 to reflect liens or unsatisfied judgments entered against him.

Firm Expelled For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

Falcon Trading Group, Ltd., Boca Raton, Florida

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

CDC Investment Corporation, Farmington, Connecticut (May 1, 1997)

Maclaren Securities, Inc., Marblehead, Massachusetts (May 1, 1997)

Mercury American Capital Corp., Williamsville, New York (May 1, 1997)

Suppes Securities, Inc., New York,

New York (May 1, 1997)

Suspensions Lifted

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

Burlington Securities Corp., Chatnam, Massachusetts (May 5, 1997)

Genoa Financial Group, Inc., Tampa, Florida (May 6, 1997)

Hornblower & Weeks, Inc., New York, New York (April 30, 1997)

Jess Kent Capital Markets, Inc., Los Angeles, California (May 8, 1997)

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

Lyle E. Bettenhausen, Sr., Tampa, Florida

James M. Bock, Gillette, New Jersey

Kerner A. Breaux, Fair Oaks, California

Robert E. Chason, Jr., Orlando, Florida

Steve M. Dodson, Tulsa, Oklahoma

Martin J. Heninger, Atlanta, Georgia

Leandro Obenauer, Boynton Beach, Florida

Frank S. Pellichino, Antioch, Tennessee

Ruslan Rapoport, Brooklyn, New York

James R. Stock, Portland, Oregon

Glen T. Vittor, Boca Raton, Florida

David Weiss, Northridge, California

NASD Regulation Fines And Censures First Albany In First Case Against Armacon

NASD Regulation has fined First Albany Corporation $10,000 for recordkeeping violations arising from payments made to Armacon Securities, Inc. NASD Regulation also announced it censured a principal of the firm for the same violations. Both disciplinary actions were taken pursuant to an offer of settlement in which the respondents neither admitted nor denied the allegations.

NASD Regulation found that First Albany made two $10,000 payments to Armacon in return for advice—from a principal of Armacon—primarily about how to become designated as an eligible bond underwriter by the New Jersey Health Care Financing Facilities Authority. NASD Regulation discovered, however, that First Albany recorded the payments as expenses of two specific offerings of municipal securities conducted by the firm, though Armacon had not provided any services in connection with either offering. First Albany did not charge the expenses to the issuers involved or to other parties.

NASD Regulation also found that First Albany failed to create or maintain any records that recorded the services actually provided by Armacon.

In recording the payments in this fashion, NASD Regulation found that First Albany violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 thereunder and Municipal Securities Rulemaking Board Rule G-8.

A copy of the settlement—the Letter of Acceptance, Waiver, and Consent—is available.

FOR YOUR INFORMATION

SEC Issues No-Action Letter On Haircuts For Mortgage-Backed Securities

In December 1996, the Securities and Exchange Commission (SEC) Division of Market Regulation issued a no-action letter that allows broker/dealers to use the alternative method in the Net Capital Rule (SEC Rule 15c3-1) when calculating proprietary haircut charges on certain pass-through mortgage-backed securities sponsored by U.S. government agencies. The letter also addresses charges for these securities under various hedging scenarios.

The alternative method uses the relationship between a security's market price and its par value to determine the maturity of the security for computing net capital net haircuts under SEC Rule 15c3-1(c)(2)(vi)(A). It is based on the theory that "a mortgage-backed security with a high coupon rate will experience a significant amount of prepayment of principal and, consequently, will tend to have a short duration." As an example, the letter cites that "a thirty-year mortgage-backed security trading at $108 with a par value of $100 generally has a duration equal to a government security with nine to twelve months remaining maturity."

Members should note that, if they choose to use this alternative method, they must apply the alternative method to all pass-through mortgage-backed securities covered under the no-action letter. These include any security sponsored by a U.S. government agency that represents a pro rata interest or participation in the principal and interest cash flows generated by a pool of mortgage loans of which at least 95 percent of the aggregate principal is composed of fixed-rate residential mortgage loans on one-to-four family homes, including five- and seven-year mortgage loans with balloon payments at maturity. The letter excludes multifamily, adjustable-rate, commercial, and mobile-home mortgage loans.

Members intending to apply these haircuts to pass-through mortgage-backed securities in their proprietary and other accounts should read the SEC's letter in its entirety. Requests for copies of the letter may be directed to Samuel L. Luque, Jr., Associate Director, Compliance Department, NASD Regulation, at (202) 728-8472; or Robert Broughton, District Coordinator, NASD Regulation, at (202) 728-8361.

West Virginia Securities Commission Increases Registration, Re-Registration, And Renewal Fees

Effective July 10, 1997, the West Virginia Securities Commission will increase its agent registration and agent re-registration fee to $80. In addition, effective with the 1997-98 renewal program, West Virginia's agent renewal fee will increase to $65.

If you have any questions regarding these changes, please contact your assigned Quality & Service Team or Gateway at (301) 590-6500.

SEC Approves Rule Permitting Electronic Submission Of Information

On May 9, 1997, the SEC approved a rule amendment that will allow the NASD® to request that members provide regulatory information in electronic form and to establish electronic submission programs for regularly filed regulatory information.

The rule that was amended requires members to submit oral or written reports in response to NASD requests for investigatory information. The amendment will provide that a member that maintains information in an electronic format may

be required to submit investigatory reports to the NASD electronically. The rule amendment also provides the NASD with authority to establish programs for the electronic submission of regularly filed information, with the approval of the SEC.

SPECIAL NASD NOTICE TO MEMBERS 97-41

NASD Requests Comment On Use Of Decimal Pricing In The Nasdaq Stock Market; **Comment Period Expires July 15, 1997**

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

In the following document, NASD® requests comment on the positive and negative effects of decimalization on investors and the securities industry.

Questions concerning this *Request For Comment*, in particular the format for any data that may be provided, should be directed to Jeffrey Smith, Office of Economic Research, NASD, at (202) 728-8032.

Request For Comment

The NASD encourages all members and other interested parties to comment to ensure that its review of this issue evaluates and analyzes the costs, benefits, and other implications of decimalization as fully as possible. All comments received will be available to the public unless the commenters request confidentiality in their submissions.

Comments can be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD
1735 K Street, NW,
Washington, DC 20006

or e-mailed to:
pubcom@nasd.com.

To be able to conclude the NASD's review within a reasonable period of time, comments must be received **by July 15, 1997**.

NASD Request For Comment 97-41

Executive Summary

As a part of its continuing review of the appropriate quote and trade increments for stocks that are traded in The Nasdaq Stock Market, Inc. (Nasdaq®), the NASD® has determined that the issue of decimalization in Nasdaq should be thoroughly evaluated to analyze the potential gains for investors that may be achieved. As a part of its review of the issue, the NASD believes it is important to obtain information about the positive and negative effects of decimalization on investors and the securities industry from as wide a range of constituents as possible. The NASD also preliminarily believes that the costs entailed in decimalization may be alleviated by setting a firm, future date for the transition.

Accordingly, through this *Request For Comment* and other means, the NASD encourages investors, NASD members, Nasdaq issuers, information vendors, and any other interested parties to provide the NASD with comments, views, and studies regarding the effects that a move to the use of decimals for quoting and trading purposes may have on Nasdaq-listed stocks. Comments should be received **by July 15, 1997**, for such views and analyses to be incorporated into the NASD's evaluation of the issue.

Background

During recent years, the NASD and Nasdaq have carefully reviewed the benefits and the costs of trade reports and quotations priced in narrower increments. For example, in 1994, the Nasdaq system was revised to accept trade reports in increments as small as 1/256ths. Further, earlier this year Nasdaq proposed to reduce quotation increments to sixteenths for all Nasdaq stocks.[1] Nasdaq's purpose in doing so was to improve the transparency of the market, provide investors with an opportunity to receive better execution prices, facilitate greater quote competition and narrower spreads, and promote the price discovery process.

In addition, the U.S. Congress recently held hearings related to the issue of the use of decimals in the U.S. stock markets. In particular, the hearing focused on proposed legislation called the Common Cents Stock Pricing Act of 1997 (H.R. 1053).[2] This bill would require the Securities and Exchange Commission (SEC) to promulgate, within one year of the bill's enactment into law, a new rule that would require the quotation of equity securities traded on U.S. exchanges in dollars and cents. Under the proposed law, the SEC would be permitted to set an implementation schedule regarding the period in which the securities industry would ready itself to trade in stocks priced at decimals instead of fractions, the current general practice in U.S. equity markets.

Along with other U.S. stock markets, the NASD testified at this hearing and promised to conduct a study that would allow the NASD to evaluate the costs and the benefits that may be associated with a shift to decimalization. The NASD agreed to provide the results of this analysis to the congressional committee that is considering the bill.

The NASD's plan for this study includes: a review and interpretation of the relevant literature, in particular any academic research that has evaluated decimalization or related issues; a study of other markets with experience with decimalization; and an analysis of the technology impact that a change to decimals would have on Nasdaq trading and regulatory systems, based on current experience in the Nasdaq market. This study will play an important part in the NASD's consideration of the decimalization issue.

If the NASD's review of this issue demonstrates that a shift to decimal pricing aids investors in the purchase and sale of Nasdaq stocks, the NASD is committed to undertake the necessary technological changes to provide this benefit for investors. A critical component of a conversion to decimalization is the technology that supports Nasdaq systems, and those operated by member firms and information vendors. The NASD currently has scheduled changes to its systems that would permit the use of decimals, if appropriate, before the end of 1998. This technical preparation should not be interpreted as a predisposition by the NASD to move forward with decimalization.

The NASD recognizes, however, that member firm and vendor systems would also have to be converted to permit trading in decimals and that other technology-intensive projects, such as preparations of systems for the Year 2000 project and for complying with the recently adopted SEC Order Handling Rules, are consuming significant resources in the industry. Because of these concerns, the NASD believes that if conversion to decimals is appropriate, implementation of decimalization should occur on a date when the NASD is certain that all participants can be technologically ready, with full consideration given to the other significant technology projects that members are currently dealing with, such as Year 2000. Accordingly, as discussed below, the NASD believes it is appropriate to obtain additional information on the effects that decimalization may have on the securities industry as a whole, including the feasibility, appropriateness, and timing of implementing any change.

To make its review of the decimalization issue more complete, the NASD believes that it is very important that it obtain views from others that may be affected by any change to decimals in the U.S. equity markets. Consequently, the NASD is seeking to obtain the views of all interested parties, supported by as much empirical evidence as possible, on the costs and the benefits that could result from any shift to decimal pricing. The NASD plans to reach as wide a range of constituents as possible through this *Notice* and other means. That
is, the NASD wishes to receive comments on decimalization from investors, NASD member firms, Nasdaq issuers, information vendors that distribute Nasdaq price information, and other interested parties that may have views on the benefits and the costs related to conversion to decimals.

To sharpen the focus of commenters on the issues, the NASD requests that commenters provide information on the following questions. The questions set forth below are not intended, however, to limit the information that commenters should provide. If commenters believe other issues related to decimals should be addressed in the NASD's review and they have information related to such issues, the NASD welcomes such input.

1. Identify and Assess the Positive and/or Negative Effects

A. What are the general or specific positive and/or negative effects that would arise if the U.S. equity markets, including Nasdaq, used decimals instead of fractions in pricing stocks?

B. What are the best means to measure these effects, *i.e.*, is there an appropriate methodology to quantify the effects to the overall market or a particular segment of market participants?

C. What is the likelihood that investors would trade in increments of one cent?

D. Would the effects described above occur if all U.S. markets had a minimum quotation increment of five cents?

2. Identify and Assess the Technology Costs to Broker/ Dealers and Vendors

A. What are the general or specific costs that a broker/dealer or an information vendor would likely incur to convert its technology support systems to be able to handle decimals?

B. How quickly could such conversion occur? Commentators, where possible, should quantify any additional costs entailed in a conversion to decimalization by 1999. Conversely, commentators should indicate whether any technology costs would be substantially reduced by scheduling the transition in 2001.

C. Would broker/dealers or information vendors rely on internal data processing resources to convert systems or would it be necessary to rely on external vendors and/or consultants? If external resources were to be used, is this a scarce resource that may not be readily available to all?

D. What is the effect on technology resources of issues related to system development work required for Year 2000 projects and projects related to upgrading systems for the purpose of meeting the SEC's Order Handling Rules? What would be the general effect on the capacity of the systems used in the industry?

3. Regulatory Effects

A. If the U.S. equity markets convert to decimals, are there any regula-

tory benefits or costs associated with such a move? For example, if stocks can be traded in one cent minimum increments, does such an increment pose risks related to professional traders being able to trade ahead of less sophisticated traders at a minimal cost to the professional trader? If commenters view this ability as a negative effect, should there be a minimum increment rule or some other rules that effectively prohibit such activity. If such a rule should be adopted, what are the likely costs associated with monitoring and enforcing any such rule.

B. Would any existing marketplace rules be affected by decimalization? If so, what are they and what would the effect be?

4. Market Quality Effects

A. What effect, if any, would decimalization have on dealer participation in the U.S. equity markets? Can the effect be quantified? If so, what are the estimates and on what basis were such estimates derived?

B. To the extent that decimalization reduces dealer-spread profits, can or should such reductions be recaptured through increased commissions?

5. Phased Implementation

A. Would phased implementation over a period of time have a positive or negative effect on conversion to decimals?

B. Can implementation be phased in over time or classes of stock, or should all systems and operations in a market be converted at the same time?

6. Universal or Segmented Implementation

Is there any effect if one equity market converted to decimals in advance of other equity markets? Would any such effect be viewed as positive or negative? Is there a means to measure such effect?

7. Minimum Decimal Increments

A. Assuming that the markets use decimals, should stocks be traded in minimum decimal increments, such as five cents?

B. What is the value if no minimum increments are allowed?

C. To the extent that quotation spreads already occur in increments of one sixteenths, is there any added economic value to investors to use decimals with a minimum increment of five cents?

Questions concerning this *Request For Comment*, in particular the format for any data that may be provided, should be directed to Jeffrey Smith, Office of Economic Research, NASD, at (202) 728-8032.

Request For Comment

The NASD encourages all members and other interested parties to comment to ensure that its review of this issue evaluates and analyzes the costs, benefits, and other implications of decimalization as fully as possible. All comments received will be available to the public unless the commenters request confidentiality in their submissions.

Comments can be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD
1735 K Street, NW,
Washington, DC 20006

or e-mailed to:
pubcom@nasd.com.

To be able to conclude the NASD's review within a reasonable period of time, comments must be received **by July 15, 1997**.

Endnotes

[1] On May 27, 1997, the Securities and Exchange Commission approved the NASD rule filing on this issue. Accordingly, on June 2, 1997, all Nasdaq-traded stocks are eligible to be quoted in increments of a sixteenth.

[2] On May 21, 1997, the House Commerce Committee's Subcommittee on Finance and Hazardous Materials approved the bill and voted to send the bill to the full Committee for consideration.

NASD NOTICE TO MEMBERS 97-42

SEC Approves Amendments Relating To The Release Of Disciplinary Information

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 April 22, 1997, the Securities and Exchange Commission (SEC) approved amendments to the Interpretation on the Release of Disciplinary Information (NASD® IM-8310-2). These amendments authorize the release of public information on disciplinary complaints and non-final disciplinary decisions that present significant investor protection issues, provided that such releases are accompanied by appropriate disclosures concerning the status of the complaint or decision. The effective date of these amendments is June 12, 1997.

Background And Description

The NASD's Public Disclosure Program currently provides, through the Central Registration Depository (CRD℠), a synopsis of all pending NASD disciplinary information regarding members and associated persons, including information on disciplinary complaints[1] when they are issued by the NASD and disciplinary decisions when they are issued by any Committee or Board of the NASD.

The Interpretation on the Release of Disciplinary Information (Interpretation), NASD IM-8310-2, currently permits the NASD to issue information regarding certain specified significant disciplinary decisions when they become final.[2] The specified decisions are those that impose sanctions of a suspension, bar, or a fine of $10,000 or more.

While information on all pending NASD disciplinary matters regarding members and associated persons is available through CRD, there are concerns that there is limited access to such information. Previously, the Interpretation did not permit NASD Regulation, Inc. (NASD Regulation℠) to be proactive in providing notification to the public of non-final disciplinary decisions and did not permit NASD Regulation to publicize other final and non-final disciplinary decisions that do not meet the current publication criteria but nonetheless involve a significant policy or enforcement issue that should be brought to the attention of the public. Recently, the SEC approved an amendment to the Interpretation to provide copies of disciplinary complaints and decisions upon request.[3]

The NASD has adopted amendments to the Interpretation designed to balance the interests of the public in obtaining improved access to information concerning significant disciplinary matters against the legitimate interests of respondents not to be subject to unfair publicity concerning unadjudicated allegations of violations and non-final determinations of violations. The amendments to the Interpretation seek to balance these interests by authorizing the NASD to release information on disciplinary matters that could most significantly affect investor interests and by enhancing the disclosure accompanying the release of disciplinary information.

Release Of Complaint Information

The amended Interpretation authorizes the NASD to release information on those disciplinary complaints that present the most significant investor protection issues, *i.e.*, violations of anti-fraud, anti-manipulation, and sales practices rules that affect investors. In particular, the amendments authorize the NASD to release public information on NASD-initiated disciplinary complaints that contain an allegation of a violation of a specifically designated statute, rule or regulation of the SEC, NASD, or Municipal Securities Rulemaking Board (MSRB)[4] that is determined by the NASD Regulation Board of Directors to involve serious miscon-

duct that affects investors (Designated Rules). The amendments also authorize the NASD to release public information on any complaint or group of complaints that the President of NASD Regulation determines should be publicized in the public interest.

Information will be automatically released to the public for complaints alleging violations of the following list of Designated Rules:

List Of Designated Rules

SEC Rules	
Rule 10b-5	Employment of Manipulative and Deceptive Devices
Rules 15g-1 to 15g-9	Sales Practice Requirements for Certain Low-Priced Securities (Penny Stock Rules)
Section 17(a)	Fraudulent Interstate Transactions

NASD Rules **Rule No.**	**Title**
2110	Standards of Commercial Honor and Principles of Trade (Only if the complaint alleges unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, front-running, trading ahead of research reports, or excessive markups).
2120	Use of Manipulative, Deceptive, or Other Fraudulent Devices
2310	Recommendations to Customers (Suitability)
2330	Customers' Securities or Funds
2440	Fair Prices and Commissions
3310	Publication of Transactions and Quotations
3330	Payment Designed to Influence Market Prices, Other than Paid Advertising

MSRB Rules **Rule**	**Title**
Rule G-19	Suitability of Recommendations and Transactions
Rule G-30	Prices and Commissions (Markups)
Rules G-37(b) & (c)	Political Contributions and Prohibitions on Municipal Securities Business

Any future changes to this list will be published by NASD Regulation in a subsequent *NASD Notice to Members*, after approval by the Board.

To ensure that appropriate disclosures accompany information on any disciplinary complaint, the amendments provide that the release of information concerning a disciplinary complaint be accompanied by disclosure regarding the status of such complaint. The Interpretation currently requires disclosure that "the issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint." The amendments to the Interpretation expand this disclosure to include the following statement: "Because this complaint is unadjudicated, you are encouraged to contact the respondent before drawing any conclusions regarding the allegations in the complaint." NASD Regulation believes that this disclosure will help to enable recipients of the information to view it in an appropriate context and, thereby, provide appropriate protections to the respondent.

Release Of Information On Disciplinary Decisions

With respect to non-final disciplinary decisions, the amendments require that the current significance test for release of information on final decisions also be applied to the release of information on non-final decisions, with the additional requirement that non-final decisions be accompanied by appropriate disclosures as to the status of the case. As a result of these changes, the NASD is authorized to release information on non-final disciplinary decisions that impose monetary sanctions of $10,000 or more or penalties of expulsion, revocation, suspension, or a bar from being associated with member firms.

In addition, the amendments require that information on all non-final and final decisions that contain an allegation of a Designated Rule be released, regardless of the extent of the sanction or whether any sanction had, in fact, been imposed. NASD Regulation believes that where information on a disciplinary complaint is released because it includes an allegation of violation of one or more Designated Rules, information on the decision involving the same matter should also be released based on the same public policy interests that justify the release of complaint information, regardless of whether the decision results in the finding of a violation and the imposition of sanctions, a dismissal of the allegation, or a reversal of earlier findings.[5] Further, the rule amendments provide that the release of any non-final disciplinary decisions should contain appropriate disclosures regarding the status of such non-final decisions.

Moreover, to remain consistent with the treatment of disciplinary complaints, the amendments authorize the NASD to release public information on any decision or group of decisions that the President of NASD Regulation determines should be publicized in the public interest.

Finally, the current Interpretation allows a waiver of the release of information in a particular case under those extraordinary circumstances where the release of information would be deemed to violate fundamental notions of fairness or work an injustice. The amendments transfer the authority to grant exceptions from the NASD Board of Governors to the National Business Conduct Committee (NBCC) to facilitate consideration of any application for an exception pursuant to the standard NBCC review procedures for motions by respondents.

Questions regarding this Notice may be directed to Gary L. Goldsholle, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8104.

Text Of Amendments

*(**Note:** New language is underlined; deletions are bracketed.)*

IM-8310-2 Release of Disciplinary Information

(a)[6] The Association shall, in response to a written inquiry, electronic inquiry or telephonic inquiry via a toll-free telephone listing, release certain information [as] contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, [or] state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or U-4 and all foreign government or self-regulatory organization disciplinary actions that [are] relate to securities or commodities [related] transactions and are required to be reported on Form BD or U-4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U-4. The Association will also release information required to be reported on Form BD or Form U-4 concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or regulatory matters, terminations of employment after allegations involving violations of

investment related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten (10) years old, outstanding judgements or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.

(b) The Association shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Association or any subsidiary or Committee thereof; provided, however, that each copy of:

(1) a disciplinary complaint shall be accompanied by [a] the following statement [that]: "The issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint."

(2) a disciplinary decision that is released prior to the expiration of the time period provided under the [Code of Procedure] Rule 9000 Series for appeal or call for review within the Association or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the Association;

(3) a final decision of the Association that is released prior to the time period provided under the [Securities Exchange] Act [of 1934] for appeal to the Commission or while such an appeal is pending, shall be accompanied by a statement that the findings and sanctions of the Association are subject to review and modification by the Commission; and

(4) a final decision of the Association that is released after the decision is appealed to the Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

(c)(1) The Association shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement of NASD Regulation, Inc., the NASD Regulation, Inc. Board of Directors, or the NASD Board of Governors containing an allegation of a violation of a designated statute, rule or regulation of the Commission, NASD, or Municipal Securities Rulemaking Board, as determined by the NASD Regulation, Inc. Board of Directors (a "Designated Rule"); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest.

(2) Information released to the public pursuant to subparagraph (c)(1) shall be accompanied by the statement required under subparagraph (b)(1).

[(c)](d)(1) The Association shall [report to the membership and to the press pursuant to the procedures and at the times outlined herein any order of] release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of $10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest. The [Board of Governors] National Business Conduct Committee (NBCC) may, in its discretion, determine to waive the [notice provisions set forth herein as to an order of imposition of monetary sanctions of $10,000 or more upon a member or person associated with a member,] requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where [notice] the release of such information would violate fundamental notions of fairness or work an injustice.

(2) Information released to the public pursuant to subparagraph (d)(1) shall be accompanied by a statement to the extent required for that type of information under subparagraphs (b)(2)-(4).

[(d)] (e) If a decision [of a District Business Conduct Committee] issued pursuant to the Rule 9000 Series other than by the NBCC is not appealed to or called for review by the NBCC, the [order of the District Business Conduct Committee] decision shall become effective on a date set by the Association but not before the expiration of 45 days after the date of decision. [Notices of decisions imposing monetary sanctions of $10,000 or more or penalties of expulsion, revocation, suspension and/or the barring of a person from being associated with all members

shall promptly be transmitted to the membership and to the press, concurrently; provided, however, no such notice shall be sent prior to the expiration of 45 days from the date of the said decision.]

[(e)](f) Notwithstanding paragraph [(d)](e), expulsions and bars imposed pursuant to the provisions of Rules 9217 and 9226 shall become effective upon approval or acceptance by the [National Business Conduct Committee] NBCC, and [publicity] information regarding any sanctions imposed pursuant to those Rules may be [issued] released to the public pursuant to paragraph (d) immediately upon such approval or acceptance.

[(f)](g) If a decision [of a District Business Conduct Committee] issued pursuant to the Rule 9000 Series is appealed to or called for review by the NASD Regulation, Inc. Board of [Governors] Directors or called for review by the NASD Board of Governors, [the order of the District Business Conduct Committee is] the decision shall be stayed pending a final determination and decision by the Board [and notice of the action of the District Business Conduct Committee shall not be sent to the membership or the press during the pendency of proceedings before the Board of Governors].

[(g)](h) If a final decision of the Association is not appealed to the Commission, the sanctions specified in the decision (other than bars and expulsions) shall become effective on a date established by the Association but not before the expiration of 30 days after the date of the decision. Bars and expulsions, however, shall become effective upon issuance of the decision, unless the decision specifies otherwise. [Notices of decisions imposing monetary sanctions of $10,000 or more or penalties of expulsion, revocation, suspension and/or the barring of a person from being associated with all members shall promptly be transmitted to the membership and to the press concurrently; provided, however, that any notice shall be sent prior to the expiration of 30 days from the date of a decision imposing sanctions other than expulsion, revocation, and/or the barring of a person from being associated with all members.]

[(h)](i) If a decision of the [Board of Governors] Association imposing monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members is appealed to the Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by the Association of notice from the Commission of such appeal and the Association's notice shall state whether the effectiveness of the Board's decision has [or has not] been stayed pending the outcome of proceedings before the Commission.

[(i)](j) In the event an appeal to the courts is filed from a decision by the Commission in a case previously appealed to it from a decision of the [Board of Governors] Association, involving the imposition of monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members, notice thereof shall be given to the membership as soon as possible after receipt by the Association of a formal notice of appeal. Such notice shall include a statement [that] whether the order of the Commission has [or has not] been stayed.

[(j)](k) Any order issued by the Commission of revocation or suspension of a member's broker/dealer registration with the Commission; or the suspension or expulsion of a member from the Association; or the suspension or barring of a member or person associated with a member from association with all broker/dealers or membership; or the imposition of monetary sanctions of $10,000 or more shall be [made known to the membership of the Association] released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by the Association of the order of the Commission.

[(k)](l) Cancellations of membership or registration pursuant to the Association's By-Laws, Rules and Interpretative Material shall be [sent to the membership and, when appropriate, to the press] released to the public as soon after the effective date of the cancellation as possible.

[(l)](m) [Notices to the membership and r] Releases to the [press] public referred to in paragraphs (c) and (d) above shall identify the Rules and By-Laws of the Association or the SEC Rules violated, and shall describe the conduct constituting such violation. [Notices] Releases may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by the Association to be in the public interest.

Endnotes

[1] These rule amendments relate to "disciplinary complaints" and do not address "customer complaints."

[2] The publication of information concerning significant disciplinary actions that have become final during the preceding month is normally done through a monthly press release. In addition, a more detailed press release about a case of particular importance may be issued on a more expedited basis.

[3] See *NASD Notice to Members 96-76*.

[4] NASD Regulation maintains the authority and responsibility to enforce compliance with MSRB rules with respect to member firms.

[5] With respect to the methodology for the release of information on complaints and decisions, it is anticipated that information

will be released through an omnibus press release that is subsequently included in an *NASD Notice to Members*, a press release on an individual matter, or through the NASD Regulation Web site.

[6] The language of paragraph (a) treats as if adopted proposed amendments to the provision filed with the SEC in SR-NASD-96-38. File SR-NASD-96-38 has been published for comment in Securities Exchange Act Release No. 37994 (November 27, 1996), 61 FR 64549 (December 5, 1996).

NASD NOTICE TO MEMBERS 97-43

SEC Amends Broker/Dealer Record Retention Rule

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 February 5, 1997, in Release No. 34-38245 (Release), the Securities and Exchange Commission (SEC) amended its broker/dealer record retention rule to allow broker/dealers to employ, under certain conditions, electronic storage media to maintain records required to be retained. These 17a-4 amendments reflect a recognition of technological developments that will provide economic as well as time-saving advantages for broker/dealers by expanding the scope of recordkeeping options while, at the same time, continuing to require broker/dealers to maintain records in a manner that preserves their integrity. The SEC has also issued an interpretation, through the Release, of its record retention rule relating to the treatment of electronically generated communications.

This rule change codifies two SEC staff no-action positions issued on November 3, 1979, and June 18, 1993, respectively (described below), that allowed broker/dealers to utilize microfiche and optical storage technology (OST) under the same conditions as referenced in the Release. These conditions are further outlined in *NASD Notice to Members 93-47* as well as the rule itself (see changes to rule below). The new amendments now allow for the retention of required records, pursuant to SEC Rules 17a-3 and 17a-4, to be stored and maintained using OST, including confirmations and order tickets. However, the recordkeeping requirements pursuant to Securities Exchange Act of 1934 (Exchange Act) Rules 15g-2 and 15g-9 are not to be met by use of electronic storage media. Specifically, Rules 15g-2 and 15g-9 require broker/dealers to obtain from a customer prior to effecting transactions in penny stocks: (i) a manually signed acknowledgement of the receipt of a risk disclosure document; (ii) a written agreement to transactions involving penny stocks; and (iii) a manually signed and dated copy of a written suitability statement. As a result of the SEC not permitting the use of electronic media to satisfy the requirements of Rules 15g-2 and 15g-9 as outlined in the May 1996 Interpretive Release, the staff of the Division of Market Regulation (Division) believes it would not be appropriate to permit the storage of records required by such rules using electronic storage media. The record retention requirements under these rules require maintenance in paper format for the prescribed time period.

The rule amendment is also calling for the following arrangements: (i) audit systems for certain records; (ii) escrow agents; (iii) third-party download providers; and (iv) indexing of optical disks. These arrangements are summarized immediately below and discussed in detail within the Release.

Audit Systems: Requires the implementation and use of an audit system where required records pursuant to Rule 17a-4 are being entered or when any additions to existing records are made. No audit records will be required for records that can be accessed but not altered by the reader.

Escrow Agents: Broker/dealers who use outside service bureaus to preserve records could place in escrow and keep current a copy of the information necessary to access the format (i.e., the logical layout) of the optical disks and to download records stored on optical disks.

Third-Party Download Provider: Requires broker/dealers that use OST exclusively to have arrangements with at least one third party that has the ability to download information from the broker/dealer's electronic storage system to another acceptable medium. The provider must submit an agreement to the member firm's

designated examining authority (DEA) which will permit the SEC and appropriate DEA to access the member's records when needed. Any notices and representation(s) required by SEC Rule 17a-4(f)(2)(i) and 17a-4(f)(3)(vii) should be directed to:

NASD Regulation, Inc.
Compliance Department
1735 K Street, NW
Washington, DC 20006-1500

or facsimile to:
(202) 728-8341.

Indexing of Optical Disks: Requires broker/dealers to keep or escrow all information necessary to download records and indices stored on optical disks.

Background

SEC Rules 17a-3 and 17a-4 specify minimum requirements with respect to the business records that must be kept and maintained by broker/dealers as well as the specific periods during which such records and other documents relating to the broker/dealer's business must be preserved. Generally, records preserved pursuant to these Rules must be kept for up to six years, the first two in an easily accessible place. Some records, however, must be preserved for three years, and records concerning the legal existence of the broker/dealer (e.g., partnership articles, minute books, stock certificate books) must be preserved during the life of the broker/dealer and its successors.

Until 1970, paper was the sole medium for the preservation of the records required under Rules 17a-3 and 17a-4. In 1970, Rule 17a-4 was amended to permit records to be immediately produced on microfilm for recordkeeping purposes. This amendment allowed for the use of microfilm for record preservation purposes provided that the conditions set forth in paragraph (f) of Rule 17a-4 were met. In 1979, SEC staff interpreted Rule 17a-4 to include microfiche as well as microfilm for recordkeeping purposes, provided that the requirements of Rule 17a-4(f) were satisfied.

Moreover, on June 18, 1993, the SEC issued a no-action letter in response to a May 19, 1992, letter from the Securities Industry Association's Ad Hoc Record Retention Committee allowing for further expansion in the manner records may be preserved under 17a-3 and 17a-4. Specifically, the Committee was granted no-action relief by the Division to allow broker/
dealers to maintain the required records on optical disk storage.

The SEC Release that follows this *Notice* contains details regarding the specific requirements to be met if OST is to be utilized, among other things. Members planning to use OST should review the Release in its entirety.

Questions concerning this *Notice* should be directed to Robert Broughton, District Coordinator, NASD Regulation, Inc., at (202) 728-8361; or Susan DeMando, District Coordinator, NASD Regulation, Inc., at (202) 728-8411.

NASD NOTICE TO MEMBERS 97-44

Fixed Income Pricing System Additions, Changes, And Deletions As Of June 20, 1997

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 June 20, 1997, the following bonds were added to the Fixed Income Pricing System℠ (FIPS℠).

Symbol	Name	Coupon	Maturity
DHI.GA	D.R. Horton Inc	8.375	6/15/04
SNY.GA	Snyder Oil Corp	8.750	6/15/07
COTT.GA	Cott Corp	8.500	1/15/07
ICII.GB	Imperial Credit Industry Inc	9.875	1/15/07
MOAI.GA	Motels of America Inc	12.000	4/15/04
SPF.GB	Standard Pacific Corp	8.500	6/15/07
UC.GA	United Companies Financial Corp	8.375	7/1/05

As of June 20, 1997, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
BBY.GA	Best Buy Inc	9.000	6/15/97
CPA.GB	Carlisle Plastics Inc	10.250	6/15/97
STO.GE	Stone Container Corp	10.750	6/15/97
CHK.GB	Chesapeake Energy Corp	7.875	3/15/04
CHK.GC	Chesapeake Energy Corp	8.500	3/15/12
ITHA.GA	Ithaca Industry Inc	11.125	12/15/02
LFCL.GA	Lomas Meeting USA Inc	10.250	10/1/02
LFCL.GB	Lomas Meeting USA Inc	9.750	10/1/97
IHS.GA	Integrated Health Services Inc	10.750	7/15/04
IHS.GB	Integrated Health Services Inc	9.625	5/31/02

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASD Regulation℠ Market Regulation, at (301) 590-6451.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq® Market Operations, at (203) 385-6310.

DISCIPLINARY ACTIONS

Disciplinary Actions Reported For July

NASD Regulation, Inc. (NASD Regulation℠) has taken disciplinary actions against the following firms and individuals for violations of NASD® rules; federal 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, July 21, 1997. The information relating to matters contained in this Notice is current as of the end of June. Information received subsequent to the end of June is not reflected in this edition.

Firms Suspended, Individuals Sanctioned

Amerivet-Dymally Securities, Inc. (Inglewood, California) and Elton Johnson, Jr. (Registered Principal, Panorama City, California) submitted an Offer of Settlement pursuant to which they were fined $20,250, jointly and severally. In addition, the firm was suspended of all underwriting activities for 30 days and Johnson was ordered to requalify by exam as a financial and operations principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting though Johnson, effected transactions in securities and induced the purchase or sale of securities when the firm failed to have and maintain sufficient net capital. The finding also stated that the firm, acting through Johnson, failed to file in a timely manner MSRB Form G-37 in connection with four municipal securities underwritings sold by the firm on a firm commitment basis.

Brooklyn Capital & Securities Trading, Inc. (Brooklyn, New York) and David Rybstein (Registered Principal, Brooklyn, New York) were fined $58,000, jointly and severally. The firm was suspended from NASD membership for one year and required to reapply for membership. Rybstein was suspended from association with any NASD member in any capacity for one year and must requalify by exam. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a January 1996 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm and Rybstein employed manipulative and deceptive devices in trading of securities in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 and NASD rules.

Firm Fined, Individual Sanctioned

Falcon Trading Group, Ltd. (Boca Raton, Florida) and Thomas W. Hands (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which they were fined $10,000, jointly and severally. In addition, the firm was fined $2,500, jointly and severally with another respondent and Hands was required to requalify by exam as a financial and operations principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hands, conducted a securities business while maintaining insufficient net capital. The findings also stated that the firm, acting through Hands, filed an inaccurate FOCUS Part IIA report, prepared an inaccurate net capital computation, and failed to give telegraphic notice of its net capital deficiency. Furthermore, the NASD determined that the firm breached its restrictive agreement.

Firm and Individual Fined

First California Capital Markets, Inc. (San Francisco, California) and Gerald Beldon Porter, Jr. (Registered Principal, San Rafael, California) submitted a Letter of

Acceptance, Waiver and Consent pursuant to which they were fined $27,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Porter, effected sales of securities to customers at prices that were not fair and reasonable taking into consideration all relevant circumstances. The findings also stated that Porter acted, and the firm permitted him to act, as a municipal securities principal without being registered as such.

Firm Fined

Stratton Oakmont, Inc. (Lake Success, New York) was fined $20,000 and ordered to submit to the NASD, and thereafter utilize in its settlement agreements, a form of Offer of Settlement containing non-disclosure and confidentiality clauses, if any, acceptable to the NASD. The firm also was required, upon request by the NASD in connection with the NASD's investigative duties, to identify customers that should be released from settlement agreements that impose conditions on a customer's ability to provide information to the NASD. The SEC affirmed the sanctions following appeal of an April 1996 NBCC decision. The sanctions were based on findings that the firm prepared, utilized, and executed agreements when settling customer complaints that preclude, restrict, or condition customers' ability to cooperate with the NASD in connection with its investigation of customer complaints. The firm also failed to release a public customer from the restrictive provisions of a settlement agreement that precluded, restricted, and/or conditioned the customer from cooperating in an NASD investigation.

Individuals Barred Or Suspended

Bruce Abramson (Registered Representative, Coconut Creek, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $17,785 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Abramson consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to and obtain prior written authorization from his member firm to effect these transactions.

Michael Kenneth Anderson (Registered Representative, San Jose, California) was fined $70,468 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Anderson participated in the sale of promissory notes to investors without giving prior written notification to his member firm.

Claudio M. Balestra (Associated Person, Somerville, New Jersey) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Balestra misused customer funds totaling $168 intended for the payment of an insurance premium. Balestra also failed to respond to NASD requests for information.

Eric R. Bauer (Registered Representative, Cincinnati, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bauer failed to respond to NASD requests for information.

Julius Berman (Registered Representative, Austin, Texas) 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, Berman consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Raymond C. Bochert, Sr. (Registered Representative, Cortland, Ohio) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bochert received $236 from public customers as insurance premium payments and failed to apply the funds as instructed by the customers or in any other manner for the benefit of the customers. Bochert also failed to respond to NASD requests for information.

Thomas Joseph Browne, Jr. (Registered Representative, Forest Hills, New York), Bartholomew Cornell Haring (Registered Representative, Staten Island, New York), and Gregory John Mouen (Registered Representative, New York, New York). Browne was fined $25,000 and barred from association with any NASD member in any capacity. Haring was fined $4,100 and barred from association with any NASD member in any capacity. Mouen was fined $7,100 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brown, Haring, and Mouen engaged in manipulative, deceptive, or other fraudulent activities in connection with the purchase or sale of securities.

Louis T. Buonocore (Registered Representative, Staten Island, New York) was fined $15,000 and suspended from association with any NASD member in any capacity for one year. The NBCC imposed the sanctions following appeal of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Buonocore failed to respond to NASD requests to appear and give testimony.

This action has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

William Pierce Carroll (Registered Representative, Cutchoque, New York) was fined $195,000, barred from association with any NASD member in any capacity, and ordered to pay $35,000 in restitution to a public customer. The sanctions were based on findings that Carroll received a $35,000 check from a public customer for the purchase of shares of a common stock and failed to deposit the funds into the customer's account or invest them on the customer's behalf. Instead, Carroll endorsed the check and converted the monies to his own use. Carroll also failed to respond to NASD requests for information.

Rodney W. Causey (Registered Representative, Peoria, Illinois) was fined $175,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Causey obtained $21,000 from a public customer for the purchase of a certificate of deposit, failed to follow the customer's instructions, and used the funds for some purpose other than for the benefit of the customer. Furthermore, Causey participated in private securities transactions without giving prior written notice to and receiving written approval from his member firm to engage in such activities. Causey also failed to respond to NASD requests for information.

Benjamin Antonio Chacon (Registered Representative, Dana Point, California) submitted an Offer of Settlement 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, Chacon consented to the described sanctions and to the entry of findings that he caused the surrender of $10,145.74 worth of paid-up additional insurance on the life insurance policy of a public customer and forged the customer's endorsement on the surrender check without the customer's knowledge or consent. The findings also stated that Chacon submitted an application in the customer's name for a variable appreciable life policy that was not signed by the customer and applied $2,385.89 of the proceeds from the surrender check toward the policy, thereby generating a commission.

Matthew M. Chornoby (Registered Principal, Sterling Heights, Michigan) was fined $100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chornoby received $19,000 in personal checks from a public customer with instructions that the funds be held in a special account and returned to the customer upon request. Chornoby failed to follow said instructions, in that he deposited the funds in an account in which he had a beneficial interest and used the funds for some purpose other than the benefit of the customer.

Sammy T. Dean (Registered Representative, Ridgeland, Mississippi) 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 two weeks. Without admitting or denying the allegations, Dean consented to the described sanctions and to the entry of findings that he engaged in outside business activities without prior written notice to or approval from his member firm.

Sidney C. Eng (Registered Principal, Mill Valley, California) was fined $75,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Eng knowingly purchased shares of stock while in possession of material, non-public information.

This action has been appealed to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Scott R. Gnesda (Registered Representative, Jeannette, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gnesda consented to the described sanctions and to the entry of findings that he affixed to insurance forms and checks the initials, signatures, and endorsements of public customers and deposited the checks in his personal bank account without their authorization.

Raymond Richard India (Registered Representative, Chicago, Illinois) submitted an Offer of Settlement pursuant to which he was fined $5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam. Without admitting or denying the allegations, India consented to the described sanctions and to the entry of findings that he executed, on a discretionary basis, index options transactions in a customer's account without obtaining written authorization from the customer to exercise discretion in his account. The findings also stated that India recommended and effected index options transactions in the customer's account in the absence of a reasonable basis for believing that the recommendations were suitable for the customer in light of the customer's investment objectives, experience, financial situation, or needs.

Joseph John Janczycki (Registered Representative, Chandler, Texas) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Janczycki failed to respond to NASD requests for information.

Bennett Lee Jones (Registered Representative, Bedford, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $2,500, suspended from association with any NASD member in any capacity for five business days, and ordered to disgorge $1,159.05 in commissions. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he exercised discretionary power with respect to trading in option contracts in a customer's account without prior written authorization from the customer or written acceptance of such a discretionary account by a registered options principal.

Atif A. Joseph (Registered Representative, New York, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Joseph failed to respond to NASD requests for information and to appear for an on-the-record interview.

Vladik Kaminsky (Registered Representative, Brooklyn, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kaminsky failed to respond to NASD requests for information.

Scott W. Kliewe (Registered Representative, Upper Saddle River, New Jersey) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kliewe failed to respond to NASD requests for information.

Lo-Shan Lee (Registered Representative, San Diego, California) submitted an Offer of Settlement pursuant to which he was fined $1,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he opened a securities account with a member firm without informing his member firm of the existence of the account and/or the trading in the account and without informing the other firm of his association with his member firm.

Edward A. McKay, Jr. (Registered Principal, New York, New York) was fined $10,000 and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that McKay failed to respond timely to NASD requests for information.

Daniel C. Montano (Registered Principal, Orange, California) submitted an Offer of Settlement pursuant to which he was fined $102,500 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Montano consented to the described sanctions and to the entry of findings that he engaged in a course of conduct that resulted in his member firm's mishandling and/or misusing funds entrusted to the firm by prospective registered representatives that the firm agreed to sponsor for the purpose of their applying to take certain securities exams. The findings also stated that a member firm, acting under the direction and control of Montano, effected securities transactions while failing to maintain sufficient net capital.

John Michael Novichonek (Registered Representative, St. James, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Novichonek failed to respond to NASD requests for information.

Richard O. Pilardi (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pilardi consented to the described sanctions and to the entry of findings that he induced a public customer to affix her daughters' signatures on insurance policy applications and thereafter submitted such applications to his member firm as authentic without the authorization of the customer's daughters. The findings also stated that Pilardi affixed a customer's signature on forms requesting loans totaling $489 and submitted such forms to his member firm. Furthermore, the NASD determined that Pilardi affixed the customer's endorsement on checks and caused such checks to be applied to insurance premium payments, and submitted a request to change the customer's address of record to his home address without the customer's authorization.

Bernard E. Ribordy (Registered Representative, St. Petersburg, Florida) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Ribordy consented to the described sanctions and to the entry of findings that he forged a public customer's signature on a change of representative form and submitted the form to his member firm without the knowledge or authorization of the customer.

Angel Emilio Rivera (Registered Representative, Staten Island, New York) was fined $75,344.98, barred from association with any NASD member in any capacity, and required to pay $11,068.98 in restitution to a customer. The sanctions were based on findings that Rivera received an $11,060.90 check from a public customer for investment in a mutual fund and, instead, without the prior knowledge, authority, or consent of the customer, deposited the check into his personal bank account and converted the monies of his personal use. Rivera also failed to respond to NASD requests to appear for an on-the-record interview.

Lowell C. Schatzer (Registered Principal, New York, New York), Robert F. Catoggio (Registered Representative, Staten Island, New York), and Ronan S. Garber (Registered Representative, Highland Beach, Florida) submitted Offers of Settlement pursuant to which Schatzer and was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $4,161,362 in restitution, jointly and severally, with a member firm. Catoggio was fined $50,000 and barred from association with any NASD member in any capacity. Garber was fined $120,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented the described sanctions and to the entry of findings that, by means of manipulative, deceptive, and other fraudulent devices and contrivances, Schatzer, Catoggio, and Garber effected a series of transactions in common stock that created actual and apparent active trading in the stock or raised the stock's price. The findings also stated that Garber effected transactions in, and induced others to effect transactions in a stock that were not fair and reasonable and were not reasonably related to the prevailing market price of the stock. Garber also engaged in and induced others to engage in deceptive and fraudulent devices and contrivances in connection with the transactions. Furthermore, the NASD determined that Schatzer failed to establish and maintain an effective supervisory system, failed to enforce supervisory procedures, and failed to respond to NASD requests to appear for testimony. The NASD also found that Garber failed to timely respond to NASD requests to appear for testimony.

Michael John Vertin (Registered Principal, Roswell, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 10 days and required to requalify by exam as an investment company and variable contracts products principal. Without admitting or denying the allegations, Vertin consented to the described sanctions and to the entry of findings that he failed to provide prompt written notice to his member firm of his association with another company. The NASD also found that Vertin failed to provide his member firm with written notice of transactions with public customers through the other company.

Kay Leroi Walker (Registered Representative, Nauvoo, Illinois) submitted an Offer of Settlement pursuant to which he was fined $7,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Walker consented to the described sanctions and to the entry of findings that he failed to timely respond to NASD requests for information. The findings also stated that Walker received a $10,000 check from a public customer for investment purposes, failed to apply the funds as intended, and instead, misused the customer's funds without the knowledge or consent of the customer.

Peter Wang (Registered Representative, Union City, New Jersey) submitted an Offer of Settlement pursuant to which he was fined $2,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wang consented to the described sanctions and to the entry of findings that, while taking the Series 7 exam, he was in possession of unauthorized material related to the exam.

William H. Westerman (Registered Representative, Rosedale, Indiana) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Westerman received $111 from a public customer for the purchase of a life insurance policy and failed to follow the customer's instructions in that he used at least $39 of the funds for purpose other than for the benefit of the customer. Westerman also failed to respond to NASD requests for information.

Tomer Matthew Yuzary (Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000, suspended from association with any NASD member in any capacity for 30 days, and required to pay $50,114 in restitution to public customers. Without admitting or denying the allegations, Yuzary consented to the described sanctions and to the entry of findings that he placed an order to buy or sell securities without the knowledge or consent of public customers for whom the orders were placed. Furthermore, the NASD found that Yuzary made assurances to his member firm that order tickets for purchases submitted by another

representative to his member firm were for actual customer accounts, although he had not personal knowledge on which to base such assurances. The findings also stated that Yuzary recommended and placed orders for purchases and sales of securities for public customers without having a reasonable basis for believing that the recommendations were suitable for the customers in light of their investment objectives, financial situations, and needs.

Roger L. Zarling (Registered Representative, Tacoma, Washington) was fined $160,000, barred from association with any NASD member in any capacity, and required to pay $32,000 in restitution to a member firm. The sanctions were based on findings that Zarling received checks totaling $32,000 from public customers intended for investment in mutual funds, and instead, endorsed the checks and deposited the proceeds into his personal bank account.

Richard Jon Zimmer (Registered Representative, Plano, Texas) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Zimmer failed to respond to NASD requests for information.

Individuals Fined

Robert John Lancellotti (Associated Person, Valley Cottage, New York) was fined $26,562.50. The sanction was based on findings that Lancellotti purchased units of a hot issue that traded at a premium in the immediate aftermarket in contravention of the Board of Governors Free-Riding and Withholding Interpretation. Lancellotti also opened a brokerage account at a member firm and executed a securities transaction in the account without notifying the firm in writing that he was associated with another member firm.

James Thomas Shanley (Registered Principal, Old Bridge, New Jersey) submitted an Offer of Settlement pursuant to which he was fined $10,000. Without admitting or denying the allegations, Shanley consented to the described sanction and to the entry of findings that a member firm, acting through Shanley, opened 97 customer accounts and effected purchases and sales on behalf of the public customers prior to receiving required approval from the San Francisco DBCC to change its business.

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Euro-Atlantic Securities, Inc., Boca Raton, Florida (May 27, 1997)

Maclaren Securities, Inc., Marblehead, Massachusetts (June 7, 1997)

Mercury American Capital Corp., New York, New York, (June 7, 1997)

RXR Securities, Inc., Stamford, Connecticut (May 22, 1997)

The Richman Group, Incorporated, Colleyville, Texas (May 27, 1997)

State Capital Markets Corporation, New York, New York, (May 27, 1997)

Firm Suspended Pursuant To NASD Rule 9622 For Failure To Pay Arbitration Award

The date the suspension began is listed after the entry.

Gilbert Marshall & Co., Inc., Greeley, Colorado (May 27, 1997)

Suspensions Lifted

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

North Star Financial Services, Inc., Dallas, Texas (May 16, 1997)

William & Co. Capital Markets, New York, New York (May 30, 1997)

Individuals Whose Registrations Were Canceled/Suspended Pursuant To NASD Rule 9622 For Failure To Pay Arbitration Awards

Richard Coates, Encinitas, California

William Jackob, Marietta, Georgia

Anthony Kehle, Palm Beach, Florida

Michael Usher, Greeley, Colorado

NASD NOTICE TO MEMBERS 97-45

Corrected List Of SOES Tier Size Levels Effective July 1, 1997

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 following is a corrected list of the Small Order Execution System℠ (SOES℠) tier size changes that became effective on July 1, 1997. The list of SOES tier size changes included in *Notice to Members 97-38* was incorrect due to data errors. Despite the errors, the correct list of SOES tier size changes was programmed into SOES, effective July 1, 1997, according to the Nasdaq® SOES tier size re-ranking rules and procedures. Shortly after the publication of *Notice to Members 97-38*, Nasdaq's Market Operations Department informed the membership of the errors. Accordingly, this *Notice to Members* merely reflects the correct list of SOES tier size changes which went into effect on July 1, 1997.

For more information, please contact Nasdaq Market Operations at (203) 378-0284.

Description

Under Rule 4710, the maximum SOES order size for a Nasdaq National Market® security is 1,000, 500, or 200 shares depending on the trading characteristics of the security. The Nasdaq Workstation II™ indicates the maximum SOES order size for each Nasdaq National Market security in its bid/offer quotation display. The indicator "NM10," "NM5," or "NM2" is displayed to the right of the security name, corresponding to a maximum SOES order size of 1,000, 500, or 200 shares, respectively.

The criteria for establishing SOES tier sizes are as follows:

• A 1,000-share tier size was applied to those Nasdaq National Market securities that had an average daily non-block volume of 3,000 shares or more a day, a bid price that was less than or equal to $100, and three or more market makers.

• A 500-share tier size was applied to those Nasdaq National Market securities that had an average daily non-block volume of 1,000 shares or more a day, a bid price that was less than or equal to $150, and two or more market makers.

• A 200-share tier size was applied to those Nasdaq National Market securities that had an average daily non-block volume of less than 1,000 shares a day, a bid price that was less than or equal to $250, and less than two market makers.

In accordance with Rule 4710, Nasdaq periodically reviews the SOES tier size applicable to each Nasdaq National Market security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of March 31, 1997, pursuant to the aforementioned standards. The SOES tier-size changes called for by this review are being implemented with three exceptions.

• First, issues were not permitted to move more than one tier-size level. For example, if an issue was previously categorized in the 1,000-share tier, it would not be permitted to move to the 200-share tier, even if the formula calculated that such a move was warranted. The issue could move only one level to the 500-share tier as a result of any single review. In adopting this policy, the NASD was attempting to maintain adequate public investor access to the market for issues in which the tier-size level decreased and to help ensure the ongoing participation of market makers in SOES for issues in which the tier-size level increased.

• Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced.

• Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

In addition, with respect to initial public offerings (IPOs), the SOES tier-size reranking procedures provide that a security must first be traded on Nasdaq for at least 45 days before it is eligible to be reclassified. Thus, IPOs listed on Nasdaq within the 45 days prior to March 31, 1997, were not subjected to the SOES tier-size review.

Nasdaq National Market SOES Tier-Size Changes

All Issues In Alphabetical Order By Security Name
(Effective July 1, 1997)

Symbol	Company Name	Old Tier Level	New Tier Level
TDDDF	3DLABS INC LTD	200	500
TDXT	3DX TECHNOLOGIES INC	200	500
A			
AANB	ABIGAIL ADAMS NATL	1000	500
AASI	ADVANCED AERO CL A	200	500
AASIW	ADVANCED AERO WT A	200	500
AASIZ	ADVANCED AERO WT B	200	500
ABDR	ABACUS DIRECT CP	500	1000
ABFI	AMERICAN BUS FIN SVC	200	500
ABND	AUTOBOND ACCEPT CP	500	1000
ABRI	ABRAMS INDS INC	200	500
ACCB	ACCESS BEYOND INC	200	500
ACLR	ACCENT COLOR SCIENCE	200	500
ACLY	ACCELER8 TECH CORP	200	500
ADCC	ANDEAN DEV CORP	500	1000
ADCCW	ANDEAN DEV CORP WTS	500	1000
ADECY	ADECCO SA ADR	500	200
ADIC	ADVANCED DIG INFO CP	500	1000
ADVH	ADVANCED HEALTH CORP	500	1000
ADVP	ADVANCE PARADIGM INC	500	1000
AFCI	ADVANCED FIBRE ##	500	1000
AFCX	A F C CABLE SYS INC	1000	500
AFED	AFSALA BANCORP INC	500	1000
AICX	APPLIED IMAGING CORP	500	1000
AIII	AUTOLOGIC INFO INTL	1000	500
ALET	ALOETTE COSMETICS	1000	500
ALFC	ALLIED LIFE FINL CP	500	1000
ALGO	ALGOS PHARMACEUTICAL	500	1000
ALLE	ALLEGIANT BNCP INC	500	200
ALLN	ALLIN COMMUNICATIONS	500	1000
ALYN	ALYN CORP	500	1000
ALZAW	A L Z A CP WTS	500	1000
AMBC	AMER BNCP OHIO	200	500
AMCE	AMER CLAIMS EVALUAT	1000	500
AMCI	AMERICAN MEDSERV CP	500	1000
AMCN	AMERICAN COIN MERCH	500	1000
AMED	AMEDISYS INC	500	1000
AMRS	AMERUS LIFE HLDGS	200	500
AMSN	AMSCAN HLDGS INC	200	500
ANCO	ANACOMP INC	500	1000
ANDR	ANDERSEN GROUP INC	500	200
AQLA	AQUILA BIOPHARMACEUT	500	1000
ARMXF	ARAMEX INTL LTD	200	500
ARONA	AARON RENTS INC CL-A	500	1000
ARQL	ARQULE INC	500	1000
ARSD	ARABIAN SHIELD DEV	1000	500
ARTT	ADVANCED RADIO TELE	500	1000
ARTW	ART S WAY MFG CO INC	500	200
ASFN	ALLSTATE FINL CP	500	1000
ASIGF	ANSALDO SIGNAL NV	200	500
ASTM	AASTROM BIOSCIENCES	200	500
ASVI	A S V INC	500	1000
ATAC	AFTERMARKET TECH CP	200	500
ATRC	ATRIA COMMUNITIES	500	1000
ATRI	ATRION CP	500	1000
AUGIW	AMER UN GLOBAL WT	500	200
AURM	AURUM SOFTWARE INC	500	1000
AVIR	AVIRON	500	1000
AWRD	AWARD SOFTWARE INTL	500	1000
AXYS	AXSYS TECHS INC	200	500
B			
BANF	BANCFIRST CP	500	1000
BBHF	BARBERS HAIRSTYLING	200	500
BBII	BOSTON BIOMEDICA INC	500	1000
BBIOY	BRITISH BIO-TECH ADR	1000	500
BCIS	BANCINSURANCE CP	500	1000
BCOM	BANK OF COMMERCE(CA)	500	1000
BCORY	BIACORE INTL AB ADR	200	500
BEERF	BIG ROCK BREWERY LTD	1000	500
BEVB	BEVERLY BANCORP INC	500	1000
BFEN	B F ENTERPRISES INC	200	500
BFFC	BIG FOOT FIN CORP	200	500

Symbol	Company Name	Old Tier Level	New Tier Level
BGAS	BERKSHIRE GAS CO	500	1000
BGLVW	BALLY'S GRAND INC WT	500	200
BHIKF	B H I CORP	1000	500
BIORY	BIORA AB ADR	200	500
BITS	BITSTREAM INC	500	1000
BKCT	BANCORP CONN INC	1000	500
BKLA	BANK OF LOS ANGELES	200	500
BLGMY	BUFFELSFONTEIN ADR	500	1000
BLSC	BIO LOGIC SYS CP	1000	500
BMAN	BIRMAN MANAGED CARE	200	500
BMCCP	BANDO MCGLOC PFD A	200	500
BNHNA	BENIHANA INC A	1000	500
BNTT	BARNETT INC	500	1000
BOOT	LACROSSE FOOTWEAR	500	1000
BOSA	BOSTON ACOUSTICS INC	500	1000
BOXXA	BOX ENERGY CP CL A	500	200
BOYD	BOYD BROS TRANS INC	200	500
BPAO	BALDWIN PIANO ORGAN	1000	500
BRID	BRIDGFORD FOODS CP	500	1000
BSTE	BIOSITE DIAGNOSTIC	200	500
BTEK	BALTEK CP	500	200
BTIC	BRUNSWICK TECHS INC	200	500
BTRN	BIOTRANSPLANT INC	1000	500
BWINB	BALDWIN LYONS CL B	1000	500
BWLN	BOWLIN OUTDOOR ADVER	200	500
CINS	CIRCLE INCOME SHARES	500	1000
CLBK	COMMERCIAL BANKSHRS	500	1000
CLSR	CLOSURE MEDICAL CORP	500	1000
CLTR	COULTER PHARM INC	200	500
CMSS	CREDIT MGMT SOLU	200	500
CNBA	CHESTER BANCORP INC	500	1000
CNBF	C N B FINANCIAL CP	200	500
CNDL	CANDLEWOOD HOTEL CO	500	1000
CNDS	CELLNET DATA SYSTEMS	500	1000
CNIT	C E N I T BNCP INC	500	1000
CNRMF	CINRAM LIMITED	500	200
COLTY	C O L T TELECOM ADR	200	500
COVB	COVEST BANCSHARES	500	1000
CRBO	CARBO CERAMICS INC	1000	500
CRRC	COURIER CP	1000	500
CRYSF	CRYSTAL SYSTEMS SOL	200	500
CSBI	CENTURY SOUTH BKS	1000	500
CSCQW	CORRECTIONAL SVCS WT	500	200
CTLG	SPECIALTY CATALOG CP	500	1000
CTWS	CONN WATER SVCS INC	500	1000
CUNO	C U N O INC	500	1000
CVTX	C V THERAPEUTICS INC	200	500
CWTR	COLDWATER CREEK INC	200	500
CYBR	CYBERMEDIA INC	500	1000
CYMI	CYMER INC	500	1000

C

CAFI	CAMCO FINANCIAL CP	500	1000
CAII	CAPITAL ASSOC	1000	500
CALGL	CAL FED SEC LIT INT	500	1000
CALM	CAL-MAINE FOODS INC	200	500
CBCG	C B COMM REAL ESTATE	200	500
CBMD	COLUMBIA BANCORP MD	500	1000
CBNJW	CARNEGIE BANCORP WTS	1000	500
CBST	CUBIST PHARMACEUTCLS	500	1000
CCBG	CAPITAL CITY BANK GR	200	500
CCOW	CAPITAL CP OF WEST	200	500
CDEN	COAST DENTAL SVCS	200	500
CERB	C E R B C O INC	500	1000
CERS	CERUS CORP	200	500
CFBXL	CFB CAPITAL I CUM	200	500
CFCI	C F C INTL INC	500	1000
CFIN	CONSUMERS FIN CP	500	200
CFNC	CAROLINA FINCORP INC	200	500
CFWY	CONS FREIGHTWAYS CP	500	1000
CHCO	CITY HOLDING CO	500	1000
CHFC	CHEMICAL FIN CP	500	1000
CHNL	CHANNELL COML CORP	500	1000
CICS	CITIZENS BKSH INC	500	1000

D

DAOU	D A O U SYSTEMS INC	200	500
DATX	DATA TRANSLATION	200	500
DBTO	D B T ONLINE INC	500	1000
DCBI	DELPHOS CITIZENS BCP	200	500
DCBK	DESERT COMMUNITY BK	200	500
DCRNW	DIACRIN INC WT	500	1000
DDRX	DIEDRICH COFFEE	500	1000
DEZI	DONNELLY ENT SOLUTIO	500	1000
DHMS	DIAMOND HOME SVCS	500	1000
DIGL	DIGITAL LIGHTWAVE	200	500
DIGX	DIGEX INC	500	1000
DITI	DIATIDE INC	1000	500
DLIA	DELIA*S INC	200	500
DNAP	D N A P HLDG CP	500	1000
DOCP	DELAWARE OTSEGO CP	500	1000
DOCX	DOCUMENT SCI CP	500	1000
DPNR	DIGNITY PARTNERS INC	1000	500
DROOY	DURBAN ROODEPOOR ADR	500	1000
DTAM	DATAMARK HOLDING INC	200	500
DXCPN	DYNEX CAPITAL PFD C	500	1000

Symbol	Company Name	Old Tier Level	New Tier Level
E			
EASY	STORM TECH INC	500	1000
ECSGY	ECSOFT GROUP PLC ADR	200	500
EDMC	EDUCATION MGMT CORP	500	1000
EDSE	E S E L C O INC	200	500
EFBC	EMPIRE FED BANCORP	200	500
EGLB	EAGLE BANCGROUP INC	500	1000
EIDSY	EIDOS PLC ADR	200	500
EIRE	EMERALD ISLE BANCORP	500	1000
ELET	ELLETT BROTHERS INC	1000	500
ELGT	ELECTRIC & GAS TECH	200	500
ELNK	EARTHLINK NETWORK	200	500
ELRWF	ELRON ELEC INDS WTS	500	200
ELSE	ELECTRO SENSORS INC	500	200
ELTKF	E L T E K LTD	200	500
ELXS	E L X S I CP	1000	500
EMCI	E M C INSURANCE GP	500	1000
EMER	EMERGENT GROUP INC	500	1000
EMITF	ELBIT MED IMAGING	200	500
ENML	ENAMELON INC	500	1000
EONE	ENVIRONMENT ONE CP	500	1000
EPIX	E P I X MEDICAL INC	200	500
EPTO	EPITOPE INC	200	500
ERGB	ERGOBILT INC	200	500
ESCA	ESCALADE INC	500	1000
ESCP	ELECTROSCOPE INC	1000	500
ESLTF	ELBIT SYSTEMS LTD	200	500
EUSA	EAGLE USA AIRFREIGHT	500	1000
F			
FAHC	FIRST AMER HEALTH	1000	500
FAME	FLAMEMASTER CP THE	200	500
FATS	FIREARMS TRAINING	200	500
FAXX	FAXSAV INC	500	1000
FBAN	F N B CP (PA)	500	1000
FBHC	FORT BEND HLDG CORP	500	200
FBNKO	FIRST PFD CAP TR PFD	200	500
FBNKP	FIRST BKS CUM PFD C	200	500
FBSI	FIRST BANCSHARES INC	200	500
FCNB	F C N B CP	500	1000
FCPY	FACTORY CARD OUTLET	200	500
FDPC	F D P CP	500	1000
FFSW	FIRSTFEDERAL FINL	500	1000
FKFS	FIRST KEYSTONE FIN	500	1000
FLAG	F L A G FINANCIAL CP	500	1000
FLCHF	FLETCHER'S FINE FOOD	200	500
FLWR	CELEBRITY INC	1000	500
FLYT	INTERACTIVE FLGT A	500	1000
FMAR	FIRST MARINER BNCP	200	500
FMCO	F M S FINANCIAL CP	500	200
FMST	FINISHMASTER INC	1000	500
FNBF	FNB FINANCIAL SVC CP	200	500
FNGB	FIRST NORTHERN CAP	500	1000
FORR	FORRESTER RESEARCH	200	500
FOUR	FOUR MEDIA COMPANY	200	500
FPBN	F P BANCORP INC	500	1000
FPWR	FOUNTAIN PWRB IND	500	1000
FRME	FIRST MERCHANTS CP	500	1000
FRTG	FORTRESS GROUP INC	500	1000
FSNJ	FIRST SAV BK OF NJ	500	1000
FSPG	FIRST HOME BNCP INC	200	500
FSTH	FIRST SO BCSHS INC	1000	500
FTFN	FIRST FIN CP (RI)	500	1000
FTNB	FULTON BANCORP INC	500	1000
FVHI	FIRST VIRTUAL HLDGS	200	500
FVNB	FIRST VICTORIA NATL	200	500
G			
GBBK	GREATER BAY BANCORP	500	1000
GENBB	GENESEE CP B	500	200
GEOC	GEOTEL COMMUN CP	200	500
GFCO	GLENWAY FIN CP	200	500
GFNL	GRANITE FINANCIAL	500	1000
GGEN	GALAGEN INC	1000	500
GIGA	GIGA TRONICS INC	1000	500
GLDB	GOLD BANC CORP INC	200	500
GLTB	GOLETA NATL BANK	200	500
GMCR	GREEN MT COFFEE INC	500	1000
GNCNF	GORAN CAPITAL INC	500	1000
GOAL	ASCENT ENTER GROUP	500	1000
GOYL	GARGOYLES INC	500	1000
GPFI	GRAND PREMIER FIN	500	1000
GRDL	GRADALL INDS INC	500	1000
GRLL	ROADHOUSE GRILL INC	200	500
GSLC	GUARANTY FIN CP	500	1000
GTRN	GREAT TRAIN STORE CO	500	1000
GWALY	GREAT WALL ADR	500	200
H			
HAHIW	HELP AT HOME INC WTS	500	1000
HAYS	HAYES WHEELS INTL	500	1000
HBEI	HOME BANCP ELGIN	500	1000
HBNK	HIGHLAND FEDERAL BK	1000	500
HCFP	HEALTHCARE FIN PTRS	200	500
HECHB	HECHINGER CO CL B	1000	500
HERS	HERITAGE FINL SVC IL	500	1000
HFFC	H F FINANCIAL CP	1000	500

Symbol	Company Name	Old Tier Level	New Tier Level
HFGI	HARRINGTON FIN GRP	1000	500
HGMCY	HARMONY GOLD MNG ADR	500	1000
HIBB	HIBBETT SPORTING	500	1000
HIFS	HINGHAM INSTI SAVING	500	200
HIHOF	HIGHWAY HLDGS LTD	200	500
HIHWF	HIGHWAY HLDGS WTS	200	500
HILI	HILITE INDS INC	1000	500
HLGRF	HOLLINGER INC	1000	500
HMGT	HOMEGATE HOSPITALITY	500	1000
HNBC	HARLEYSVILLE NATL CP	1000	500
HOMF	HOME FEDERAL BANCORP	500	1000
HOTT	HOT TOPIC INC	500	1000
HPFC	HIGH POINT FINL CORP	200	500
HPSC	H P S C INC	500	1000
HPWR	HEALTH POWER INC	1000	500
HVFD	HAVERFIELD CP	500	1000
HYDEB	HYDE ATHLETIC INDS B	1000	500
I			
IACP	I A CORPORATION I	500	1000
IBCP	INDEP BK CP MI	500	1000
IBCPP	INDEP BK CP CUM PFD	200	500
IFSC	INTERFERON SCIENCES	500	1000
IGRP	INDUS GROUP INC THE	500	1000
IGYN	IMAGYN MEDICAL INC	500	1000
IHCC	INTENSIVA HLTHCR CP	500	1000
IHIIL	INDUSTRIAL HLDG WT C	200	500
ILABY	INSTRUMENTATION ADR	500	1000
ILCC	INTEGRATED LIVING	500	1000
ILDCY	ISRAEL DEVEL LTD ADR	200	500
ILOGY	I L O G ADR	200	500
IMIC	INDUSTIR-MATEMATIK	500	1000
IMRI	INTEGRATED MED RES	500	1000
IMRS	INFO MGMT RESOURCES	500	1000
INDQB	INTL DAIRY QUEEN B	200	500
INLD	INLAND CASINO CP	500	200
INSS	INTL NETWORK SVCS	500	1000
INTD	INTELIDATA TECHS ##	500	1000
INVN	INVISION TECH INC	500	1000
IPSW	IPSWICH SAV BK	500	1000
IRWNP	IRWIN FIN CUM TR PFD	200	500
ISCA	INTL SPEEDWAY CL A	500	1000
ISER	INNOSERV TECH INC	1000	500
ITCC	INDUSTRIAL TRAINING	1000	500
ITDS	INTL TELECOM DATA	500	1000
ITIG	INTELLIGROUP INC	500	1000
IUBC	INDIANA UNITED BNCP	200	500
J			
JAKK	JAKKS PACIFIC INC	500	1000
JCORZ	JACOR COMM INC WTS	500	1000
JPEI	J P E INC	1000	500
JTAX	JACKSON HEWITT INC	500	1000
JUDG	JUDGE GROUP INC	200	500
K			
KARR	KARRINGTON HEALTH	1000	500
KAYE	KAYE GROUP INC	500	200
KOGCP	KELLEY OIL & GAS PFD	1000	500
KPSQ	KAPSON SNR QUARTERS	500	1000
KTTY	KITTY HAWK INC	500	1000
KVCO	KEVCO INC	500	1000
KWIC	KENNEDY-WILSON INTL	500	200
L			
LABL	MULTI COLOR CP	500	1000
LANV	LANVISION SYS INC	1000	500
LARK	LANDMARK BSCHS INC	200	500
LARS	LARSCOM INC CL A	200	500
LEAP	LEAP GROUP (THE)	500	1000
LEIX	LOWRANCE ELECTRONICS	1000	500
LEPI	LEADING EDGE PACKAGI	200	500
LFUSW	LITTELFUSE INC WTS	500	200
LIVE	LIVE ENTERTAIN INC	1000	500
LMAR	LAMAUR CORP	500	1000
LMTR	LITHIA MOTORS INC	200	500
LOFSY	LONDON & OVERSEA ADR	200	500
LSON	LASON INC	500	1000
LTBG	LIGHTBRIDGE INC	500	1000
M			
MACC	MACC PRIVATE EQU INC	500	200
MACD	MACDERMID INC	500	1000
MAII	MEDICAL ALLIANCE INC	500	1000
MAME	MOBILE AMER CP NEW	500	1000
MANC	MANCHESTER EQUIP CO	200	500
MAST	MASTECH CORPORATION	200	500
MAXF	MAXCOR FINL GROUP	500	1000
MAZL	MAZEL STORES INC	200	500
MBLF	M B L A FINL CORP	500	200
MBRK	MEADOWBROOK REHAB A	500	200
MBRS	MEMBERWORKS INC	500	1000
MCRI	MONARCH CASINO	1000	500
MDLK	MEDIALINK WORLDWIDE	200	500

Symbol	Company Name	Old Tier Level	New Tier Level
MDMD	MEDIRISK INC	200	500
MDSIF	M D S I MOBILE DATA	200	500
MEDJ	MEDI-JECT CORP	500	1000
MEMCF	MEMCO SOFTWARE LTD	500	1000
METZ	METZLER GROUP INC	500	1000
MFAC	MARKET FACTS INC	500	1000
MFBC	M F B CORP	1000	500
MGRC	MCGRATH RENT CP	1000	500
MIGI	MERIDIAN INS GP INC	500	1000
MINT	MICRO-INTEGRATION CP	1000	500
MISI	METRO INFO SVCS INC	200	500
MMGC	MEGO MORTGAGE CP	200	500
MMGR	MEDICAL MGR CORP	200	500
MOKA	COFFEE PEOPLE INC	500	1000
MONEP	MONEY STORE PFD	500	1000
MORP	MOORE PRODUCTS CO	200	500
MRET	MERIT HOLDING CP	500	1000
MSDX	MASON-DIXON BCSHS	1000	500
MSFTP	MICROSOFT CV PFD	200	500
MTNT	METRO NETWORKS INC	500	1000
MTON	METRO ONE TELECOMM	500	1000
MTRS	METRIS COMPANIES INC	500	1000
MTXC	MATRIX CAP CORP	500	1000
MVIS	MICROVISION INC	500	1000
MVISW	MICROVISION WTS	500	1000
MVSI	M V S I INC	500	1000
MVSIW	M V S I INC WTS A	200	500
MWHX	MARKWEST HYDROCARBON	500	1000
N			
NAFI	NATIONAL AUTO FIN CP	200	500
NAIG	NATL INSURANCE GP	500	1000
NAII	NATURAL ALTERNATIVES	200	500
NATI	NATL INSTRUMENTS CP	500	1000
NCBE	NATL CITY BANCSHARES	500	1000
NCOG	N C O GROUP INC	500	1000
NECB	NEW ENGLAND COMM A	500	1000
NECSY	NETCOM SYSTEMS ADR	200	500
NEIB	NORTHEAST IND BNCP	1000	500
NEOT	NEOTHERAPEUTICS INC	500	1000
NEOTW	NEOTHERAPEUTICS WTS	500	1000
NFLIW	NUTRITION FOR LFE WT	1000	500
NFOR	N F O RESEARCH INC	500	1000
NGPSF	NOVATEL INC	200	500
NMTI	NITINOL MED TECHS	500	1000
NMTXW	NOVAMETRIX MED WTS A	500	200
NOLD	NOLAND CO	200	500
NPBC	NATL PENN BSCHS INC	500	1000
NPSI	NORTH PITTSBURGH SYS	200	500
NSAI	N S A INTL INC	500	1000
NSCF	NORTHSTAR COMPUTER	200	500
NSSX	NATL SANITARY SUPPLY	200	500
NUCM	NUCLEAR METALS INC	200	500
NWTL	NORTHWEST TELEPROD	1000	500
NYBS	NEW YORK BAGEL ENT	500	1000
O			
OAKF	OAK HILL FIN INC	500	200
OATS	WILD OATS MARKETS	500	1000
OCENY	OCE VAN GRINTEN ADR	200	500
OCWN	OCWEN FINANCIAL CP	500	1000
OEDC	OFFSHORE ENERGY DEV	500	1000
OGAR	O'GARA COMPANY (THE)	500	1000
OGLE	OGLEBAY NORTON CO	200	500
OGNB	ORANGE NATL BNCP	200	500
OHSC	OAK HILL SPORTSWEAR	1000	500
OKSB	SOUTHWEST BNCP INC	500	1000
OLGR	OILGEAR CO	500	200
OMEF	OMEGA FINL CP	500	1000
OMGR	OMNI INSURANCE GP	500	1000
ONCO	ON COMMAND CORP	500	1000
ONDI	ONTRACK DATA INTL	500	1000
OSBC	OLD SECOND BNCP INC	200	500
OTRX	O T R EXPRESS INC	1000	500
P			
PAASF	PAN AMER SILVER CP	500	1000
PABN	PACIFIC CAPITAL BNCP	200	500
PATI	PATIENT INFOSYSTEMS	200	500
PBFI	PARIS CORP	500	200
PBSF	PACIFIC BANK NATL CA	500	1000
PECX	PHOTOELECTRON CORP	200	500
PENG	PRIMA ENERGY CP	500	1000
PGTV	PEGASUS COMMUNICATIO	500	1000
PHXX	PHOENIX INTL LTD	500	1000
PICM	PROFESSIONALS INS CO	500	1000
PJAM	P J AMERICA INC	500	1000
PLIT	PETROLITE CP	500	1000
PMFI	PERPETUAL MIDWEST	1000	500
PNBC	PRINCETON NATL BNCP	200	500
PNTGF	PETROMET RES LTD	200	500
POST	INTL POST LIMITED	1000	500
PPLS	PEOPLES BK CP OF IND	200	500
PRCM	PROCOM TECH INC	200	500
PRLS	PEERLESS SYSTEMS CP	500	1000
PRLX	PARLEX CP	200	500
PRMX	PRIMEX TECHS INC	200	500

Symbol	Company Name	Old Tier Level	New Tier Level
PRTL	PRIMUS TELECOM GROUP	500	1000
PRTW	PRINTWARE INC	500	1000
PRWW	PREMIER RESEARCH	200	500
PSAB	PRIME BNCP INC	500	1000
PSDS	PROSOURCE INC	500	1000
PSFI	PS FINANCIAL INC	200	500
PUCK	FLORIDA PANTHERS HLD	500	1000
PULS	PULSE BANCORP INC	200	500
PUMA	PUMA TECHNOLOGY INC	200	500
PWAV	POWERWAVE TECHS INC	200	500
Q			
QEPC	Q E P CO INC	500	1000
QLIX	QUALIX GROUP INC	200	500
R			
RADS	RADIANT SYSTEMS INC	200	500
RAIL	RAILAMERICA INC	500	1000
RARB	RARITAN BANCORP INC	500	200
RAVE	RANKIN AUTO GP	200	500
RBPAA	ROYAL BSCHS OF PA A	500	1000
RCMT	R C M TECH INC	500	1000
RELV	RELIV INTL INC	500	1000
RGFC	R & G FINANCIAL CORP	500	1000
RGLD	ROYAL GOLD INC	500	1000
RIDG	RIDGEVIEW INC	500	1000
RIMG	RIMAGE CP	500	1000
RLLYW	RALLY'S HAMBURGER WT	500	1000
RMHT	R M H TELESERVICE	500	1000
ROMN	FILM ROMAN INC	500	1000
ROYL	ROYALE ENERGY INC	500	1000
RSHX	ROCKSHOX INC	500	1000
RSLN	ROSLYN BANCORP INC	200	500
RSTI	ROFIN-SINAR TECHS	500	1000
RWAV	ROGUE WAVE SOFTWARE	200	500
S			
SABB	SANTA BARBARA BNCP	500	1000
SAVB	SAVANNAH BNCP INC	500	200
SAVO	SCHULTZ SAV O STORES	500	1000
SBCN	SUBURBAN BNCP	500	1000
SBHC	SECURITY BK HLDG CO	500	1000
SCAI	SANCHEZ COMPUTER ASS	500	1000
SCNI	SPECIALTY CARE NETWK	200	500
SCOT	SCOTT AND STRINGFELL	200	500
SEAC	SEA CHANGE INTL INC	500	1000
SEAM	SEAMAN FURNITURE CO	500	200
SEEC	S E E C INC	500	1000
SELAY	SELECT APPT PLC ADR	200	500
SEMD	SEA M E D CORP	200	500
SENEB	SENECA FOODS CP B	200	500
SEWY	SEAWAY FOOD TOWN INC	500	1000
SFNCA	SIMMONS FIRST NATL A	1000	500
SFSW	STATE FINL SVCS CL A	200	500
SFXBW	SFX BROADCASTING WTS	1000	500
SGNS	SIGNATURE INNS INC	200	500
SGNSP	SIGNATURE INNS PFD A	200	500
SIGC	SYMONS INTL GROUP	500	1000
SIGN	PLASTI LINE INC	1000	500
SIND	SYNTHETIC INDS INC	500	1000
SKYM	SKYMALL INC	200	500
SLAB	SAGE LABS INC	500	200
SLCTY	SELECT SOFTWARE ADR	500	1000
SLGN	SILGAN HOLDINGS INC	200	500
SMBC	SOUTHERN MO BNCP INC	500	1000
SMCI	SIMULATION SCIENCES	500	1000
SMIT	SCHMITT INDS (OR)	500	1000
SMMT	SUMMIT DESIGN INC	500	1000
SMTK	SMARTALK TELESVCS	500	1000
SNFCA	SECURITY NATL FINL A	200	500
SNHY	SUN HYDRAULICS CORP	200	500
SNSR	CONTROL DEVICES INC	500	1000
SOLLY	DR SOLOMON'S GRP ADR	200	500
SOMR	SOMERSET GP INC THE	200	500
SOSC	SUBURBAN OSTOMY SUPP	500	1000
SPLH	SPLASH TECH HLDGS	500	1000
SPPR	SUPERTEL HOSPITALITY	1000	500
SRCL	STERICYCLE INC	500	1000
SSFC	SOUTH STREET FIN CP	500	1000
STAF	STAFFMARK INC	500	1000
STGE	STAGE STORES INC	500	1000
STIZ	SCIENTIFIC TECH INC	1000	500
STLD	STEEL DYNAMICS INC	200	500
STNRF	STEINER LEISURE LTD	500	1000
STYL	STYLING TECH CORP	200	500
SUBK	SUFFOLK BNCP	500	1000
SUPC	SUPERIOR CONSULTANT	500	1000
SWBC	STERLING WEST BNCP	200	500
SWBI	SOUTHWEST BANCSHARES	200	500
SWBT	SOUTHWEST BANCP TX	200	500
SWLDY	SMALLWORLDWIDE ADR	500	1000
T			
TACT	TRANSACT TECH INC	500	1000
TALX	T A L X CORP	500	1000
TBCOA	TRIATHLON BRDCSTG A	500	1000

Symbol	Company Name	Old Tier Level	New Tier Level
TBCOL	TRIATHALON BD DEP SH	500	200
TCAM	TRANS CP OF AMER INC	500	1000
TCIX	TOTAL CONTAINMENT	500	200
TCOMP	TELE COMMUN PFD B	500	200
TESOF	TESCO CORP	200	500
TEXP	TITAN EXPLORATION	200	500
THNK	T H I N K NEW IDEAS	200	500
THQI	T*HQ INC	500	1000
TISX	TRUSTED INFO SYS ##	500	1000
TKIOY	TOKIO MARINE ADR	500	1000
TKTM	TICKETMASTER GROUP	200	500
TKTX	TRANSKARYOTIC THERAP	500	1000
TMAI	TECHNOLOGY MODELING	500	1000
TMAM	T E A M AMERICA CORP	200	500
TMPL	TEMPLATE SOFTWARE	200	500
TMPW	T M P WORLDWIDE INC	200	500
TMRK	TRIMARK HLDGS INC	500	1000
TRGI	TRIDENT ROWAN GROUP	500	200
TRII	TRANSCRYPT INTL INC	200	500
TRNI	TRANS INDS INC	1000	500
TSATA	T C I SAT ENT SER A	200	500
TTILF	T T I TEAM TELECOM	200	500
TTRRW	TRACOR INC WTS A	1000	500
TWLB	TWINLAB CORP	500	1000
U			
UBMT	UNITED FINANCIAL CP	200	500
UNBCZ	UNIONBANCAL CP DEP	1000	500
UNBJ	UNITED NATL BNCP	500	1000
UNDG	UNIDIGITAL INC	1000	500
UNFI	UNITED NAT FOODS INC	500	1000
UOLP	U O L PUBLISHING INC	200	500
UPCPO	UNION PLANTERS PFD E	500	1000
UPEN	UPPER PENINSULA ERGY	1000	500
UROH	UROHEALTH SYSTEMS	200	500
UROQ	UROQUEST MEDICAL CP	500	1000
USAK	U S A TRUCK INC	500	1000
USFS	U S FRANCHISE SYS A	500	1000
USLM	U S LIME & MINERALS	1000	500
USPH	U S PHYSICAL THERAPY	500	1000
USTR	UNITED STATIONERS	500	1000
V			
VDRY	VACU DRY CO	500	200
VERS	VERSATILITY INC	200	500
VGCO	VIRGINIA GAS CO	500	1000
VIRS	TRIANGLE PHARMACEUTS	500	1000
VISG	VIISAGE TECH INC	500	1000
VLCCF	KNIGHTSBRIDGE TANKER	200	500
VMSI	VENTANA MED SYSTEMS	500	1000
VONE	V-ONE CORP	500	1000
VOXW	VOXWARE INC	500	1000
VPHM	VIROPHARMA INC	200	500
VRSA	VERSA TECH INC	1000	500
VSAT	VIASAT INC	200	500
VTCH	VITECH AMERICA INC	500	1000
VTEK	VODAVI TECHNOLOGY	1000	500
VUTKW	VIEW TECH INC WTS	500	1000
VVID	VIVID TECHS INC	200	500
VYTL	VIATEL INC	500	1000
W			
WALBP	WALBRO CAP TR CV PFD	200	500
WAMUO	WASHINGTON MUT PFD C	500	1000
WCBI	WESTCO BANCORP	500	1000
WCOMP	WORLDCOM DEP SHS	200	500
WEFC	WELLS FINANCIAL CP	500	1000
WEHO	WESTWOOD HOMESTEAD	500	1000
WEYS	WEYCO GP INC	200	500
WFSG	WILSHIRE FIN SVCS GR	200	500
WGOV	WOODWARD GOVERNOR CO	200	500
WJCO	WESLEY JESSEN VISION	200	500
WLFC	WILLIS LEASE FIN CP	500	1000
WPNE	WHITE PINE SOFTWARE	500	1000
WTRS	WATERS INSTRUMENTS	500	200
WTSC	WEST TELESERVICES CP	200	500
X			
XION	XIONICS DOC TECHS	500	1000
XLCT	XLCONNECT SOLUTIONS	500	1000
XOMD	XOMED SURG PRODS INC	500	1000
Y			
YURI	YURIE SYSTEMS INC	200	500
Z			
ZAGIF	Z A G INDS LTD	500	1000
ZHOM	ZARING HOMES INC	500	1000
ZILA	ZILA INC	500	1000
ZOMX	ZOMAX OPTICAL MEDIA	500	1000
ZSEV	Z SEVEN FUND INC THE	200	500

NASD NOTICE TO MEMBERS 97-46

SEC Approves Rule Prohibiting Payments For Market Making

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 3, 1997, in Release No. 34-38812 (SEC Release), the Securities and Exchange Commission (SEC) approved new NASD® Rule 2460 (Rule), which explicitly prohibits any payment by issuers or the issuers' affiliates and promoters, directly or indirectly, to a member for publishing a quotation, acting as a market maker, or submitting an application in connection therewith. The Rule is intended, among other things, to assure that members act in an independent capacity when publishing a quotation or making a market in an issuer's securities. **The new Rule is effective immediately**. The text of the new Rule and *Federal Register* version of the SEC Release are attached.

Questions concerning this *Notice* should be directed to David A. Spotts, Office of General Counsel, NASD Regulation, Inc. (NASD Regulation℠) at (202) 728-8014.

Background

NASD Regulation originally proposed this new Rule and requested comment from members and the public in *Notice to Members 96-83* in December 1996. As stated in the earlier *Notice*, it has been a long-standing policy and position of the National Association of Securities Dealers, Inc. (NASD) that a broker/dealer is prohibited from receiving compensation or other payments from an issuer for quoting or making a market in an issuer's securities or for covering the member's out-of-pocket expenses for making a market, or for submitting an application to make a market in an issuer's securities.[1] As stated in *Notice to Members 75-16* (February 1975), such payments may be viewed as a conflict of interest since they may influence the member's decision as to whether to quote or make a market in a security and, thereafter, the prices that the member would quote.

In the past, certain broker/dealers have entered into arrangements with issuers to accept payments from an issuer, affiliate or promoter of the issuer to make a market in the issuer's securities, or for covering out-of-pocket expenses of the member incurred in the course of market making, or for submitting an application to act as a market maker. As stated above, the NASD believes that such conduct may be viewed as a conflict of interest. The NASD believes that a market maker should have considerable latitude and freedom to make or terminate market making activities in an issuer's securities. The decision by a firm to make a market in a given security and the question of price generally are dependent on a number of factors, including, among others, supply and demand, the firm's expectations toward the market, its current inventory position, and exposure to risk and competition. This decision should not be influenced by payments to the member from issuers or promoters.

The new Rule establishes a fair practice standard to a particular course of conduct of a member and members should be mindful that certain actions of a member in charging an issuer a fee for making a market, or accepting an unsolicited payment from an issuer where the member makes a market in the issuer's securities, could also subject the member to violations of the anti-fraud provisions of federal securities laws and NASD Rule 2120. Further, the payment by an issuer to a market maker to facilitate market making activities could also involve the member in potential violations of the registration requirements of Section 5 of the Securities Act of 1933.

For a complete description of the new Rule, members should review in detail the attached *Federal Register* version of the SEC Release.[2]

Text Of New Rule
(Note: All rule language is new.)

2460. Payments for Market Making

(a) No member or person associated with a member shall accept any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith.

(b) The provisions of paragraph (a) shall not preclude a member from accepting:

(1) payment for bona fide services, including, but not limited to, investment banking services (including underwriting compensation and fees); and

(2) reimbursement of any payment for registration imposed by the Securities and Exchange Commission or state regulatory authorities and for listing of an issue of securities imposed by a self-regulatory organization.

(c) For purposes of this rule, the following terms shall have the stated meanings:

(1) "affiliate" shall have the same definition as used in Rule 2720 of the Business Conduct Rules of the Association;

(2) "promoter" means any person who founded or organized the business or enterprise of an issuer, is a director or employee of an issuer, acts or has acted as a consultant, advisor, accountant or attorney to an issuer, is the beneficial owner of any of an issuer's securities that are considered "restricted securities" under Rule 144, or is the beneficial owner of five percent (5%) or more of the public float of any class of an issuer's securities, and any other person with a similar interest in promoting the entry of quotations or market making in an issuer's securities; and

(3) "quotation" shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a member in receiving bids or offers from others for a security, or an indication by a member that he wishes to advertise his general interest in buying or selling a particular security.

Endnotes

[1] *See Notices to Members 75-16* (February, 1975) and *92-50* (October, 1992).

[2] The new Rule as originally proposed for public comment included a third exception, which was intended to encourage members to conduct an initial SEC Rule 15c2-11 review of the issuer and the security by permitting reimbursement of the member's reasonable out-of-pocket expenses related to this review. The third exception was eliminated from the rule proposal due to concerns that such payments could violate Section 17(b) of the Securities Act of 1933 and could be used inappropriately to avoid the limitations of the Rule.

NASD NOTICE TO MEMBERS 97-47

NASD Regulation Requests Comment On Presentation Of Related Performance Information; **Comment Period Expires September 29, 1997**

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

In the following document, NASD Regulation, Inc. (NASD Regulation-SM) requests public comment concerning the potential benefits to investors of allowing the presentation of Related Performance Information in mutual fund (and, where applicable, variable product) sales material. NASD Regulation also requests comment on the potential investor protection concerns associated with the presentation of Related Performance Information in mutual fund (and where applicable, variable product) sales material.

Questions concerning this *Request For Comment* should be directed to Thomas M. Selman, Director, Advertising/Investment Companies Regulation, at (202) 728-8330 or Robert J. Smith, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 726-8176.

Request For Comment

NASD Regulation encourages all members and interested parties to respond to the issues raised in this *Notice*. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received **by September 29, 1997**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation, Inc. Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

NASD Regulation Request for Comment 97-47

Executive Summary

A) Recent No-Action Letters of the Division of Investment Management

The SEC's Division of Investment Management recently issued a series of "no-action letters" that essentially permit mutual funds to present a range of performance information in their sales material and/or prospectuses, in specific factual circumstances and subject to specific conditions.[1] The letters thus permit funds to present the performance of:

• an insurance company separate account, common trust fund or private investment company that had been converted into the offered mutual fund ("predecessor performance");

• private or institutional accounts that are managed by the mutual fund's adviser ("private account performance");

• investment companies that are managed by the mutual fund's adviser;

• a mutual fund that was previously managed by the offered fund's portfolio manager ("manager performance"); and

• a mutual fund from which the offered fund had been "cloned" ("clone performance").

(This *Request For Comment* will refer to these types of performance information as "Related Performance Information.")

The Division's no-action letters were based on representations that are designed to ensure that Related Performance Information is not presented in a misleading manner. For example, the letters generally require that the mutual fund and the accounts to which the Related Performance Information relates are managed in a "substantially similar" manner. The letters also require that Related Performance Information be accompanied by various types of disclosure, including disclosure concerning "all material differences" between a mutual fund and the accounts to which the Related Performance Information refers and "any other disclosure that may be necessary to ensure that the [Related Performance Information] is not presented in a misleading manner." The Division's letters state that the NASD® Conduct Rules impose standards on mutual fund sales material separate from the SEC's rules, and the Division reached no conclusion concerning whether the presentation of Related Performance Information under the conditions imposed by the letters would comply with the NASD Conduct Rules.

B) Regulation Of Mutual Fund Advertising By The SEC And NASD Regulation

The Division's no-action letters reflect the complementary nature of advertising regulation by the SEC and the National Association of Securities Dealers, Inc. (NASD). The SEC's advertising rules establish general standards to ensure that mutual fund sales material is not misleading. The SEC may monitor compliance with these standards in its mutual fund inspections and examinations.

NASD Regulation, Inc. (NASD Regulation℠) has primary responsibility for reviewing actual sales material filed by NASD members and for developing specific requirements that address practical issues that these sales pieces may raise. These requirements, which are independent of the SEC's advertising rules but are subject to SEC oversight, are designed to ensure that sales material does not mislead or confuse investors, that it provides a sound

basis for an investment decision, that it is accurate and that it makes a fair and balanced presentation. Depending upon the nature of the practical issues that certain types of information are found to raise in the filings review process, NASD Regulation may impose conditions or even prohibit the use of these types of information by NASD members, even if presentation of this information would not violate the SEC's general antifraud provisions.

This system of regulation has permitted mutual funds to develop innovative marketing materials that provide useful and relevant information to investors. At the same time, it has best ensured that the presentation of this information complies with high standards of full and fair disclosure.

C) NASD Regulation's Consideration Of Related Performance Information

Since 1993, the Division has permitted a mutual fund to include relevant private account performance in its supplemental sales literature and prospectus during the fund's first year of operations. (The Division's recent letters eliminated this one-year restriction and expanded the relief to Rule 482 advertisements.) NASD Regulation has not, however, permitted the presentation of private account performance or most other types of Related Performance Information in supplemental sales literature or Rule 482 advertisements.[2]

In light of the Division's recent no-action letters and the apparent public interest in the potential benefits and concerns with the presentation of Related Performance Information in mutual fund advertising, NASD Regulation has commenced a comprehensive examination of the issues related to such presentations. NASD Regulation intends to consider the practical application of its rules to the presentation of Related Performance Information in actual filings, and whether more specific direction concerning the presentation of Related Performance Information — or even a prohibition on certain uses of this information — would be necessary to ensure that investors are not misled or confused.

The Board of Directors of NASD Regulation has determined that NASD Regulation will maintain its current positions with respect to the presentation of Related Performance Information in mutual fund and variable product sales material during NASD Regulation's review of these issues.

NASD Regulation recognizes that Related Performance Information might be useful to investors. Mutual fund sales material often describes the investment experience of the fund's investment adviser and portfolio manager. Related Performance Information might provide an additional basis upon which an investor could evaluate the investment acumen and expertise of the adviser or portfolio manager. NASD Regulation requests public comment concerning the potential benefits to investors of allowing the presentation of Related Performance Information in mutual fund (and, where applicable, variable product) sales material.

NASD Regulation also requests comment on the potential investor protection concerns associated with the presentation of Related Performance Information in mutual fund (and where applicable, variable product) sales material. Should NASD Regulation continue to prohibit the presentation of some or all types of Related Performance Information? For example, would the risks that a mutual fund sponsor might tend to select private accounts that attained superior performance (and exclude those that did not) justify a prohibition on the presentation of private account performance? Would the presentation of manager performance necessarily mislead investors into believing that this performance was attributable solely to the efforts of the portfolio manager, even when it was largely attributable to the personnel and resources of the fund's investment adviser?

NASD Regulation also requests comment on what, if any, specific disclosure requirements we should adopt to best ensure that the presentation of Related Performance Information does not mislead or confuse investors. In addition to specific disclosure requirements, NASD Regulation is interested in whether specific guidance concerning the calculation of Related Performance Information in sales material would be appropriate and feasible. Should NASD Regulation impose objective criteria that might reduce the effects of any subjective determinations involved in the calculation of this information? If so, what should these criteria be and how could they be enforced through the filings review process?

NASD Regulation is also interested in what, if any, specific standards should be adopted to discourage the "incubation" of several private funds and the subsequent conversion of the fund with superior performance into a public mutual fund. Finally, NASD Regulation is interested in what, if any, specific standards should be imposed to help ensure that investors can compare a wide range of performance data. For example, NASD Regulation could mandate uniform standards concerning the presentation of different types of Related Performance Information.

Questions concerning this *Request For Comment* should be directed to Thomas M. Selman, Director, Advertising/Investment Companies Regulation, at (202) 728-8330 or Robert J.

Smith, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 726-8176.

II. Related Performance Information

In the past two years, the SEC's Division of Investment Management has issued a series of no-action letters that permit mutual funds to present Related Performance Information in their prospectuses or sales material under certain conditions including, in each case, that management of the funds and the related accounts would be substantially similar.

MassMutual Institutional Funds (pub. avail. September 28, 1995) essentially permitted mutual funds that had been converted from unregistered insurance company separate accounts to include predecessor performance in their prospectuses and sales material, adjusted to reflect the funds' fees and expenses. The Division stated that its analysis also would apply to the conversion of private investment companies and common trust funds into mutual funds.

Two additional letters, *Nicholas-Applegate Mutual Funds* (pub. avail. August 6, 1996 and February 7, 1997), essentially permitted mutual funds to include private account performance in their prospectuses and sales material, subject to certain conditions. Until the staff issued these letters, the Division had only permitted use of this information in prospectuses and supplemental sales literature during the first year of a fund's existence. The *Nicholas-Applegate* letters imposed no one-year restriction, and extended relief to mutual fund performance advertisements.

Bramwell Growth Fund (pub. avail. August 7, 1996) essentially permitted a mutual fund to include manager performance in its prospectus, subject to certain conditions. The Division had not previously stated that such information could be included in a mutual fund prospectus.

ITT-Hartford Mutual Funds (pub. avail. February 7, 1997) essentially permitted mutual funds to include clone performance in their sales material. This performance information related to other investment companies managed by the same adviser and subadviser and that served as funding vehicles for variable insurance products. The mutual funds were "modeled" after the insurance funds.

GE Funds (pub. avail. February 7, 1997) essentially permitted mutual funds to include in their sales material the performance of other registered investment companies and institutional private accounts managed by the funds' adviser or its affiliate. The adviser and affiliate had in common "virtually all of their investment professionals."

III. Potential Benefits And Concerns With Related Performance Information

A) Potential Benefits

Today many mutual funds describe the investment acumen and expertise of their investment adviser or portfolio manager in their sales material. Mutual funds may, for example, identify the portfolio manager and describe the manager's experience, and may describe the assets that the investment adviser has under management and the length of time that the adviser has offered investment advice. NASD Regulation recognizes that this information can be helpful to investors and has not objected to its use provided that it is presented in a way that is not misleading.

Related Performance Information apparently is intended to provide additional information on the basis of which to evaluate the skills and experience of the adviser or portfolio manager. NASD Regulation requests comment on the potential benefits to investors of permitting the presentation of Related Performance Information in mutual fund and variable product sales material. Commenters are asked to address the following issues, distinguishing whenever necessary between different types of Related Performance Information:

• Does Related Performance Information provide a "sound basis" for making an investment decision for purposes of NASD Conduct Rule 2210?

• To what extent do investors want or need this information?

• Precisely how would sponsors of mutual funds and variable products propose to present this information in sales material?

• What legal or practical limitations might there be on providing those benefits (*e.g.*, litigation risks; space limitations on required disclosure)?

• What conditions on the use of Related Performance Information would ensure that it will be used for these beneficial purposes?

  • For example, should NASD Regulation permit the use of Related Performance Information only to advertise mutual funds and variable products that have not established their own performance records?

• Are the benefits from making Related Performance Information available to investors so significant that NASD Regulation should *require* the use of this information in mutual fund and variable product sales material?

B) Potential Concerns

The SEC and the NASD have long recognized that the presentation of mutual fund and variable product performance data in sales material, while compelling to many investors, can also present special risks if not adequately regulated. In 1988, for example, the SEC amended Rule 482 and adopted Rule 34b-1 to impose uniform standards on the calculation and presentation of performance data in mutual fund sales material because the calculation methods previously in use did not produce data that investors could compare and may have distorted actual performance. SEC Rule 156 describes some conditions under which representations about investment performance could be misleading. NASD Conduct Rule 2210 similarly prohibits members from predicting or projecting investment results or from implying that past gain or income will be repeated.

NASD Regulation requests comment on what, if any, specific conditions on the use of Related Performance Information in mutual fund and variable product sales material could best ensure that this information would not confuse or mislead investors. Commenters should distinguish whenever possible between different types of Related Performance Information, and should describe any regulatory conditions that might address perceived investor protection concerns. Commenters also should indicate whether the potential concerns with the use of Related Performance Information might depend upon where it appears (*e.g.*, in advertisements or supplemental sales material).

NASD Regulation also requests comment on the following specific issues:

1) Should NASD Regulation Impose Specific Disclosure Standards on the Presentation of Related Performance Information?

The Division's no-action letters were explicitly conditioned upon general disclosure standards that are designed to prevent a misleading presentation of Related Performance Information. In addition, requesters represented that they would present the information according to certain specific criteria (*e.g.*, presentation of predecessor performance that reflects the advertised fund's fees and expenses).

NASD Regulation requests comment concerning what, if any, specific disclosure requirements we should apply in our filings review program. For example, should NASD Regulation impose conditions on the use of Related Performance Information similar to the requirements of SEC Rule 482 with respect to mutual fund performance information (*e.g.*, prohibition of the use of distribution rates for related accounts; a requirement that Related Performance Information be current as of the most recent calendar quarter; mandated presentation of one-, five- and ten-year total return for the related accounts)? Should NASD Regulation require that Related Performance Information reflect the fund level expenses, sales charges and shareholder account fees that investors would incur if they were to invest in the mutual fund?

In addition, the Division's no-action letters were partially based on a representation that sales material would describe all material differences between the related accounts and the offered mutual fund. Should NASD Regulation require specific types of disclosure to ensure that investors are informed about these differences?

The SEC and the NASD have recognized that a determination concerning whether information is misleading may partially depend upon whether an investor is likely to understand the information and recognize its limitations given the investor's level of financial sophistication and investment experience. Moreover, NASD Conduct Rule 2210 states, "A complex or overly technical explanation may be worse than too little information." What conditions, if any, should NASD Regulation place on the presentation of Related Performance Information to ensure that the average investor will understand the information and its limitations?

Should any conditions apply to the use of graphs or other illustrations of the Related Performance Information or comparisons of the related accounts to a "peer group"?

2) Should NASD Regulation Impose Standards on the Calculation of Related Performance Information?

NASD Regulation requests comment on the extent to which we should (or even could) regulate the calculation of Related Performance Information in our filings review program. While NASD Regulation could review the disclosure provided by any sales piece, other issues related to the calculation of this information might not be as susceptible to review.

Under the facts of the Division's letters, funds generally would provide performance information concerning only those accounts that have "substantially similar investment objectives, policies, and strategies," although "an adviser may choose to exclude certain similar accounts . . . so long as such exclusion would not cause the composite performance to be misleading." A predecessor account would have to be managed in a manner that is "in all material respects equivalent" to the advertised mutual fund in order for predecessor

performance to be presented.

These general standards are intended to discourage fund sponsors from "cherry-picking" the related accounts and from drawing comparisons to related accounts that are not managed in a sufficiently similar manner to the advertised fund. Nevertheless, the determination of whether a related account should be included in Related Performance Information and whether it is sufficiently similar to the advertised fund is a highly subjective one. Even with these general standards — and without any intention to defraud or mislead investors — mutual fund sponsors might present Related Performance Information that places undue weight on better-performing accounts or that is based on related accounts that are not managed in a sufficiently similar manner to the advertised fund. It may be difficult for those preparing the sales material to "screen out" their internal biases when they select the related accounts to include in the performance data. Yet this temptation to compare the advertised fund to superior-performing related accounts might so undermine the integrity of the Related Performance Information that its presentation could mislead investors.

Some have expressed similar concerns about manager performance information. The value of this information would partially depend upon the extent to which the portfolio manager was solely responsible for the performance of the predecessor fund and will be solely responsible for the performance of the advertised fund. In *Bramwell*, the portfolio manager was responsible for the day-to-day operations of both her former and current funds. The Division presumably would not have reached a similar conclusion had multiple portfolio managers managed either portfolio.

Many mutual fund management companies employ or retain research analysts who recommend investment actions to the portfolio manager; traders who attempt to obtain best price and execution, which may be partially based on the volume of the fund's transactions; and other staff who assist the portfolio manager's investment selection and who help make the mutual fund's operations more efficient, thereby reducing the fund's expense ratio and enhancing its performance. NASD Regulation requests comment on whether, under these circumstances, members should be permitted to present manager performance in mutual fund sales material. Would the presentation of manager performance necessarily mislead investors into believing that this performance was attributable solely to the efforts of the portfolio manager, even when it was largely attributable to the personnel and resources of the fund's investment adviser?

If Related Performance Information were permitted, NASD Regulation requests comment on what, if any, conditions could be placed on its presentation to ensure that the information is calculated in a sufficiently objective manner and the related accounts selected by the fund sponsor (including any predecessor fund) are sufficiently similar to the advertised mutual fund. Would some private accounts (*e.g.*, collective investment funds) serve as a better basis for comparison than other private accounts (*e.g.*, individual retail accounts)? Should NASD Regulation insist that the mutual fund and the related account share not only investment advisers but all subadvisers? NASD Regulation understands that the Association for Investment Management and Research has promulgated guidelines for the presentation of composite private account performance information. These guidelines govern such matters as the selection of private accounts to include in composite data, the criteria used to maintain the composite, the calculation of the composite performance data, and the verification of this data by an independent third party. Should NASD Regulation permit the presentation only of composite private account information that complies with applicable AIMR standards and that has been verified by a qualified, independent third party? What standards, if any, should NASD Regulation apply to ensure that the verifying party is truly independent and qualified?

Should NASD Regulation make explicit what *Bramwell* seems to imply, that the presentation of manager performance information must, at a minimum, be contingent upon disclosure in the prospectus for the previous fund that the portfolio manager was the person responsible for day-to-day management of that fund? Should NASD Regulation explicitly prohibit the use of manager information if the previous prospectus disclosed that the decisions of the named portfolio manager were ratified by a committee? Should NASD Regulation prohibit use of manager performance information when the manager managed only a segment of a portfolio (*e.g.*, the equity portion of a balanced portfolio)? How should differences in research and trading support be reflected?

3) Should NASD Regulation Impose Standards to Discourage the "Incubation" of Private Account Performance?

Some commentators have expressed concern about the possibility that investment advisers might create private "incubator" funds in order to establish various performance records and convert the private fund that attains the best performance. In response to an inquiry on this subject, the Division recently issued a

letter in which it expressed "severe reservation" about incubator funds. The Division noted that a converted mutual fund is likely to be managed differently than it was during the period of its incubation, and that it could be misleading for a fund sponsor to select the performance of a single incubator fund without disclosing the performance of less successful but similarly managed funds. The Division stated that disclosure about the sponsor's purpose in establishing the incubator fund would have to be "extremely clear." The Division contrasted the incubator fund situation with the circumstances in *MassMutual*.[3]

To what extent does "incubation" present an investor protection concern, assuming that the predecessor fund was managed in a sufficiently similar manner to the successor fund? What, if any, criteria should NASD Regulation impose in its filings review program in order to discourage the creation of incubator funds? For example, should NASD Regulation prohibit the use of predecessor performance once the converted mutual fund has been in existence for as long as the predecessor account had been? Such a condition might discourage the creation of incubator funds to establish a short-term performance record. Should a mutual fund that had been converted from a predecessor account be required to disclose the fact that the adviser managed other private accounts that were less successful? (NASD Regulation does not currently require mutual fund sales material to disclose the performance of the investment adviser's other mutual funds.) Should this problem be addressed by limiting Related Performance Information to the use of composites under AIMR standards which, among other things, appear to prohibit elimination of closed or terminated accounts from the corporate results for the period in which they were managed?

4) Should NASD Regulation Impose Standards to Promote the Comparability of Performance Data?

NASD Regulation requests comment on what, if any, conditions imposed in its filings review program could help investors compare and understand different types of performance data. For example, if NASD Regulation were to permit use of manager performance information, then sales material could present the performance record of the fund being advertised and the fund that the portfolio manager previously managed. The presence of both performance quotations could complicate an investor's ability to compare the information in that sales material with performance information in another sales piece. In addition, a portfolio manager might have left two fund groups, in which case the sales material could describe three separate funds. Moreover, NASD Regulation requests comment on whether the manager's previous fund should be permitted to present its performance history, if it is simultaneously presented as manager performance information by the manager's new fund.

A similar issue might arise when an investor attempts to compare sales material with various types of Related Performance Information, such as an advertisement containing manager performance to one containing clone performance, to one containing predecessor performance. In these cases, the presence of different performance quotations covering various time periods and calculated in different ways could complicate the ability of investors to compare mutual fund performance and thus undermine an important advantage that the SEC's standardization of mutual fund performance has achieved.

Another aspect of Related Performance Information that may complicate an investor's ability to compare performance data is the apparent absence of uniform standards concerning the calculation of the *components* of this information, such as those concerning the manner in which portfolio securities are priced, the frequency with which they are valued, or the accounting of income and expenses by the portfolio. Would different accounting methods make an accurate comparison of performance data more difficult? What, if any, criteria could NASD Regulation impose in the filings review process to address this concern? For example, data that is based on different accounting methods might tend to converge when they pertain to longer periods. Should NASD Regulation require that nonstandardized performance data pertain to a stated period of sufficient duration to better ensure that the data produced by different accounting methods will tend to converge? Would the imposition of the AIMR standards for the calculation of nonstandardized private performance data address these concerns?

Request For Comment

NASD Regulation encourages all members and interested parties to respond to the issues raised in this *Notice*. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received **by September 29, 1997**. Before

becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation, Inc. Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

Endnotes

[1] A Division "no-action letter" represents a statement by the Division that it would not recommend that the SEC take enforcement action under the federal securities laws if a person engages in certain specified activity.

[2] Since the Division's issuance of its *Mass-Mutual* no-action letter (described below), NASD Regulation has permitted members, under appropriate conditions, to describe predecessor performance (concerning insurance company separate accounts, private investment companies or common trust funds) in their sales materials. NASD Regulation is reviewing its position concerning the presentation of predecessor performance as part of its comprehensive consideration of the presentation of all types of Related Performance Information.

The NASD has issued guidelines in IM-2210-2 that govern the presentation by an existing fund of how it would have performed had it been an investment option within a variable product. IM-2210-2 states that a member communication may contain the fund's historical performance predating its inclusion in the variable product, provided that no significant changes occurred to the fund when it became part of the variable product or thereafter. The communication may not include the performance of an existing fund to promote a variable product that provides, as an investment option, a clone or model of the existing fund.

[3] *See* Letter from Jack W. Murphy, Associate Director (Chief Counsel), Division of Investment Management, to Dr. William Greene (February 3, 1997).

NASD NOTICE TO MEMBERS 97-48

NASD Regulation Requests Comment On Amendments To Rules Governing Sale And Distribution Of Investment Company Shares And Variable Insurance Products; **Comment Period Expires September 29, 1997**

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

NASD Regulation, Inc. (NASD Regulation℠) requests member comment on proposed amendments that would revise NASD® Conduct Rule 2830, governing the sale and distribution of investment company shares (the Investment Company Rule), and NASD Conduct Rule 2820, governing the sale and distribution of variable insurance contracts (the Variable Contracts Rule).

Questions concerning this *Request For Comment* should be directed to Thomas M. Selman, Director, or Joseph E. Price, Counsel, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8330 or Robert J. Smith, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 726-8176.

Request For Comment

NASD Regulation encourages all members and interested parties to respond to the issues raised in this *Notice*. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received **by September 29, 1997**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation, Inc. Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

NASD Regulation Request for Comment 97-48

Executive Summary

NASD Regulation, Inc. (NASD Regulation℠) requests member comment on proposed amendments that would revise NASD® Conduct Rule 2830, governing the sale and distribution of investment company shares (the Investment Company Rule), and NASD Conduct Rule 2820, governing the sale and distribution of variable insurance contracts (the Variable Contracts Rule).

The proposed amendments to the Investment Company Rule would: (1) provide maximum aggregate sales charge limits for funds of funds; (2) permit funds to charge installment loads, but prohibit loads on reinvested dividends; (3) impose redemption order requirements for shares subject to contingent deferred sales loads; and (4) eliminate duplicative prospectus disclosure. The proposed amendments to the Variable Contracts Rule would ensure that the treatment of sales charges is consistent with recent legislation that establishes standards limiting aggregate fees and charges deducted under variable insurance contracts.

Questions concerning this *Request For Comment* should be directed to Thomas M. Selman, Director, or Joseph E. Price, Counsel, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8330 or Robert J. Smith, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 726-8176.

Background

Regulatory initiatives adopted last year by Congress and the Securities and Exchange Commission (SEC) provide mutual funds and variable insurance contracts with greater flexibility in structuring distribution arrangements. In connection with these initiatives, Congress and the SEC looked to the National Association of Securities Dealers, Inc. (NASD) to adapt the sales charge provisions in the Investment Company Rule and the Variable Contracts Rule to the new distribution arrangements.

1. Recent Legislation

On October 11, 1996, the National Securities Markets Improvement Act of 1996 (1996 Amendments or Amendments) was signed into law.[1] The legislation amended the Investment Company Act of 1940 (1940 Act) to, among other things, broaden the ability of mutual fund sponsors to establish "fund of funds" arrangements and significantly alter the basis on which the SEC regulates sales charges deducted under variable insurance contracts.

a. Fund of Funds

Before the 1996 Amendments were enacted, the 1940 Act had subjected fund of funds arrangements to percentage limitations on the value and amount of fund shares that could be acquired by another fund. These restrictions reflected a concern that funds of funds could result in excessive layering of fees and concentration of voting power in the acquiring fund.

The 1996 Amendments relaxed these restrictions, subject to certain conditions. These conditions include the requirement that both the fund purchasing shares and the funds whose shares are purchased be members of the same "group" of funds.[2] Other requirements in the 1996 Amendments address abusive layering of sales charges in the two-tier structure of funds of funds by requiring either that: (a) if the acquiring fund charges a sales load or other distribution fees, it does not incur such charges at the underlying fund level; or (b) if such fees are charged at both the acquiring and underlying fund levels, the com-

bined charges at both levels do not exceed the NASD sales charges limits. The Amendments also provide the SEC with broad rulemaking and exemptive authority that could be used, for example, to accommodate smaller fund complexes that may lack a sufficient variety of funds and wish to offer investments in unaffiliated funds.

b. Variable Insurance Contracts

Before 1996, various 1940 Act provisions had limited the amount, type and timing of sales charges that could be imposed in connection with variable insurance contracts.[3] The 1996 Amendments exclude variable insurance contracts and the insurance companies selling such contracts from these provisions. This approach is consistent with an earlier SEC staff recommendation to "fundamentally change" the regulation of variable insurance contracts by exempting these products and sponsoring insurance companies from specific sales charge restrictions under the 1940 Act, and instead requiring aggregate charges under variable contracts to be "reasonable."[4]

A variable insurance contract may include at least five types of charges: (1) sales loads or surrender charges that operate like a contingent deferred sales load (CDSL) and permit an insurer to deduct proceeds from the redemption of a contract; (2) administrative expense charges, which had been limited under the 1940 Act to the cost of services provided; (3) mortality and risk expense charges (M&E charges), which compensate the insurer for mortality and risk expenses; (4) investment-related charges, such as investment advisory fees; and (5) other insurance charges, especially with respect to variable life contracts. Because the SEC's jurisdiction to impose specific limits on the charges associated with variable insurance contracts under the 1940 Act had extended only to the securities-related charges, with the states retaining exclusive jurisdiction to impose specific limits on the insurance charges, the SEC's regulation of variable insurance charges had been characterized by arguments over where the jurisdictional lines should be drawn, especially with regard to M&E charges. The insurance industry contended that M&E charges are insurance charges outside of SEC jurisdiction, but the SEC was concerned that M&E charges were being used to pay for distribution. The SEC considered its efforts to regulate distribution charges to be ineffectual because issuers could compensate for restrictions on sales charges by increasing M&E charges and using the proceeds for distribution.[5]

The 1996 Amendments provide the SEC with rulemaking authority to impose specific limits on all charges deducted under variable insurance contracts, including insurance charges.[6] The Amendments also establish a "reasonableness" standard and make it unlawful for a registered separate account or sponsoring insurance company to sell a variable insurance contract unless the fees and charges deducted are reasonable. Aggregate charges must be "reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company."[7] The sponsoring insurance company is required to represent in the variable insurance contract registration statement that the charges deducted meet the reasonableness standard.

2. Recent Regulatory Developments

a. Deferred Sales Loads

In 1995, the SEC adopted Rule 6c-10, which permits funds to deduct a CDSL upon redemption of fund shares.[8] Rule 6c-10 codified approximately 300 exemptive orders issued by the SEC to allow funds to impose CDSLs. CDSLs typically are combined with an asset-based sales charge in an arrangement known as a "spread load." A spread load permits a fund's underwriter over time to recover its distribution expenses, including commissions, through assessment of asset-based sales charges or the CDSL.

In September 1996, the SEC amended Rule 6c-10 to replace certain conditions in the rule with a general requirement that deferred loads comply with the Investment Company Rule. The amendments to Rule 6c-10 permit new types of deferred loads, such as back-end and installment loads and deferred loads on reinvested dividends. The amendments also impose new prospectus disclosure requirements for deferred loads and eliminate other requirements relating to the calculation of CDSLs. In adopting the amendments to Rule 6c-10, the SEC noted that, despite its changes to the rule, funds could not charge installment loads or deferred loads on reinvested dividends because they currently are not permitted under the Investment Company Rule.[9]

b. Variable Insurance Contracts

In May 1996, the SEC's Division of Investment Management announced in a letter to industry trade groups that it would permit a mutual fund that offers its shares to insurance company separate accounts (Underlying Fund) to adopt a Rule 12b-1 plan[10] to use fund assets to finance distribution expenses.[11] The Division emphasized that although it would permit Underlying Funds to adopt Rule 12b-1 plans, it is the responsibility of the Underlying Fund's board of directors to ensure that a Rule 12b-1 plan will benefit the fund and its shareholders. The Division fur-

ther emphasized that, in the context of a two-tier variable insurance contract, the finding of a benefit to shareholders requires the likelihood of a benefit to the individual contract holders, not the insurance company separate account that may be the technical owner of the fund's shares.

The Variable Contracts Rule and the Investment Company Rule impose limits on distribution fees that may be charged by separate accounts and mutual funds, but they do not specifically address distribution fees charged by an Underlying Fund or total asset-based sales charges imposed at both the separate account and Underlying Fund levels.

Discussion

1. Investment Company Rule

The NASD adopted the Investment Company Rule in 1975 to prohibit members from offering or selling to the public fund shares that include an excessive sales load.[12] Sales charges are deemed excessive unless they conform to the specific limits provided in the rule. The NASD amended the rule in 1993 to address concerns that Rule 12b-1 fees were being used to circumvent the rule's sales charge limits. The 1993 amendments provide maximum limits for front-end loads, Rule 12b-1 payments and CDSLs.

The sales charge provision in the Investment Company Rule generally is divided into two parts. Subsection (d)(1) limits sales charges assessed by investment companies that do not have asset-based sales charges by prohibiting members from offering or selling fund shares if the front-end and/or deferred sales charges described in the prospectus are excessive. Because sales charges assessed by the acquiring fund and the underlying funds in a fund of funds arrangement are required to be disclosed in the acquiring fund's prospectus, subsection (d)(1) effectively regulates funds of funds that do not include asset-based sales charges.

Subsection (d)(2) limits sales charges assessed by investment companies that have asset-based sales charges. Subsection (d)(2), however, does not effectively regulate funds of funds with asset-based sales charges because it requires calculations based on "fund level accounting" that are problematic in a two-tier structure.

Subsection (d)(2) limits aggregate sales charges to 7.25 percent of new gross sales, plus interest charges assessed at the prime rate, plus one percent per annum. If the fund pays a service fee, the cap is reduced to 6.25 percent. Asset-based sales charges may not exceed .75 percent of a fund's average net assets. A service fee is not subject to the aggregate cap, but service fees may not exceed .25 percent of a fund's average net asset. The maximum front-end or deferred sales charge on any one transaction may not exceed the applicable 7.25 percent or 6.25 percent maximum rate.

Subsection (d)(2) requires fund-level accounting in which all sales charges terminate when a percentage of gross sales is reached. For example, a fund with $1 million of sales subject to the 6.25 percent cap would have a "remaining amount" of $62,500 from which sales-related expenses could be deducted. Although all sales would terminate after $62,500 (plus interest) had been charged, new gross sales increase the remaining amount and a long-term investor likely would pay more than the economic equivalent of the maximum sales charge permitted under the rule before the remaining amount is depleted. (Reinvested dividends and exchanges within a family of funds, with certain exceptions, are excluded from the new gross sales calculation.)

a. Proposed Amendments to Accommodate Funds of Funds

NASD Regulation proposes to amend the Investment Company Rule so that if a fund of funds charges a sales load or other distribution fee at both the acquiring and underlying fund levels, the combined sales charges do not exceed the maximum percentage limits currently contained in the Investment Company Rule. The amended rule would permit the acquiring fund, the underlying fund, or both to charge an asset-based sales fee that in the aggregate does not exceed .75 percent of average net assets and a service fee that in the aggregate does not exceed .25 percent of average net assets. Consistent with the current rule, aggregate front-end and deferred sales charges would be limited in any transaction to 7.25 percent, or 6.25 percent for a contract that includes a service fee. NASD Regulation also requests comment on whether these percentage limitations provide adequate protection against excessive layering of distribution fees.

NASD Regulation is not proposing to require funds of funds to calculate a remaining amount balance similar to the calculations required under the Investment Company Rule for other funds with an asset-based sales charge. Consequently, asset-based sales charges would not terminate when a dollar amount representing a percentage of gross sales is reached. A fund's remaining amount is calculated through fund-level accounting, by looking to the gross new sales and charges of the fund as a whole. It would not seem feasible to require the acquiring fund in a fund of funds

structure to calculate a single remaining amount that reflects not only its own gross new sales and charges, but also its proportionate share of the underlying funds' gross new sales and their charges. Even if such a remaining amount could be calculated, it probably would be a hypothetical number that may not serve the purposes of the rule in many cases.

Because the amended rule would not impose a cumulative cap on asset-based sales charges for funds of funds, long-term investors who pay asset-based sales charges could pay more than the economic equivalent of the maximum cap.[13] NASD Regulation requests comment on whether a cumulative cap should apply and, if so, how it could be calculated.

As written, the proposed definition of "fund of funds" would include "master-feeder" funds. NASD Regulation requests comment on whether it would be practical for a "master-feeder" fund to calculate a remaining amount. Should the proposed definition of "fund of funds" exclude "master-feeder" funds? In addition, the proposed definition of "fund of funds" is limited to investment companies that invest their assets "principally" in the securities of other mutual funds or unit investment trusts.[14] Is this test sufficient to ensure that funds will not invest in the securities of another mutual fund or unit investment trust simply to avoid the cumulative cap on asset-based fees?

b. Installment Loads

NASD Regulation proposes to amend the Investment Company Rule to permit new types of deferred sales charges, such as installment loads.

Prior to the SEC's 1996 amendments to Rule 6c-10, the only deferred loads permitted under Rule 6c-10 were CDSLs, which are paid at redemption but decline to zero if shares are held for a stated period of time. The amendments to Rule 6c-10 permit a variety of deferred sales charges, including loads paid upon redemption that do not decline to zero (back-end loads), loads paid after purchase during the term of a shareholder's investment (installment loads) and deferred loads on reinvested dividends.[15]

NASD Regulation proposes to conform the definition of "deferred sales charge" in the Investment Company Rule to the definition of "deferred sales load" in Rule 6c-10 (*i.e.*, "any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption").[16] Such an amendment would provide funds with greater flexibility to structure their deferred sales load arrangements, subject to the sales charge limits imposed by the Investment Company Rule.[17] Conforming the definitions also would minimize any confusion or compliance burdens that could result from the application of inconsistent SEC and NASD requirements to the same transaction.[18]

c. Loads on Reinvested Dividends

NASD Regulation proposes to amend the Investment Company Rule to prohibit loads on reinvested dividends, including front-end loads (which the rule currently permits) and deferred loads (which the rule prohibits but SEC Rule 6c-10 now permits).

While the Investment Company Rule permits front-end loads on reinvested dividends, NASD Regulation understands that few, if any, funds currently charge such loads.[19] Front-end loads on reinvested dividends were more common before funds were permitted to assess asset-based sales charges under Rule 12b-1. Deferred loads on reinvested dividends have never been permitted under the Investment Company Rule.

NASD Regulation proposes to amend the Investment Company Rule to prohibit *all* loads on reinvested dividends because these charges will typically cause an investor to pay a charge twice on the same assets, and could exceed the appropriate sales charge limits. For example, an investor who invests in a load fund at a time when a portion of the fund's net asset value includes undistributed income or capital gains will pay a charge based, in part, on the undistributed earnings. When those earnings are distributed and reinvested, the investor will pay a second charge on those assets. Amending the Investment Company Rule to prohibit loads on reinvested dividends would ensure that investors are not subject to the imposition of these duplicative loads.

d. CDSL Calculations

NASD Regulation proposes to amend the Investment Company Rule to reinstate redemption order (first-in-first-out or FIFO) requirements for shares subject to CDSLs that were eliminated by the SEC's Rule 6c-10 amendments.

NASD Regulation is proposing to amend the Investment Company Rule to prohibit members from selling fund shares that carry CDSLs unless the method used by the fund to calculate CDSLs in partial redemptions requires that investors are given full credit for the time they have invested in the fund. Before the SEC's amendments to Rule 6c-10, the rule had required that in a partial redemption a CDSL must be calculated as if shares not subject to a load are redeemed first and then the other shares are redeemed in the order purchased (the FIFO method). (Rule 6c-

10 did permit any other order of redemption that results in the redeeming shareholder paying a lower CDSL.) Because a CDSL declines over the period of a shareholder's investment, the redemption order requirement generally ensured that transactions were subject to the lowest applicable CDSL.

The Rule 6c-10 amendments eliminated the FIFO requirement.[20] A fund thus may use a last-in-first-out (the LIFO method) of calculation, which could cause investors to incur the *highest* applicable sales charge on each transaction. For example, an investor who bought shares subject to a CDSL in 1988 for $10,000, invested another $10,000 subject to the CDSL in 1997, and then redeemed shares for $10,000 later in 1997 would pay the maximum deferred load charged by the fund under a LIFO method, but no load under a FIFO method (assuming that the CDSL declines to $0 within nine years, which is typical).[21] The FIFO method of CDSL calculation currently used by most investment companies better reflects the purpose of the CDSL, to encourage long-term investing and ensure that the mutual fund's distribution costs are recouped through the asset-based sales charges. At the same time, the FIFO method ensures that investors incur only the lowest applicable CDSL.

The proposed amendment to the Investment Company Rule, however, would expressly provide that if a redemption order other than FIFO would result in a redeeming shareholder paying a lower CDSL, the other method may be used.[22] For example, an investor who invested $10,000 in a fund in January 1996 and $10,000 in November 1996 and redeemed $10,000 in December 1996 may benefit if the fund used a LIFO calculation. A LIFO calculation could result in a lower CDSL if the investor redeems additional shares in 1997, based on the longer holding period for the shares purchased in January 1996.

e. Prospectus Disclosure

NASD Regulation proposes to amend the Investment Company Rule to eliminate the prospectus disclosure requirement regarding the long-term effect of Rule 12b-1 plans.

The Investment Company Rule prohibits a member from offering or selling shares of a fund with an asset-based sales charge unless its prospectus discloses that long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by the rule.[23] The SEC recently proposed for public comment significant revisions to the prospectus disclosure requirements for mutual funds.[24] Included in the proposal was an amendment that would require prospectuses of funds with asset-based sales charges to disclose that:

• the fund has a Rule 12b-1 plan that allows the fund to pay fees for the sale and distribution of its shares; and

• since these fees are paid out of the fund's assets on an ongoing basis, over time these fees will increase the cost of an investment and may cost the investor more than paying other types of sales loads.

In the release proposing the prospectus disclosure revisions, the SEC stated that if the amendment is adopted, it would discuss with the NASD the NASD's disclosure requirements so that similar disclosure is not required to be repeated in the prospectus.[25] In light of the SEC's proposal concerning disclosure of the effect of asset-based sales charges, NASD Regulation proposes to eliminate the similar disclosure requirement in the Investment Company Rule.

2. Variable Contracts Rule

NASD Regulation proposes to amend the Variable Contracts Rule to eliminate the maximum sales charge limitations.

a. Background

Prior to the 1996 Amendments, insurance companies selling variable insurance contracts had been treated under the 1940 Act as periodic payment plan sponsors and were limited in the types of fees that could be deducted under the contracts. Variable insurance contracts had been treated as periodic plan certificates and were limited in the amount, manner and timing of sales loads that could be charged.[26] The 1996 Amendments fundamentally changed the way sales charges for variable insurance contracts are regulated by the SEC by eliminating specific limits on fees and imposing a reasonableness standard on aggregate fees. The Variable Contracts Rule, however, continues to impose specific limits on the payment of sales charges for the sale of variable annuity contracts. The Variable Contracts Rule does not impose sales charge limits in connection with the sale of variable life contracts. The NASD determined that specific limits on variable life products would not be meaningful since sales charges and commissions generally are paid from sources other than deductions from premium or purchase payments.

b. Sales Charge Limits

The Variable Contracts Rule prohibits members from participating in the offer or sale of variable annuity contracts if the charges stated in the prospectus exceed 8.5 percent of total payments to be made under a

contract, determined over a maximum period of 12 years. For variable annuity contracts providing for a single payment, the Variable Contracts Rule provides sales charge limits on a decreasing scale from 8.5 percent for a purchase payment at or below $25,000 to 6.5 percent for payments over $50,000. The Variable Contracts Rule, however, does not define "sales charge."

The Variable Contracts Rule was last amended in 1976 and the current provisions relating to sales charges do not reflect the changes in the distribution and fee structures in variable insurance products over the last 20 years.[27] For example, variable annuity contracts typically do not deduct sales loads from purchase payments. Instead, distribution expenses are paid by the issuer. In funding these expenses, the issuer may use amounts realized from surrender charges and profits realized from other charges under the contract.

c. Jurisdictional Issues

NASD Regulation has the authority to prohibit excessive sales charges in connection with the distribution of variable insurance products under Section 22(b) of the 1940 Act.[28] Effective regulation of sales charges by NASD Regulation is problematic without clear jurisdiction to impose specific limits on insurance charges, however, for the same reason that SEC regulation in this area was problematic prior to the 1996 Amendments. Moreover, while the fund of funds provisions in the 1996 Amendments specifically deferred to the NASD sales charge rules, the Amendments concerning the aggregate fees charged for variable insurance contracts refer only to SEC rulemaking authority. Therefore, the imposition by NASD Regulation of specific limits on the sales charge component of variable insurance contracts under the Variable Products Rule appears to be impractical and inconsistent with congressional intent. For these reasons, NASD Regulation proposes to eliminate the sales charge limitations in the rule by deleting paragraphs (c)(1) to (3) in Rule 2820.[29]

d. Possible Limitations on Sales Charges of Underlying Funds

The Variable Products Rule provides that it "shall apply exclusively (and in lieu of [the Investment Company Rule]), to the activities of members in connection with variable contracts, to the extent such activities are subject to regulation under the federal securities laws." Consequently, the Underlying Fund in a variable insurance contract would not be subject to sales charge limitations under NASD Regulation's proposal.[30] NASD Regulation could amend the Investment Company Rule to provide that it applies to Underlying Funds. Such an amendment, however, would not impose an overall limit on variable contract charges, and thus may not be particularly effective.

NASD Regulation requests comment on whether the Investment Company Rule should be amended to provide that its sales charge limitations apply to Underlying Funds.

Request For Comment

NASD Regulation encourages all members and interested parties to respond to the issues raised in this *Notice*. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received **by September 29, 1997**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation, Inc. Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

Text Of Proposed Amendments

(Note: New text is underlined; deletions are bracketed. Text from pending amendments to revise existing rules in accordance with pending non-cash compensation proposals are not included. Rule 2830 paragraphs (e)-(n) are not included; no amendments to those paragraphs are proposed.)

2820. Variable Contracts Of An Insurance Company

(a) Application

This Rule shall apply exclusively (and in lieu of Rule 2830) to the activities of members in connection with variable contracts to the extent such activities are subject to regulation under the federal securities laws.

(b) Definitions

(1) The term "purchase payment" as used throughout this Rule shall mean the consideration paid at the time of each purchase or installment for or under the variable contract.

(2) The term "variable contracts" shall mean contracts providing for benefits or values which may vary according to the investment experience of any separate or segregated account or accounts maintained by an insurance company.

(c) Sales Charges

[No member shall participate in the offering or in the sale of variable annuity contracts if the purchase payment includes a sales charge which is

excessive:]

[(1) Under contracts providing for multiple payments a sales charge shall not be deemed to be excessive if the sales charge stated in the prospectus does not exceed 8.5% of the total payments to be made thereon as of a date not later than the end of the twelfth year of such payments, provided that if a contract be issued for any stipulated shorter payment period, the sales charge under such contract shall not exceed 8.5% of the total payments thereunder for such period.]

[(2) Under contracts providing for single payments a sales charge shall not be deemed to be excessive if the prospectus sets forth a scale of reducing sales charges related to the amount of the purchase payment which is not greater than the following schedule:

First $25,000 - 8.5% of purchase payment

Next $25,000 - 7.5% of purchase payment

Over $50,000 - 6.5% of purchase payment]

[(3) Under contracts where sales charges and other deductions for purchase payments are not stated separately in the prospectus the total deductions from purchase payments (excluding those for insurance premiums and premium taxes) shall be treated as a sales charge for purposes of this rule and shall not be deemed to be excessive if they do not exceed the percentages for multiple and single payment contracts described in paragraphs (1) and (2) above.]

[(4)] Every member who is an underwriter and/or issuer of variable annuities shall file with Advertising/Investment Companies Regulation Department, prior to implementation, the details of any changes or proposed changes in the sales charges of variable annuities, if the changes or proposed changes would increase the effective sales charge on any transaction. Such filings should be clearly identified as an "Amendment to Variable Annuity Sales Charges."

(d) Receipt of Payment

No member shall participate in the offering or in the sale of a variable contract on any basis other than at a value to be determined following receipt of payment therefor in accordance with the provisions of the contract, and, if applicable, the prospectus, the Investment Company Act of 1940 and applicable rules thereunder. Payments need not be considered as received until the contract application has been accepted by the insurance company, except that by mutual agreement it may be considered to have been received for the risk of the purchaser when actually received.

(e) Transmittal

Every member who receives applications and/or purchase payments for variable contracts shall transmit promptly to the issuer all such applications and at least that portion of the purchase payment required to be credited to the contract.

(f) Selling Agreement

No member who is a principal underwriter as defined in the Investment Company Act of 1940 may sell variable contracts through another broker/dealer unless (1) such broker/dealer is a member, and (2) there is a sales agreement in effect between the parties. Such sales agreement must provide that the sales commission be returned to the issuing insurance company if the variable contract is tendered for redemption within seven business days after acceptance of the contract application.

(g) Redemption

No member shall participate in the offering or in the sale of a variable contract unless the insurance company, upon receipt of a request in proper form for partial or total redemption in accordance with the provisions of the contract undertakes to make prompt payment of the amounts requested and payable under the contract in accordance with the terms thereof, and, if applicable, the prospectus, the Investment Company Act of 1940 and applicable rules thereunder.

2830. Investment Company Securities

(a) Application

This Rule shall apply exclusively to the activities of members in connection with the securities of companies registered under the Investment Company Act of 1940 (the 1940 Act); provided however, that Rule 2820 shall apply, in lieu of this Rule, to members' activities in connection with "variable contracts" as defined therein.

(b) Definitions

(1) Associated person of an underwriter," as used in paragraph (l), shall include an issuer for which an underwriter is the sponsor or a principal underwriter, any investment adviser of such issuer, or any affiliated person (as defined in Section 2(a)(3) of the [Investment Company Act of 1940] 1940 Act) of such underwriter, issuer or investment adviser.

(2) "Brokerage commissions," as used in paragraph (k), shall not be limited to commissions on agency transactions but shall include under-

writing discounts or concessions and fees to members in connection with tender offers.

(3) "Covered account," as used in paragraph (k), shall mean

(A) any other investment company or other managed account by the investment adviser of such investment company, or

(B) any other account from which brokerage commissions are received or expected as a result of the request or direction of any principal underwriter of such investment company or of any affiliated person (as defined in the [Investment Company Act of 1940] 1940 Act) of such investment company or of such underwriter, or of any affiliated person of an affiliated person of such investment company.

(4) "Person" shall mean "person" as defined in the [Investment Company Act of 1940] 1940 Act.

(5) "Prime rate," as used in paragraph (d) shall mean the most preferential interest rate on corporate loans at large U.S. money center commercial banks.

(6) "Public offering price" shall mean a public offering price as set forth in the prospectus of the issuing company

(7) "Rights of accumulation" as used in paragraph (d), shall mean a scale of reducing sales charges in which the sales charge applicable to the securities being purchased is based upon the aggregate quantity of securities previously purchased or acquired and then owned plus the securities being purchased.

The quantity of securities owned shall be based upon:

(A) The current value of such securities (measured by either net asset value or maximum offering price); or

(B) Total purchases of such securities at actual offering prices; or

(C) The higher of the current value or the total purchases of such securities.

The quantity of securities owned may also include redeemable securities of other registered investment companies having the same principal underwriter.

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

(A) An "asset-based sales charge" is a sales charge that is deducted from the net assets of an investment company and does not include a service fee.

(B) A "deferred sales charge" is [a sales charge that is deducted from the proceeds of the redemption of shares by an investor, excluding any such charges that are (i) nominal and are for services in connection with a redemption or (ii) discourage short-term trading, that are not used to finance sales-related expenses, and that are credited to the net assets of the investment company] any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.

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

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

(10) The terms "underwriter," "principal underwriter," "redeemable security," "periodic payment plan," "open-end management investment company," and unit investment trust," shall have the same definitions used in the [Investment Company Act of 1940] 1940 Act.

(11) A "fund of funds" is an investment company that invests its assets principally in the securities of registered open-end investment companies or registered unit investment trusts, and that limits its other investments to Government securities or short term paper.

(c) Conditions of Discounts to Dealers

No member who is an underwriter of the securities of an investment company shall sell any such security to any dealer or broker at any price other than a public offering price unless such sale is in conformance with Rule 2420 and, if the security is issued by an open-end management company or by a unit investment trust which invests primarily in securities issued by other investment companies, unless a sales agreement shall set forth the concessions to be received by the dealer or broker.

(d) Sales Charge

No member shall offer or sell the shares of any open-end investment company or any "single payment" investment plan issued by a unit investment trust (collectively "invest-

ment companies") registered under the [Investment Company Act of 1940] 1940 Act if the sales charges described in the prospectus are excessive. Aggregate sales charges shall be deemed excessive if they do not conform to the following provisions:

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

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

[(B)(i) Dividend reinvestment may be made available at net asset value per share to any person who requests such reinvestment.

(ii) If dividend reinvestment is not made available as specified in subparagraph (B)(i) above, the maximum aggregate sales charge shall not exceed 7.25% of offering price.]

[(C)](B)(i) Rights of accumulation (cumulative quantity discounts) may be made available to any person in accordance with one of the alternative quantity discount schedules provided in subparagraph [(B)](C)(i) below, as in effect on the date the right is exercised.

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

[(a)] 8.0% of offering price [if the provisions of subparagraph (B)(i) are met; or]

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

[(D)]*(C)*(i) Quantity discounts, if offered, shall be made available on single purchases by any person in accordance with one of the following two alternatives:

a. A maximum aggregate sales charge of 7.75% on purchases of $10,000 or more and a maximum aggregate sales charge of 6.25% on purchases of $25,000 or more, or

b. A maximum aggregate sales charge of 7.50% on purchases of $15,000 or more and a maximum aggregate sales charge of 6.25% on purchases of $25,000 or more.

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

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

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

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

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

[(E)] (D) If an investment company without an asset-based sales charge pays a service fee, the maximum aggregate sales charge shall not exceed 7.25% of the offering price.

[(F) If an investment company without an asset-based sales charge reinvests dividends at offering price, it shall not offer or pay a service fee unless it offers quantity discounts and rights of accumulation and the maximum aggregate sales charge does not exceed 6.25% of the offering price.]

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

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

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

front-end or deferred sales charge resulting from any transaction shall be 7.25% of the amount invested.

(C) The maximum aggregate sales charge on total new gross sales set forth in subparagraph (A) and (B) may be increased by an amount calculated by applying the appropriate percentages of 6.25% or 7.25% of total new gross sales which occurred after an investment company first adopted an asset-based sales charge until July 7, 1993 plus interest charges on such amount equal to the prime rate plus one percent per annum less any front-end, asset-based or deferred sales charges on such sales or net assets resulting from such sales.

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

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

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

(ii) Any deferred sales charges deducted from the proceeds of a redemption after the maximum cap described in subparagraph (A), (B), (C) and (D) hereof, has been attained are not credited to the investment company.

(3) Fund of Funds

(A) If neither an acquiring company nor an acquired company (as those terms are defined in Section 12(d)(1)(G)of the 1940 Act) in a fund of funds structure has an asset-based sales charge, the maximum aggregate front-end and/or deferred sales charges that may be imposed by the acquiring company and the acquired company, as described in the prospectus of the acquiring company, shall not exceed the limits provided in paragraph (d)(1).

(B) If an acquiring company or acquired company in a fund of funds structure has an asset-based sales charge, the maximum aggregate asset-based sales charge and/or service fee imposed by the acquiring company and the acquired company, as described in the prospectus of the acquiring company, shall not exceed the limits provided in paragraphs (d)(2)(E)(i) and (d)(5). The maximum aggregate front-end or deferred sales charge shall be 7.25% of the amount invested, or 6.25% if either company pays a service fee.

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

[(4) No member or person associated with a member shall offer or sell the securities of an investment company with an asset-based sales charge unless its prospectus discloses that long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this Rule. Such disclosure shall be adjacent to the fee table in the front section of a prospectus. This subparagraph shall not apply to money market mutual funds which have asset-based sales charges equal to or less than .25 of 1% of average net assets per annum.]

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

(6) No member or person associated with a member shall offer or sell the securities of an investment company if:

(A) the investment company has a front-end or deferred sales charge imposed on shares, or amounts representing shares, that are purchased through the reinvestment of dividends; or

(B) the investment company has a deferred sales charge paid upon redemption that declines over the period of a shareholder's investment ("contingent deferred sales load"), unless the contingent deferred sales load is calculated as if the shares or amounts representing shares not subject to the load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased, provided, however, that another order of redemption may be used if such order would result in the redeeming shareholder paying a lower contingent deferred sales load.

Endnotes

[1]Pub. L. No. 104-290, 110 Stat. 3416 (1996).

[2]The legislation defines a "group of investment companies" as two or more funds that

hold themselves out to the public as being related for purposes of investment or investor services.

[3]Section 27(a) limited issuers of variable annuity contracts to a load not to exceed nine percent of total premium payments. 15 U.S.C. 80a-27(a). Rule 27a-1 under the Act limited sales loads to nine percent of total payments to be made under a contract, determined over a maximum period of 12 years. 17 CFR 270.27a-1. Section 26(a)(2)(C) required administrative fees to be reasonable, as determined by the SEC. 15 U.S.C. 80a-26(a) Rule 26a-1 defined reasonable administrative expenses for a separate account funding a variable annuity. 17 CFR 270.26a-1. Rules 6e-2 and 6e-3(T) limited sales loads assessed under variable life contracts to nine percent of total premiums paid or expected to be paid over the lesser of 20 years or the life expectancy of the insured. 17 CFR 270.6e-2, 6e-3(T).

[4]*See Protecting Investors: A Half Century of Investment Company Regulation*, Division of Investment Management, United States Securities and Exchange Commission, May 1992 (Protecting Investors) pp. 373 - 419.

[5]*Id.* at 394.

[6]15 U.S.C. 80a-26(e)(4).

[7]*Id. See also* H.R. Rep. No. 622, 104th Cong. 2d Sess. at 45 (1996) (the House Report). The House Report clarifies that aggregate charges include all fees and charges imposed for any purpose and in any manner, including marketing, sales and distribution, advisory services, and insurance charges imposed directly on the contract holder or on the assets of the separate account. *Id.* at 46.

[8]17 CFR 270.6c-10.

[9]Investment Company Act Release No. 22202 (September 9, 1996). The Investment Company Rule currently permits front-end loads on reinvested dividends.

[10]Rule 12b-1 permits the use of fund assets to pay for distribution of fund shares. 17 CFR 270.12b-1.

[11]*See* Letter from Heidi Stam, Associate Director, Division of Investment Management, SEC, to Gary Hughes, Chief Counsel, American Counsel of Life Insurance, Paul Schott Stevens, General Counsel, Investment Company Institute, and Mark J. Mackey, President & CEO, National Association for Variable Annuities (May 7, 1996).

[12]Section 22(b) of the 1940 Act authorizes the NASD to prohibit excessive sales loads. 15 U.S.C. 80a-22(b).

[13]Long-term investors in many funds with asset-based sales charges can be expected to pay more than the economic equivalent of the maximum cap. Unless a fund has experienced net redemptions or few new sales over an extended period, it is unlikely that the fund would deplete its remaining amount since new sales replenish the remaining amount. Some multiple class funds, however, offer shares that automatically convert after a predetermined number of years to shares that do not impose asset-based sales charges. Investors in funds with such a feature might not pay more than the maximum cap.

[14]*Cf.* Investment Company Act Release No. 22528 (February 27, 1997) (proposing to amend Form N-1A, Item 4 to require disclosure of a fund's "principal investment strategies, including the particular type or types of securities in which the Fund principally invests or will invest").

[15]The amendments do not require any particular method of collecting deferred loads. For example, the loads could be paid out of distributions, by automatic redemptions, or through separate billing of a shareholder's account. The choice of a particular method likely would have tax consequences for investors.

[16]The current definition of "deferred sales charge" in the Investment Company Rule expressly excludes certain nominal charges for services in connection with a redemption or to discourage short-term trading that are credited to the net assets of the fund. The proposed definition of "deferred sales charge" would apply only to amounts chargeable to sales or promotional expenses, so there no longer would be a need for an express exclusion for nominal charges that are not sales related.

[17]The Investment Company Rule prohibits members from describing a fund as "no-load" or as having "no sales charge" if the fund has a deferred sales charge. In the release adopting amendments to Rule 6c-10, the SEC stated, "[I]f the NASD amends the [Investment Company] Rule to permit installment loads, the Commission anticipates the NASD would address the applicability of its 'no-load' labeling policy to funds whose shares are subject to such loads." If, as recommended above, the definition of "deferred sales charge" is conformed to the Rule 6c-10 definition, the NASD's "no-load" labeling policy would apply to all deferred loads by its terms.

[18]The Investment Company Institute (ICI) recently recommended certain changes to the Investment Company Rule to implement the Rule 6c-10 amendments. See Letter from Craig Tyle, Senior Vice President, ICI, to Thomas M. Selman, Director, Advertising/Investment Companies Regulation, NASDR (December 5, 1996). The ICI suggested that the NASD Regulation implement each of the relevant SEC amendments to Rule 6c-10. The ICI specifically recommended that the NASDR conform the definition of "deferred sales charge" in the Investment Company Rule to the Rule 6c-10 definition, thereby permitting funds to charge a wider variety of deferred loads and reducing compliance burdens that could result from inconsistent definitions. NASD Regulation's proposal is in accord with this recommendation. The ICI also recommended amending the Investment Company Rule to permit deferred loads on reinvested dividends and stated that it did not believe that there is a need for NASD Regulation to restrict the manner in which CDSLs are calculated. For the reasons discussed below, these positions have not been accepted into the proposal.

[19]The Investment Company Rule subjects funds that do not offer reinvestment of dividends at net asset value (*i.e.*, that impose sales loads on reinvested dividends) to lower

sales charge limits than funds that do.

[20] The SEC also eliminated the requirement that a CDSL be based on the "lesser of" net asset value (NAV) of a fund's shares at the time of purchase or NAV at the time of redemption. As amended, Rule 6c-10 permits any deferred load in an amount not greater than a specified percentage of NAV at the time of purchase, subject to the limits in the Investment Company Rule.

[21] In addition to paying the maximum deferred load on the redeemed shares, such an investor probably would pay Rule 12b-1 fees on the initial investment for nine years.

[22] Moreover, the proposed amendment, which would concern only the manner in which a fund may calculate the CDSL, should not affect a shareholder's ability to identify for tax purposes which shares have been redeemed.

[23] Rule 2830(d)(2)(4).

[24] *See* Investment Company Act Release No. 22528 (February 27,1997).

[25] The proposing release also states that the SEC intends to discuss other NASD prospectus disclosure requirements with the goal of streamlining disclosure requirements in SEC

documents consistent with the SEC's initiatives to improve fund disclosure.

[26] Before the 1940 Act limited sales charges for periodic payment plans, investors typically would incur a sales load calculated as a percentage of the total amount invested over the life of the plan, rather than as a percentage of each individual payment. Proportionately higher loads charged on early payments left little for actual investment, and if a plan was terminated before completion of planned payments, investors paid a sales load on a larger amount than was actually invested. *See Protecting Investors*, pp. 382-384.

[27] Prior to the 1996 Amendments, which changed the regulatory standards for variable insurance contracts, NASD Regulation issued *Notice to Members 96-52* (August 1996) soliciting members' comment on revisions to the Variable Contracts Rule, including a new definition of "sales charge." The amendments proposed today would supercede the proposals regarding sales charge limits in *Notice to Members 96-52*. Also in 1996, NASD Regulation published *Notice to Members 96-86* to remind members that sales of variable contracts are subject to NASD suitability requirements.

[28] 15 U.S.C. 80a-22(b).

[29] Of course, the NASD's suitability requirements would continue to apply to variable insurance contracts. An NASD member offering these products must consider, among other factors, the amount of premium that a customer would be obligated to pay and the customer's financial ability to meet such an obligation. See *Notice to Members 96-86.*

[30] We understand that due to provisions in the Internal Revenue Code, in the vast majority of cases Underlying Funds are not offered both to separate accounts and to the public as mutual funds. If an Underlying Fund is offered in both distribution channels, however, the exclusivity provision would not prevent the Investment Company Rule sales

NASD NOTICE TO MEMBERS 97-49

Compliance With SEC Order Handling Rules And Nasdaq Trading Rules

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 National Association of Securities Dealers, Inc. (NASD®) has been reviewing member firm compliance with the Securities and Exchange Commission (SEC) Order Handling Rules and with Nasdaq® trading rules. We are taking this opportunity to reemphasize the application of several rules and system changes and to remind members of their responsibilities in the following areas. Several of these topics have been addressed in the more than 50 faxes that have been sent to head traders and others at member firms since January 1997. Responsible Nasdaq departments are listed below, with appropriate contacts and telephone numbers.

Discussion

Members Must Comply With ECN Rules

In the stocks covered by the SEC Order Handling Rules (the SEC Rules), a market maker is required to reflect all orders (customer and proprietary) placed in an electronic communications network (ECN) in its quote unless the ECN's display is included in the Nasdaq system and there is access to that ECN. SelectNet℠ is not a linked or eligible ECN under the SEC Rules because SelectNet orders are not reflected in the Nasdaq quote montage and, accordingly, market makers may not use SelectNet Broadcast to reflect orders priced better than their own displayed quotes, without also adjusting their quotes.

ECN Rules

1) A market maker that broadcasts a SelectNet order must reflect that order in its own quote if the order is priced better than its quote, whether the market maker is at the inside or not. For example, if a market maker broadcasts a SelectNet order to buy 1,000 shares at 20, the market maker must change its Nasdaq bid to 20 for 1,000 shares.

2) Further, if the market maker is at the inside and places a customer order into SelectNet Broadcast that represents a size greater than 10 percent of its quote size, the market maker must increase its displayed size in its quote. For example, if a market maker broadcasts a customer order in SelectNet to buy 5,000 shares at 20, the market maker must change its Nasdaq bid to 6,000 shares. (It is not necessary to change a market maker's quote size to reflect a proprietary order.)

3) Before Nasdaq moved to display quotes in 1/16s, a market maker could broadcast an order in SelectNet priced 1/16 better than its displayed quote without changing its quote in Nasdaq, but since the change on June 2, 1997, this is no longer permissible. Market makers may continue to preference orders to other market makers or ECNs via the SelectNet preference service without changing their quotes.

4) A market maker that broadcasts an all-or-none (AON) SelectNet order priced superior to its quote must still update its quote to reflect the better-priced SelectNet order.

Market Makers Must Reflect Customer Limit Orders In Quotes

In all stocks covered by the SEC Rules, customers are not required to request that their limit orders be displayed in a market maker's quote. All customer orders that are priced better than a market maker's quote or that add size to the market maker's quote at the inside price are required to be displayed, unless an exception applies. Exceptions include: block size orders (*e.g.*, 10,000 shares or $200,000 market value); odd-lots; all-or-none orders; those executed

immediately upon receipt, sent to another market maker or a linked ECN; or those requested by the customer not to be displayed. Customers do not have to ask for their limit orders to be displayed — it is the obligation of the market maker to display the orders, unless instructed otherwise by the customer.

Market Makers Must Display Customer Orders

The SEC Rules require members to display customer limit orders as soon as possible, within 30 seconds of receipt in normal market conditions. The 30-second rule does not apply at market openings or shortly thereafter, when trading reopens after a trading halt, or when an Initial Public Offering (IPO) first begins trading, but it does apply at all other times. Members are reminded of their obligation to comply with the 30-second time frame.

Members Must Comply With Limit Order Protection Rules

Whether or not a stock is subject to the SEC Rules, a member's obligation to protect a customer limit order does not cease when the order is sent to an ECN or a market maker for execution. The limit order protection obligations (Manning Rules) apply to all customer limit orders sent to an ECN or a market maker, and the member sending or receiving the order cannot trade ahead of that order. Members must monitor the status of the order and not trade ahead of it until the order has been executed within the ECN or by the market maker.

For example, in an instance where a member receives a customer limit order, sends it to an ECN for execution, and subsequently receives a market order, the SEC has stated that the market order must be given the improved price of the limit order. A member's obligation to protect the limit order and to improve the price of an incoming market order does not end when the limit order is sent to another entity for execution.

Market Makers Should Review "No Dec" Feature

Nasdaq has given market makers the option to prevent their displayed quote size from being decremented following an execution in the Small Order Execution System (SOES[SM]) (no dec), provided that their published quote size is equal to or greater than the SOES tier size. This qualification on the use of no dec has been put into place to ensure that market makers who do not want their quote size diminished will continue to provide liquidity of at least the SOES tier size. Accordingly, while it is permissible under the rules to quote the first 50 pilot stocks in proprietary sizes less than the SOES tier size, it is not permissible to do this while using the no dec feature.

The NASD recognizes a very limited exception to the use of the no dec feature when a market maker uses no dec while quoting smaller size in conjunction with the operation of the market maker's own auto-quote system. Specifically, market makers may reflect customer limit orders in sizes lower than SOES tier size while using the no dec feature, but they must immediately reinstate the SOES tier size using their own automated quote update systems following the execution of the customer limit order.

Market makers are not permitted to continue to quote at less than the SOES tier size in any stock while using no dec.

Members Must Maintain Appropriate Size Quotes

With the implementation of the SEC Rules, market makers began reflecting customer limit orders in their quotes, regardless of the minimum quote sizes required by Nasdaq. The SEC allowed the first 50 pilot stocks to be quoted in actual size, as low as 100 shares, and Nasdaq began decrementing the size of market makers' quotes following unpreferenced SOES executions. Accordingly, market makers for the first time have been required to actively monitor their posted size to make sure that they are complying with the various new rules and system features.

Size Obligations

1) Market makers are permitted to quote actual size in the first 50 pilot stocks, unless they are using the no dec feature.

2) For stocks that are phased in under the SEC Rules, market makers are required to reflect better priced customer limit orders in their quotes, and to increase their size if they are at the inside and the customer order represents at least 10 percent of the market maker's quote size. Market makers may voluntarily choose to reflect customer limit orders in their quotes for stocks that have not yet been phased in under the SEC Rules.

3) Market makers who have their size decremented following a SOES execution may remain at that size until other SOES executions reduce their size to zero. When a quote is decremented to zero size, the Nasdaq automated quote refresh feature will refresh the market maker's quote to tier size if the market maker has chosen this feature. A market maker may also use its own manual or automated update system to refresh its quote to tier size or customer limit order size. If none of these alternatives is used, the market maker will be placed in a SOES closed status and would be deemed to have withdrawn from the stock if it has not refreshed its quote after five minutes.

4) Market makers who have had their size decremented by a SOES execution and who voluntarily update their price must also update their size to the SOES tier size at that time. Market makers may not update their price and leave less than the SOES tier size displayed. The new Quick Quote Update feature, available on June 24, 1997 with the Workstation 4/5 release, now permits market makers to update the size of their quotes quickly for this purpose.

Aggregated Size Of Customer Limit Orders

Anytime a market maker is at the inside, or the inside market moves to the market maker's quote, the market maker's displayed price and size must reflect the aggregated size of all of its customers' limit orders.

For example, if a market maker receives three customer limit orders priced at 20 for 1,000, 2,000, and 1,000 shares, the SEC Rules require these orders to be displayed. If 20 becomes the inside bid and the market maker is quoting 20, the market maker must update its quote size to at least 4,000 shares, reflecting the aggregation of the limit order sizes.

Market Makers May Not Lock Or Cross The Market

Market makers are reminded of their obligations to use reasonable means not to lock or cross the market, whether through their own quote or by sending an order into an ECN. "Reasonable means" has been interpreted to include a SelectNet order preferenced to the firm(s) at the bid or offer. This is especially important at the opening, and it is important that members monitor their quotes as well as any orders placed in ECNs to avoid locking or crossing the market during the opening. If these orders in the ECN are market maker orders, it is the obligation of the market maker to attempt to contact the other side prior to sending the order into the ECN and locking or crossing the market. ECNs are also required to use reasonable means to avoid locking or crossing the market, especially when the orders sent into Nasdaq emanate from a non-market maker or non-member.

Members Must Mark ACT Reports

Since all market makers are now primary market makers and exempt from the short sale rule for Nasdaq National Market securities, when market makers effect a short sale using their primary market maker exemption, they must mark their Automated Confirmation Transaction Service (ACT℠) reports with "short sale exempt."

Requests For Excused Withdrawal Status

Market makers that call Nasdaq Market Operations for an excused withdrawal should maintain, as a part of their recordkeeping requirements, supporting documentation for the reason they have requested the withdrawal. NASD Regulation examiners will request and review such documentation for excused withdrawal requests.

Questions regarding this *Notice* or marketplace rules in general may be directed to:

Nasdaq MarketWatch at (800) 211-4953;

Nasdaq Office of General Counsel at (202) 728-8294; or

NASD Regulation, Market Regulation at (301) 590-6410.

For questions regarding system operations, please call:

Nasdaq Market Operations at (800) 481-2732; or

Nasdaq Trading and Market Services at (202) 728-8805.

NASD NOTICE TO MEMBERS 97-50

NASD Regulation Requests Comment On Regulation Of Payment And Receipt Of Cash Compensation Incentives; **Comment Period Expires October 15, 1997**

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

NASD Regulation, Inc. (NASD Regulation℠) requests comment on appropriate regulation regarding the participation by members and their associated persons in arrangements for the payment and receipt of various forms of incentive-based cash compensation for the sale and distribution of investment company and variable contract securities.

Questions concerning this *Request For Comment* may be directed to R. Clark Hooper, Senior Vice President, Office of Disclosure and Investor Protection, NASD Regulation, at (202) 728-8325 and Robert J. Smith, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Request For Comment

NASD Regulation encourages all members and interested parties to respond to the issues raised in this *Notice*. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received **by October 15, 1997**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation, Inc. Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

NASD Regulation Request for Comment 97-50

Executive Summary

NASD Regulation, Inc. (NASD Regulation℠) requests comment on appropriate regulation regarding the participation by members and their associated persons in arrangements for the payment and receipt of various forms of incentive-based cash compensation for the sale and distribution of investment company and variable contract securities. In addressing this issue, commenters are asked to consider whether certain forms of incentive-based cash compensation designed to encourage sales of these products, such as "revenue sharing" agreements and differential commission payments, are harmful or beneficial to customers or the industry. Commenters are also asked to consider the appropriate regulatory approach to such arrangements, including possible disclosure requirements or substantive prohibitions. NASD Regulation requests that National Association of Securities Dealers, Inc. (NASD®) members, investors, and others, in considering their responses and comments, focus in particular on the need to permit members and associated persons the flexibility to structure compensation arrangements in the most effective manner possible in accordance with their business requirements while addressing any investor protection concerns that may arise in connection with some compensation practices.

Questions concerning this Request For Comment may be directed to R. Clark Hooper, Senior Vice President, Office of Disclosure and Investor Protection, NASD Regulation, at (202) 728-8325 and Robert J. Smith, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Background

Current NASD Rules

Paragraph (l)(1) to NASD Conduct Rule 2830 prohibits principal underwriters of investment company shares from making cash and non-cash payments to NASD members selling such shares unless the payments are disclosed in the prospectus.[1] Conduct Rule 2830(l) further states that "special compensation arrangements" made available to individual dealers which are not generally made available to all dealers must be disclosed in detail, including the identity of particular dealers involved.[2] This requirement includes disclosure of all such payments to dealers, regardless of whether other prospectus disclosure rules apply.[3] The disclosure provisions were intended to inform investors of certain concessions, in addition to the charges already required to be disclosed in the prospectus, that dealers receive to promote specific products.

Conduct Rule 2830 does not contain a definition of "special compensation arrangement," and members have interpreted the term differently. In some instances, issuers have taken the position that cash compensation arrangements with individual dealers do not constitute "special" compensation arrangements where such arrangements are available to all dealers upon request, and therefore do not have to be disclosed in the prospectus with the required specificity. This interpretive ambiguity has resulted in a wide array of disclosure practices by issuers regarding special cash compensation, ranging from specific to very general disclosure or, in some cases, no disclosure.

NASD Rules for variable products do not contain any requirements regarding prospectus disclosure of cash compensation arrangements.[4]

Recent NASD Initiatives

In 1994, NASD Regulation requested member comment on proposed rules that would have more closely regulated non-cash compensation

arrangements and sales promotion awards involving trips, merchandise and other prizes, for the sale of mutual funds and variable contracts (Non-Cash Proposal).[5] While the Non-Cash Proposal generally was aimed at enhancing supervisory control and reducing "point-of-sale" influences inherent in non-cash incentives, it also restated the current requirement in NASD Rules to disclose in the prospectus all "cash compensation" and "special cash compensation" arrangements for the sale of mutual funds. "Cash compensation" was proposed to be defined as "any discount, concession, fee, service fee, commission, asset-based sales charge, loan, or override received in connection with the sale and distribution of investment company securities." "Special cash compensation" was not defined.

When the Non-Cash Proposal was published by the Securities and Exchange Commission (SEC) for public comment,[6] it contained an additional provision that proposed to require that certain cash compensation credit for the sale of mutual funds and variable products be equally weighted. This provision was intended to prevent members from paying out non-cash awards in the form of cash, thereby circumventing the non-cash provisions. However, some commenters, primarily insurance-affiliated broker/dealers, stated that such a requirement appeared to mandate equal treatment of all forms of cash compensation. In particular, the commenters were concerned that the proposed rules would restrict the ability of member firms and their affiliated insurance companies to pay higher commissions or offer higher incentives for their proprietary products. Further, the commenters underscored the difficulties in trying to identify which compensation practices would qualify as cash or non-cash compensation for purposes of the proposed rule and to what extent those practices provided significant incentives for salespersons to sell one product over another. As a result of these comments, the Board of Directors of NASD Regulation approved the deletion of the provision requiring equal credit for certain cash compensation incentives. On May 6, 1997, NASD Regulation resubmitted the Non-Cash Proposal to the SEC without the incentive cash compensation provision.

The Tully Report

In May 1994, an industry committee chaired by Merrill Lynch Chairman Daniel P. Tully (the Committee) was formed at the request of SEC Chairman Arthur Levitt to address concerns regarding conflicts of interest in the brokerage industry. The Committee's mandates were to review industry compensation practices for registered representatives (RRs) and branch managers, identify actual and perceived conflicts of interest for RRs and branch managers, and identify the "best practices" used in the industry to eliminate, reduce or mitigate such conflicts. The Committee issued its report on April 10, 1995 (Tully Report).[7] Among some of the "best practices" identified were (i) paying a portion of RR compensation based on client assets in the account, regardless of transactional activity; (ii) prohibiting sales contests, or permitting contests based only on broad measures, rather than on single products; and (iii) paying identical commissions to RRs for proprietary and non-proprietary products within a product category, so that, with respect to the products in the same category, RRs are less motivated at point-of-sale by incentives.[8] Generally, the Tully Report's findings and conclusions reflected a growing concern that the securities industry should more closely align the interests of brokerage firms and RRs to those of their customers and should encourage long-term relationships between firms and RRs and their customers.

Discussion

Types Of Arrangements

NASD Regulation is aware of a broad range of cash compensation practices by which investment company and variable contract issuers, distributors, underwriters, investment advisers or affiliates of these entities (Offerors) provide various payments, incentives, rewards or value-added services to retail broker/dealers or their RRs in exchange for selling, promoting, or carrying the Offeror's products. Some of these payments (sometimes referred to as "revenue sharing") are paid to the broker/dealer and generally remain at the entity level to cover firm costs; other payments, such as differential commission payouts, are passed on to RRs and raise more directly the point-of-sale issues associated with the payment of differential compensation for proprietary products and sales contests.

Such arrangements include:

a) differential commission payouts by an Offeror to retail broker/dealers, such as:

• cash awards or increased commission payouts for sales contests, in particular, contests that promote a single product of an Offeror over the short term;

• higher base commission payouts for the sale of proprietary products;

• bonus commissions on new business;

• excess commissions for the sale of particular products;

• renewal commissions for maintaining accounts with an Offeror;

• service commissions for ongoing customer and shareholder account service; and

• commission payments for large purchases of the Offeror's funds at net asset value by the broker/dealer's customers;

b) payments by an Offeror to retail broker/dealers in exchange for:

• carrying the Offeror's funds as one of the broker/dealer's "preferred" funds;

• conducting "due diligence" examination of an Offeror's products;

• placing the Offeror's ads in the broker/dealer's internal newsletter;

• allowing the Offeror to prepare the broker/dealer's training materials; and

• providing omnibus and subaccounting services to the broker/dealer's customers who have purchased the Offeror's funds; and

c) reimbursement by an Offeror to retail broker/dealers to cover business costs, such as:

• errors and omissions insurance;

• group life and health insurance;

• contributions to pension plans;

• agent and RR licensing fees;

• generation of sales leads;

• continuing education;

• office space, furniture and telephone bills;

• general marketing costs;

• training of an "equity" specialist; and

• management bonuses or "overrides" to wholesalers and supervisors.

Current Best Practices

The Tully Report identified current "best practices" of firms that are designed to align more closely the interests of firms and their RRs with their customers. The Tully Report assessed all firms, not just firms that exclusively sell mutual funds and variable products. According to the Report, many firms have adopted the practice of paying identical commissions for the sale of proprietary and non-proprietary products to ensure that RRs are indifferent to incentives when making recommendations. The Tully Report noted that some firms have adopted policies against sales contests of any kind; other firms permit contests but base them on broad measures rather than a single product. The Tully Report also noted that some firms have adopted practices of paying a portion of RR compensation based on client assets in an account regardless of transactional activity or deferring a portion of RR compensation for several years and linking payment to a good compliance record. At least one firm adopted the practice of linking a portion of compensation for the sale of variable products to certain customer satisfaction measures, such as the RR's product knowledge and responsiveness to customer needs.

The Tully Report noted in particular that, where differential compensation practices were still in place, there was generally no disclosure of extra compensation RRs receive for the sale of particular products. For example, there was generally no disclosure of the extra incentives associated with sales contests or the sale of proprietary products. The Tully Report concluded that knowledge of such practices may lead to better decision-making by clients and that full disclosure of such practices may reduce the potential for conflict and abuse.[9]

The Need For Additional Public Comment On Cash Compensation Issues

Some commenters to the Non-Cash Proposal asked whether disclosure should apply equally to similar compensation arrangements for the sale of variable products. Other commenters expressed concerns regarding the impact of the Non-Cash Proposal on disparate payout of commissions and compensation to representatives for the sale of proprietary products. Some commenters suggested that customers are not harmed by cash arrangements that do not involve deducting payments from customer purchases or fund assets and, therefore, that such payments should neither be disclosed nor regulated. Other commenters proposed that all "revenue sharing" cash compensation practices be either disclosed in the prospectus or prohibited.

Cash compensation arrangements of the types described above provide an array of economic resources from which distribution and marketing costs for mutual funds and variable products are financed. NASD Regulation has historically not attempted to regulate the internal compensation arrangements of member firms and their RRs. However, NASD Regulation recognizes that the compensation arrangements described above in some cases may create incentives to inappropriately favor one product over another. Such arrangements may provide point-of-sale or other incentives that could compromise proper customer suitability determinations or otherwise create a perception that a member's interests might not, in some circumstances, be fully aligned with the interests of customers. NASD Regulation seeks comment on the appropriate regula-

tory approach regarding the participation by members and their associated persons in cash compensation arrangements described above.

General Approaches

One approach might be to mandate disclosure of all cash compensation arrangements. As noted above, although NASD Conduct Rule 2830 currently prohibits principal underwriters of investment company shares from making cash and non-cash payments to NASD members selling such shares unless the payments are disclosed in the prospectus, the current content and scope of disclosure varies widely. A disclosure approach to cash compensation is also consistent with the NASD's long-standing practice to not substantively regulate the internal compensation arrangements of member firms and their RRs.

Investors may find that information on cash compensation arrangements would be important in determining whether an RR's particular product recommendation was influenced by such arrangements. Yet some of the cash compensation arrangements described above may be of so little interest to investors or so far removed from any effective point-of-sale influence that disclosure of such information would not serve a significant customer protection or other regulatory purpose.

A disclosure approach would seem to require, at a minimum, a determination of what kind of information would need to be disclosed (*e.g.*, only those cash compensation arrangements that raise significant point-of-sale conflicts, such as sales contests, rather than entity-level, revenue sharing arrangements) and with what specificity, where the disclosure would occur (*e.g.*, prospectus, statement of additional information, a separate document), when it would occur (*e.g.*, at point of sale), and who would provide it (*e.g.*, Offerors, selling dealers, RRs).

Another approach might be to impose substantive requirements on cash compensation arrangements — for example, limiting or prohibiting payments of differential compensation. Imposing substantive requirements to pay the same commissions to RRs for proprietary and non-proprietary products, for example, would attempt to ensure that RRs are indifferent to incentives when making recommendations and sales. Similarly, it may be appropriate for NASD Regulation to prohibit differential compensation in connection with the offer and sale of "multiple class" funds. A multiple class fund is an open-end investment company that issues two or more classes of securities representing interests in the same investment portfolio. Each class may vary with respect to expenses for distribution, administration and shareholder services. Certain classes may be more appropriate for a particular investor (*e.g.*, Class A shares for a long-term investment). To the extent that compensation arrangements with respect to various classes might differ, a prohibition of differential compensation arrangements with respect to multiple class funds might better ensure that the form of compensation would not unduly influence an RR's recommendation of a class.

Yet it may be difficult to define "differential compensation" for these purposes. For example, how would NASD Regulation or its members treat different streams of compensation payments for the sale of different funds? How would different compensation arrangements for different types of funds (*e.g.*, international funds and municipal bond funds) be resolved?

Moreover, existing commission-based compensation systems may reflect legitimate business considerations that derive from a competitive market. For example, smaller, less-known issuers may want to provide additional compensation to members and their RRs in order to encourage them to learn more about their products and how those products can help customers meet their investment objectives. The imposition by NASD Regulation of rules requiring similar commission structures could be viewed as anti-competitive and inconsistent with the NASD's purpose under the Securities Exchange Act of 1934 to promulgate rules that "...are designed to promote just and equitable principles of fair trade...remove impediments to and perfect the mechanism of a free and open market...and are not designed to...impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by [the NASD's] members...."[10]

Another approach might be to regard cash compensation arrangements that create conflicts of interest as fundamentally a sales-practice issue. When recommending to a customer the purchase, sale or exchange of any security, NASD Rule 2310 requires that the member have reasonable grounds for believing that the recommendation is suitable for the customer. It may be possible to provide more detailed guidance concerning the applicability of the suitability requirements to differential compensation arrangements. Such detailed guidance might not anticipate all of the circumstances under which compensation arrangements can be conducted according to the varied and evolving business practices of our members, however.

Because of the significant interest in cash compensation arrangements and how such arrangements ought to be regulated, NASD Regulation is soliciting comment on (i) the nature of

various cash compensation arrangements within the mutual fund and variable product industries as described above (such as "revenue sharing" and payments of differential compensation for proprietary vs. non-proprietary products), (ii) the potential harms and benefits of such arrangements, and (iii) the appropriate regulatory approach to the arrangements (including imposing disclosure requirements or substantive prohibitions, or regulating the arrangements under existing NASD sales practice rules).

Solicitation Of Comments

1. Do cash compensation arrangements as described above raise specific investor protection concerns? Do these arrangements in general encourage or discourage aligning the common interests of investors, salespersons and firms? Are there other compensation practices not identified above that should be regulated?

2. Do cash compensation arrangements create sufficiently strong "point-of-sale" incentives to warrant substantive regulations regarding their use? Would the answer to the question vary depending on whether such incentives are retained at the firm level or passed on to individual salespersons? Would the answer to the question vary depending on whether an arrangement, such as a sales contest, is designed to promote the sale of a particular product?

3. If cash compensation arrangements warrant substantive regulations, what would be the appropriate form of such regulations? Should such arrangements generally be prohibited or permitted within certain guidelines? Should guidelines require equal weighting of cash compensation credit when offered as part of a sales contest, reflecting a similar requirement for non-cash incentives in the Non-Cash Proposal?

4. Is it more appropriate to require disclosure of cash compensation arrangements rather than substantive regulation? Should disclosure be provided in the prospectus and/or some other document? What information and level of detail should be included? Should the responsibility for providing the disclosure fall on the Offeror, the retail broker/dealer and/or the salesperson? Are current NASD prospectus disclosure rules for mutual funds sufficient to require disclosure of cash compensation arrangements? Should the NASD's rules regarding variable products require similar disclosure?

5. Are individual investors concerned about and interested in disclosure of the cash compensation arrangements described above? What investor protection purposes are served when such information is made available to investors? Rather than substantive regulation or disclosure, is it more appropriate to address concerns regarding cash compensation arrangements under existing NASD sales practice rules, such as rules regarding suitability requirements?

Request For Comment

NASD Regulation encourages all members and interested parties to respond to the issues raised in this *Notice*. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received **by October 15, 1997**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation, Inc. Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

Endnotes

[1] *See* subparagraph (l)(1)(C) to NASD Conduct Rule 2830. This provision states in part: "No underwriter or associated person of an underwriter shall offer, pay, or arrange for the offer or payment to any other member, in connection with retail sales or distribution of investment company securities, any discount, concession, fee or commission (hereinafter referred to as "concession") which:..is not disclosed in the prospectus of the investment company. If the concessions are not uniformly paid to all dealers purchasing the same dollar amounts of securities from the underwriter, the disclosure shall include a description of the circumstances of any general variations from the standard schedule of concessions. If special compensation arrangements have been made with individual dealers, which arrangements are not generally available to all dealers, the details of the arrangements, and the identities of the dealers shall also be disclosed."

[2] *Id.*

[3] Under SEC Rules, front-end, asset-based and deferred sales charges are required to be disclosed in the fund's prospectus fee table.

[4] *See* NASD Conduct Rule 2820.

[5] *See Special Notice to Members 94-67* (August 22, 1994).

[6] Securities Exchange Act Rel. No. 37374 (June 26, 1996); 61 FR 35822 (July 8, 1996).

[7] *See* Report of the Committee on Compensation Practices, April 10, 1995.

[8] *See* Tully Report, pp. 12-13.

[9] *See* Tully Report, p. 23.

[10] 15 U.S.C. § 78o-3.

NASD NOTICE TO MEMBERS 97-51

NASD Regulation Grants Two Conditional Exemptions Under MSRB Rule G-37

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

Under SEC approved procedures, NASD Regulation, Inc. (NASD Regulation℠) reviews member requests for exemption from the two-year prohibition of municipal securities underwriting business contained in Rule G-37 (Rule) of the Municipal Securities Rulemaking Board (MSRB). Recently, NASD Regulation granted two conditional exemptions under exemption paragraph (i) of the Rule. The two conditional exemptions were granted in light of the highly unusual facts and circumstances of the particular cases, and reflect the MSRB's expressed intent that dealers would not routinely request exemptions and that NASD Regulation would grant exemptions only in very limited circumstances.

The two conditional exemptions and NASD Regulation's rationale for its determinations are summarized in this *Notice*. These exemptions should not be viewed as precedents for other requests. Rather, NASD Regulation has determined to provide notice of its responses to selected exemption requests in order to highlight the procedures that all members should institute to avoid triggering the two-year business prohibition under the Rule. Members should be aware that future requests for exemptions under the Rule will be reviewed on an individual basis and granted only in limited cases. Dealers should continue to ensure that their compliance procedures are reasonably designed and implemented to avoid triggering the two-year prohibition.

Background

The Rule prohibits a broker, dealer or municipal securities dealer (dealer) from engaging in municipal securities business with an issuer for two years after the dealer, any municipal finance professional (MFP) associated with the dealer, or any political action committee (PAC) controlled by the dealer or any such associated MFP, makes a contribution to any official of the issuer who can, directly or indirectly, influence the awarding of municipal securities business. The only contributions to such an issuer official that do not trigger a prohibition on municipal securities business are contributions by an MFP to an official of an issuer for whom the MFP is entitled to vote that, in total, do not exceed $250 per election.

Paragraph (i) of the Rule provides NASD Regulation with authority to exempt, conditionally or unconditionally, in particular cases, a dealer from the two-year prohibition on conducting municipal securities business with an issuer following political contributions by municipal securities professionals to specified officials of the issuer.

The MSRB has stated that a dealer who was subject to the prohibition should have to make a substantial showing to be exempted from that prohibition. The MSRB also has stated that it expects the exemption would not be routinely requested by dealers and that exemptions would be granted by the National Association of Securities Dealers, Inc. (NASD®) only in limited circumstances.

In connection with the adoption of paragraph (i) of the Rule, the MSRB stated that relief would be appropriate in certain circumstances, such as the following examples raised by public commenters: (1) contributions by a disgruntled employee made purposely to injure the dealer, its management or employees; and (2) a number of small contributions during an election cycle (*e.g.*, over four years) made by an MFP eligible to vote for a particular official of an issuer which, when consolidated, amount to slightly over the $250 *de minimis* exemption (*e.g.*, $255).

In determining whether to grant an exemption, the Rule requires that the NASD consider, among other factors, whether: (1) such exemption is consistent with the public interest, the protection of investors and the purposes of the Rule; and, (2) such dealer (A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with the Rule; (B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s); (C) had taken all available steps to cause the person or persons involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and (D) had taken such other remedial or preventive measures, as may be appropriate under the circumstances.

History Of Rule G-37 Exemptions Under Current NASD Regulation Review Procedures

On October 20,1995, the SEC approved NASD procedures for exemption requests under paragraph (i) of the Rule.[1] For details of those procedures, refer to *Notice to Members 95-103*, (December 1995). Since that time, NASD Regulation has received only a limited number of exemption requests. Under these procedures, NASD Regulation has granted only two conditional exemptions, and has not granted any full exemptions.

Under the NASD procedures, exemption requests made pursuant to paragraph (i) of the Rule were submitted to NASD Regulation staff. If an exemption request was denied by NASD Regulation staff, it could be reviewed by the NASD Regulation Fixed Income Committee (the Committee) upon request. The two conditional exemptions were Committee determinations.

The circumstances surrounding the two conditional exemptions as well as the Committee's rationale for its determinations are summarized below. The conditional exemptions were granted for very unusual circumstances, and reflect the MSRB's expressed intent that such exemptions would not be routinely requested by dealers and that exemptions would be granted only in limited circumstances.

Exemption Request #1

Circumstances Surrounding The Request

In May of 1996, the chairman of a dealer wrote a check for $240 to an elected official of a municipality, who was running for re-election. In July of the same year, the chairman inadvertently mailed a duplicative check for $240 to the official's campaign, resulting in a total of $480 being contributed to the official's campaign. This second contribution, in aggregate with the first contribution, triggered the two-year business prohibition under the Rule.

Upon realizing that he had made the same contribution twice, the chairman requested and received a refund check of $240 from the official's campaign. The chairman stated in an affidavit that at the time he wrote the check, he did not recall having already written a check for the $240 contribution.

At that time, the dealer's written political contributions policy had required that municipal finance professionals submit a pre-clearance request form to the firm's designated supervisory professional and receive written approval prior to making a contribution. The chairman, in fact, submitted forms in both instances and received approval of both of his pre-clearance forms.

According to representations made by the dealer, the dealer's designated supervisory principal, at the time the contributions were made, had delegated the responsibility of maintaining the books and records required by MSRB Rule G-8 and G-9 to the dealer's general counsel, who maintained a database of all political contributions by firm personnel. Normally, a pre-request form was reviewed by the general counsel, who compared it against the dealer's database for previous contributions, prior to the delegated supervisory principal's review of the form for approval.

Under the circumstances at issue, the chairman's pre-request form for the first contribution was pre-reviewed by the general counsel, but the pre-request form for the second contribution was approved by the designated supervisory principal, without the general counsel's review. The designated supervisory principal did not remember previously approving a request form for the chairman, but instead relied only on the chairman's indication on the pre-request form that no prior contributions were made to the candidate.

The dealer has subsequently revised its compliance procedures to require that, prior to the designated supervisory principal's review of any request form, the general counsel will review the firm's political contribution database to ensure that the applicant had made no prior contributions to that candidate and to indicate approval or disapproval on the request form.

Committee Determination

The Committee granted the dealer a conditional exemption by reducing the two-year prohibition to one year

from the date of the chairman's second contribution. The Committee found that mitigating factors distinguished the contribution made by the chairman from the contributions seen in other requests before the Committee. The Committee found that the second contribution resulted more from human error by the chairman than from insufficient compliance procedures, failure by the dealer to educate key personnel, or any ignorance by firm personnel of the Rule. The Committee considered the relevant mitigating factors to be that the chairman was knowledgeable of the Rule's requirements and did follow the firm's pre-screening compliance procedures by submitting a second request which, were it not for administrative error, would have prevented the inadvertent second contribution. The Committee also noted that the dealer had already experienced a significant loss of business because of this matter.

Exemption Request #2

Circumstances Surrounding The Request

In 1997, the parent company of a dealer acquired a non-member sponsor of municipal open-ended funds (the acquired company). Upon completion of the acquisition, the chairman and Chief Executive Officer (CEO) of the acquired company became an executive vice president of the dealer and was placed on the dealer's Executive Committee. Under the Rule, the CEO became a municipal finance professional (MFP) of the dealer by virtue of becoming a member of the dealer's Executive Committee. After the acquisition, the dealer discovered that the CEO had made a $500 contribution to the governor of a particular state in 1996, which triggered the two-year business prohibition under the Rule for the dealer in that state, beginning from the date of the contribution.

The dealer had a long-standing policy forbidding political contributions of any kind by the firm or its employees for the purpose of influencing the municipal securities business. However, according to the dealer, the persons responsible for examining the acquisition of the acquired company did not anticipate that the CEO would become a member of the dealer's Executive Committee.

Committee Determination

The Committee granted the dealer a conditional exemption by reducing the two-year prohibition to one year from the date of the executive's contribution. In reviewing the circumstances surrounding the dealer's request, the Committee found that the placement of the CEO on the dealer's Executive Committee did trigger the two-year prohibition.

To determine the appropriateness of granting a conditional or unconditional exemption under the circumstances at issue, the Committee considered the five factors required to be considered under paragraph (i) of the Rule, and in particular, the first factor, i.e., whether an exemption under the circumstances would be consistent with the public interest, the protection of investors and the purposes of the Rule.

Upon review, the Committee determined that the dealer had: (1) developed and instituted procedures reasonably designed to ensure compliance with the Rule; (2) had no actual knowledge of the contribution prior to or at the time of the contribution; (3) had taken all available steps to cause the person involved in making the contribution to obtain a return of the contribution; and (4) had taken such other remedial or preventative measures as were appropriate under the circumstances. The Committee further noted that the two-year prohibition did not occur from a lack of knowledge of the Rule by the persons responsible for examining the acquisition of the acquired company, but from a lack of communication to such persons regarding the intent to place the CEO on the Executive Committee.

The Committee determined that, in light of the unusual circumstances, prohibiting the dealer from conducting business in the state in question for one year would constitute a significant penalty that would discourage similar occurrences by the dealer and other dealers.

NASD Regulation notes, however, that the conditional exemption was based on unique and unusual circumstances, including the circumstances surrounding the acquisition and placement of the CEO on the dealer's Executive Committee. This decision should not be construed to mean that a conditional exemption will be granted in future requests if the event which causes the two-year prohibition was inadvertent.

Summary

Members should be aware that future requests for exemptions from the two-year prohibition that are based on circumstances similar to those summarized in this *Notice* may not merit conditional exemptions. Dealers, therefore, should review the circumstances surrounding these two conditional exemptions, and should revise their compliance procedures, if appropriate, to ensure that such procedures are reasonably designed to prevent similar occurrences.

Questions regarding this *Notice* may be directed to John H. Pilcher, Assistant General Counsel, Office of General Counsel, at (202) 728-8287.

Endnotes

[1] These procedures were recently superseded by new Rules 9600 to 9630 of the Code of Procedure (the Code). On August 7, 1997, the SEC approved new NASD Regulation review procedures for exemption requests under the Rule. *See*, SEC Rel. No. 34-38908 (August 7, 1997). Under new Rule 9610 of the Code, a member seeking an exemption from the Rule shall file a written application with the Office of General Counsel of NASD Regulation. After considering an application, NASD Regulation staff shall issue a written decision, pursuant to new Rule 9620 of the Code, setting forth its findings and conclusions. The decision shall be served on the applicant pursuant to new Rules 9132 and 9134. After the decision is served on the applicant, the application and decision shall be publicly available unless NASD Regulation staff determines that the applicant has shown good cause for treating the application as confidential in whole or in part.

If the application is denied, an applicant may file a written notice of appeal, pursuant to new Rule 9630, within 15 calendar days after service of a staff decision. The appeal will be reviewed by the National Business Conduct Committee pursuant to new Rule 9630.

NASD NOTICE TO MEMBERS 97-52

SEC Approves Amendments Relating To Market Maker Registration And Primary Market Maker Eligibility By Managers And Co-Managers Of Secondary Offerings

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 June 27, 1997, the Securities and Exchange Commission (SEC) approved amendments to NASD® Rules 4611(d) and 4612(g) with regard to market maker registration and Primary Market Maker (PMM) eligibility by managers and co-managers of secondary offerings.

Background And Summary

A) Market Maker Registration

On April 24, 1997, the National Association of Securities Dealers, Inc. (NASD) submitted a proposed rule change to NASD Rule 4611 to permit managers and co-managers of an underwriting syndicate participating in a secondary offering of a security listed and traded on Nasdaq® to register as a market maker in such issue on a same-day basis on the day of the secondary offering.

Previously, on-line registration requests by all members in an issue that had been trading on Nasdaq for more than five days became effective on the business day after such request. The rule is designed to minimize the potential for "fair weather" market making and to ensure that members registering as market makers are making a legitimate commitment of their capital to the issue for the betterment of the market, not just capturing short-term trading profits during the brief periods of favorable market conditions. However, managers and co-managers of underwriting syndicates who failed to submit a market maker registration on the day before the offering were sometimes unjustly precluded from trading an issue on the day of the secondary offering.

Accordingly, with this amendment to Rule 4611(d), managers and co-managers of syndicates in a secondary offering can register in such issue on a same-day basis on the day of the secondary offering. Because of the inherent commitment of managers and co-managers of underwriting syndicates, the need for their members to make a market in the stock to manage their risk, and the additional liquidity and pricing efficiency that these market makers may provide, Nasdaq determined that same-day, on-line registrations are appropriate for managers and co-managers of an issue on the day of the secondary offering.

B) Primary Market Maker Eligibility

Also on April 24, 1997, the NASD submitted a proposed rule change to NASD Rule 4612(g), permitting managers and co-managers of a secondary offering to be eligible to become a Primary Nasdaq Market Maker in that issue prior to the effective date of the secondary offering when the member is a PMM in 80 percent or more of the securities in which they are registered, regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering.[1]

While Rule 4612(g) does not prevent member firms from registering as market makers in a particular issue, it may prevent a member firm from registering as a market maker and immediately becoming a PMM in that issue in certain circumstances. Specifically, Rule 4612(g) provides that if a member registers in a stock after a secondary offering in that issue has been announced, or a registration statement has been filed, but before the offering has been declared effective, then that member cannot become a PMM in that stock unless: (1) the secondary offering has become effective and the market maker had satisfied the PMM standards between the time the market maker registered in the security and the time the offering became effec-

tive, or (2) the market maker has satisfied the PMM standards for 40 calendar days (Secondary Offering PMM Delay Rule).

Nasdaq's concern underlying Rule 4612(g) is that dealers may enter the market after secondary offerings have been announced in order to take advantage of the market maker exemption from the short sale rule. Specifically, it has been Nasdaq's experience that the time period after secondary offerings have been announced is sensitive to short selling pressure, as the "overhang" on the market from the offering makes the security particularly susceptible to manipulative short selling.

Because of the Secondary Offering PMM Delay Rule, there have been instances where managers and co-managers of secondary offerings were precluded from becoming a PMM in the issue prior to the effective date of the secondary offering, simply because they were not previously registered in the issue.

Because of the inherent commitment of managers and co-managers of underwriting syndicates to their issues, as well as the additional liquidity that these members provide, Nasdaq determined that it would be appropriate to permit managers and co-managers to register as PMMs in their issues prior to the effective date of the secondary offering.

Text Of Amendments

(Note: New language is underlined; deletions are bracketed.)

NASD Rule 4611

(a) through **(c)** No change.

(d) A Nasdaq market maker may become registered in an issue already included in Nasdaq by entering a registration request via a Nasdaq terminal. If registration is requested in an issue that has been included in Nasdaq for more than five (5) days, and the requirements of paragraph (b) above are satisfied, registration shall become effective on the date after the registration request is entered. Provided, [If] however, that same day registration is permissible for:

(1) a Nasdaq market maker, registered in a security that is the subject of a publicly announced merger or acquisition offer with another Nasdaq issue, who seeks registration in the other merger or acquisition issue; [, same-day registration is permissible.]; and

(2) a manager or co-manager of an underwriting syndicate for a secondary offering of that security.

(e) through **(g)** No change.

NASD Rule 4612

(a) through **(g)(1)** No change.

(g)(2) Notwithstanding paragraph (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:

(A) For secondary offerings:

(i) the secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective: provided, however, that if the member is a manager or co-manager of the underwriting syndicate for the secondary offering and it is a PMM in 80% or more of the Nasdaq National Market securities in which it is registered, the member is eligible to become a PMM in the issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering; or

(ii) the market maker has satisfied the qualification criteria for 40 calendar days.

(g)(2)(B) through **(h)** No change.

Questions regarding this rule change should be directed to Nasdaq Market Operations at (800) 219-4861.

Endnotes

[1] A firm is not precluded from being a manager or co-manager of a secondary offering if it is not a PMM in 80 percent or more of the stocks in which it makes a market.

NASD NOTICE TO MEMBERS 97-53

Labor 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

Labor Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market℠ and the securities exchanges will be closed on Monday, September 1,1997, in observance of Labor Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Aug. 26	Aug. 29	Sept. 3
27	Sept. 2	4
28	3	5
29	4	8
Sept. 1	Markets Closed	—
2	5	9

*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 five 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 titled "Reg. T Date."

NASD NOTICE TO MEMBERS 97-54

Fixed Income Pricing System Additions, Changes, And Deletions As Of July 25, 1997

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 July 25, 1997, the following bonds were added to the Fixed Income Pricing System (FIPS℠).

Symbol	Name	Coupon	Maturity
OEC.GA	Ohio Edison Co	7.500	08/01/02
OEC.GB	Ohio Edison Co	8.750	02/15/98
OEC.GC	Ohio Edison Co	8.625	09/15/03
OEC.GD	Ohio Edison Co	8.250	04/01/02
OEC.GE	Ohio Edison Co	8.750	06/15/22
OEC.GF	Ohio Edison Co	6.875	09/15/99
OEC.GG	Ohio Edison Co	7.375	09/15/02
OEC.GH	Ohio Edison Co	6.375	04/01/00
OEC.GI	Ohio Edison Co	6.875	04/01/05
OEC.GJ	Ohio Edison Co	7.875	04/01/23
OEC.GK	Ohio Edison Co	7.625	06/15/23
PPPC.GA	Pennsylvania Power Co	8.500	07/15/22
PPPC.GB	Pennsylvania Power Co	7.500	08/01/03
PPPC.GC	Pennsylvania Power Co	6.625	07/01/04
PPPC.GD	Pennsylvania Power Co	7.625	07/01/23
PPPC.GE	Pennsylvania Power Co	6.375	09/01/04
JCP.GA	Penny (JC) Inc	6.950	04/01/00
ICAB.GB	International CableTel Inc	11.500	02/01/06
AKS.GB	AK Steel Corp	9.125	12/15/06
DRL.GA	DI Industries Inc	8.875	07/01/07
SLGC.GA	Sterling Chemicals Inc	11.250	04/01/07
CNLP.GA	Connecticut Light & Power Co	6.500	01/01/98
CNLP.GB	Connecticut Light & Power Co	7.250	07/01/99
CNLP.GC	Connecticut Light & Power Co	7.375	12/01/25
CNLP.GD	Connecticut Light & Power Co	5.750	07/01/00
CNLP.GE	Connecticut Light & Power Co	7.500	07/01/23
CNLP.GF	Connecticut Light & Power Co	5.500	02/01/99
CNLP.GG	Connecticut Light & Power Co	6.125	02/01/04
CNLP.GH	Connecticut Light & Power Co	8.500	06/01/24
CNLP.GI	Connecticut Light & Power Co	7.875	06/01/01
PIEL.GA	Pierce Leahy Corp	11.125	07/15/06
STO.GM	Stone Container Corp	10.750	04/01/02
PTX.GA	Pilowtex Corp	10.000	11/15/06
CHFP.GA	Chief Auto Parts Inc	10.500	05/15/05
WMAS.GA	Western Mass Electric Co	6.750	03/01/98
WMAS.GB	Western Mass Electric Co	7.750	12/01/02
WMAS.GC	Western Mass Electric Co	6.875	01/01/00
WMAS.GD	Western Mass Electric Co	6.250	03/01/99
WMAS.GE	Western Mass Electric Co	7.750	03/01/24
DFC.GA	Delta Financial Corp	9.500	08/01/04

As of July 25, 1997, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
CMZ.GA	Cincinnati Milcron Inc	12.000	07/15/10
UIS.GE	Unisys Corp	15.000	07/01/97

As of July 25, 1997, changes were made to the names and symbols of the following FIPS bonds:

New Symbol	New Name	Coupon	Maturity	Old Symbol
PLH.GA	Pierce Leahy Corp	11.125	07/15/06	PIEL.GA
PLH.GB	Pierce Leahy Corp	9.125	07/15/07	PIEL.GB

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASD Regulation℠ Market Regulation, at (301) 590-6451.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq® Market Operations, at (203) 385-6310.

DISCIPLINARY ACTIONS

Disciplinary Actions Reported For August

NASD Regulation, Inc. (NASD Regulation℠) has taken disciplinary actions against the following firms and individuals for violations of NASD® rules; federal 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, August 18, 1997. The information relating to matters contained in this *Notice* is current as of the end of July 25. Information received subsequent to the end of July 25 is not reflected in this edition.

Firms Expelled, Individuals Sanctioned

Prime Investors, Inc. (Overland, Kansas), Kenneth James Wright (Registered Principal, Olathe, Kansas), and **Michael Lyn Johnson, (Registered Principal, Lee's Summit, Missouri)**. The firm and Wright were fined $150,000, jointly and severally. In addition, the firm was expelled from National Association of Securities Dealers, Inc. (NASD) membership and Wright was barred from association with any NASD member in any capacity. Johnson was fined $50,000 and barred from association with any NASD member in any capacity, with the right to reapply after two years. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a September 1995 National Business Conduct Committee (NBCC) decision.

The sanctions were based on findings that the firm, acting through Wright and Johnson, sold unregistered securities and made material misrepresentations and omissions of fact in connection with the sale of those securities. The firm, acting through Wright, also misused customers' funds and engaged in several improper extensions of credit, including day trading in cash accounts and the use of a fictitious account to "park" stock to avoid sellout. Furthermore, the firm, acting through Wright and Johnson, sold securities that were not registered or exempt from registration and made material misstatements or omissions of fact in selling these securities. Moreover, the firm, acting through Wright, misused offering funds raised by placing monies in personal securities accounts, lending those monies to friends, employees, and customers, and using about $77,000 of the monies to cover a debit balance owed by Wright and co-investors in a third-party securities account.

Firms Fined, Individuals Sanctioned

Everest Securities, Inc. (Minneapolis, Minnesota) and **Jeanne Alyce Kunkel (Registered Principal, Minneapolis, Minnesota)** were fined $10,000, jointly and severally, and required to pay $22,500 in restitution. Kunkel was barred from association with any NASD member in a principal capacity and required to requalify by exam as a registered representative. The U.S. Court of Appeals sustained the sanctions following appeal of an August 1996 SEC decision. The sanctions were based on findings that the firm and Kunkel offered and sold securities using documents that were misleading. The firm, acting through Kunkel, also failed to maintain accurate books and records.

McFadden, Farrell & Smith, L.P. (New York, New York) and **Alan M. Green (Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $100,000, jointly and severally. Green was also suspended from association with any NASD member in any supervisory capacity for three months. Without admitting or denying the allegations, the respondents

consented to the described sanctions and to the entry of findings that the firm, acting through Green, failed to establish, maintain, and enforce adequate written supervisory procedures.

Furthermore, the NASD determined that the firm, acting through Green, failed to register employees, failed to register employees in a timely manner, and failed to register an employee who was not engaged in an investment banking or securities business. The findings also stated that the firm, acting through Green, failed to maintain and preserve copies of the initial Form U-4 applications and failed to maintain and preserve appropriate documentation on employees with personal brokerage accounts at other broker/dealers. The NASD found that the firm, acting through Green, failed to respond to an NASD request for information in a timely manner and negligently submitted documents containing inaccurate information.

Firms and Individuals Fined

Alden Capital Markets, Inc. (Denver, Colorado) and **Robert Thayer (Registered Principal, Denver, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Thayer, conducted a securities business while failing to maintain its required net capital.

A.G. Edwards & Sons, Inc. (St. Louis, Missouri) and Bruce Reed (Registered Principal, Las Cruces, New Mexico) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally. Reed also was required to requalify by exam as a branch manager by taking the Series 8 exam. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Reed, failed to supervise a registered representative in a manner designed to achieve compliance with NASD Rules pertaining to private securities transactions.

D.H. Blair & Co., Inc. (New York, New York) and **Alfred S. Palagonia (Registered Representative, Quogue, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $25,000, jointly and severally, and ordered to disgorge $10,230.25, jointly and severally. Palagonia was required to requalify by exam as a general securities representative. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Palagonia, sold shares of stock that traded at a premium in the immediate aftermarket to a restricted account.

The findings also stated that the firm, acting through Palagonia, failed to obtain and/or maintain the registered representative's signature introducing the restricted account, and failed to ascertain the occupation of one of the spouses in a jointly held account, the name and address of the spouse's employer, and whether the spouse was an associated person of another member firm. The NASD also determined that the firm failed to adequately enforce its written supervisory procedures relating to the review and approval of the restricted account in question.

Dickinson & Co. (Des Moines, Iowa), Theodore Marshall Swartwood (Registered Principal, New York, New York), and T**homas M. Swartwood (Registered Principal, Des Moines, Iowa)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $10,000 and fined $1,000, jointly and severally, with another respondent. In addition, the firm, Theodore Swartwood, and Thomas Swartwood were fined $10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Theodore and Thomas Swartwood, filed a proposed public offering of securities of its parent corporation with the NASD for review, and failed to timely appoint a public director to the parent corporation's board of directors and audit committed within 12 months of the effective date of the offering.

The findings also stated that the firm acted as placement agent for offerings and, during the contingency period of the offering, contravened SEC Rule 15c2-4 in that investors' monies were transmitted to the issuer's law firm and deposited in an account under the control of the issuer. Furthermore, the NASD determined that the firm sold units of an offering and omitted to state the material fact that the common stock and warrants of the offering were in jeopardy of being delisted from Nasdaq® due to the offering's deteriorating financial condition.

Tradition (Government Securities) Inc. (New York, New York) and **Dennis William Savitsky (Registered Principal, North Bellmore, New York)** submitted an Offer of Settlement pursuant to which they were fined $10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Savitsky, permitted individuals to engage in the securities

business and to function as government securities representatives without being registered with the NASD.

Yee, Desmond, Schroeder and Allen, Inc. (Phoenix, Arizona), Stanley J. Allen, Jr. (Registered Principal, Scottsdale, Arizona), and **James F. Desmond (Registered Principal, Phoenix, Arizona)** submitted an Offer of Settlement pursuant to which they were fined $10,000, jointly and severally. In addition, the firm and Allen were fined $7,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Allen, participated in the distribution of and accepted payment for securities in an offering made subject to a minimum purchase contingency and failed to forward payments to an escrow account that satisfied the requirements of SEC Rule 15c2-4. Furthermore, the NASD determined that the firm, acting through Allen and Desmond, failed to supervise registered and associated persons reasonably and failed to establish, maintain, and enforce adequate written supervisory procedures.

Firms Fined

Alfred Berg, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $20,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it reported transactions late without the proper modifier, reported transactions incorrectly with a modifier, failed to report transactions, and reported transactions when not required to be reported. The findings also stated that the firm reported a transaction with the incorrect price, reported transactions with the improper volume, reported transactions with execution times that were different than those reflected on the order tickets, and failed to enter a time stamp on an order ticket reflecting the execution time for a transaction. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to detect and deter trade reporting violations.

Broadcort Capital Corporation (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $11,500. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it permitted officers to participate as members of the firm's Board of Directors without general securities principal registrations and without the prerequisite requirements for a general securities principal. The findings also stated that the firm did not register a municipal securities principal although it was engaged in a municipal securities business.

BZW Securities Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which it was fined $20,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to report trades on the Automated Confirmation Transaction Service (ACT℠) within 90 seconds and failed to append the late indicator. Furthermore, the NASD found that the firm failed to identify accurately the time of execution on order tickets and failed to time stamp order tickets, or the time was otherwise unavailable or did not agree with the time submitted to ACT. The findings also stated that the firm reported transactions when it was not required to do so, incorrectly identified itself as the market maker in its reports, and transmitted Nasdaq National Market® Transactions to ACT late. The NASD also determined that the firm failed to establish, maintain, and enforce written supervisory procedures to prevent the above violations.

Gilford Securities, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it reported or failed to report Nasdaq National Market Securities and Over-The-Counter Equity Securities to the ACT, contrary to the provisions of Marketplace Rules 4632 and 6620.

Lew Lieberbaum & Co., Inc. (Garden City, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $80,000 and required to attend a compliance conference. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT late and executed transactions prior to the market opening and prior to the market close. The NASD also determined that transactions between the firm and other market makers were reported to ACT with no contra side information and a bunched report was reported without using a modifier. The findings also stated that the firm failed to time stamp order tickets, canceled trades were not maintained, and reported transactions as bunched without indicating it on the order tickets. Furthermore, the NASD found that the firm failed to establish, maintain, or enforce written supervisory procedures with respect to trade reporting.

Merrill Lynch Government Securities of Puerto Rico, S.A. (Hato Rey, Puerto Rico) submitted a Letter of Acceptance, Waiver and Consent

pursuant to which the firm was fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it conducted a securities business while failing to maintain its minimum required net capital.

Merrill Lynch, Pierce, Fenner & Smith Incorporated (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to file any conventional option position reports with the NASD.

Westport Resources Investment Services, Inc. (Westport, Connecticut) 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 it reported Nasdaq Securities to the Automated Confirmation Transaction Service contrary to the provision of Marketplace Rules 4632 and 4642 in that it failed to report Nasdaq transactions within 90 seconds after execution and did not designate the transactions as late with a modifier. The NASD also found the firm aggregated individual executions into Nasdaq-listed security transactions reports but failed to designate the reports with the appropriate modifier, and order tickets did not indicate that the executions were bunched for trade reporting purposes.

Whale Securities Co., L.P. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $20,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it violated the NASD Marketplace Rules in that transactions were reported to ACT without a modifier, were improperly aggregated, and were reported with incorrect volumes. The NASD also found that trades were reported late without using the modifier, a trade done on a cash/next day settlement basis was reported the regular way, and transactions were not reported to ACT. The findings also stated that the firm violated SEC Rule 17a-3 and Marketplace Rules in that transactions did not indicate original time of entry or execution, order tickets were missing, and order tickets were not time stamped with execution times. Furthermore, the NASD determined that the firm failed to establish, maintain, and enforce written supervisory procedures concerning trade reporting.

Individuals Barred or Suspended

Kevin Thomas Calderbank (Registered Representative, New Port Richey, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Calderbank failed to respond to NASD requests for information.

Victor Capote (Registered Representative, West Palm Beach, Florida) 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, Capote consented to the described sanctions and to the entry of findings that he forged the signatures of public customers on insurance applications and submitted these applications to his member firm. The NASD also found that Capote submitted a starter check with the customer's forged signature representing the initial premium payment for the policies.

Anthony Carnevale (Registered Representative, Florham Park, New Jersey) submitted an Offer of Settlement pursuant to which he was fined $2,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carnevale consented to the described sanctions and to the entry of findings that, during the course of taking the Series 7 exam, he was in possession of notes containing formulas and information that had been the subject of questions on the exam.

Kellen M. Carson (Registered Representative, Glenhead, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $582,905, barred from association with any NASD member in any capacity, and ordered to pay $60,408 in restitution to a member firm. Without admitting or denying the allegations, Carson consented to the described sanctions and to the entry of findings that he caused $116,581 from his member firm's pending account to be converted by placing the monies into five accounts that he controlled.

Edward Catalanello (Registered Representative, Metuchen, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Catalanello consented to the described sanctions and to the entry of findings that he forged the name of an insurance customer on disbursement request forms and caused disbursements to be made from the customer's life insurance policies to pay for premiums on other policies without the customer's prior knowledge or consent.

Nathan Cohen (Registered Representative, Hollywood, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $2,400 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prompt written notice to and obtain written approval from his member firm to participate in the transactions.

Ashley T. Collen (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $329,425 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Collen consented to the described sanctions and to the entry of findings that he engaged in the sale of private securities transactions to public investors, without providing prior written notice to, and receiving written approval from his member firm.

Roy C. Cook (Registered Representative, Albuquerque, New Mexico) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity until he requalifies by exam in any representative or principal capacity. Without admitting or denying the allegations, Cook consented to the described sanctions and to the entry of findings that he signed firm documents without the signatories' authorization and consent.

Albert E. Depew (Registered Representative, Butler, Pennsylvania) 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 six months, and required to requalify by exam as an investment company and variable contract products representative. Without admitting or denying the allegations, Depew consented to the described sanctions and to the entry of findings that he recommended to a public customer the exchange of an annuity and told the customer that the surrender charge would be $800, told the customer that the $2,500 surrender charge reflected on a statement was incorrect when he knew or should have known that the $2,500 charge was the correct charge and had no reasonable basis for stating that it was incorrect.

The NASD also found that Depew submitted to his member firm a policy delivery receipt bearing his own signature and the purported signature of a customer when he knew the annuity had not been delivered to the customer and that the customer's signature was not genuine.

Richard R. Desrochers (Registered Representative, Las Vegas, Nevada) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Desrochers consented to the described sanctions and to the entry of findings that he prepared and submitted to his member firm fictitious check disbursement forms allegedly on behalf of policyholders which caused his member firm to issue checks totaling $7,811.51, payable to policyholders. The NASD found that Desrochers forged the policyholders' signatures, deposited the checks into his personal bank account, and misappropriated the proceeds to his own use and benefit.

David Martin Dickey (Registered Representative, Bridgewater, New Jersey) 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, Dickey consented to the described sanctions and to the entry of findings that he filed a Form U-4 with a member firm and failed to disclose an arrest and conviction which, if disclosed, would have caused him to be statutorily disqualified.

Thomas Diggs, Jr. (Registered Principal, Hampton, Georgia) was fined $5,000 and suspended from association with any NASD member in any capacity for 10 days. The sanctions were based on findings that Diggs effected the purchase of shares of stock in the securities accounts of public customers without their prior knowledge or authorization.

Paul S. Dolan (Registered Representative, Revere, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $2,000,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dolan consented to the described sanctions and to the entry of findings that he solicited and received from investors at least $2,300,000 and falsely represented to the investors that their funds would be invested either in a money market fund, which never existed, or tax-free government bonds, that were never purchased. The findings also stated that Dolan misappropriated and converted $2,214,522 of the funds to his own use and benefit.

Paul Alexis Drayton (Registered Representative, Brooklyn, New York) was fined $196,250 and barred from association with any NASD member in any capacity. The sanc-

tions were based on findings that Drayton converted customer funds totaling $25,250 by opening accounts in a public customer's name and using false addresses for the customer. In addition, Drayton falsified records by failing to disclose on a Form U-4 his criminal history. Drayton also failed to respond to NASD requests to appear for an on-the-record interview.

Charles William Duquette (Registered Representative, Beaverton, Oregon), Lewis H. Aytes (Registered Representative, Medford, Oregon), and **William Alan Smith (Registered Principal, Central Point, Oregon)** submitted Letters of Acceptance, Waiver and Consent pursuant to which Duquette was fined $50,000 and suspended from association with any NASD member in any capacity for 18 months. Aytes was fined $100,000 and suspended from association with any NASD member in any capacity for 18 months and Smith was fined $20,000 and required to provide certification from his member firm that he has undergone additional training to meet his supervisory responsibilities.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Duquette and Aytes recommended and sold limited partnership units to public customers at prices substantially in excess over the prices at which they were able to obtain the units. Furthermore, the NASD determined that, in connection with their solicitation of customers and recommendations to them, Duquette and Aytes failed to disclose material information to the customers about the offering. The findings also stated that Smith failed to reasonably review Duquette and Aytes' activities to ensure their compliance with the applicable NASD Rules.

Duquette's suspension began January 16, 1996 and concluded July 16, 1996.

Aytes' suspension began February 15, 1996 and concluded August 15, 1996.

Richard E. Epstein (Registered Representative, Coral Springs, Florida) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Epstein consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving prior written notice to his member firm.

Yana Michelle Epstein (Registered Representative, Dove Canyon, California) submitted an Offer of Settlement pursuant to which she was fined $5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Epstein consented to the described sanctions and to the entry of findings that she provided false and misleading information to the NASD in response to NASD's request for information concerning the possible misuse of a customer's insurance proceeds.

Eddie Samuel Freeman, II (Registered Principal, St. Louis, Missouri) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, Freeman consented to the described sanction and to the entry of findings that a member firm, acting through Freeman, made erroneous computations in computing its special reserve requirement and contravened SEC Rule 15c3-3 by withdrawing funds from its special reserve account without an accompanying reserve computation upon which the withdrawal was based. The findings also stated that the firm, acting through Freeman, conducted a securities business while failing to maintain its minimum required net capital and failed to prepare its books and records properly.

James C. Garcia (Registered Representative, Virginia Beach, Virginia) was fined $20,000 and barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) affirmed the sanctions following appeal of a Washington District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Garcia failed to respond to NASD requests for information.

Matthew Alan Goldberg (Registered Representative, Glendale, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goldberg consented to the described sanctions and to the entry of findings that he engaged in business outside of the scope of his employment with his member firm. The NASD found that Goldberg engaged in the offer and sale of securities without providing prior written disclosure to his member firm describing the proposed transactions and his role therein. The findings also stated that Goldberg disclosed inaccurate information on his Form U-4.

John P. Goldsworthy (Registered Representative, Harahan, Louisiana) was fined $50,000, barred from association with any NASD member in any capacity, and required to pay $499,744 in restitu-

tion to a member firm. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Goldsworthy engaged in private securities transactions without providing prior written notice to and obtaining approval from his member firm.

This action has been appealed to the SEC and the sanctions, other than the bar, are not in effect pending consideration of appeal.

Gary A. Hill (Registered Representative, Rio Rancho, New Mexico) was fined $2,500 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Hill received from public customers funds totaling $630 for insurance premium payments and failed to forward the funds to his member firm.

Jack E. John (Registered Representative, Raleigh, North Carolina) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that John obtained $12,512.06 from a public customer intended for the purchase of securities and instead misused the funds without the knowledge or authorization of the customer. John also failed to respond to NASD requests for information.

Richard William Kelley (Registered Principal, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, Kelley consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative adequately and properly to assure compliance with applicable rules and regulations.

Audrey Klein-Kapneck (Registered Representative, Livingston, New Jersey) submitted an Offer of Settlement pursuant to which she was fined $29,000, suspended from association with any NASD member in any capacity for 10 business days, and ordered to disgorge $58,874.76. Without admitting or denying the allegations, Klein-Kapneck consented to the described sanctions and to the entry of findings that she failed to provide written notification, to her member firm and the executing member firm, of her association with the member firm prior to opening an account with the executing firm. Furthermore, the NASD determined that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, Klein-Kapneck purchased and sold shares of hot issues that traded at a premium in the immediate aftermarket.

Scott Kliewe (Registered Representative, Marco Island, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and suspended from association with any NASD member in any capacity for nine months. Without admitting or denying the allegations, Kliewe consented to the described sanctions and to the entry of findings that he charged certain retail customers unfair prices in transactions where the gross commissions were approximately 30 percent of the principal amount of the transactions. The findings also stated that Kliewe failed to respond timely to NASD requests for information.

Daniel John Knight (Registered Representative, Noblesville, Indiana) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Knight failed to respond to NASD requests for information.

Kent Wade Larsen (Registered Representative, Nevada, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Larsen consented to the described sanctions and to the entry of findings that he forged customers' signatures on forms relating to securities and non-securities insurance products without their knowledge or consent.

Patrick Charles Lawrence (Registered Representative, Bellevue, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $60,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lawrence consented to the described sanctions and to the entry of findings that, by using false bookkeeping entries to the books and records of his member firm, he caused $12,000 of the firm's monies to be deposited into securities accounts under his control, and used those monies for personal purposes, all without the knowledge or consent of the firm.

Taek Yung Lee (Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $17,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he solicited a customer to provide a $3,500 check for the purpose of purchasing securities in an initial public offering. The

NASD found that Lee personally retrieved the check from the customer, signed and endorsed the check, deposited it into his brother's bank account, and made use of the customer's funds in a manner that was contrary to the customer's intention.

Robert W. Lewis (Registered Principal, Englewood, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any representative capacity, with the right to reapply after one year, and barred from association with any NASD member in any principal or proprietary capacity, with a right to reapply after two years. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that he used funds belonging to his member firm to which he may not have been entitled under his employment agreement with the firm.

John F. Long (Registered Representative, Thornton, Colorado) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Long consented to the described sanctions and to the entry of findings that he opened accounts and executed transactions in the accounts pursuant to the instructions from a third party without having the authorization of the beneficial owners of the accounts. The findings also stated that Long completed new account cards with information that he knew or should have known to be inaccurate.

William J. Lucadamo (Registered Representative, Bayside, New York) was fined $62,500, suspended from association with any NASD member in any capacity for 15 business days, and required to requalify by exam in all capacities requiring qualification except Series 3. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Lucadamo misrepresented and omitted material facts to public customers and recommended investments in stock without having a reasonable basis to believe that his recommendations were suitable for the customers. In addition, Lucadamo effected purchase transactions in customer accounts without their prior authorization or consent. Furthermore, Lucadamo exercised discretion in a customer's account without written authorization.

Richard J. Manning (Registered Representative, Pittsburgh, Pennsylvania) 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, Manning consented to the described sanctions and to the entry of findings he recommended and effected, in the account of a public customer, transactions that were excessive in size and frequency in view of the financial circumstances and the character of the account, and without having reasonable grounds to believe that the transactions were suitable for the customer. The findings also stated that Manning engaged in acts and practices that were designed to conceal trading losses in the account of a public customer and deceive the customer about the status of his account. Furthermore, the NASD determined that Manning gave a check or caused a check to be given to a public customer and falsely represented to the customer that the check represented profits or earnings from trading in the customer's account. The NASD also found that Manning provided an altered statement he owned that overstated the value of the annuity.

Kevin J. McCarthy (Registered Principal, Bow, New Hampshire) was fined $5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that McCarthy forged a payroll check intended for a registered representative at his member firm and converted the funds for his own use and benefit.

Sheila Marlene Mehrens (Registered Representative, Tucson, Arizona) submitted an Offer of Settlement pursuant to which she was fined $65,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mehrens consented to the described sanctions and to the entry of findings that she obtained checks totaling $13,000 made payable to a public customer, endorsed the checks, deposited them to a bank account under her control, and converted the funds to her personal use.

Steven Tetsuo Miller (Registered Representative, Irvine, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $8,711 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he participated in outside business activities and failed to provide prompt written notice to his member firm of such activities.

Dennis Charles Murphy (Registered Representative, Boise, Idaho) 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, Murphy consented to the described sanctions and to the entry of findings that he participated in securities transactions and failed to provide written notice to his member firm describing in detail the proposed transaction, his proposed role therein, and whether he had received or may receive selling compensation in connection with the transaction. The findings also stated that Murphy failed to respond to NASD requests for information.

Ronald E. Overstreet (Registered Representative, Hattiesburg, Mississippi) was fined $75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Overstreet received from a public customer an $11,000 check as payment for insurance premiums, failed to submit these funds to his member firm on the customer's behalf, endorsed the check, and deposited the funds into his personal bank account, thereby converting the funds to his own use and benefit without the customer's knowledge or consent. Overstreet also failed to respond to NASD requests for information.

William R. Papandrea (Registered Representative, North Babylon, New York) was fined $10,000, barred from association with any NASD member in any capacity, and ordered to pay $600 in restitution to a customer. The sanctions were based on findings that Papandrea signed a customer's name on a $600 refund check, deposited the check into his account, and converted the funds for his personal use without the customer's knowledge or consent.

James G. Patton (Registered Representative, Duluth, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Patton consented to the described sanction and to the entry of findings that he recommended a series of equity transactions, including margin transactions in the investment account of a public customer that were not suitable based upon the customer's financial objectives and investment experience. The findings also stated that Patton entered a purchase order on margin for shares of stock in the account of a public customer when the margin agreement was not on file for the customer, and that he signed the agreement for the customer without the customer's consent.

George L. Pelaez (Registered Representative, Tampa, Florida) and **Robert J. Pelaez (Registered Principal, Tampa, Florida)** were fined $80,000, jointly and severally, and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that a member firm, acting through the Pelaezes, submitted materially inaccurate FOCUS Part I and IIA reports and prepared inaccurate general ledger, trial balance, and net capital computations. In addition, the firm, acting through the Pelaezes, conducted a securities business while failing to maintain its minimum required net capital. Furthermore, after being asked by the NASD to provide documentation substantiating the addition to their firm's capital as reflected on a FOCUS report, the Pelaezes submitted two forged documents.

Peter A. Provence (Registered Principal, Pasadena, California) submitted an Offer of Settlement pursuant to which he was fined $10,000 and suspended from association with any NASD member in any principal capacity for one year. Without admitting or denying the allegations, Provence consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative in a reasonable manner.

Randall Arthur Radunz (Registered Representative, Minneapolis, Minnesota) was barred from association with any NASD member in any capacity. The sanction was based on findings that Radunz engaged in a private securities transaction without prior written notice to and approval from his member firm.

James Alan Randall (Registered Representative, Bellevue, Nebraska) 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 60 days. Without admitting or denying the allegations, Randall consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers on forms without their knowledge or consent.

Daniel S. Regan (Registered Representative, Atlanta, Georgia) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Regan failed to respond to NASD requests for information.

Alan C. Robert (Registered Representative, Coconut Creek, Florida) was fined $26,000, barred from association with any NASD member in any capacity, and ordered to pay $1,200 in restitution to a member firm. The sanctions were based on findings that Robert obtained a blank check from his member firm, forged the signature of the branch manager, and converted the proceeds to his own use and benefit. Robert also

failed to respond to an NASD request for information.

Robert M. Samardich (Registered Representative, Missoula, Montana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $350,000, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations, Samardich consented to the described sanctions and to the entry of findings that he obtained possession of customer funds in excess of $70,000 intended for investment in certificates of deposit. The NASD determined that Samardich put the funds to his own use and not for the purpose intended by the customers involved.

Alan M. Santos-Buch (Registered Representative, South Norwalk, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Santos-Buch consented to the described sanctions and to the entry of findings that he signed and delivered to a public customer a memorandum that stated that the customer's account would be guaranteed against losses. The findings also stated that Santos-Buch stated to the same customer that they shared an investment relationship which allocated financial responsibility for certain changes in the value of the account to him under certain circumstances.

Mark Scott Savage (Registered Representative, Plymouth, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for 25 days. Without admitting or denying the allegations, Savage consented to the described sanctions and to the entry of findings that he executed securities transactions in the accounts of public customers without their knowledge or consent of the customers.

Jeffrey R. Streamer (Registered Representative, West Chester, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Streamer failed to respond to NASD requests for information.

James Patrick Suiter (Registered Representative, McCook, Nebraska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000, suspended from association with any NASD member in any capacity for two years, and required to pay $250,000 in restitution to investors. Without admitting or denying the allegations, Suiter consented to the described sanctions and to the entry of findings that he participated in private securities transactions without written notification to and approval and/or acknowledgment from his member firm.

Chi Ming Szeto (Registered Representative, Brooklyn, New York) 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, Szeto consented to the described sanctions and to the entry of findings that he effected securities transactions in the accounts of public customers without their prior knowledge or authorization. The NASD also found that Szeto caused the mailing addresses on the accounts of public customers to be changed to his own address or an address that he controlled without the customers' prior knowledge or authorization. The findings also stated that Szeto caused checks totaling $880 to be issued from the accounts of public customers and converted the proceeds to his own use.

David Terpoilli (Registered Representative, Norristown, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Terpoilli failed to respond to NASD requests for information.

Thomas L. Thomson, Jr. (Registered Representative, Coral Springs, Florida) was fined $58,750 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Thomson obtained from a public customer $7,750 intended as insurance policy premiums and converted said funds to his own use and benefit. Thomson also failed to respond to NASD requests for information.

Mack H. Uhl (Registered Representative, Grayland, Washington) submitted an Offer of Settlement pursuant to which he was fined $25,000, required to pay $10,000 in restitution to a customer, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Uhl consented to the described sanctions and to the entry of findings that he conducted a private securities transaction and failed to provide written notice to or obtain approval from his member firm.

Edward Veisman (Registered Representative, Brooklyn, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Veisman failed to respond to NASD

requests for information.

Veisman has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Josef B. Villanasco (Registered Representative, Annandale, Virginia) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Villanasco failed to respond to NASD requests for information.

Andrew Shih Wang (Registered Representative, Holmdel, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wang consented to the described sanction and to the entry of findings that, without the knowledge or consent of public customers, he requested loans totaling $10,512.03 from the customers' insurance policies, forged the customers' name on the checks, and deposited the checks into his personal bank account.

Paul Martens Winn (Registered Representative, Branson, Missouri) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Winn failed to respond to NASD requests for information.

Robin Eric Yessen (Registered Representative, Wellington, Kansas) was fined $40,000, barred from association with any NASD member in any capacity, and required to pay $208,750 in restitution. The sanctions were based on findings that, without the knowledge or consent of a public customer, Yessen misused customer funds totaling $208,750 for his personal use by withdrawing the funds from the customer's account and making the checks payable to himself rather than for the purposes intended by the customer. Yessen also failed to respond to NASD requests for information.

David J. Yorwerth (Registered Representative, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Yorwerth consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give prior written notice to his member firm describing, in detail, the proposed transactions, his role therein, and how he would be compensated for the transactions.

Individuals Fined

Peter Lloyd Anderson (Registered Representative, Shoreview, Minnesota) submitted an Offer of Settlement pursuant to which he was fined $10,000. Without admitting or denying the allegations, Anderson consented to the described sanction and to the entry of findings that he engaged in improper outside business activity in that he sold and received compensation for insurance products offered by non-approved insurance companies without giving prompt written notice to his member firm.

Gary Lester Eilefson (Registered Representative, New Brighton, Minnesota) submitted an Offer of Settlement pursuant to which he was fined $10,000. Without admitting or denying the allegations, Eilefson consented to the described sanction and to the entry of findings that he engaged in improper outside business activity without giving prompt written notice to his member firm.

Craig S. Gioia (Registered Representative, Highland, New York) was fined $10,000. The sanction was based on findings that Gioia made an improper guarantee of a customer account against loss.

Herbert Morton Paul (Registered Representative, North Woodmere, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $14,531.25. Without admitting or denying the allegations, Paul consented to the described sanctions and to the entry of findings that he purchased shares of stock that traded at a premium in the immediate aftermarket, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation. The findings also stated that Paul failed to notify his current member firm that he had opened an account with a former member firm and failed to notify the member firm he purchased the securities through of his association with his member firm. Furthermore, the NASD found that Paul purchased stock without giving prior written notice to his member firm.

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Euro-Atlantic Securities, Inc., Boca Raton, Florida (June 30, 1997)

Matrix Securities Corporation Inc., Garden City, New York (June 23, 1997)

The Richmond Group, Inc., Cololeyville, Texas (June 30, 1997)

State Capital Markets Corp., New York, New York (June 30, 1997)

Suspensions Lifted

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

Maclaren Securities, Inc., Marblehead, Massachusetts (June 18, 1997)

RXR Securities, Inc., Stamford, Connecticut (July 9, 1997)

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

DuSean Berkich, Irvine, California

Christopher M. Finan, McLean, Virginia

Reginald K. Nelson, Romulus, Michigan

Russell D. Perlmutter, Flushing, New York

Rich E. Pierson, Houston, Texas

John J. Pulgisi, New York, New York

William G. Sellens, Greeley, Colorado

Carl W. Spoerer, II, Mahomet, Illinois

Mark Wallace, Ballwin, Missouri

NASD Regulation Bars Registered Representatives Suspected Of Using An Imposter To Take Qualification Examination

NASD Regulation has barred, fined, and censured the following individuals suspected of paying an impostor to take a qualification examination on their behalf. More than $1.8 million in fines and forfeited commissions were assessed.

Each of the barred individuals was required to forfeit all commissions earned, a total of more than $1.2 million, while they functioned in a registered capacity. Individual fines included $25,000 for cheating on the examination and $25,000 if they failed to respond to NASD Regulation requests for information, for a total of $650,000.

Upon identification, many individuals were ordered to appear immediately for on-the-record testimony to answer questions regarding the qualification examination at issue.

Frank Aquafredda, New York, New York

William Battista, New York, New York

Glenn Bennett, New York, New York

Christopher Carratura, New York, New York

James Contacessa, Armonk, New York

Kevin Coughlin, New York, New York

Joseph DeMarco, New York, New York

Christopher Granese, New York, New York

Rondo Hosang, New York, New York

Darian E. Kelty, Ft. Lauderdale, Florida

Joseph Lanni, New York, New York

Victor Lastorino, New York, New York

Peter LaTourette, New York, New York

Tremain McDowell, New York, New York

Vladen Mezhibovsky, New York, New York

Sevgul Paso, New York, New York

Michael Poliak, New York, New York

Norm Rabinovich, New York, New York

Igor Shekhtman, New York, New York

FOR YOUR INFORMATION

Year 2000 Program Addresses Challenges Faced By Automated Systems

Members Be Advised: The year 2000 will be upon us in less than two and a half years, and, to be ready, all National Association of Securities Dealers, Inc. (NASD®) member firms must take action now to ensure that their automated systems will continue to operate successfully. The NASD has instituted a Year 2000 (Y2K) Program to address the unique challenges this coming century poses for the Association's date-sensitive systems. The NASD urges all of its members to conduct a comprehensive Y2K project as well. All introducing and clearing firms have a responsibility to analyze the readiness of their automated regulatory and compliance systems and make the changes needed for continued successful operation. Computer failures related to Y2K problems generally will be considered neither a defense to violations of a firm's regulatory or compliance responsibilities nor a mitigation of sanctions for such violations. To read more about the NASD's Y2K Program and its various phases, please refer to *Notice To Members 97-16*, and visit the Year 2000 Web page at NASD's Web Site (*www.nasd.com*). Remember, the deadline is January 1, 2000, and there are no extensions!

Web Site Adds Treasury Department Connection

Investors and regulators can now use the NASD Regulation, Inc. (NASD Regulation℠) Web Site (*www.nasdr.com*) to consult the Treasury Department's Office of Foreign Assets Control's (OFAC) list of individuals and companies subject to economic or trade sanction. Securities firms are prohibited from dealing in securities issued from target countries and governments and must "block" or "freeze" accounts, assets, and obligations of a large number of blocked entities and individuals from around the world.

Through its link to OFAC Web Site, (*http://www.ustreas.gov/treasury/services/fac/*), NASD Regulation is able to provide members and other interested parties with access to the information they need to help prevent money laundering and other illegal activities.

New SEC Options Haircuts Take Effect September 1, 1997

The Securities and Exchange Commission (SEC) recently adopted changes to the treatment of options and options-related inventory positions in SEC Rule 15c3-1, the Net Capital Rule. Effective September 1, 1997, broker/dealers may no longer rely on the strategy-based haircuts in Section (c)(2)(x) of the Rule or haircuts pursuant to an SEC No-Action Letter to the Securities Industry Association (SIA) dated October 23, 1985. In addition, the haircuts contained in Appendix A are modified significantly.

Instead, broker/dealers now may use approved theoretical options pricing models to determine haircuts on listed options and related positions for futures, options on futures, foreign currency, and forward contracts. For broker/dealers, especially those doing a limited options business, that do not want to use pricing models, the SEC included an "Alternative Strategy-Based Methodology" in the Rule.

Other amendments include:

• A change in the time frame, from the end of the business day to noon of the next day, within which broker/dealers must take net capital charges on the options specialist's trading positions that they carry.

• The elimination of subparagraph (a)(7) regarding requirements for

self-clearing options specialists, which are no longer applicable since the haircuts in Section (c)(2)(x) have been eliminated.

Questions concerning these changes may be directed to Samuel Luque, Jr., Associate Director, Compliance, NASD Regulation, at (202) 728-8472, or Susan DeMando, District Coordinator, Compliance, NASD Regulation, at (202) 728-8411.

SPECIAL NASD NOTICE TO MEMBERS 97-55

New Membership Application Rules, New Code Of Procedure, And Other New Disciplinary Rules

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 April 18, 1997, the National Association of Securities Dealers, Inc. (NASD®) proposed to the Securities and Exchange Commission (SEC or Commission) SR-NASD-97-28, a rule filing containing proposed rules relating to membership application procedures; disciplinary proceedings; and procedures used to determine eligibility questions, impose limitations on the operations of members, impose summary suspensions, non-summary suspensions, cancellations, or bars, and adjudicate denials of access (Rules).[1] The Commission approved the Rules on August 7, 1997.[2]

Questions

Questions should be directed to:

Membership Application Procedures

Dan Sibears, Vice President, Department of Member Regulation, (202) 728-6911

Mary Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, (202) 728-8252

Rule 8000 Series

John Pinto, Executive Vice President, Department of Member Regulation, (202) 728-8233

Mary Dunbar
(202) 728-8252

Code Of Procedure Disciplinary Proceedings

Katherine Malfa, Chief Counsel, Department of Enforcement, (202) 974-2853

Sharon Zackula, Assistant General Counsel, Office of General Counsel, NASD Regulation, (202) 728-8985

Procedures In Rule 9400 Series-Rule 9500 Series

Mary Dunbar
(202) 728-8252

Case Authorization Process In Code Of Procedure

William R. Schief, Vice President, Department of Enforcement, (202) 974-2858

Louise Corso, Senior Attorney, Department of Enforcement, (202) 974-2835

Membership Application Procedures

The NASD is amending the membership application procedures so that all initial membership application decisions are made by the Department of Member Regulation rather than a District Committee. In addition, the new Rules set forth more detailed information on the standards for admission and contain specific guidelines for determining when an admission decision must be issued. The new Rules also address applications by a current member to obtain approval of a change in ownership, control, or operations, or a change in a business restriction agreement. The new Rules are set forth in the new Rule 1010 Series.

Rules Regarding Investigations And Sanctions

The NASD is making changes to the procedures used in NASD investigations and examinations to clarify the NASD's authority to require members and their associated persons to testify under oath or affirmation and provide other information. The NASD is also revising a procedure for suspending members or their associated persons who fail to provide the NASD with requested infor-

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mation. Such changes are set forth in the amended Rule 8000 Series.

Disciplinary Procedures In Code Of Procedure

The NASD is amending the procedures applicable to disciplinary proceedings described in the Code of Procedure to provide for, among other things:

• Staff-authorized complaints;

• Staff Hearing Officers presiding over disciplinary proceedings;

• New Rules relating to discovery, *ex parte* prohibitions and motions practice;

• Hearing Panels chaired by staff Hearing Officers;

• "Trial-level" decisions issued by Hearing Panels, rather than by District Committees; and

• Appeals of disciplinary decisions by NASD staff as well as by Respondents.

The new Rules setting forth these changes to the Code of Procedure are the new Rule 9100 Series, the new Rule 9200 Series, and the new Rule 9300 Series. The new Rule 9100 Series sets forth Rules of general applicability not only to disciplinary proceedings described in the new Rule 9200 Series and the new Rule 9300 Series, but also to the procedures set forth in the new Rule 9400 Series and the new Rule 9500 Series described below.

Procedures Regarding Eligibility, Limitations On Operations, Summary And Non-Summary Suspensions, Cancellations, Bars, And Denials Of Access

The NASD is amending the procedures relating to eligibility, limitations on operations, summary and non-summary suspensions, cancellations, bars, and denials of access to provide greater detail regarding the procedural rights of a participant in a proceeding and to conform such proceedings to the current corporate structure. These amended Rules are set forth in the new Rule 9400 Series and the new Rule 9500 Series.

The new Rules set forth sweeping changes in several areas of concern to members, their associated persons, and the investing public. For a complete understanding of the new Rules, the NASD urges members and their associated persons to read the Rules and the description of such Rules in the SEC releases in the *Federal Register* cited in note 1 and note 2.

Effectiveness Of The New Procedures

The Commission approved SR-NASD-97-28 on August 7, 1997, and made the new Rules effective upon approval, except as indicated below.

Membership Admission Rules

The new Rule 1010 Series, the membership admission Rules, will take effect on August 7, 1997. Thus, if a membership application is received by the NASD before August 7, 1997, the application will be considered under the old procedures. However, if a membership application is received by the NASD on or after August 7, 1997, the new Rule 1010 Series will apply to the application process.

Rules Regarding Investigations And Sanctions

The amendments to the Rule 8000 Series will take effect on August 7, 1997.

The Code Of Procedure

The Code of Procedure, as amended (the new Rule 9100 Series through the new Rule 9300 Series), will apply to disciplinary proceedings as follows.

a) Complaints, Offers Of Settlement

If a complaint is authorized prior to August 7, 1997, a Respondent may not seek to obtain reconsideration of whether the complaint should have been authorized under the new Code. Otherwise, the application of the new Code to a complaint and the disciplinary proceeding following is established by determining two facts: when the complaint is authorized and when NASD staff first attempted service of the complaint.

Old Code

In a disciplinary proceeding involving only one Respondent named in the complaint, the Respondent is subject to the old Code, including those provisions relating to offers of settlement, if the complaint is authorized and the first attempted service occurs prior to August 7, 1997.[3] First attempted service means the complaint is mailed by NASD staff or delivered by NASD staff to a courier for transmission by the courier. In a multi-Respondent disciplinary proceeding, all of the Respondents named in the complaint will be subject to the old Code, including those provisions relating to offers of settlement, if the complaint is authorized and, as to at least one Respondent, the first attempted service occurs prior to August 7, 1997.[4]

New Code

In a disciplinary proceeding involving only one named Respondent, the Respondent is subject to the new Code if the complaint is authorized before August 7, 1997, but the first attempted service occurs on or after

August 7, 1997. In a disciplinary proceeding in which multiple Respondents are named in the complaint, all Respondents are subject to the new Code if the complaint is authorized before August 7, 1997, but NASD staff does not make the first attempted service of the complaint as to any of the named Respondents until on or after August 7, 1997. Finally, in any case in which the complaint is authorized on or after August 7, 1997, the Respondent will be subject to the provisions of the new Code.

b) AWCs, MRVs

The application of the new Code to a letter of acceptance, waiver, and consent (AWC) or a minor rule violation plan letter (MRV) is based on when a member or an associated person executes an AWC or a MRV. Thus, if a member or an associated person executes an AWC or a MRV before August 7, 1997, the AWC or MRV will be subject to review and acceptance under the old Code. However, if a member or an associated person is engaged in negotiations about the terms of an AWC or MRV and the AWC or MRV is not executed until August 7, 1997, or later, it will be subject to review and acceptance under the new Code.

c) Appeals, Reviews

The Rule 9300 Series of the new Code will apply to any appeal, call for review, or review of a decision rendered under new Rule 9268 and new Rule 9269 if the decision is: (a) served on a Respondent on or after August 7, 1997, *and* (b) appealed, called for review, or reviewed. By doing so, all of the new appellate and review procedural enhancements, with one exception, will apply to a completed "trial-level" proceeding that is appealed, subject to a call for review, or reviewed on or after the effective date of the new Code. The one exception is the right of the Department of Enforcement to appeal or cross-appeal a case, which will not apply. This provision in the new Rule 9300 Series will not apply to any disciplinary proceeding unless the disciplinary proceeding is based upon a complaint authorized on or after August 7, 1997.

d) A 14-Calendar Day "Opt-In" Period

In SR-NASD-97-28, the NASD proposed that in certain cases a Respondent to a disciplinary proceeding that would be administered under the old Code be allowed to opt in to the new Code. *62 F. R. 25229-25230*. The NASD continues to believe that it is appropriate and desirable to have a period during which a Respondent subject to the old Code may opt to have the proceeding administered under the new Code, even though the Commission made the new Rules effective upon approval. Thus, a Respondent who is named in a complaint that is authorized prior to August 7, 1997, may opt to have the disciplinary proceeding go forward under the new Code if the first attempted service of the complaint upon the Respondent occurred not earlier than 14 calendar days before August 7, 1997, *i.e.*, July 24, 1997. A Respondent must notify NASD staff in writing of its request to have the disciplinary proceeding administered under the new Code prior to or on the date the Respondent's answer is due. As noted in a previous submission to the Commission, the NASD believes that in a disciplinary proceeding involving more than one Respondent, all Respondents must so opt in order for the new Code to apply. NASD staff shall specifically notify a Respondent who has the option to opt in of the existence of this right and the limitations on this right.

Procedures Regarding Eligibility, Limitations On Operations, Summary And Non-Summary Suspensions, Cancellations, Bars, And Denials Of Access

The new Rule 9400 Series through the new Rule 9500 Series will take effect on August 7, 1997. If a proceeding is initiated before August 7, 1997, the proceeding will be administered under the old provisions relating to the proceeding. If a proceeding is initiated on or after August 7, 1997, the proceeding will be administered under the new Rules.

The Case Authorization Process

Investigations

Investigations under the new Code will be handled in essentially the same manner as such matters were performed previously. Previously, staff of the Departments of Member Regulation and Enforcement investigated matters arising in NASD's District Offices. These matters resulted from a variety of sources, including routine or cause examinations of member firms, review of customer complaints, registered representatives' terminations for cause filed on Form U-5, inquiries from the public, or referrals from regulators. The staff of the Departments of Member Regulation and Enforcement will continue to investigate such matters and obtain the evidence to support allegations of violations of the NASD rules, the rules of the Municipal Securities Rulemaking Board (MSRB), or the federal securities laws. These matters will also be reviewed by an attorney in the District Office who is a member of the Department of Enforcement. As before, the attorney will work with the Member Regulation staff to ensure that there is sufficient evidence to support proposed charges.

Staff of the Department of Enforcement in Washington, D.C. and the

Department of Market Regulation will continue to investigate matters that arise from a variety of sources. Staff in each of these departments also will work with attorneys to ensure that there is sufficient evidence to support allegations of violation.

At the conclusion of an investigation, the staff will determine whether formal action is appropriate. In certain cases, the staff may determine that formal disciplinary action is not warranted, but informal cautionary action is appropriate. In such instances, the staff may issue a Letter of Caution and may also require individuals and representatives of a member firm to attend a meeting, which the staff has referred to as a "Compliance Conference." These informal actions will not be subject to review by the Case Authorization Unit (CAU) described below.

When the staff notifies a Respondent that a recommendation of formal disciplinary charges is being considered, the potential Respondent generally will have an opportunity to either settle the matter through the appropriate pre-complaint procedure, or, if the Respondent chooses, submit a written statement explaining why such charges should not be brought. These statements are commonly referred to as "Wells Submissions,"[5] and will be provided to the CAU, and, in appropriate cases, the Office of Disciplinary Policy (ODP), along with the staff's recommendation to file a disciplinary action.[6] Potential Respondents will have one opportunity to submit a "Wells-type" statement and all appropriate arguments should be addressed at that time.

Case Authorization

Beginning August 7, 1997, the effective date of the new Code, all District cases will be authorized by the new CAU, which has been formed in the Department of Enforcement. After the staff has completed its investigation and the matter has been reviewed at the District level by both the attorney responsible for the case and the District Director, the recommendation to bring a formal disciplinary action will be forwarded to the CAU. This unit will review the matter, obtain any additional information necessary to evaluate its basis, and consult with other offices, if appropriate. The Department of Enforcement has developed a computer system to systematically track the progress of matters being reviewed by the CAU.

The newly formed ODP will assist in the development of overall disciplinary policy for the organization. On behalf of the Office of the President of NASD Regulation, Inc. (NASD Regulation[SM]) ODP will review and approve all recommendations by District Offices to file significant or complex formal actions raising important regulatory or policy issues. ODP review will be concurrent, and in coordination, with CAU review. The ODP also will provide an objective review and approval of cases that are investigated by the Department of Enforcement in Washington D.C., as well as those that relate to "quality of market" issues. The review and approval of these cases will be performed in a manner similar to that described for the District Office cases, except that ODP will serve as the primary reviewer. The Department of Enforcement, however, will be the authorizing entity within NASD Regulation.

After review and approval by the CAU, and, in appropriate cases, ODP, the Department of Enforcement will authorize the matter. After a case has been authorized, the appropriate office will issue the complaint and file the complaint with the Office of Hearing Officers. All offers of settlement supported by the staff will be reviewed in the same manner as described above for filing cases. AWCs and MRVs may be negotiated with the staff prior to, and subject to, approval by the Department of Enforcement, and, in appropriate cases, ODP, and acceptance by the National Business Conduct Committee (NBCC).

This centralized review of disciplinary proceedings is intended to provide an objective review of the case by those not directly involved in the investigation and ensure a level of consistency among the many disciplinary actions that are filed each year.

This is a brief summary of the new Rules approved by the Commission. Members, associated persons, and their counsel should refer to the specific Rules for a complete understanding of the Rules and to assure compliance with their terms. The full text of the approved Rules is attached to this *Notice* as it is published on the NASD Regulation Web Site, *www.nasdr.com*, "Members Check Here," and then under the caption, "Notices to Members." The full text of the new Rules is also available from NASD MediaSource, at (301) 590-6142.

Endnotes

[1] SR-NASD-97-28, filed April 18, 1997, Rel. No. 34-38545 (April 24, 1997), 62 F.R. 25226 (May 8, 1997); SR-NASD-97-28, Amendment No. 1, filed April 23, 1997; SR-NASD-97-28, Amendment No. 2, filed July 10, 1997, Rel. No. 34-38831 (July 11, 1997), 62 F.R. 38156 (July 16, 1997); SR-NASD-97-28, Amendment No. 3, filed July 11, 1997; SR-NASD-97-28, Amendment No. 4, filed July 21, 1997; and SR-NASD-97-28, Amendment No. 5, filed August 4, 1997. In Amendment No. 2, the NASD also proposed Rules relating to requests for exemptive relief, which are the Rule 9600 Series. The Rule 9600 Series will be addressed in a separate *Notice to Members*. The amendments that do not contain a *Federal Register* citation

were not published. Terms that are defined in the rule filing are capitalized in this *Notice*.

[2] Rel. No. 34-38908 (August 7, 1997). The Commission also approved proposed amendments to the Rule 8000 Series, Rule 0120, and Rule 0121, and proposed Rule IM–2210–4. The NASD withdrew the part of SR-NASD-97-28 relating to the restated certificates of incorporation of NASD, NASD Regulation and Nasdaq, Inc. (Nasdaq®), the By-Laws of NASD, NASD Regulation, and Nasdaq, and the Plan of Allocation and Delegation of Functions By NASD to Subsidiaries (Delegation Plan) (collectively, the "Seven Corporate Documents"). The Seven Corporate Documents, as amended to reflect the corporate restructuring recently approved by the NASD Board of Governors, will be resubmitted in a separate rule filing.

[3] The appeal or review of such disciplinary proceeding may be subject to the new Code if the disciplinary proceeding is subsequently appealed to the NBCC or the NBCC subjects the disciplinary proceeding to a review, as described in greater detail below.

[4] *See* note 3, *supra*.

[5] This term has been used at the SEC following the issuance of the release *Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations*, Rel. No. 33-5310 (September 27, 1972). This release addressed recommendations of the Advisory Committee on Enforcement Policies, which was known as the "Wells Committee." The recommendations included the discretionary practice of permitting persons to present a statement to the Commission. *See* William R. McLucas, *et al*., *An Overview of Various Procedural Considerations Associated with the Securities and Exchange Commission's Investigative Process*, 45 Bus. Law. 625, 689 (1990).

[6] In most cases, potential Respondents will be given the opportunity to make such a submission; however, there may be instances where the staff determines it inappropriate to do so. This process is discretionary with the staff and is not a right or policy. The failure to allow for the submission of a "Wells-type" statement has no effect on the staff's ability or authority to file a disciplinary action against a member or an associated person.

NASD NOTICE TO MEMBERS 97-56

Intermarket Surveillance Group Issues New Automated Reporting Requirements

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ■ Options
- ☐ Registered Representatives
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ■ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

New uniform provisions regarding the automated reporting requirement for **Positions Hedging Stock Options** will become effective on December 31, 1997.

New uniform provisions regarding the automated reporting requirement for **Stock Index and Currency Warrants** will become effective on December 31, 1997.

Effective October 15, 1997, all members will be required to file **Large Option Position Reports** (LOPRs) for FLEX options electronically with the Securities Industry Automation Corporation (SIAC)[1].

Effective October 15, 1997, all members must provide a list of all groups of options accounts that act in-concert in a standard electronic format. Further, after October 15, all new or updated in-concert lists must be provided in the same electronic format.

All members must successfully test the first three items with SIAC in order to be in compliance by the effective dates. The above new provisions will become effective at the options exchanges, the National Association of Securities Dealers, Inc. (NASD®), and those other exchanges which are approved to trade currency and stock index warrants.

This *Notice* describing these new provisions and requirements was prepared by the self-regulatory organizations (SROs)[2] acting jointly as members of the Intermarket Surveillance Group (ISG):

American Stock Exchange, Inc. (AMEX)

Boston Stock Exchange, Inc. (BSE)

Chicago Board Options Exchange, Inc. (CBOE)

Chicago Stock Exchange, Inc. (CHX)

Cincinnati Stock Exchange, Inc. (CSE)

NASD Regulation, Inc.

New York Stock Exchange, Inc. (NYSE)

Pacific Exchange, Stock & Options, Inc. (PCX)

Philadelphia Stock Exchange, Inc. (PHLX)

I. Automated Reporting Requirement For Positions Hedging Stock Options

Since 1988, member firms have been approved for an automatic limited exemption from equity options position limits when utilizing the four most commonly used hedged positions (long stock and short call or long put, and short stock and long call or short put). When utilizing these exemptions, the exchanges have required that members report all hedged options positions manually on a special "Hedge Exemption" reporting form which indicates account information, equity options positions, and securities used to hedge the position.

Effective December 31, 1997, all Hedge Exemption Reports for Options Clearing Corporation (OCC) issued options will be required to be submitted in machine readable form only.[3] For those firms providing the report through their own EDP area or through an outside service bureau, see Attachment 1 for the layout of the new hedged instrument position record reporting as well as the current specifications for reporting large options positions. For those firms using SIAC's PC-based software, upgraded software will be provided to you.

When reporting hedged positions, firms will be required to report the entire customer account options position (all series) and hedge instrument position. Increases or reductions of positions in previously reported series; additions of new series; and series that have been closed out through purchase, sale, exercise, assignment, bona fide adjustment, or hedge instrument position changes, must all be reported. Please enter a zero to indicate when a position in a series has been closed. It is not necessary to report changes due to expired series. It is important to remember that all accounts under common control by the same individual or entity must be aggregated for the purpose of calculating the reporting threshold. For firm proprietary accounts, only the firm's hedge instrument position need be reported.

Firms that introduce options transactions to other firms on a fully disclosed basis need not report the position in such accounts provided that the carrying firm files the required information. Non-clearing firms introducing options business to clearing firms on an omnibus basis are required to report individual positions for both customer and proprietary accounts directly to SIAC.

The Large Options Positions Report (LOPR)[4] should be transmitted to SIAC by no later than 9:00 p.m., Eastern Time, on trade date plus one.

Questions concerning hedge exemption reporting requirements can be directed to James Alaimo, American Stock Exchange, at (212) 306-1540, Patricia Cerny, Chicago Board Options Exchange, at (312) 786-7722, or Joseph Alotto, NASD Regulation, at (301) 590-6845.

II. Stock Index And Currency Warrants Reporting

The Securities and Exchange Commission (SEC) approved revisions to rules[5] concerning transactions in stock index and currency warrants. One provision requires members to report currency and index warrant positions held by an account acting alone or in-concert with other accounts, when the position totals 100,000 warrants or more covering the same underlying currency or index. This revision applies only to currency or stock index warrants listed after August 28, 1995.

To facilitate the automated reporting of these positions, enhancements have been made to the LOPR. Attachment 2 displays the record layouts for this enhancement.[6] **Member firms that carry large warrant positions are required to begin reporting on an automated basis by October 15, 1997.**

For purposes of calculating the 100,000-warrant reporting threshold, long positions in call warrants will be aggregated with short positions in put warrants and short positions in call warrants will be aggregated with long positions in put warrants. This aggregation of positions applies only to warrants covering the same underlying currency or index.

Members with positions which currently meet the warrants position reporting threshold should contact the appropriate individual listed below for guidance in reporting these positions:

Oree Richburg, American Stock Exchange, Inc., at (212) 306-1547

Patricia Cerny, Chicago Board Options Exchange, Inc., at (312) 786-7722

Joseph Alotto, NASD Regulation, Inc., at (301) 590-6845

Hope Duffy, New York Stock Exchange, Inc., at (212) 656-6197

David DiCenso, Pacific Exchange, Stock & Options, Inc., at (213) 977-4541

Richard McDonald, Philadelphia Stock Exchange, Inc., at (215) 496-5353

III. FLEX Options

Because of the differences in the FLEX option symbol format, member firms have been permitted to file large FLEX options positions either manually with an interested SRO, or electronically with SIAC. **Effective October 15, 1997, all members will be required to file LOPRs for FLEX options electronically with SIAC.**[7] Manual reporting will no longer be accepted.

Questions concerning FLEX options reporting requirements can be directed to James Alaimo, American Stock Exchange, at (212) 306-1540, or Patricia Cerny, Chicago Board Options Exchange, at (312) 786-7722.

IV. Aggregation Of Accounts Acting In-Concert

Member firms carrying customer accounts that must be aggregated for position limit and LOPR purposes currently file a listing of in-concert accounts in a manual format. As a reminder, this reporting requirement only applies to customer accounts that trade options and whose aggregate position equals 200 or more contracts. This procedure has been changed so that by no later than October 15, 1997, all members must provide a list of all groups of accounts that act in-concert on a 3.5" IBM compatible diskette in the format outlined in Attachment 3. Fur-

ther, all new or updated in-concert lists must be provided in the above-noted manner. Diskettes must be filed with the American Stock Exchange, Market Surveillance Department, 86 Trinity Place, New York, New York 10006. The AMEX will process this information on behalf of all market centers.

Questions concerning account aggregation reporting should be directed to Oree Richburg, American Stock Exchange, at (212) 306-1547.

V. Testing

Members wishing to utilize the new hedge exemption or currency/index warrant reporting methods prior to the deadline can do so by updating their software and conducting a successful test of their computerized data input with SIAC. Firms wishing to obtain SIAC's PC-based software or to upgrade their old PC-based software can contact the SIAC PC Service Center, at (212) 383-2062. Firms wishing to commence hedge exemption reporting directly to SIAC, utilizing their own software, should contact Laura Clinton of SIAC's Network Support Department, at (212) 383-2890 for testing information.

Note: All firms must successfully test with SIAC before utilizing the new reporting methods. Further, firms that do not utilize hedge exemptions or trade currency or stock index warrants are not required to upgrade their software.

Endnotes

[1] NASD Regulation[SM] has special reporting requirements for listed and unlisted options. Please refer to *NASD Notice to Members 94-46* for details.

[2] These new provisions and requirements were prepared by the American Stock Exchange, Chicago Board Options Exchange, NASD Regulation, New York Stock Exchange, Pacific Stock Exchange and the Philadelphia Stock Exchange.

[3] NASD Regulation has special reporting requirements for listed and unlisted options. Please refer to *NASD Notice to Members 94-46* for details.

[4] This procedure is implemented pursuant to the following rules: AMEX - 906; CBOE - 4.13; NASD - Conduct Rule 2860-1(5); NYSE - 706; PCX - 8.17; PHLX - 1003.

[5] This procedure is implemented pursuant to the following rules: AMEX - 1110; CBOE - 30.35; NASD Conduct Rules 2852; NYSE - 414; PCX - 8.17; PHLX - 1003.

[6] NASD Regulation has special reporting requirements for listed and unlisted currency and stock index warrants.

[7] *See* note 2 above.

```
*****************************************************************
*                                                               *
*    LAYOUT OF DATATRAK HEADER RECORD FOR LARGE POSITION INPUT  *
*                                                               *
*    THIS RECORD MUST BE THE FIRST RECORD OF THE INPUT FILE,    *
*    IF THE INPUT IS SUBMITTED IN MACHINE READABLE FORM         *
*    (TAPE OR TRANSMISSION).                                    *
*                                                               *
*****************************************************************

 01  DATATRAK-HEADER.
     05  FILLER                    PIC X(3)  VALUE 'HDR'.
     05  FILLER                    PIC X(2)  VALUE '.S'.
     05  DTRK-SYSID-INPUT-CODE     PIC 9(5)  VALUE '28044'.
     05  FILLER                    PIC X(2)  VALUE '.E'.
     05  FILLER                    PIC 9(2)  VALUE '00'.
     05  FILLER                    PIC X(2)  VALUE '.C'.
     05  DTRK-ORIGINATOR-NBR       PIC 9(4).
***          IDENTIFIES PARTY SUBMITTING DATA. WILL BE THE
***          FOUR DIGIT CLEARING NUMBER FOR MEMBER FIRMS
***          SUBMITTING ON THEIR OWN BEHALF. SERVICE BUREAUS
***          AND OTHERS WILL BE ASSIGNED ORIGINATOR CODES BY SIAC.
     05  FILLER                    PIC X(2)  VALUE '.S'.
     05  DTRK-SUB-ORIGINATOR-NBR   PIC 9(4).
***          IDENTIFIES PARTY FOR WHOM DATA IS SUBMITTED.
***          WILL BE THE FOUR-DIGIT CLEARING NUMBER IF ALL
***          DATA IS FOR THE SAME MEMBER FIRM. SPECIAL CODES
***          WILL BE ASSIGNED IF SUBMISSION IS FOR MULTIPLE
***          FIRMS OR FOR OTHER TYPES OF USERS.
     05  FILLER                    PIC X(1)  VALUE SPACES.
     05  DTRK-DATE-SUBMITTED       PIC 9(6).
***          CONTAINS THE DATE THE DATA WAS SUBMITTED   MMDDYY
     05  FILLER                    PIC X(1)  VALUE SPACES
     05  DTRK-DESCRIPTION          PIC X(25)
                                   VALUE 'ISG OPT. LARGE POS.'.
     05  FILLER                    PIC X(21) VALUE SPACES.
```

```
*****************************************************************
*                                                               *
*    LAYOUT OF LARGE-OPTION-POSITIONS UPDATE RECORDS.           *
*                                                               *
*    RECORD LENGTH = 80.                                        *
*                                                               *
*****************************************************************
*                                                               *
*    THERE ARE TWO RECORD FORMATS:                              *
*      1. NAME AND ADDRESS RECORD FORMAT                        *
*      2. DETAIL RECORD FORMAT                                  *
*                                                               *
*    THE FIRST 34 BYTES ARE THE SAME IN BOTH FORMATS AND        *
*    BYTE 35 SERVES AS THE RECORD TYPE. IT IS 1, 2, 3, 4 OR 5   *
*    FOR NAME AND ADDRESS RECORDS AND IS 6 FOR DETAIL RECORDS.  *
*                                                               *
*    THE FIRST 5 RECORDS FOR EACH ACCOUNT/TRADE-DATE ARE        *
*    NAME-AND-ADDRESS RECORDS, WITH RECORD TYPE OF 1, 2, 3, 4   *
*    AND 5 AND CONTAINING NAME-AND-ADDRESS LINES 1 THRU 5       *
*    RESPECTIVELY. THEY ARE FOLLOWED BY MULTIPLE DETAIL RECORDS *
*    WITH THE SAME KEY PREFIX (BYTES 1 THRU 34) AND WITH A      *
*    RECORD TYPE OF 6.                                          *
*                                                               *
*****************************************************************

 01  UPDATE-REC.
     05  UPDATE-INPUT-ID              PIC X(1).
***              ALWAYS = 'L'
     05  UPDATE-TRADE-DATE-MMDDYY.
***              DATE FOR WHICH THE DATA IS REPORTED
         10  UPDATE-TRADE-DATE-MM     PIC 9(2).
         10  UPDATE-TRADE-DATE-DD     PIC 9(2).
         10  UPDATE-TRADE-DATE-YY     PIC 9(2).
     05  UPDATE-FIRM                  PIC 9(4).
***              REPORTING FIRM NUMBER
     05  UPDATE-BRANCH                PIC X(4).
***              FIRM BRANCH
     05  UPDATE-ACCT                  PIC X(9).
***              ACCOUNT NUMBER
     05  UPDATE-SS-NUMBER-OR-TAX-ID PIC 9(9).
***              SOCIAL SECURITY NUMBER OR TAX ID
     05  UPDATE-S-T-F-IND             PIC X(1).
***             S = THE PREVIOUS FIELD CONTAINS A SOCIAL SECURITY #
***             T = THE PREVIOUS FIELD CONTAINS A TAX ID
***             F = THIS CUSTOMER IS FORIEGN (NO SOC. SEC. OR TAX ID)
     05  UPDATE-REC-TYPE              PIC X(1).
***              = 1,2,3,4 OR 5   FOR NAME AND ADDRESS RECORDS
***              = 6 FOR ALL DETAIL RECORDS
     05  UPDATE-DETAIL.
***                  ----- LAYOUT FOR DETAIL RECORDS -----
         10  UPDATE-OPTION-SYMBOL     PIC X(6).
***                  OPTION SYMBOL (THIS IS NOT NECESSARILY THE
***                  SAME AS UNDERLYING STOCK SYMBOL)
         10  UPDATE-OPTION-MONTH-ALPHA PIC X(3).
***                  EXPIRATION MONTH - JAN,FEB,MAR,APR,MAY,JUN
***                  JUL,AUG,SEP,OCT,NOV,DEC.
         10  UPDATE-OPTION-YEAR       PIC 9(2).
***                  EXPIRATION YEAR
         10  UPDATE-P-C-IND           PIC X(1).
***                  P = PUT
***                  C = CALL
         10  UPDATE-STRIKE-PRICE      PIC 9(6)V9(6).
***                  OPTION STRIKE PRICE (WITH DECIMAL FRACTION).
***                    E.G. FOR 112 1/2   =  000112 500000
***                         FOR 104 1/16  =  000104 062500
***                         FOR 104 3/16  =  000104 187500
         10  UPDATE-STRIKE-PRICE-W-F
                    REDEFINES UPDATE-STRIKE-PRICE.
             15  UPDATE-STRIKE-PRICE-WHOLE  PIC 9(6).
             15  UPDATE-STRIKE-PRICE-FRAC   PIC 9(6).
         10  UPDATE-LONG-QTY              PIC 9(7).
***                  NUMBER OF LONG CONTRACTS
         10  UPDATE-SHORT-COVERED-QTY     PIC 9(7).
***                  NUMBER OF SHORT COVERED CONTRACTS
         10  UPDATE-SHORT-UNCOVERED-QTY   PIC 9(7).
***                  NUMBER OF SHORT UNCOVERED CONTRACTS
     05  UPDATE-NA REDEFINES UPDATE-DETAIL.
***                  ----- LAYOUT FOR NAME-AND-ADDRESS RECORDS -----
         10  UPDATE-NAME-AND-ADDRESS PIC X(30).
***                  NAME AND ADDRESS DESCRIPTION LINE
         10  FILLER                    PIC X(15).
```

LEVL	DESCRIPTION	LGTH	TYPE	FROM	TO
01	UPDATE-REC				
05	UPDATE-INPUT-ID	1	X	1	1
05	UPDATE-TRADE-DATE-MMDDYY				
10	UPDATE-TRADE-DATE-MM	2	N	2	3
10	UPDATE-TRADE-DATE-DD	2	N	4	5
10	UPDATE-TRADE-DATE-YY	2	N	6	7
05	UPDATE-FIRM	4	N	8	11
05	UPDATE-BRANCH	4	X	12	15
05	UPDATE-ACCT	9	X	16	24
05	UPDATE-SS-NUMBER-OR-TAX-ID	9	N	25	33
05	UPDATE-S-T-F-IND	1	X	34	34
05	UPDATE-REC-TYPE	1	X	35	35
05	UPDATE-DETAIL				
10	UPDATE-OPTION-SYMBOL	6	X	36	41
10	UPDATE-OPTION-MONTH-ALPHA	3	X	42	44
10	UPDATE-OPTION-YEAR	2	N	45	46
10	UPDATE-P-C-IND	1	X	47	47
10	UPDATE-STRIKE-PRICE 9(6)V9(6)	12	N	48	59
10	*UPDATE-STRIKE-PRICE-W-F REDEFINES UPDATE-STRIKE-PRICE				
15	UPDATE-STRIKE-PRICE-WHOLE	6	N	48	53
15	UPDATE-STRIKE-PRICE-FRAC	6	N	54	59
10	UPDATE-LONG-QTY	7	N	60	66
10	UPDATE-SHORT-COVERED-QTY	7	N	67	73
10	UPDATE-SHORT-UNCOVERED-QTY	7	N	74	80
05	*UPDATE-NA REDEFINES UPDATE-DETAIL				
10	UPDATE-NAME-AND-ADDRESS	30	X	36	65
10	FILLER	15	X	66	80

LAYOUT

Large Options Positions Reporting Guide for New Record Type (7)

The following information pertains to record type 7 (Column 35):
Type 7 represents Hedge Instrument Positions on Options.

Col. No.	Definition
35	Record type; always "7".
36-45	Options symbol; same as Options Symbol for Large Options see type "6". Left justified.
46-55	Hedge instrument symbol. Left justified.
56-59	Filler, always spaces.
60-68	Long quantity. Right justified, zero filled.
69-77	Short quantity. Right justified, zero filled.
78-80	Filler; always spaces.

Attachment 2

Large Options Positions Reporting Guide for New Record Types (8,9)

The following information pertains to records type 8 (Column 35):
Type 8 represents Currency and Stock Index Warrants.

Col. No.	Definition
35	Record type; always "8".
36-45	Warrant symbol. Left justified.
46-59	Filler; always spaces.
60-68	Long quantity. Right justified; zero filled.
69-77	Short quantity. Right justified; zero filled.
78-80	Filler; always spaces.

The following information pertains to records type 9 (Column 35):
Type 9 represents Hedge Instrument Positions on Currency and Stock Index Warrants.

Col. No.	Definition
35	Record type; always "9".
36-45	Warrant symbol. Left justified.
46-55	Hedge instrument symbol. Left justified.
56-59	Filler; always spaces.
60-68	Long quantity. Right justified; zero filled.
69-77	Short quantity. Right justified; zero filled.
78-80	Filler; always spaces.

Attachment 3

Intermarket Surveillance Group Guide for Concert Group Update

Column Number	Definition
1	Input ID; always "C".
2-5	Filler; always spaces.
6-14	Customer ID (Social Security or Tax ID). Right justified; zero filled.
15-18	Firm (Four Digit Clearing Member Number or Number Assigned by Exchange.) Right justified; zero filled.
19-22	Branch; Left justified.
23-31	Account Number; Left justified.
32-61	Account Title; Left justified.
62-91	Account Title; Left justified.
92-121	Account Title; Left justified.
122-151	Address; Left justified.
152-167	City; Left justified.
168	Filler; always space.
169-171	State/Country; Left justified.
172	Filler; always space.
173-181	Zip Code; Left justified.
182-211	Name of Controlling Entity; Left justified.
212-219	Report Date CCYYMMDD.
220-224	Firm Assigned Number for Controlling Entity; Right justify
225-250	Filler; always spaces.

All inputs should be in ASCII text format.

NASD NOTICE TO MEMBERS 97-57

NASD Interpretations Of SEC Order Handling Rules, NASD Limit Order Protection Rules, And Member Best Execution Responsibilities

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Government Securities
- ■ Institutional
- ■ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registered Representatives
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ■ Systems
- ■ Trading
- ■ Training
- ☐ Variable Contracts

Executive Summary

In the following document, the National Association of Securities Dealers, Inc. (NASD®), after consultation with staff of the Securities and Exchange Commission (SEC), is providing interpretive advice regarding a member's best execution obligations when handling a customer order, especially in light of the SEC's Order Handling Rules and the NASD's Limit Order Protection Rules. The Questions and Answers that follow are an attempt to provide members with answers to compliance questions raised following the implementation of the new Order Handling Rules. If members have additional questions regarding these issues, please contact Eugene A. Lopez, Director, Market Services, The Nasdaq Stock Market, Inc., at (202) 728-6998 or NASD Regulation, Inc.'s Market Regulation Department, at (800) 925-8156. Any requests for legal opinions regarding matters addressed in this *Notice* should be directed to the Nasdaq Office of General Counsel, at (202) 728-8294.

Questions And Answers On New SEC Order Handling Rules And Associated Nasdaq Rules: Best Execution And Other Issues

In its release adopting and amending the new and amended SEC Order Handling Rules, Rule 11Ac1-4 and Rule 11Ac1-1, the SEC made specific statements regarding the best execution of customer orders. Specifically, the SEC stated that when a market maker holds an undisplayed limit order priced better than the quote, and it subsequently receives a market order on the opposite side of the market from the limit order, it is no longer appropriate for the market maker to execute the market order at the published quote and the limit order at its limit price. The market maker must pass along the price improvement of the limit order to the market order. The Nasdaq Stock Market℠ (Nasdaq®) has received a number of questions regarding NASD member firm obligations to obtain best execution of customer orders in light of this statement. Nasdaq and NASD Regulation℠ have discussed various best execution scenarios as detailed below with the SEC.

In using this Q & A as a tool to develop a member's policies regarding its best execution obligations, it is important to note that the application of best execution concepts necessarily involves a "facts and circumstances" analysis. Depending upon the particular set of facts surrounding an execution, actions that in one set of circumstances may meet a firm's best execution obligation, may not meet that standard in another set of circumstances. It should also be noted that the best execution obligation is an obligation that evolves as rules and systems change. Thus, if Nasdaq were to amend its Limit Order Protection Rule, a firm's best execution obligations will likely change as well.

In addition, it should be noted that the discussion that follows relates principally to the handling of orders in Nasdaq securities (National Market and SmallCap℠) in light of the NASD's Limit Order Protection Rule, IM-2110-2. However, because the NASD Limit Order Protection Rule (Manning) only applies to Nasdaq securities, the limit order protection requirements discussed below do not necessarily apply to over-the-counter equity securities that may trade in the NASD's OTC Bulletin Board®. Of course, members continue to have best execution obligations for these securities. The NASD continues to evaluate best execution and limit order handling obligations for such securities and will provide information regarding a firm's obligations in a separate document at a future date. Separately, we note that

limit order protection for over-the-counter executions in exchange-listed securities is governed by NASD Rule 6440 and members continue to have best execution obligations for these securities as well.

I. Treatment Of Orders Received From Another Member

Question 1: Basic Obligation

Nasdaq Inside Market:
10 – 10 1/2 10 x 10

Market Maker A (MMA) holds customer limit to buy 1,500 shares at 10 1/4.

The customer requests that this order not be displayed.

MMA receives a market order to sell 1,000 shares from another customer through its internal order delivery and execution system.

What must MMA do?

Answer 1:

Under best execution principles discussed in the SEC's Adopting Release, market makers holding undisclosed limit orders must execute incoming market orders at the limit order price. Thus, MMA must execute the market order at 10 1/4, the price of the undisplayed limit order. MMA may execute the market order against the limit order or against its own inventory. However, if it fills the market order out of its own inventory, the Manning Rule requires that MMA protect the limit order at its price. Therefore, the limit order would also have to be executed at its price. The remaining 500 shares of the limit order would continue to reside undisplayed on MMA's book.

Question 2: System Orders

Nasdaq Inside Market:
10 –10 1/2 10 x 10

MMA holds a customer limit order to buy at 10 1/4 for 1,500 shares that is not displayed.

MMA receives a customer market order to sell 1,000 shares from another broker/dealer through MMA's automated order delivery and execution system.

At what price should the limit and market orders be executed?

Answer 2:

Even though the order is from another broker/dealer, because the other firm has routed its order with the understanding that MMA will provide automated executions for that broker's customer orders and thereby provide best execution through MMA's system, MMA must match (as principal or as agent, as explained in Answer 1, above) the 1,000-share customer market order against 1,000 shares of the undisclosed customer limit and execute at 10 1/4. The remaining 500 shares of the 10 1/4 limit order remains undisclosed on MMA's files. The same rationale for matching the market order against the limit order would apply if the customer order had been routed to MMA through Nasdaq's Advanced Computerized Execution System® (ACES®) facility.

Question 3: Phone Orders — Market Maker And Order Entry Firm Have A Relationship

Nasdaq Inside Market:
10 – 10 1/2 10 x 10

MMA holds an undisclosed customer limit order at 10 1/4 for 1,500 shares.

MMA is quoting publicly 10 bid.

Broker/dealer B (BD-B) telephones MMA to sell 1,000 shares at the market for a customer. MMA has an arrangement with BD-B with the understanding that MMA will provide BD-B's customer orders with best execution, such as part of a payment for order flow, reciprocal, or correspondent arrangement.

What is MMA's obligation to broker/dealer B and to the limit order to buy?

Answer 3:

Even though the order is from another broker/dealer, MMA must match 1,000 shares of BD-B's customer order against the undisclosed limit order of 10 1/4, because MMA has an arrangement under which it has implicitly or explicitly undertaken to provide best execution to BD-B's customer orders. MMA will execute 1,000 shares of the market order and the limit order at 10 1/4.

However, because the Limit Order Display Rule, Rule 11Ac1-4, has not been fully implemented as of the date of this document, limit orders received by a market maker may not yet be reflected in the market maker's quote. Consequently, it may be difficult for a market maker to quickly access information regarding the limit order at a better price that it holds at the time the telephone order is received. Accordingly, until such time that all Nasdaq stocks are subject to Rule 11Ac1-4 and thus are likely to be reasonably accessible to the trader, the NASD will not take regulatory action against market makers that fail to provide the undisplayed limit order price to the execution of telephone orders that they receive in any Nasdaq stocks during the phase-in period. Once all Nasdaq securities are subject to Rule 11Ac1-4, members will be expected to provide telephone orders, except as detailed below, the benefit of superior limit

order prices, whether displayed or not.

Question 4: Phone Orders — Market Maker And Order Entry Firm Do Not Have A Relationship

Nasdaq Inside Market:
10 – 10 1/2 10 x 10

MMA holds an undisclosed customer limit order at 10 1/4 for 1,500 shares.

MMA is quoting publicly 10 bid.

Broker/dealer B telephones MMA to sell 1,000 shares at the market for BD-B's own account where MMA has no agreement or understanding to treat BD-B's orders as customer orders or otherwise provide them with best execution.

What is MMA's obligation to broker/dealer B and to the limit order to buy?

Answer 4:

MMA may execute BD-B's market order to sell at MMA's published quote of 10. MMA does not owe a best execution obligation to a non-customer where no understanding or expectation of treatment as a customer has been reached by MMA and BD-B. Broker/dealers are not considered customers for purposes of this obligation.

If MMA executes BD-B's order at 10, MMA, however, has traded through the customer limit order it holds. Under the Manning Rule, therefore, MMA must execute 1,000 shares of the limit order it holds. Under the present interpretation of Manning, MMA must execute 1,000 shares of the customer limit order at 10 1/4 or better, because 10 1/4 is the price at which the limit order was held. MMA, of course, may choose to give the market order customer the price of the limit order, but it is not currently required to do so. The NASD's staff is presently evaluating whether to propose to the Nasdaq Board a change to the Manning Rule that would require a member to provide price improvement to the limit order in this situation.

Question 5: Rounded Orders

Nasdaq Inside Market:
20 – 20 1/2 10 x 10

MMA holds a customer limit order to buy a Nasdaq stock at 20 5/32 for 2,000 shares. MMA changes its quote to 20 1/8 for 2,000 shares to reflect the rounded price of the customer limit order

MMA receives a market order to sell 2,500 shares.

At what price must the market and limit orders be executed?

Answer 5:

MMA must execute the customer limit order and 2,000 shares of the market order at 20 5/32, even though its displayed quote was rounded to 20 1/8. The execution must occur at the actual limit order price that MMA held.

Question 6:

Nasdaq Inside Market:
10 – 10 1/2 10 x 10

MMA holds a customer limit order to buy at 10 1/4 for 1,500 shares that is not displayed.

MMA receives a customer limit order to sell 1,000 shares at 10 1/8.

At what price(s) should the limit orders be executed?

Answer 6:

The SEC's best execution discussion in the Adopting Release did not discuss the crossing of limit orders with each other. However, by analogy to the best execution example used in the SEC's Order Handling Release, Nasdaq believes that the crossing of two limit orders is similar to the interaction of a market order and a limit order. Accordingly, Nasdaq believes that to provide best execution to a customer limit order when that limit order would cross another customer limit order, MMA should execute the sell limit order against the buy limit order at 10 1/4. In essence, the second limit order is a marketable limit order that is the equivalent of a market order and should be treated as such under the best execution principles discussed by the SEC.

Question 7: Minimum Price Improvement To Avoid Manning Violation

Nasdaq Inside Market:
20 – 20 1/4 10 x 10

MMA receives a customer limit order to buy at 20 1/16 for 2,000 shares.

MMA changes its quote to 20 1/16 for 2,000 shares to reflect the price of the customer limit order.

MMA receives a market order to sell 2,500 shares.

May MMA offer the market order price improvement over the 20 1/16th limit order and execute the market order for its own account? If so, what is the minimum amount of price improvement allowable?

Answer 7:

MMA is allowed to execute the market order at a price better than the limit order. Nasdaq, after consultation with the Quality of Market Committee, believes that the minimum

amount of price improvement that would permit a market maker to avoid a violation of the Manning Rule is 1/16th, where the actual spread is greater than 1/16th; however, where the actual quotation spread is the minimum quotation increment, the minimum price improvement is one-half of the normal minimum quote increment. In Question 7, since the actual spread is 20 1/16 – 20 1/4, the minimum price improvement is 1/16th. Thus, MMA could trade ahead of the limit order at 20 1/8th. If the actual spread were 20 1/16 – 20 1/8, since the security is priced at more than $10 per share, the minimum quote increment is 1/16th. If the market maker wants to trade with an incoming market order to sell without triggering its Manning obligations to the buy limit order, the market maker must buy from the sell order at 20 3/32nds. Similarly, if the security were priced under $10 and quoted at 5 1/32 – 5 1/16, the minimum price improvement to avoid a violation of the Manning Rule would be 1/64th better than a buy limit order it holds.

This represents a change from previous statements regarding price improvement. In *Notice to Members 95-43*, regarding the Manning Rule, Nasdaq stated that market makers may avoid violating Manning if they execute for their own accounts at 1/64th better than the limit order price. This statement no longer is applicable and is superseded by this *Notice* as of the date of the publication of this *Notice*.

II. Discretionary Or Working Orders

Question 8:

Nasdaq Inside Market:
10 - 10 1/8 10 x 10

MMA quote: 9 7/8 - 10 1/4

MMA receives 100,000 share discretionary ("working") order to buy in which the institutional customer and the market maker agree to the terms under which the order is to be worked and the compensation that MMA is to receive. The parties to this trade agree that MMA may, if necessary to fill the entire order at an acceptable price, trade ahead of the institutional customer's order. MMA immediately sells 30,000 shares to the institution and holds the remaining 70,000 shares.

A. MMA executes an undisplayed limit order to sell at 10 1/16 for 1,000 shares.

B. MMA executes a market order to sell for 1,000 shares at 10.

C. MMA executes an order to sell 10,000 shares at 9 7/8.

What are MMA's responsibilities to the 70,000 share order when it executes any of the orders described in A, B, or C?

Answer 8:

MMA is holding a discretionary market order for which it has agreed to work to obtain an execution satisfactory to the customer. A discretionary order, sometimes called a "not held" or a "working" order, is an order voluntarily categorized by the customer as permitting the member to trade at any price without being required to execute the customer order. A broker/dealer with such an order must use its brokerage judgment in the execution of the order, and if such judgment is properly exercised, the broker is relieved of its normal responsibilities with respect to the time of execution and the price or prices of execution of such an order.

Because MMA has been given discretion by its customer to work the order, MMA does not owe the same best execution obligations to it and to other crossing orders as it would if the order were a non-discretionary market or limit order. Thus, where beneficial to the discretionary order, MMA may trade at 10 1/16 or lower with incoming orders without necessarily triggering a fill for the discretionary order it holds. Because the discretionary order is not a priced order, there are no Manning obligations to the order, nor is there a specific price at which an incoming order can be matched.

MMA, however, must clearly document that it has obtained the authorization of its customer to work the order and must disclose to the customer that such discretion means that the firm may trade at the same price or at a better price than that received by the discretionary order. In addition, it should be noted that, because the customer has granted the market maker the discretion to work the order, the market maker, as agent, has a clear responsibility to work to obtain the best fill considering all of the terms agreed to with the customer and the market conditions surrounding the order. In the absence of a clear understanding between the trader and the customer regarding MMA's activities in competing with the customer order, MMA could potentially violate its fiduciary duties to its customer in the way it "works" the order.

Question 9:

Nasdaq Inside Market:
10 x 10 1/4 10 x 10

MMA accepts a discretionary order to buy 100,000 shares with a cap of 10 3/16.

MMA receives a market order to sell 1,000 shares from a customer.

Does MMA have to match the market order against the discretionary order that has a cap?

Answer 9:

The discretionary order with a cap is not considered a limit order because the firm is "working" the order and may be able to execute it at prices other than the 10 3/16 cap price. Thus, MMA does not have to match the market order against the discretionary order and MMA is able to buy from the market order at its bid of 10, assuming that this handling benefits the discretionary order.

III. Execution Of Blocks Outside The Inside Market Price

Question 10:

Nasdaq Inside Market:
10 x 10 1/4

MMA accepts a customer limit order to buy 1,000 shares at 10 1/8 that is not displayed.

MMA negotiates with an institution to buy 100,000 shares at 9 7/8.

Does MMA have to execute the 1,000-share limit order at 9 7/8?

Answer 10:

No. While MMA has a Manning obligation to execute the limit order, MMA can execute the limit order at its stated price of 10 1/8. In addition, MMA is not obligated to execute 1,000 shares of the block at 10 1/8, assuming that MMA has clearly disclosed to the institution that it intends to handle the order in this manner, and the institution has agreed to this practice.

IV. Net Trades/Internal Sales Credits

Question 11:

Nasdaq Inside Market:
20 - 20 1/4 10 x 10

MMA holds a limit order to buy at 20 for 1,000 shares.

MMA receives from an institution a limit order to sell 9,000 shares "net" at 20.

What effect does the "net" sell order have on MMA's Manning or best execution obligations?

Answer 11:

MMA must execute the net sell order at 20 by matching (as principal or as agent) the limit order to buy at 20 against the net sell order first and execute the remainder of the net order against its inventory.

Question 12:

Assuming the same facts as outlined in Question 11 above, does the answer change if MMA discloses to the institutional customer with the sell limit order that the sales representative is to obtain a 1/8th sales credit and thus, MMA will be holding the limit order at a price exclusive of the sales credit?

Answer 12:

If MMA chooses to disclose the internal sales credit to the institutional customer, explains that the 20 net price is to be affected by this sales credit, and the customer agrees to this arrangement, then MMA should hold the limit order to sell at 20 1/8 and display the order in its quote, unless an exception to Rule 11Ac1-4 were available. Thus, the inside market would move to 20 – 20 1/8, 10 x 90. Accordingly, because the net limit order to sell was held at a price (20 1/8) that does not match against the limit order to buy at 20, there is no execution.

Further, if the net limit order to sell were to be executed, it should be executed at a price of 20 1/8 and reported at such price to Nasdaq for trade reporting purposes and to the customer on the confirmation for purposes of Rule 10b-10. In effect, the agreement regarding the compensation to the sales representative converts an internal division of firm profits on a trade into compensation to the firm that must be treated as a markup/markdown or commission and handled as such. This answer is consistent with statements made by the NASD in *Notices to Members 95-67* and *96-10*, as well as the letter from Richard Lindsey, SEC, to Richard Ketchum, NASD, dated January 3, 1997.

NASD NOTICE TO MEMBERS 97-58

NASD Regulation Requests Comment On Proposed Interpretive Material 1031 Regarding Cold Calling Activity; **Comment Period Expires October 31, 1997**

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ■ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registered Representatives
- ■ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ■ Training
- ☐ Variable Contracts

Executive Summary

In the following document, NASD Regulation, Inc. (NASD Regulation℠) requests comment on proposed NASD® Interpretive Material 1031 (IM-1031), which would: (1) require registration as a representative for all persons associated with a member who communicate with members of the public, except existing customers of the member, for the purpose of soliciting the purchase of securities or related services or identifying prospective customers and (2) prohibit any member from engaging or using any unregistered person to communicate on behalf of the member with members of the public, except existing customers of the member, to solicit the purchase of securities or related services or identify prospective customers. IM-1031 would permit unregistered persons to contact existing customers for three limited purposes only: (A) extending invitations to firm-sponsored events at which any substantive presentations and account or order solicitation will be conducted by appropriately registered personnel, (B) inquiring whether the existing customer wishes to discuss investments with a registered person, and (C) determining whether the existing customer wishes to receive investment literature from the firm.

Questions concerning this *Request For Comment* should be directed to Gary L. Goldsholle, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8104.

Request For Comment

NASD Regulation encourages all members and interested parties to respond to the issues raised in this *Notice*. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received **by October 31, 1997**. Before becoming effective, any interpretive material or rule change developed as a result of comments received must be adopted by the NASD Regulation, Inc., Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

NASD Regulation Request for Comment 97-58

Executive Summary

NASD Regulation, Inc. (NASD Regulation℠) requests comment on proposed NASD® Interpretive Material 1031 (IM-1031), which would require registration as a representative for all persons associated with a member who communicate with members of the public, except existing customers of the member, for the purpose of soliciting the purchase of securities or related services or identifying prospective customers. IM-1031 also would prohibit any member from engaging or using any unregistered person to communicate on behalf of the member with members of the public, except existing customers of the member, to solicit the purchase of securities or related services or identify prospective customers. Lastly, IM-1031 would permit unregistered persons to contact existing customers for three limited purposes only: (1) extending invitations to firm-sponsored events at which any substantive presentations and account or order solicitation will be conducted by appropriately registered personnel; (2) inquiring whether the existing customer wishes to discuss investments with a registered person; and (3) determining whether the existing customer wishes to receive investment literature from the firm. Notwithstanding these provisions, IM-1031 is not meant to restrict a member's administrative personnel, in the normal course of their duties, from contacting customers regarding routine administrative matters.

Questions concerning this *Request For Comment* should be directed to Gary L. Goldsholle, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8104.

Background

Proposed IM-1031 is designed to prohibit unregistered persons from communicating with members of the public to solicit the purchase of securities or related services or identify prospective customers. The interpretation is directed primarily to "cold calling" activity, *i.e.*, solicitation of persons who are not existing customers. The National Association of Securities Dealers, Inc. (NASD) has prohibited cold calling by unregistered persons in a variety of contexts. In *Notice to Members (NTM) 85-48*, the NASD explained that the term "representatives" refers to "persons associated with a member who are engaged in the investment banking or securities business for the member, including the function of supervision, solicitation or conduct of business in securities . . . ." The NASD further added that the definition of representatives:

> has been consistently interpreted by the NASD to require registration of persons who engage in activities that only constitute a portion of registered representatives' traditional dealings with public customers. Thus, for example, members are required to register persons who . . . solicit accounts on behalf of members, notwithstanding any limitation of such solicitations to prepared scripts discussing generic products and services offered by the member.

NTM 85-48; *see also NTM 88-24*; *NTM 88-50*.

The NASD, however, has also stated that the registration requirements are not intended to "restrict a member's administrative personnel, in the normal course of their duties, from contacting customers regarding routine administrative matters involving customers' accounts, such as investment seminars at which any substantive presentations and accounts or order solicitations will be made by appropriately registered personnel." *NTM 88-24*.

In *Notice to Members 88-50*, the NASD set forth the limited circumstances in which a member may employ unregistered persons to contact prospective customers. Specifically, *NTM 88-50* states that unregistered persons may contact prospective customers for purposes of: (1) extending invitations to firm-sponsored events at which any substantive presentations and account or order solicitation will be conducted by appropriately registered personnel; (2) inquiring whether the prospective customer wishes to discuss investments with a registered person; and (3) determining whether the prospective customer wishes to receive investment literature from the firm.

NTM 88-50 requires persons who use unregistered persons for these three activities to observe the following guidelines: (1) pursuant to Rule 1031(b) (formerly Section (1)(b), Part III of Schedule C to the By-Laws), unregistered persons may not discuss general or specific investment products or services offered by the firm, pre-qualify prospective customers as to financial status and investment history and objectives, or solicit new accounts or orders; (2) the member should provide unregistered persons with orientation and training that specifically addresses the limitations of their permissible activities, the regulatory consequences of exceeding these limitations, and the fact that such persons are associated persons of the member, subject to the rules of the NASD and its disciplinary authority; (3) the member should conduct a reasonable investigation of such persons' backgrounds to determine that they are not statutorily disqualified from becoming associated with the member; (4) unregistered persons are regarded as employees of the member and should not be compensated on any basis other than a salary or hourly wage; (5) the member should take reasonable steps to assure that the activities of unregistered persons are consistent with applicable state statutes and rules and with the rules of other self-regulatory organizations; and (6) the member should be able, upon request, to demonstrate that its supervisory procedures include procedures reasonably designed to prevent violative conduct by unregistered persons.

Based upon experience gained from recent investigations, including a recent review of sales practice activities of selected firms by the staffs of the NASD, the SEC, the New York Stock Exchange, and representatives of the North American Securities Administrators Association, Inc., NASD Regulation staff are concerned that the policy embodied in *NTM 88-50* and the current restrictions on the use of unregistered cold callers may not be effective in preventing abusive cold calling practices. NASD Regulation staff have discovered evidence of abusive cold calling practices, such as high pressure and aggressive sales pitches, often delivered by unregistered persons using specially designed scripts. Customers who are solicited by these unregistered persons may not be given all the protections and disclosures that would be afforded them if they were contacted by registered persons.

To address these violations, protect investors, and to provide the NASD with a greater ability to discipline firms and individuals who engage in improper cold calling practices, NASD Regulation is considering altering its policy and practice with respect to cold calling to require registration of all persons who contact prospective customers concerning the purchase of securities or related services or for the purpose of identifying potential customers. This change is intended to assure that persons who contact prospective customers have the appropriate qualifications and training regarding solicitations and the sale of securities.

NASD Regulation staff also preliminarily believe that IM-1031, with its absolute prohibition against cold calling prospective customers by unregistered persons, would provide members with greater clarity and consistency with respect to the registration requirements. NASD Regulation staff have observed an increasing number of inquiries concerning the scope of permissible cold calling activities under *NTM 88-50*, and are concerned that members may not be consistently applying the current cold calling prohibitions and registration requirements.

Moreover, an absolute prohibition against cold calling prospective customers by unregistered persons would make violations much easier to detect, and thus aid enforcement of the registration requirements. Under IM-1031, unregistered persons cold calling prospective customers would *per se* violate NASD rules.

NASD Regulation does not, however, believe that unregistered persons should be prohibited from contacting existing customers in appropriate circumstances. Accordingly, proposed IM-1031 permits unregistered persons to contact existing customers for the limited purposes contained in *NTM 88-50*, which include extending invitations to firm-sponsored events, and inquiring whether the customer wishes to discuss investments with a registered person or receive investment literature. Further, IM-1031 would not prohibit a member's administrative personnel, in the normal course of their duties, from contacting customers regarding routine administrative matters such as confirming mailing addresses and acknowledging receipt of communications.

NASD Regulation has previously recognized a distinction between potential and existing customers in the context of the "telemarketing rules." The "telemarketing rules," NASD Conduct Rules 2211 and 3110, were adopted on December 2, 1996, pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, under which the NASD was required to adopt rules similar to those adopted by the Federal Trade Commission prohibiting deceptive and abusive telemarketing acts and practices. In particular, NASD Conduct Rule 2211 exempts the time-of-day and disclosure requirements normally placed on cold calls from calls made to an "existing customer," which is defined to include "a customer for whom the broker or dealer, or a clearing broker or dealer or dealer on behalf of such broker or dealer, carries an account." NASD Regulation preliminarily believes that a similar distinction is appropriate with respect to cold calling registration requirements.

Description

Paragraph (a)(1) of proposed IM-1031 provides that any person associated with a member who communicates with members of the public for the purpose of soliciting the purchase of securities or related services, or for the purpose of identifying potential customers, is engaged in the securities business and is required to register as a representative. Paragraph (a)(2) provides that no member shall engage or use any person to communicate on behalf of the member with members of the public to solicit the purchase of securities or related services, or to identify prospective customers, unless such person is registered as a broker or dealer under the Securities Act of 1934, or is registered as a representative. Under this provision, third-party telemarketing firms that solicit on behalf of broker-dealers would themselves be required to register as either a broker or dealer, and their employees engaged in soliciting activity would be required to register as representatives.

As noted above, NASD Regulation believes unregistered persons should be permitted to contact existing customers for the limited activities identified in *NTM 88-50*. Specifically, paragraph (b)(1) permits unregistered persons associated with a member to communicate with existing customers so long as their communications are limited to: (A) extending invitations to firm-sponsored events at which substantive presentations and account or order solicitation will be conducted by appropriately registered personnel; (B) inquiring whether the existing customer wishes to discuss investments with a registered person; and (C) determining whether the existing customer wishes to receive investment literature. Paragraph (b)(2) outlines the responsibilities of members employing or seeking to employ unregistered persons pursuant to section (b)(1). Lastly, paragraph (c) would adopt the same scope for the definition of "existing customer" for IM-1031 as is used in telemarketing Rule 2211. NASD Regulation requests comment on the nature and scope of permissible contact between unregistered persons and existing customers and whether the definition of existing customer should be the same as it is under the "telemarketing rules."

NASD Regulation also requests comment on whether an alternative registration category should be developed for cold calling activity. Separate registration categories for assistant representatives and limited representatives apply to associated persons who perform only limited activities. *See* NASD Conduct Rules 1041 and 1032. As proposed, IM-1031 would require registration as a general securities representative. However, NASD Regulation is soliciting comment on whether an alternative registration category should be developed for persons who engage solely in cold calling activities, and if such an alternative category is used, how NASD Regulation may define the scope of conduct permissible under such category. Finally, if an alternative registration category is used, should the NASD develop a different Qualification Examination for the cold calling registration category?

Request For Comment

NASD Regulation encourages all members and interested parties to respond to the issues raised in this *Notice*. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received **by October 31, 1997**. Before becoming effective, any interpretive material or rule change developed as a result of comments received must be adopted by the NASD Regulation, Inc. Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

Text Of Proposed Interpretive Material

(Note: All language is new.)

IM-1031. Registration of Cold-Callers, Telemarketers and Related Persons

(a)(1) Persons associated with a member who communicate with members of the public for the purpose of soliciting the purchase of

securities or related services or for the purpose of identifying prospective customers are engaged in the securities business and are required to register as a representative.

(2) No member shall engage or use any person to communicate on behalf of the member with members of the public to solicit the purchase of securities or related services or to identify prospective customers unless such person is registered as a broker or dealer under the Securities Exchange Act of 1934, or is registered as a representative.

(b)(1) Notwithstanding the provisions of paragraph (a), persons associated with a member who communicate with existing customers for the purpose of soliciting the purchase of securities or related services are not required to be registered with the Association provided that their communications are limited solely to:

(A) extending invitations to firm-sponsored events at which any substantive presentations and account or order solicitation will be conducted by appropriately registered personnel;

(B) inquiring whether the existing customer wishes to discuss investments with a registered person; and

(C) determining whether the existing customer wishes to receive investment literature from the firm.

(2) Firms employing or seeking to employ unregistered persons pursuant to paragraph (b)(1) shall observe the following guidelines:

(A) Pursuant to Rule 1031(b), unregistered persons shall not discuss general or specific investment products or services offered by the firm, prequalify customers as to financial status and investment history and objectives, or solicit new accounts or orders;

(B) The member shall provide unregistered persons with orientation and training that specifically addresses the limitations of such persons' activities, the regulatory consequences of exceeding these limitations, and the fact that such persons are associated persons of the member, subject to the rules of the NASD and its disciplinary authority;

(C) The member shall conduct a reasonable investigation of such persons' backgrounds to determine that they are not statutorily disqualified from becoming associated with the member;

(D) Unregistered persons are regarded as employees of the member and shall not be compensated on any basis other than a salary or hourly wage;

(E) The member shall take reasonable steps to assure that the activities of unregistered persons are consistent with applicable state statutes and rules and with the rules of other self-regulatory organizations; and

(F) The member shall be able, upon request, to demonstrate that its supervisory procedures include procedures reasonably designed to prevent violative conduct by unregistered persons.

(c) For the purposes of paragraph (b), the term "existing customer" means a customer for whom the broker or dealer, or a clearing broker or dealer on behalf of such broker or dealer, carries an account.

NASD NOTICE TO MEMBERS 97-59

NASD Regulation Requests Comment On Injunctive Relief And Expedited Proceedings; **Comment Period Expires October 31, 1997**

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
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- ☐ Options
- ■ Registered Representatives
- ■ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

NASD Regulation, Inc. (NASD Regulation℠) is seeking from members, associated persons, and others, comments on the procedures for obtaining injunctive relief and expedited proceedings under Rule 10335 of the Code of Arbitration Procedure (Code).

Questions concerning this *Request For Comment* should be directed to Deborah Masucci, Vice President, Office of Dispute Resolution, NASD Regulation, at (212) 858-4400; or Elliott R. Curzon, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

Request For Comment

NASD Regulation encourages all members and interested parties to respond to the issues raised in this *Notice*. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received **by October 31, 1997**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation, Inc. Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

NASD REGULATION REQUEST FOR COMMENT 97-59

Executive Summary

NASD Regulation, Inc. (NASD Regulation℠) is seeking from members, associated persons, and others, comments on the procedures for obtaining injunctive relief and expedited proceedings under Rule 10335 of the Code of Arbitration Procedure (Code).

Questions concerning this *Request For Comment* should be directed to Deborah Masucci, Vice President, Office of Dispute Resolution, NASD Regulation, at (212) 858-4400; or Elliott R. Curzon, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

Background

On January 3, 1996, the National Association of Securities Dealers, Inc. (NASD®) implemented a one-year pilot arbitration procedure to govern injunctive relief claims between or among members and associated persons. The pilot procedure, codified in Rule 10335 (Rule) (formerly Section 47), was extended for another year on January 3, 1997, in order to permit NASD Regulation's Office of Dispute Resolution to gain additional experience with the Rule in anticipation of making the Rule a permanent addition to the Code. NASD Regulation is seeking comments from members, associated persons, and others concerning how the injunctive relief rule and expedited proceedings work and how to improve the Rule and procedures. The text of Rule 10335 is set forth following this *Notice*.

Rule 10335 provides, among other things, that:

- Parties may seek temporary injunctive relief either in court or in arbitration.

- Parties who seek temporary injunctive relief in court must simultaneously submit the claim to arbitration for permanent relief.

- Parties may obtain interim injunctive relief in arbitration in the form of either an Immediate Injunctive Order or a Regular Injunctive Order.

- Permanent injunctive relief may be obtained in arbitration as part of the final relief sought by a party in connection with a claim.

- Applications for interim injunctive relief are expedited.

- Where a court grants interim injunctive relief to one of the parties, arbitration proceedings on the dispute must be expedited.

From January 3, 1996, when the Rule took effect, through August 18, 1997, the Office of Dispute Resolution has had the following experiences with injunctive relief actions.

- 433 cases were filed seeking injunctive relief.

- The national average number of days between filing and the arbitrator's initial injunctive relief order was approximately 7.5 days.

- Few cases went forward to a hearing on the merits following issuance of an injunctive order by either a court or arbitrator because most of the cases were: (i) settled shortly after filing; (ii) settled just before an injunctive hearing in arbitration; or (iii) settled shortly following an injunctive hearing in arbitration.

- Most of the cases filed under the Rule concerned associated persons leaving one firm for employment at another firm (often referred to as "raiding" cases). The associated person's former firm was generally, though not in all instances, the petitioner in arbitration. In most such cases, the firm filed the action to pre-

vent a former employee from soliciting clients the employee serviced at the firm. The causes of action asserted in many of the cases included: (i) breach of contract; (ii) misappropriation or conversion of trade secrets (customer information); and (iii) defamation (relating to the circumstances of the employee's departure from the firm).

In connection with the plan to extend the effectiveness of Rule 10335 or make it permanent, NASD Regulation is soliciting comments on the functioning of the Rule. Since the Rule was adopted, NASD Regulation's Office of Dispute Resolution (Office) has received comments from users of the Rule. These comments form the basis for the questions set forth below.

Availability Of Temporary Injunctive Relief In Court

Some users of Rule 10335 have complained that, although the Rule permits a party to obtain temporary injunctive relief (a temporary restraining order or TRO) in court prior to seeking other relief in arbitration, some courts have become reluctant to entertain requests for TROs because temporary relief is available in arbitration under the Rule.

Question 1. Should the Rule be modified to eliminate the TRO equivalent in arbitration?

Question 2. Should the Rule be modified to eliminate the TRO equivalent in arbitration and eliminate the option of resorting to the courts for TROs, or to vacate TROs, leaving the parties the remedies (including injunctions) available in an expedited proceeding?

Question 3. If the TRO equivalent is retained in arbitration, should the Rule be modified to eliminate the option of resorting to the courts for TROs, thereby requiring parties to seek all relief in arbitration?

Question 4. If the option of obtaining a TRO in court is not eliminated, should parties be barred from seeking a court injunction if an arbitration panel has already denied the request?

Question 5. If the option of obtaining a TRO in court is not eliminated, should the parties be barred from seeking relief other than the TRO in court? For example, should they be barred from seeking discovery and/or a preliminary injunction in court?

Terminology

Some users of the Rule have noted that the terminology of the Rule is confusing. The Rule provides for Immediate and Regular Injunctive Orders, and both types can be "interim" in nature. The Rule also does not specify whether an injunctive order can be permanent.

Question 6. Should the rule be modified to adopt the terminology and practice generally used in courts relating to injunctive relief (TRO, Preliminary Injunction, Permanent Injunction)?

Time Limits On Injunctive Relief

Some users of the Rule have noted that it does not specify time limitations on the effectiveness of temporary or preliminary relief, or the time limitations specified are contingent on a party seeking the next step in arbitration.

Question 7. Should the Rule provide that TROs or preliminary injunctions expire after certain specific times, or upon the failure of a party to seek further relief?

Question 8. Should the arbitrators be required to specify an expiration date for TROs or preliminary injunctions?

Question 9. Should the Rule provide a procedure for extending or extinguishing a court- or arbitrator-issued TRO or preliminary injunction?

Discovery

Ordinarily, discovery is not available in connection with a TRO, often because it is an emergency proceeding and the relief is of very short duration. Discovery is reserved for later in a proceeding, either limited discovery designed to ascertain facts necessary to support or defeat an application for a preliminary injunction, or comprehensive discovery relating to the main action for complete relief.

Question 10. Should the Rule specifically provide for discovery in injunctive relief proceedings, or do the other provisions of the Code that provide for the exchange of information in connection with the substantive claims for relief give the arbitrators sufficient authority to address discovery issues in connection with claims for injunctive relief?

Service Of Process

Paragraph (c) of the Rule provides that service of the application for injunctive relief in the form of a Statement of Claim and a statement of facts demonstrating the necessity for injunctive relief is to be made by the claimant. Rule 10314 of the Code provides that, in ordinary arbitration cases, the Statement of Claim is served on respondents by the Director of Arbitration (Director). Some users of the injunctive relief process have noted that these provisions create confusion about who serves the Statement of Claim and the manner in which an action should be initiated. Further, parties in an

injunctive relief action are not always served simultaneously.

Question 11. Should the service provisions be amended to require that all papers relating to an injunctive relief action be served simultaneously?

Question 12. Should the parties or the Director serve papers that relate to injunctive relief actions?

Hearing Procedure

The Rule provides that a party may apply for a "Regular Injunctive Order" under paragraph (d)(2). The procedures in paragraph (d)(2) specify very short time frames for Regular Injunctive proceedings. Paragraph (g) of the Rule also provides that if a court has issued an injunction, the arbitration must proceed on an expedited schedule in accordance with procedures specified by the panel of arbitrators, but it does not provide for specific deadlines or schedules. The Rule also does not preclude parties from seeking a Regular Injunctive Order under paragraph (d)(2) if they have obtained temporary relief. Nevertheless, some courts, after granting an application for a TRO, have ordered further proceedings to occur under paragraph (g). Some users believe that parties should be able to obtain a Regular Injunctive Order under paragraph (d)(2) even though they obtained the initial relief in court.

In addition, the Rule does not specify whether hearings on applications for injunctive orders under the Rule should be comprehensive evidentiary hearings on the merits of a dispute, or abbreviated inquiries concerning facts and issues relating to the applicant's entitlement to a temporary or permanent injunction.

Finally, the Rule does not address situations where several separately filed actions for injunctive relief involve the same applicant or respondent.

Question 13. Should parties be able to request a Regular Injunctive Order under paragraph (d) even if a court has ordered the parties to proceed under paragraph (g)?

Question 14. Should the Rule be amended to specify more clearly the type of hearing and the evidentiary showing required for each type of injunctive relief requested?

Question 15. Should there be page limitations on submissions in injunctive relief actions?

Question 16. Should the Rule be amended to permit a single arbitrator, who is hearing several applications for interim injunctive relief involving the same applicant or respondent, to consolidate the actions?

Arbitrator's Authority

The Rule is not clear about the authority of arbitrators to modify or vacate an injunction issued by a court. The Rule also is not clear about the authority of sole arbitrators appointed under the Rule to sanction any party who does not comply with an arbitrator's order.

Question 17. Should the Rule be amended to specify that arbitrators have the authority to modify or vacate any injunctive order issued by a court?

Question 18. Should the Rule be amended to specify that arbitrators have the authority to sanction any party that does not comply with an arbitrator's orders?

Forum Shopping

The Rule requires a party seeking a temporary injunction in court to file simultaneously a claim for permanent relief in arbitration. NASD Regulation has noted that some firms that have obtained court injunctions are filing their arbitration proceedings with another forum that does not require such proceedings to be expedited (the forum will, however, expedite proceedings upon the request of both parties). In this circumstance, the party that obtained injunctive relief in court benefits from the delay by filing in a forum other than NASD Regulation's.

Question 19. Are there benefits to parties seeking injunctive relief to be able to have their claims heard in other forums?

Question 20. Should parties who have sought temporary injunctive relief in court be barred from seeking permanent relief in forums that have not adopted procedures for adjudicating expedited injunctive relief claims unless the party that sought the injunctive relief agrees to expedite the proceeding?

Question 21. Should the NASD's rules be amended to provide that failure to file an arbitration action after obtaining temporary injunctive relief in court as required by the Rule, or that filing an arbitration action in a forum that does not expedite such proceedings will be considered a failure to submit to arbitration, subjecting the member to disciplinary action?

Other Issues

Mixed Industry/Public Cases. The availability of the procedures under the Rule has been limited to intra-industry cases. Although rare, the Office has encountered cases involving an industry party (an employee or former employee of a member) and the spouse of the party.

Question 22. Should the injunctive relief procedures be available in such cases and should the effect of any

injunctive order extend to the non-industry party?

Fees. NASD Regulation understands that some users of the injunctive relief proceedings believe that the fees charged for the proceedings should be refunded if the proceeding is not expedited. The Office is aware that on occasion circumstances arise which prevent expedited resolution of the proceedings. Parties who have sought injunctions sometimes request delays in order to secure necessary discovery and sometimes the arbitrators will grant requests for delays from responding parties. These circumstances are beyond the control of the Office and, indeed, are a predictable outcome in the process of resolving a dispute. The fees are designed to defray the costs of administering expedited proceedings and the Office often expends significant resources administering these cases even if the final resolution is not expedited. While NASD Regulation will continue to monitor the Office's actual costs of administering injunctive relief proceedings and will consider fee adjustments as necessary for the process to remain as cost-effective as possible, fee refunds are unlikely.

Request For Comment

NASD Regulation encourages all members and interested parties to respond to the issues raised in this *Notice*. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received **by October 31, 1997**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation, Inc. Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC.

Text Of Rule 10335 Of The Code Of Arbitration Procedure

10335. Injunctions

In industry or clearing disputes required to be submitted to arbitration pursuant to Rule 10201, parties to the arbitration may seek injunctive relief either within the arbitration process or from a court of competent jurisdiction. Within the arbitration process, parties may seek either an "interim injunction" from a single arbitrator or a permanent injunction from a full arbitration panel. From a court of competent jurisdiction, parties may seek a temporary injunction. A party seeking temporary injunctive relief from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file a claim for permanent relief with respect to the same dispute with the Director in the manner specified under this Code. This Rule contains procedures for obtaining an interim injunction. Paragraph (g) of this Rule relates to the effect of court-imposed injunctions on arbitration proceedings. If any injunction is sought as part of the final award, such request should be made in the remedies portion of the Statement of Claim, pursuant to Rule 10314(a).

(a) Single Arbitrator

Applications for interim injunctive relief shall be heard by a single arbitrator.

(b) Showing Required

In order to obtain an interim injunction, the party seeking the injunction must make a clear showing that it is likely to succeed on the merits, that it will suffer irreparable injury unless the relief is granted, and that the balancing of the equities lies in its favor.

(c) Application for Relief

Interim injunctions include both Immediate Injunctive Orders and Regular Injunctive Orders, as described in paragraph (d) below. In either case, the applicant shall make application for relief by serving a Statement of Claim, a statement of facts demonstrating the necessity for injunctive relief, and a properly-executed Submission Agreement on the party or parties against whom injunctive relief is sought. The above documents shall simultaneously and in the same manner be filed with the Director of Arbitration, together with an extra copy of each document for the arbitrator, proof of service on all parties, and all fees required under Rule 10205. Filings and service required under this Rule may be made by United States mail, overnight delivery service or messenger.

(d) The procedures and timetable for handling applications for interim injunctive relief are as follows:

(1) Immediate Injunctive Orders.

(A) Upon receipt of an application for an Immediate Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than one and no later than three business days after receipt of the application by the respondent and the Director.

(B) The filing of a response to an application for an Immediate Injunctive Order is optional to the party against whom the immediate order is sought. Any response shall be served on the applicant. If a response is submitted, the responding party shall, prior to the hearing or at the hearing,

file with the Director two copies of the response and proof of service on all parties.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Rule 10310; and any information required to be disclosed by the arbitrator pursuant to Rule 10312 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for an Immediate Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Immediate Injunctive Order. Unless the parties agree otherwise, however, the order will expire no later than the earlier of the issuance or denial of a Regular Injunctive Order under subparagraph (2) or a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

(2) Regular Injunctive Orders.

(A) Upon receipt of an application for a Regular Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than three and no later than five business days after the response is filed or due to be filed, whichever comes first.

(B) The party against which a Regular Injunctive Order is sought shall serve a response on the applicant within three business days of receipt of the application. The responding party shall simultaneously and in the same manner file with the Director two copies of the response and proof of service on all parties. Failure to file a response within the specified time period shall not be grounds for delaying the hearing, nor shall it bar the respondent from presenting evidence at the hearing.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Rule 10310; and any information required to be disclosed by the arbitrator pursuant to Rule 10312 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for a Regular Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Regular Injunctive Order. Unless the parties agree otherwise, however, a Regular Injunctive Order shall expire no later than a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

(e) Challenges to Arbitrators

There shall be unlimited challenges for cause to the single arbitrator appointed to hear the application for injunctive relief, but there shall be no peremptory challenges. Parties wishing to object to the arbitrator shall do so by telephone to the Director, and shall confirm such objection immediately in writing or by facsimile transmission, with a copy to all parties. A peremptory challenge may not be made to an arbitrator who heard an application for an injunctive order and who subsequently participates or is to participate on the arbitration panel hearing the same arbitration case on the merits.

(f) Hearing on the Merits

Immediately following the issuance of an Immediate or Regular Injunctive Order, the Director shall appoint arbitrators according to the procedures specified in the Code to hear the matter on the merits. The arbitration shall proceed in an expedited manner pursuant to a schedule and procedures specified by the arbitrators. The arbitrators may specify procedures and time limitations for actions by the parties different from those specified in the Code.

(g) Effect of Court Injunction

If a court has issued an injunction against one of the parties to an arbitration agreement, unless otherwise specified by the court, any requested arbitration concerning the matter of the injunction shall proceed in an expedited manner according to a time schedule and procedures specified by the arbitration panel appointed under this Code.

(h) Security

The arbitrator issuing the Immediate or Regular Injunctive Order may require the applicant, as a condition to effectiveness of the order, to deposit security in an amount that the arbitrator deems proper, in a separate bank trust or escrow account for the benefit of the party against whom injunctive relieve is sought, for the payment of any costs and damages that may be incurred or suffered by the party against whom injunctive relief is sought if it is found to have been wrongfully enjoined.

(i) Effective Date

This Rule shall apply to arbitration claims filed on or after the effective date of this Rule. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This Rule shall expire one year after its effective date unless extended by the Association's Board of Governors.

NASD NOTICE TO MEMBERS 97-60

SEC Approves New Procedures For Granting Exemptions To NASD Rules

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registered Representatives
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

On August 7, 1997, the Securities and Exchange Commission (SEC) approved amendments to the National Association of Securities Dealers, Inc. (NASD®) Code of Procedure setting forth, among other things, general procedures for members to apply for exemptions under various rules and conforming changes to provide exemptive authority for particular rules. The new rules supersede prior procedures, which vested authority for granting exemptions in various standing committees of the NASD.

Questions concerning this *Notice* may be directed to Alden S. Adkins, General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8332; Mary Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation℠, at (202) 728-8252; and Robert J. Smith, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Discussion

As part of the NASD's settlement of administrative proceedings with the SEC last year, the NASD agreed to provide autonomy and independence to the regulatory staff of the NASD and its subsidiaries such that the staff: (i) has sole discretion as to what matters to investigate and prosecute, (ii) has sole discretion to handle all other regulatory matters, (iii) prepares rule proposals, rule interpretations, and other policy matters involving consultations with interested NASD constituencies in a fair and evenhanded manner, and (iv) is generally insulated from the commercial interests of its members and The Nasdaq Stock Market℠ (Nasdaq®).

On August 7, 1997, the SEC approved amendments to the NASD's Code of Procedure setting forth, among other things, general procedures for members to apply for exemptions under various rules and conforming changes to provide exemptive authority for particular rules. The approved amendments provide autonomy and independence to the regulatory staff in that the amendments require members to apply to the staff in the first instance for an exemption under various rules and provide a right of appeal to the National Business Conduct Committee (NBCC). Under previous rules, certain quasi-adjudicative or exemptive authority was granted to various standing committees. The rules were developed after extensive consultation with SEC staff.

Description

The amendments create a new Rule 9600 Series under the Code of Procedure that requires a member seeking an exemption from certain NASD rules to file a written application with the Office of General Counsel of NASD Regulation. The amendments also set forth a list of specific rules under which exemptions are available, including: rules relating to registration requirements (Rule 1021); categories of principal registration (Rule 1022); qualification examinations and waiver of requirements (Rule 1070): free-riding and withholding (IM-2110-1)[1]; communications with the public (Rule 2210); customer account statements (Rule 2340); margin accounts (Rule 2520); underwriting terms and arrangements for corporate financing matters (Rule 2710); conflicts of interest involving distributions of securities of members and affiliates (Rule 2720); direct participation programs (Rule 2810); position limits for index warrants (Rule 2850); exercise limits for index warrants (Rule 2851); position limits for options (Rule 2860); position limits for index options (IM-2860-1); exercise limits for options (Rule 2860); securities categorized as "failed to receive" and "failed to

deliver" (Rule 3210); short sales (Rule 3350); customer account transfer contracts (Rule 11870); clearance of corporate debt securities (Rule 11900); and MSRB Rule G-37.

The rules provide that any written application for an exemption must contain the member's name and address, the name of a person associated with the member who will serve as the primary contact for the application, the rule from which the member is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the member does not wish the application or the decision on the application to be publicly available in whole or in part, the member also must include in its application a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

The rules require the NASD Regulation staff, after considering an application, to issue a written decision setting forth its findings and conclusions and to serve this decision on the applicant pursuant to NASD Rules 9132 and 9134 in the Code of Procedure. After the decision is served on the applicant, the application and decision will be made publicly available unless NASD Regulation staff determines that the applicant has shown good cause for treating the application or decision as confidential in whole or in part.

The rules permit an applicant to appeal the decision by filing a written notice of appeal within 15 calendar days after service of a decision issued under proposed Rule 9620. The notice of appeal must contain a brief statement of the findings and conclusions as to which exception is taken. The NBCC may order oral argument. If the applicant does not want the NBCC's decision on appeal to be publicly available in whole or in part, the applicant must include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal must be signed by the applicant. Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant, the NBCC shall provide expedited review. An applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the NBCC.

The rules require the NBCC, following the filing of a notice of appeal, to designate a subcommittee to hear an oral argument, if ordered, to consider any new evidence that the applicant can show good cause for not including in its application, and to recommend to the NBCC a disposition of all matters on appeal. After considering all matters on appeal and the subcommittee's recommendation, the NBCC will affirm, modify, or reverse the decision issued under proposed Rule 9620. The NBCC must issue a written decision setting forth its findings and conclusions and serve the decision on the applicant. The decision must be served pursuant to NASD Rules 9132 and 9134 in the Code of Procedure. The decision will be effective upon service and constitutes final action of the NASD.

Where necessary, the rules also make conforming changes to those particular rules under which exemptive authority may be exercised and clarify that the authority for granting such exemptions rests with NASD Regulation staff in the first instance.

In addition, authority has been newly created under NASD Rule 2210 to permit the Advertising Regulation Department to grant exemptions from the pre-filing requirements of paragraph (c) of that rule in order to reflect existing practice. The need for such authority under NASD Rule 2210 arises when, for example, members are the subject of a buyout or reorganization, or form a subsidiary firm, and the successor entity is substantially similar to the predecessor entity, retains the same control persons, and continues to produce the same securities products that were previously filed with the Department. In such situations, the pre-filing requirements may not be necessary in order to serve the purpose of the rule.

Finally, the rules delete the Rule 9800 series, which contained procedures for committee review of staff decisions relating to corporate financing and direct participation program matters.

The rules do not affect certain existing functions of committees when the functions performed are fundamentally different from adjudicatory functions, or when the issues presented are highly technical and do not require a formal process. In particular, NASD Rule 11110 will continue to authorize certain functions for the Financial Responsibility and Operations Committees, such as review of "regular way" and "when issued" transactions or an issuer's notification of a due bill or dividend announcement in certain circumstances. NASD Rules 10102, 10104 and 10301(b) will continue to authorize certain functions for the National Arbitration and Mediation Committee, such as consideration of qualifications for arbitrators, recruitment of arbitrators, maintenance of the arbitrator pool, composition and appointment of an arbitration panel in a particular case, and approval of the determination to decline the use of the NASD's arbitration forum in any dispute.

The rules create procedural regularity and predictability to optimize even-handed results and minimize dis-

parate results. At the same time, the amendments both clarify and streamline the process for granting exemptions by articulating the application and decision process and by clearly defining appeal rights.

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

CODE OF PROCEDURE

9600. Procedures for Exemptions

9610. Application

(a) File with General Counsel

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3210, 3350, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the Office of General Counsel of NASD Regulation.

(b) Content

An application filed pursuant to this Rule shall contain the member's name and address, the name of a person associated with the member who will serve as the primary contact for the application, the Rule from which the member is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the member does not want the application or the decision on the application to be publicly available in whole or in part, the member also shall include in its application a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

(c) Applicant

A member that files an application under this Rule is referred to as "Applicant" hereinafter in the Rule 9600 Series.

9620. Decision

After considering an application, NASD Regulation staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant to Rules 9132 and 9134. After the decision is served on the Applicant, the application and decision shall be publicly available unless NASD Regulation staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

9630. Appeal

(a) Notice

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. The National Business Conduct Committee may order oral argument. If the Applicant does not want the National Business Conduct Committee's decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

(b) Expedited Review

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant, the National Business Conduct Committee shall provide expedited review.

(c) Withdrawal of Appeal

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the National Business Conduct Committee.

(d) Appointment of Subcommittee

Following the filing of a notice of appeal, the National Business Conduct Committee shall designate a Subcommittee to hear an oral argument, if ordered, consider any new evidence that the Applicant can show good cause for not including in its application, and recommend to the National Business Conduct Committee a disposition of all matters on appeal.

(e) Decision

After considering all matters on appeal and the Subcommittee's recommendation, the National Business Conduct Committee shall affirm, modify, or reverse the decision issued under Rule 9620. The National Business Conduct Committee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of the Association.

Conforming Rule Changes

Rule 1021. Registration Requirements

(e)(2) Pursuant to the Rule 9600 Series, the [President of the] Association[, upon written request,] may waive the provisions of subparagraph (1)[, above,] in situations [which]

that indicate conclusively that only one person associated with an applicant for membership should be required to register as a principal.

1022. Categories of Principal Registration

(b)(4) Pursuant to the Rule 9600 Series, the Association may exempt a member[,] or an applicant for membership in the Association[, may upon written request, be exempted by the President of the Association, or his delegate,] from the requirement to have a Limited Principal—Financial and Operations if:

(A) it has been expressly exempted by the Commission from SEC Rule 15c3-1(b)(1)(iii);

(B) it is subject to the provisions of SEC Rule 15c3-1(a)(2) or to Section 402.2(c) of the rules of the Treasury Department.

1070. Qualification Examinations and Waiver of Requirements

(e) Pursuant to the Rule 9600 Series, the [President of the] Association may, in exceptional cases and where good cause is shown, waive the applicable Qualification Examination [upon written request by the member,] and accept other standards as evidence of an applicant's qualifications for registration. Advanced age, physical infirmity or experience in fields ancillary to the investment banking or securities business will not individually of themselves constitute sufficient grounds to waive a Qualification Examination.

2210. Communications with the Public

(c) Filing Requirements and Review Procedures

(8) Exemptions. Pursuant to the Rule 9600 Series, the Association may exempt a member or person associated with a member from the pre-filing requirements of this paragraph for good cause shown.

2340. Customer Account Statements

(d) Pursuant to the Rule 9600 Series, the Association[, acting through its Operations Committee] may[, pursuant to a written request for good cause shown,] exempt any member from the provisions of this Rule for good cause shown.

2520. Margin Accounts

(c)(5)(C) Joint Accounts in Which the Carrying Organization or a Partner or Stockholder Therein Has an Interest

In the case of a joint account carried by a member in which such member, or any partner, or stockholder (other than a holder of freely transferable stock only) of such member participates with others, each participant other than the carrying member shall maintain an equity with respect to such interest pursuant to the margin provisions of this paragraph as if such interest were in a separate account.

Pursuant to the Rule 9600 Series, [T]the Association [will consider requests for exemption from the] may grant an exemption from the provisions of [this] paragraph (c)(5)(C)[, provided] if the account is:

(i) [the account is] confined exclusively to transactions and positions in exempted securities;

(ii) [the account is] maintained as a Market Functions Account conforming to the conditions of Section 220.12(e) (Odd-lot dealers) of Regulation T of the Board of Governors of the Federal Reserve System; or

(iii) [the account is] maintained as a Market Functions Account conforming to the conditions of Section 220.12(c) (Underwritings and Distributions) of Regulation T of the Board of Governors of the Federal Reserve System and each other participant margins his share of such account on such basis as the Association may prescribe.

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(d) Exemptions. Pursuant to the Rule 9600 Series, the Association may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(p) Requests for Exemption from Rule 2720

Pursuant to the Rule 9600 Series, [T]the Association [Corporate Financing Committee of the Board of Governors, upon written request,] may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member unconditionally or on specified terms from any or all of the provisions of this Rule which it deems appropriate. [Unless waived by the party requesting an exemption, a hearing shall be held upon a request before the Corporate Financing Committee, or a Subcommittee thereof designated for that purpose.]

2810. Direct Participation Programs

(c) Exemptions. Pursuant to the Rule 9600 Series, the Association may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

2850. Position Limits

(a) Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a purchase or sale transaction in an index warrant listed on Nasdaq or on a national securities exchange if the member has reason to believe that as a result of such transaction the member, or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control an aggregate position in an index warrant position on the same side of the market, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market, in excess of the position limits established by the Association, in the case of Nasdaq-listed index warrants, or on the exchange on which the warrant is listed.

2851. Exercise Limits

(a) Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown, in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with a member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a long position in any index warrant if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly:

(1) has or will have exercised within any five (5) consecutive business days a number of index warrants overlying the same index in excess for the limits for index warrant positions contained in Rule 2850; or

(2) has or will have exceeded the applicable exercise limit fixed from time to time by an exchange for an index warrant not dealt in on Nasdaq.

(b) The Association, pursuant to the Rule 9600 Series for good cause shown, may institute other limitations concerning the exercise of index warrants from time to time [by action of the Association]. Reasonable notice shall be given of each new limitation fixed by the Association. These exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

2860. Options

(b) Requirements

(3) Position Limits

(A) Stock Options—Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of:

(i) 4,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

(ii) 7,500 options contracts of the put class and the call class on the same side of the market covering the same underlying security, providing that the 7,500 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 7,500 option contracts; or

(iii) 10,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security providing that the 10,500 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 10,500 option contracts; or

(iv) 20,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 20,000 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 20,000 option contracts; or

(v) 25,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 25,000 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or

exchange-traded options qualifying under applicable rules for a position limit of 25,000 option contracts; or

(vi) such other number of stock options contracts as may be fixed from time to time by the Association as the position limit for one or more classes or series of options provided that reasonable notice shall be given of each new position limit fixed by the Association.

(vii) Equity Option Hedge Exemption

a. The following positions, where each option contract is "hedged" by 100 shares of stock or securities readily convertible into or economically equivalent to such stock, or, in the case of an adjusted option contract, the same number of shares represented by the adjusted contract, shall be exempted from established limits contained in (i) through (vi) above:

1. long call and short stock;

2. short call and long stock;

3. long put and long stock;

4. short put and short stock.

b. Except as provided under the OTC Collar Exemption contained in paragraph (b)(3)(A)(viii), in no event may the maximum allowable position, inclusive of options contracts hedged pursuant to the equity option position limit hedge exemption in subparagraph a. above, exceed three times the applicable position limit established in paragraph (b)(3)(A)(i)-(v).

c. The Equity Option Hedge Exemption is a pilot program authorized by the Commission through December 31, 1997.

(viii) OTC Collar Aggregation Exemption

a. For purposes of this paragraph (b), the term OTC collar shall mean a conventional equity option position comprised of short (long) calls and long (short) puts overlying the same security that hedge a corresponding long (short) position in that security.

b. Notwithstanding the aggregation provisions for short (long) call positions and long (short) put positions contained in subparagraphs (i) through (v) above, the conventional options positions involved in a particular OTC collar transaction established pursuant to the position limit hedge exemption in subparagraph (vii) need not be aggregated for position limit purposes, provided the following conditions are satisfied:

1. the conventional options can only be exercised if they are in-the-money;

2. neither conventional option can be sold, assigned, or transferred by the holder without the prior written consent of the writer;

3. the conventional options must be European-style (i.e., only exercisable upon expiration) and expire on the same date;

4. the strike price of the short call can never be less than the strike price of the long put; and

5. neither side of any particular OTC collar transaction can be in-the-money when that particular OTC collar is established.

6. the size of the conventional options in excess of the applicable basic position limit for the options established pursuant to subparagraph (A)(i)-(v) above must be hedged on a one-to-one basis with the requisite long or short stock position for the duration of the collar, although the same long or short stock position can be used to hedge both legs of the collar.

c. For multiple OTC collars on the same security meeting the conditions set forth in subparagraph b. above, all of the short (long) call options that are part of such collars must be aggregated and all of the long (short) put options that are part of such collars must be aggregated, but the short (long) calls need not be aggregated with the long (short) puts.

d. Except as provided above in subparagraph b. and c., in no event may a member fail to aggregate any conventional or standardized options contract of the put class and the call class overlying the same equity security on the same side of the market with conventional option positions established in connection with an OTC collar.

e. Nothing in this subparagraph (viii) changes the applicable position limit for a particular equity security.

IM-2860-1. Position Limits

(B) Index Options

(i) Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction in an option contract of any class of index options displayed on Nasdaq or dealt in on an exchange if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of position limits established by the Association, in the

case of Nasdaq index options, or the exchange on which the option trades.

(4) Exercise Limits

Except in highly unusual circumstances, and with the prior written approval of the Association[,] pursuant to the Rule 9600 Series for good cause shown in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with a member has an interest, or for the account of any partner, officer, director or employee thereof or for the account of any customer, any option contract if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days a number of option contracts of a particular class of options in excess of the limits for options positions in paragraph (b)(3). The Association may institute other limitations concerning the exercise of option contracts from time to time by action of the Association. Reasonable notice shall be given of each new limitation fixed by the Association.

3210. Securities "Failed to Receive" and "Failed to Deliver"

(b) Pursuant to the Rule 9600 Series, [F]for good cause shown and in exceptional circumstances, the Association may exempt a member or a person associated with a member [a member may request exemption] from the provisions of this Rule [by written request to the District Director of the District in which his principal office is located].

3350. Short Sale Rule

(j) Pursuant to the Rule 9600 Series or on the Association's [Upon application or on its] own motion, the Association may exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of this Rule.

[9800. Corporate Financing and Direct Participation Program Matters]

[9810. Purpose]

[The purpose of this Rule 9800 Series is to provide a procedure for review of determination by the Association's staff regarding compliance with Rules of the Association relating to corporate financing and direct participation program matters by which any member is aggrieved.]

[9820. Application by Aggrieved Member]

[Any member aggrieved by a determination rendered pursuant to any Rule or regulation of the Association relating to underwriting terms or arrangements may make application for review of such determination. In exceptional or unusual circumstances, a member may request conditionally or unconditionally an exemption from such Rules or regulations. Applications for review will be accepted only with respect to offerings for which a registration statement or similar document has been filed with the appropriate federal or state regulatory agency; provided, however, that a hearing committee may waive the requirement for filing prior to review upon a finding that such review is appropriate under the circumstances.]

[9830. Application for Review]

[Any member making application for review pursuant to Rule 9820 (hereinafter referred to as "applicant") shall request such review in writing and shall specify in reasonable detail the source and nature of the aggrievement and the relief requested. The applicant shall state whether a hearing is requested and shall sign the written application.]

[9840. Notice of Hearing]

[Any applicant shall have a right to a hearing before a hearing committee constituted as provided in Rule 9850. The hearing committee may request a hearing on its own motion. A hearing shall be scheduled as soon as practicable, at a location determined by the hearing committee. Written notice of the hearing shall be sent to the applicant stating the date, time, and location of the hearing.]

[9850. Hearing Committee and Procedure]

[(a) Any hearing shall be before an individual designated by the Association, who shall be current or past members of the appropriate standing committee of the Board of Governors, i.e. the "hearing committee." Any applicant shall be entitled to appear at, and participate in, the hearing, to be represented by counsel, and to submit any relevant testimony or evidence. Representatives of the Association shall be entitled to appear at, participate in, the hearing, to be represented by counsel, and to submit any relevant testimony or evidence. Upon agreement of the applicant, representatives of the Association, and the hearing committee, a hearing may be conducted by means of telephonic or other linkage which permits all parties to participate simultaneously in the proceeding.]

[(b) In the event that the applicant waives a hearing before the appropriate hearing committee, the hearing committee shall review the matter on the record before it. Any applicant and the Association shall be entitled to submit any relevant written testimony or evidence to the hearing committee.]

[9860. Requirement for Written Determination]

[The hearing committee shall render a determination as to all issues which the committee finds to be relevant as soon as practicable following conclusion of the hearing or, in cases in which a hearing is not requested, completion of the committee's review of the record. The hearing committee may determine whether the proposed underwriting or other terms and arrangements in connection with or relating to the distribution of the securities, or the terms and conditions related thereto, taking into consideration all elements of compensation and all of the relevant surrounding factors and circumstances, are fair and reasonable and in compliance with applicable Rules and regulations. The determination of the hearing committee shall be issued in writing, and a copy shall be sent to each applicant.]

[9870. Review by Committee of Board]

[(a) Any member aggrieved by a determination of a hearing committee shall have a right to have that determination reviewed by the appropriate standing committee of the Board of Governors.]

[(b) Any member seeking a review of a determination of a hearing committee shall submit a written request for such review to the Association within fifteen (15) business days following issuance of the hearing committee's written determination. Any such member shall submit with the written request for review a written statement specifying the portion of the hearing committee's determination for which review is requested and the relief sought. Any such member may submit written testimony or evidence for consideration by the committee. Representatives of the Association may also submit written testimony or evidence to the committee.]

[(c) Pursuant to a request duly made, the appropriate standing committee of the Board of Governors will review the determination of a hearing committee, giving consideration to all parts of the record which the Board committee finds relevant. The Board committee shall render a determination as to all issues which the committee finds to be relevant. The determination of the Board committee shall be issued in writing, and a copy shall be sent to each member requesting review.]

[9880. Nature of Determination]

[Any determination by a hearing committee or standing committee rendered shall constitute the opinion of that committee as to compliance with applicable Association Rules, interpretations or policies and shall be advisory in nature only. Such determination shall not be subject to review by the Board of Governors. No such determination shall constitute a finding of a violation of any Rule, interpretation or policy. A finding of a violation shall be made only by a District Business Conduct Committee.]

11870. Customer Account Transfer Contracts

(j) Exemptions

(1) Pursuant to the Rule 9600 Series, the Association may exempt from the provisions of this Rule, either unconditionally or on specified terms and conditions, (A) any member or (B) any type of account, security or financial instrument.

11900. Clearance of Corporate Debt Securities

Each member or its agent that is a participant in a registered clearing agency, for purposes of clearing over-the-counter securities transactions, shall use the facilities of a registered clearing agency for the clearance of eligible transactions between members in corporate debt securities. Pursuant to the Rule 9600 Series, the Association may exempt any transaction or class of transactions in corporate debt securities from the provision of this Rule as may be necessary to accommodate special circumstances related to the clearance of such transactions or class of transactions.

Endnotes

[1] An exemption is available under IM-2110-1 (free-riding and withholding) only with respect to paragraph (d) relating to issuer-directed securities. However, the NASD has proposed amendments that would provide broader exemptive authority for all of the provisions of IM-2110-1 (*see Notice to Members 97-30* (May 1997)).

NASD NOTICE TO MEMBERS 97-61

SOES Tier Size Levels Set To Change October 1, 1997

Suggested Routing

- ☐ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registered Representatives
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ■ Systems
- ■ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

Effective October 1, 1997, tier sizes for 537 Nasdaq National Market® securities will be revised in accordance with NASD® Rule 4710(g).

For more information, please contact Nasdaq® Market Operations at (203) 378-0284.

Description

Under Rule 4710, the maximum Small Order Execution System℠ (SOES℠) order size for a Nasdaq National Market® security is 1,000, 500, or 200 shares depending on the trading characteristics of the security. The Nasdaq Workstation II™ indicates the maximum SOES order size for each Nasdaq National Market security in its bid/offer quotation display. The indicator "NM10," "NM5," or "NM2" is displayed to the right of the security name, corresponding to a maximum SOES order size of 1,000, 500, or 200 shares, respectively.

The criteria for establishing SOES tier sizes are as follows:

• A 1,000-share tier size was applied to those Nasdaq National Market securities that had an average daily non-block volume of 3,000 shares or more a day, a bid price that was less than or equal to $100, and three or more market makers.

• A 500-share tier size was applied to those Nasdaq National Market securities that had an average daily non-block volume of 1,000 shares or more a day, a bid price that was less than or equal to $150, and two or more market makers.

• A 200-share tier size was applied to those Nasdaq National Market securities that had an average daily non-block volume of less than 1,000 shares a day, a bid price that was less than or equal to $250, and less than two market makers.

In accordance with Rule 4710, Nasdaq periodically reviews the SOES tier size applicable to each Nasdaq National Market security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of June 30, 1997, pursuant to the aforementioned standards. The SOES tier-size changes called for by this review are being implemented with three exceptions.

• First, issues were not permitted to move more than one tier-size level. For example, if an issue was previously categorized in the 1,000-share tier, it would not be permitted to move to the 200-share tier, even if the formula calculated that such a move was warranted. The issue could move only one level to the 500-share tier as a result of any single review. In adopting this policy, the NASD was attempting to maintain adequate public investor access to the market for issues in which the tier-size level decreased and to help ensure the ongoing participation of market makers in SOES for issues in which the tier-size level increased.

• Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced.

• Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

In addition, with respect to initial public offerings (IPOs), the SOES tier-size reranking procedures provide that a security must first be traded on Nasdaq for at least 45 days before it is eligible to be reclassified.

Thus, IPOs listed on Nasdaq within the 45 days prior to June 30, 1997,

were not subjected to the SOES tier-size review.

Following is a listing of the 537 Nasdaq National Market issues that will require a SOES tier-level change on October 1, 1997.

Nasdaq National Market SOES Tier Size Changes

All Issues In Alphabetical Order By Security Name
(Effective October 1, 1997)

Symbol	Company Name	Old Tier Level	New Tier Level
A			
AAII	APPLIED ANALYTICAL	500	1000
AANB	ABIGAIL ADAMS NATL	500	1000
AASI	ADVANCED AERO CL A	500	1000
AASIW	ADVANCED AERO WT A	500	1000
ABFI	AMERICAN BUS FIN SVC	500	1000
ABFSP	ARKANSAS BEST CV PFD	500	1000
ACCB	ACCESS BEYOND INC	500	1000
ACCL	ACCELGRAPHICS INC	200	500
ACLE	ACCEL INTL CP	1000	500
ACLR	ACCENT COLOR SCIENCE	500	1000
ACLY	ACCELER8 TECH CORP	500	1000
ADECY	ADECCO SA ADR	200	500
AFCX	A F C CABLE SYS INC	500	1000
AFED	AFSALA BANCORP INC	1000	500
AGTX	APPLIED GRAPHICS TEC	500	1000
AHEPZ	AMER HEALTH DEP SHRS	1000	500
AHLS	A H L SERVCES INC ##	200	500
ALLE	ALLEGIANT BNCP INC	200	500
ALRI	ALLERGAN LIGAND RET	200	500
AMBC	AMER BNCP OHIO	500	200
AMIE	AMBASSADORS INTL INC	1000	500
AMPI	AMPLICON INC	500	200
AMRS	AMERUS LIFE HLDGS	500	1000
AMSN	AMSCAN HLDGS INC	500	1000
AMTD	AMERITRADE HLDG A ##	200	500
AMZN	AMAZON.COM INC	200	500
ANDR	ANDERSEN GROUP INC	200	500
APEX	APEX PC SOLUTIONS	200	500
AREA	AREA BANCSHARES CP	200	500
ARGL	ARGYLE TELEVISION A	500	1000
ARSD	ARABIAN SHIELD DEV	500	1000
ARTW	ART S WAY MFG CO INC	200	500
ASBP	A S B FINANCIAL CP	1000	500
ASFN	ALLSTATE FINL CP	1000	500
ASIGF	ANSALDO SIGNAL NV	500	1000
ASIS	ASI SOLUTIONS INC	200	500
ASTM	AASTROM BIOSCIENCES	500	1000
ATAC	AFTERMARKET TECH CP	500	1000
ATLPA	ATL PRODUCTS CL A	200	500
AXYS	AXSYS TECHS INC	500	1000
B			
BACU	BACOU USA INC	500	1000
BANCP	BBC CAPITAL TR I PFD	200	500
BCGA	BANK CORP OF GEORGIA	500	200
BCIS	BANCINSURANCE CP	1000	500
BCORY	BIACORE INTL AB ADR	500	1000
BEAS	B E A SYSTEMS INC	200	500
BEXP	BRIGHAM EXPLORATION	200	500
BFEN	B F ENTERPRISES INC	500	200
BFFC	BIG FOOT FIN CORP	500	1000
BGAS	BERKSHIRE GAS CO	1000	500
BGSS	B G S SYSTEMS INC	500	1000
BHIKF	B H I CORP	500	1000
BINX	BIONX IMPLANTS INC	200	500
BKCT	BANCORP CONN INC	500	1000
BKLA	BANK OF LOS ANGELES	500	1000
BKNG	BANKNORTH GP INC	500	1000
BKUNO	BANKUNITED FIN PFD	200	500
BLCI	BROOKDALE LIVING COM	200	500
BLSC	BIO LOGIC SYS CP	500	1000
BMAN	BIRMAN MANAGED CARE	500	1000
BMCCP	BANDO MCGLOC PFD A	500	200
BONEO	BANC ONE CP PFD C	1000	500
BORAY	BORAL LTD ADS	500	200
BOTX	BONTEX INC	500	200
BOXXA	BOX ENERGY CP CL A	200	500
BOYD	BOYD BROS TRANS INC	500	1000
BPOPP	POPULAR INC PFD A	500	1000
BRZS	BRAZOS SPORTSWEAR	1000	500
BSTE	BIOSITE DIAGNOSTIC	500	1000
BTEK	BALTEK CP	200	500
BTIC	BRUNSWICK TECHS INC	500	1000
BTRN	BIOTRANSPLANT INC	500	200
BWLN	BOWLIN OUTDOOR ADVER	500	1000

Symbol	Company Name	Old Tier Level	New Tier Level
C			
CAFI	CAMCO FINANCIAL CP	1000	500
CALM	CAL-MAINE FOODS INC	500	1000
CANX	CANNON EXPRESS INC	200	500
CAPS	CAPITAL SAV BNCP INC	500	1000
CARD	CARDINAL BSCHS INC	500	1000
CASS	CASS COMMERCIAL CORP	200	500
CBBI	C B BANCSHARES INC	500	1000
CBCG	C B COMM REAL ESTATE	500	1000
CBHI	C BREWER HOMES INC A	1000	500
CBMD	COLUMBIA BANCORP MD	1000	500
CBSL	COMPLETE BUSINESS	200	500
CCBC	CALIFORNIA COMM BCSH	200	500
CDEN	COAST DENTAL SVCS	500	1000
CDIR	CONCEPTS DIRECT INC	500	200
CDWN	COLONIAL DOWNS CL A	200	500
CENI	CONESTOGA ENTRPR INC	500	1000
CERS	CERUS CORP	500	1000
CFAC	CENTRAL FIN ACCEPT	500	1000
CFIC	COMMUNITY FIN CP	1000	500
CFIN	CONSUMERS FIN CP	200	500
CFINP	CONSUMERS FIN CP PFD	200	500
CFNC	CAROLINA FINCORP INC	500	1000
CHCO	CITY HOLDING CO	1000	500
CINS	CIRCLE INCOME SHARES	1000	500
CLNPP	CALLON PETRO PFD A	500	200
CLTDF	COMPUTALOG LTD	500	200
CLTR	COULTER PHARM INC	500	1000
CMDAW	CAM DESIGNS INC WTS	500	200
CMSS	CREDIT MGMT SOLU	500	1000
CNBA	CHESTER BANCORP INC	1000	500
CNBC	CENTER BANCORP INC	200	500
CNBF	C N B FINANCIAL CP	500	200
CNBI	C N BIOSCIENCES INC	500	1000
COBI	COBANCORP INC	500	1000
COLTY	C O L T TELECOM ADR	500	1000
COSC	COSMETIC CENTER CL C	200	500
COSE	COSTILLA ENERGY INC	500	1000
COVB	COVEST BANCSHARES	1000	500
CPLNY	CONCORDIA PAPER ADS	200	500
CRBO	CARBO CERAMICS INC	500	1000
CRESY	CRESUD SACIF ADR	200	500
CRYSF	CRYSTAL SYSTEMS SOL	500	1000
CTBIP	CTBI PFD CAP TRUST	200	500
CTIC	CELL THERAPEUTICS ##	200	500
CTRIS	CLEVETRUST RLTY SBI	500	1000
CTWS	CONN WATER SVCS INC	1000	500
CVTX	C V THERAPEUTICS INC	500	1000
CWTR	COLDWATER CREEK INC	500	1000
CYFN	CENTURY FINANCIAL CP	200	500
D			
DAHX	DECRANE AIRCRAFT	200	500
DAOU	D A O U SYSTEMS INC	500	1000
DARL	DARLING INTL INC	500	200
DATX	DATA TRANSLATION	500	1000
DAVE	FAMOUS DAVES OF AMER	500	1000
DCBI	DELPHOS CITIZENS BCP	500	1000
DCRNW	DIACRIN INC WT	1000	500
DEVC	DEVCON INTL CP	1000	500
DGIC	DONEGAL GROUP INC	1000	500
DIGL	DIGITAL LIGHTWAVE	500	1000
DITI	DIATIDE INC	500	1000
DLIA	DELIA*S INC	500	1000
DLTK	DELTEK SYSTEMS INC	200	500
DMAR	DATAMARINE INTL INC	1000	500
DNCC	DUNN COMPUTER CORP	200	500
DOCDF	DOCDATA NV	200	500
DTAM	DATAMARK HOLDING INC	500	1000
DTMC	D T M CORP	200	500
DTPI	DIAMOND TECH PTNRS	200	500
DXCPP	DYNEX CAPITAL PFD A	1000	500
E			
EACO	E A ENGRG SCI TECH	1000	500
EAII	ENGINEERING ANMTN	500	1000
ECSGY	ECSOFT GROUP PLC ADR	500	1000
ECSI	ENDOCARDIAL SOLUTION	200	500
EDCO	EDISON CONTROL CP	200	500
EDMD	EDUCATIONAL MEDICAL	500	1000
EDSE	E S E L C O INC	500	200
EEFT	EURONET SVCS INC	200	500
EFBC	EMPIRE FED BANCORP	500	1000
EGLB	EAGLE BANCGROUP INC	1000	500
EIDSY	EIDOS PLC ADR	500	1000
EIRE	EMERALD ISLE BANCORP	1000	500
ELET	ELLETT BROTHERS INC	500	1000
ELGT	ELECTRIC & GAS TECH	500	1000
ELNK	EARTHLINK NETWORK	500	1000
ELTKF	E L T E K LTD	500	1000
ELXS	E L X S I CP	500	1000
EMITF	ELBIT MED IMAGING	500	1000
EMKR	EMCORE CORP	200	500
EMSI	EFFECTIVE MGMT SYS	1000	500
ENMC	ENCORE MEDICAL CORP	200	500
ENMCW	ENCORE MEDICAL CP WT	200	500
ENSR	ENSTAR INC	200	500
ENTS	PHYSICIANS SPECIALTY	200	500
EPEX	EDGE PETROLEUM CP ##	200	500
EPTO	EPITOPE INC	500	1000

Symbol	Company Name	Old Tier Level	New Tier Level
ERGB	ERGOBILT INC	500	1000
ESCA	ESCALADE INC	1000	500
ESLTF	ELBIT SYSTEMS LTD	500	1000
ESPRY	ESPRIT TELECOM ADR	200	500
EVAN	EVANS INC	500	1000
EXAC	EXACTECH INC	1000	500
F			
FARM	FARMER BROTHERS CO	200	500
FATS	FIREARMS TRAINING	500	1000
FAVS	FIRST AVIATION SVCS	200	500
FBAYF	FRISCO BAY INDUS	1000	500
FBCG	FIRST BKG CO SE GA	200	500
FBCI	FIDELITY BANCORP DEL	1000	500
FBNC	FIRST BANCP TROY NC	500	200
FBNKO	FIRST PFD CAP TR PFD	500	1000
FCBF	F C B FINANCIAL CP	500	1000
FCNCA	FIRST CITIZENS CL A	1000	500
FCPY	FACTORY CARD OUTLET	500	1000
FFED	FIDELITY FED BNCP	1000	500
FFHH	FSF FINANCIAL CP	1000	500
FFIN	FIRST FINL BKSHS INC	500	1000
FFLC	FFLC BNCP INC	1000	500
FIFS	FIRST INV FIN SVC GP	1000	500
FKFS	FIRST KEYSTONE FIN	1000	500
FLCHF	FLETCHER'S FINE FOOD	500	200
FLGS	FLAGSTAR BANCORP ##	200	500
FLYAF	C H C HELICO CL A	500	200
FMAR	FIRST MARINER BNCP	500	1000
FOBBA	FIRST OAK BROOK CL A	500	1000
FOBC	FED ONE BANCORP INC	1000	500
FORR	FORRESTER RESEARCH	500	1000
FOUR	FOUR MEDIA COMPANY	500	1000
FPBN	F P BANCORP INC	1000	500
FREEY	FREEPAGES GR PLC ADR	200	500
FRME	FIRST MERCHANTS CP	1000	500
FRPP	F R P PROPERTIES INC	500	200
FSBI	FIDELITY BANCORP INC	500	200
FSBIP	FB CAPITAL TR PFD	200	500
FSBT	FIRST STATE CP	200	500
FSFH	FIRST SIERRA FIN INC	200	500
FSNJ	FIRST SAV BK OF NJ	1000	500
FSTC	FIRST CITIZENS CORP	200	500
FTCG	FIRST COLONIAL GP	500	200
FTFN	FIRST FIN CP (RI)	1000	500
FTMTF	FANTOM TECHS INC	1000	500
FVHI	FIRST VIRTUAL HLDGS	500	1000
FWRX	FIELDWORKS INC	200	500
G			
GBBK	GREATER BAY BANCORP	1000	500
GBBKP	GBB CAP I CUM TR PFD	200	500
GBCI	GLACIER BANCORP	500	1000
GEOC	GEOTEL COMMUN CP	500	1000
GETTY	GETTY COMMUN ADR	500	1000
GFCO	GLENWAY FIN CP	500	200
GFED	GUARANTY FED SAV BK	500	1000
GFNL	GRANITE FINANCIAL	1000	500
GGEN	GALAGEN INC	500	1000
GIFI	GULF ISLAND FABRIC	200	500
GLDB	GOLD BANC CORP INC	500	1000
GLTB	GOLETA NATL BANK	500	200
GMCC	GEN MAGNAPLATE CP	500	200
GMRK	GULFMARK OFFSHORE	200	500
GNCNF	GORAN CAPITAL INC	1000	500
GRERF	GREENSTONE RESOURCES	500	1000
GRLL	ROADHOUSE GRILL INC	500	1000
GSBI	GRANITE STATE BKSHS	500	1000
GSLA	G S FINANCIAL CP	200	500
GSLC	GUARANTY FIN CP	1000	500
GTPS	GREAT AMER BNCP INC	1000	500
GTRC	GUITAR CENTER INC	200	500
H			
HABK	HAMILTON BANCORP INC	200	500
HACH	HACH CO	500	1000
HCBB	HCB BANCSHARES INC	200	500
HCCO	HECTOR COMMUN CP	500	1000
HCFP	HEALTHCARE FIN PTRS	500	1000
HECHB	HECHINGER CO CL B	500	1000
HELI	HELISYS INC	1000	500
HFFB	HARRODSBURG FIRST	500	200
HFGI	HARRINGTON FIN GRP	500	1000
HIFS	HINGHAM INSTI SAVING	200	500
HIHOF	HIGHWAY HLDGS LTD	500	1000
HMII	H M I INDUSTRIES INC	1000	500
HMLD	HOMELAND HLDG CORP	200	500
HMLK	HEMLOCK FED FIN CORP	200	500
HPSC	H P S C INC	1000	500
HYDEB	HYDE ATHLETIC INDS B	500	1000
I			
IATA	IAT MULTIMEDIA ##	200	500
ICGX	ICG COMMUNICATION ##	200	500
ICIQ	INTL COMPUTEX INC	200	500
ILABY	INSTRUMENTATION ADR	1000	500
ILOGY	I L O G ADR	500	1000

Symbol	Company Name	Old Tier Level	New Tier Level
ILXO	I L E X ONCOLOGY INC	200	500
IMGXP	NETWORK IMGNG CP PFD	500	1000
IMGXW	NETWORK IMAGING WTS	500	1000
INDQB	INTL DAIRY QUEEN B	500	200
INHO	INDEPENDENCE HLDG CO	500	1000
INLD	INLAND CASINO CP	200	500
IONAY	IONA TECHS ADR ##	200	500
IPSW	IPSWICH SAV BK	1000	500
IQST	INTELLIQUEST INFO GP	500	1000
ITCC	ITC LEARNING CORP	500	1000
ITGR	INTEGRITY INC	1000	500
ITIC	INVESTORS TITLE CO	1000	500
IUBC	INDIANA UNITED BNCP	500	200
IVBK	INTERVISUAL BOOKS	1000	500
J			
JEFFP	J B I CAPITAL TR PFD	200	500
JLNY	JENNA LANE INC ##	200	500
JLNYW	JENNA LANE INC WTS	200	500
JPEI	J P E INC	500	1000
JRBK	JAMES RIVER BKSHS	200	500
JUDG	JUDGE GROUP INC	500	1000
K			
KARR	KARRINGTON HEALTH	500	1000
KAYE	KAYE GROUP INC	200	500
KELL	KELLSTROM INDS ##	500	1000
KERA	KERAVISION INC	500	1000
KEYB	KEY FLORIDA BANCORP	200	500
KOSP	KOS PHARMACEUTCL ##	200	500
KOSS	KOSS CP	1000	500
KPSQ	KAPSON SNR QUARTERS	1000	500
KTCO	KENAN TRANSPORT CO	500	200
KTEL	K-TEL INTL INC	1000	500
KTIC	KAYNAR TECHS INC	200	500
KTII	K TRON INTL INC	1000	500
KWIC	KENNEDY-WILSON INTL	200	500
L			
LABL	MULTI COLOR CP	1000	500
LACI	LATIN AMER CASINOS	1000	500
LANV	LANVISION SYS INC	500	1000
LARK	LANDMARK BSCHS INC	500	200
LARS	LARSCOM INC CL A	500	1000
LBFC	LONG BEACH FIN CP ##	200	500
LCLD	LACLEDE STEEL CO	1000	500
LEPI	LEADING EDGE PACKAGI	500	1000
LFED	LEEDS FED SAV BANK	500	200
LHSG	L H S GROUP INC	200	500
LIBHA	LIBERTY HOMES INC A	500	200
LIND	LINDBERG CP	1000	500
LION	FIDELITY NATL CP	500	1000
LMTR	LITHIA MOTORS INC	500	1000
LOFSY	LONDON & OVERSEA ADR	500	200
LOGIY	LOGITECH INTL ADR	200	500
M			
MAHI	MONARCH AVALON INC	500	200
MANC	MANCHESTER EQUIP CO	500	1000
MAST	MASTECH CORPORATION	500	1000
MAZL	MAZEL STORES INC	500	1000
MBBC	MONTEREY BAY BANCORP	1000	500
MBLF	M B L A FINL CORP	200	500
MBNY	MERCHANT N Y BNCP	500	1000
MCBS	MID CONT BCSHS INC	1000	500
MCRI	MONARCH CASINO	500	1000
MDLK	MEDIALINK WORLDWIDE	500	1000
MDMD	MEDIRISK INC	500	1000
MDSIF	M D S I MOBILE DATA	500	1000
MEAD	MEADE INSTRUMENTS	200	500
MFCX	MARSHALLTOWN FIN CP	1000	500
MFFC	MILTON FED FINL CP	1000	500
MGRC	MCGRATH RENT CP	500	1000
MISI	METRO INFO SVCS INC	500	1000
MMGR	MEDICAL MGR CORP	500	1000
MRCF	MARTIN COLOR-FI INC	1000	500
MSDX	MASON-DIXON BCSHS	500	1000
MSEX	MIDDLESEX WATER CO	500	1000
MSFTP	MICROSOFT CV PFD ##	500	1000
MTIX	MICRO THERAPEUTICS	200	500
MUEL	MUELLER PAUL CO	200	500
MVBI	MISSISSIPPI VALLEY	500	1000
MVII	MARK VII INC	1000	500
MVSIW	M V S I INC WTS A	500	1000
MVSN	MACROVISION CORP	200	500
MWAV	M-WAVE INC	1000	500
MXBIF	MFC BANCORP LTD	200	500
N			
NACT	NACT TELECOMM INC	200	500
NAFI	NATIONAL AUTO FIN CP	500	1000
NAII	NATURAL ALTERNATIVES	500	1000
NBSC	NEW BRUNSWICK SCI CP	1000	500

Symbol	Company Name	Old Tier Level	New Tier Level
NBSI	NORTH BSCHS INC	500	200
NECSY	NETCOM SYSTEMS ADR	500	1000
NEIB	NORTHEAST IND BNCP	500	1000
NEXR	NEXAR TECHS INC	200	500
NFLIW	NUTRITION FOR LFE WT	500	1000
NGPSF	NOVATEL INC	500	1000
NHCI	NATL HOME CENTERS	1000	500
NHES	NATL HLTH ENHANCE	500	1000
NICH	NITCHES INC	1000	500
NMCOF	NAMIBIAN MINERALS CP	200	500
NMGC	NEOMAGIC CORP ##	200	500
NMPS	MATRITECH INC	500	1000
NMTXW	NOVAMETRIX MED WTS A	200	500
NOLD	NOLAND CO	500	200
NOVI	NOVITRON INTL INC	1000	500
NOVT	NOVOSTE CP	1000	500
NPSI	NORTH PITTSBURGH SYS	500	1000
NRTI	NOONEY REALTY TRUST	500	200
NSAI	N S A INTL INC	1000	500
NSBC	NEWSOUTH BANCORP INC	200	500
NSSX	NATL SANITARY SUPPLY	500	200
NTEG	INTEG INC	500	1000
NWSS	NETWORK SIX INC	1000	500
NWTL	NORTHWEST TELEPROD	500	1000
O			
OAIC	OCWEN ASSET INV CORP	200	500
OAKF	OAK HILL FIN INC	200	500
OGGI	OLD GUARD GROUP INC	200	500
OKSB	SOUTHWEST BNCP INC	1000	500
OKSBP	SOUTHWEST BNCP PFD A	200	500
OMQP	OMNIQUIP INTL INC ##	200	500
ONSL	ONSALE INC	200	500
ORCI	OPINION RESEARCH CP	1000	500
OSBC	OLD SECOND BNCP INC	500	200
OVRL	OVERLAND DATA INC	200	500
P			
PACK	GIBRALTAR PKG GP INC	1000	500
PALX	PALEX INC	200	500
PAMX	PANCHO S MEXICAN INC	1000	500
PATI	PATIENT INFOSYSTEMS	500	1000
PBSF	PACIFIC BANK NATL CA	1000	500
PECX	PHOTOELECTRON CORP	500	1000
PEEK	PEEKSKILL FIN CP	1000	500
PERM	PERMANENT BNCP INC	500	1000
PFDC	PEOPLES BANCORP	500	200
PFINA	P F INDS INC A	1000	500
PHFC	PITTSBURGH HOME FIN	1000	500
PHSYP	PACIFICARE CV PFD	200	500
PLEN	PLENUM PUBLISHING CP	1000	500
PLSS	PEERLESS GROUP INC	500	1000
PMCO	PROMEDCO MGMT CO	200	500
PMFG	PEERLESS MFG CO	1000	500
PRBC	PRESTIGE BNCP INC	1000	500
PRCM	PROCOM TECH INC	500	1000
PRGN	PEREGRINE SYSTEMS	200	500
PRLX	PARLEX CP	500	1000
PRMX	PRIMEX TECHS INC	500	1000
PRWW	PREMIER RESEARCH	500	1000
PSFC	PEOPLES-SIDNEY FIN	200	500
PSFI	PS FINANCIAL INC	500	1000
PSNRY	P T PASIFIK SATL ADR	1000	500
PUMA	PUMA TECHNOLOGY INC	500	1000
PVSA	PARKVALE FINL CP	1000	500
PWAV	POWERWAVE TECHS INC	500	1000
PWBC	PENNFIRST BNCP INC	500	1000
PXXI	PROPHET 21 INC	1000	500
Q			
QCFB	Q C F BANCORP INC	500	200
QLIX	QUALIX GROUP INC	500	1000
R			
RADS	RADIANT SYSTEMS INC	500	1000
RANGY	RANDGOLD & EXPL ADR	200	500
RAVE	RANKIN AUTO GP	500	1000
RESR	RESEARCH INC	500	1000
REXW	REXWORKS INC	500	1000
RHEM	RHEOMETRIC SCIENTIFI	1000	500
RHOM	THE ROTTLUND CO	1000	500
RLCO	REALCO INC	1000	500
RLLYW	RALLY'S HAMBURGER WT	1000	500
RMBS	RAMBUS INC	200	500
RSLN	ROSLYN BANCORP ##	500	1000
RWAV	ROGUE WAVE SOFTWARE	500	1000
S			
SAESY	SAES GETTERS ADR	1000	500
SAGE	SAGEBRUSH INC	1000	500
SBGA	SUMMIT BANK CORP	500	200
SCNI	SPECIALTY CARE NETWK	500	1000
SDIX	STRATEGIC DIAGNOSTIC	1000	500
SEAM	SEAMAN FURNITURE CO	200	500
SELAY	SELECT APPT PLC ADR	500	1000

Symbol	Company Name	Old Tier Level	New Tier Level
SEMCF	SEMI-TECH CP VTG A	500	1000
SEMD	SEA M E D CORP	500	1000
SENEA	SENECA FOODS CP A	500	200
SENEB	SENECA FOODS CP B	500	200
SFFB	SOUTHERN FIN BNCP	200	500
SFSI	SEARCH FIN SVCS	200	500
SFSIP	SEARCH FIN SVCS PFD	200	500
SFXBW	SFX BROADCASTING WTS	500	200
SGNS	SIGNATURE INNS INC	500	200
SGNSP	SIGNATURE INNS PFD A	500	1000
SGVB	S G V BANCORP INC	1000	500
SJNB	S J N B FINANCIAL CP	1000	500
SKYM	SKYMALL INC	500	1000
SLGN	SILGAN HOLDINGS ##	500	1000
SMCO	SIMPSON MFG CO	500	1000
SMCX	SPECIAL METALS CP ##	200	500
SMIN	SOUTHERN MINERAL CP	500	1000
SNBCP	SUN CAPITAL TR PFD	200	500
SNHY	SUN HYDRAULICS CORP	500	1000
SOLLY	DR SOLOMON'S GRP ADR	500	1000
SPAN	SPAN AMERICA MED SYS	1000	500
SPIR	SPIRE CP	500	1000
SRCEO	1ST SOURCE CAP II PF	200	500
SRCEP	1ST SOURCE CAP I PFD	200	500
STCR	STARCRAFT CORP	1000	500
STDM	STORAGE DIMENSIONS	200	500
STLD	STEEL DYNAMICS ##	500	1000
STSAP	STERLING FIN CP PFD	500	1000
STUA	STUART ENTERTAINMENT	1000	500
STYL	STYLING TECH CORP	500	1000
SUBI	SUN BANCORP INC	200	500
SUBK	SUFFOLK BNCP	1000	500
SUMX	SUMMA INDUSTRIES INC	500	1000
SUNH	SUNDANCE HOMES INC	1000	500
SVECF	SCANVEC CO 1990 LTD	500	200
SVRNP	SOVEREIGN BNCP PFD B	1000	500
SWBT	SOUTHWEST BANCP TX	500	1000
T			
TBCOL	TRIATHALON BD DEP SH	200	500
TCCO	TECHNICAL COMMUN CP	1000	500
TCII	T C I INTL INC	1000	500
TCOMP	TELE COMMUN PFD B	200	500
TCPS	TOTAL CONTROL PROD	200	500
TDDDF	3DLABS INC LTD	500	1000
TDHC	THERMADYNE HLDGS CP	500	1000
TDXT	3DX TECHNOLOGIES INC	500	1000
TESOF	TESCO CORP	500	1000
TEXP	TITAN EXPLORATION	500	1000
THNK	T H I N K NEW IDEAS	500	1000
THRNY	THORN PLC ADR NEW	500	200
TKTM	TICKETMASTER GROUP	500	1000
TMAM	T E A M AMERICA CORP	500	1000
TMMC	TALBERT MED MGMT	200	500
TMPW	T M P WORLDWIDE INC	500	1000
TPACP	TCI PAC COM PFD ##	1000	500
TPMI	PERSONNEL MGMT INC	1000	500
TRCW	TRANSCOR WASTE SERV	1000	500
TRGI	TRIDENT ROWAN GROUP	200	500
TRII	TRANSCRYPT INTL INC	500	1000
TSATA	TCI SAT ENT SER A ##	500	1000
TSMAF	TESMA INTL INC A	500	200
TTILF	T T I TEAM TELECOM	500	1000
U			
UBCD	UNIONBANCORP INC	500	1000
UBMT	UNITED FINANCIAL CP	500	1000
UBSH	UNION BANKSHARES CP	200	500
UFCS	UNITED FIRE CASUALTY	500	1000
UFPT	U F P TECH INC	1000	500
UNDG	UNIDIGITAL INC	500	200
UOLP	U O L PUBLISHING INC	500	1000
UPCPO	UNION PLANTERS PFD E	1000	500
UPEN	UPPER PENINSULA ERGY	500	1000
UROH	UROHEALTH SYSTEMS	500	1000
USCS	U S C S INTL INC	500	1000
USML	UNIVERSAL STD MED	1000	500
USPH	U S PHYSICAL THERAPY	1000	500
UTVI	UNITED TELEVISION	500	1000
V			
VDIM	V D I MEDIA	200	500
VDRY	VACU DRY CO	200	500
VENT	VENTURIAN CP	500	200
VERS	VERSATILITY INC	500	1000
VGCOW	VIRGINIA GAS WTS	500	200
VLCCF	KNIGHTSBRIDGE TANKER	500	1000
VNGI	VALLEY NATL GASES	200	500
VPHM	VIROPHARMA INC	500	1000
VRSA	VERSA TECH INC	500	1000
VSAT	VIASAT INC	500	1000
VSEC	V S E CP	200	500
VSTN	VISTANA INC	200	500
VTEK	VODAVI TECHNOLOGY	500	1000
VTRAO	VBC CAPITAL I CAP	200	500

Symbol	Company Name	Old Tier Level	New Tier Level
W			
VVID	VIVID TECHS INC	500	1000
WALBP	WALBRO CAP TR CV PFD	500	1000
WAMUM	WASHINGTON MUT PFD E	1000	500
WAVR	WAVERLY INC	500	1000
WCBI	WESTCO BANCORP	1000	500
WEFC	WELLS FINANCIAL CP	1000	500
WEYS	WEYCO GP INC	500	200
WFSG	WILSHIRE FIN SVCS GR	500	1000
WGOV	WOODWARD GOVERNOR CO	500	1000
WHEL	WHEELS SPORTS GROUP	200	500
WHELW	WHEELS SPORTS GR WTS	200	500
WINEB	CANANDAIGUA WINE B	200	500
WJCO	WESLEY JESSEN VISION	500	1000
WTFC	WINTRUST FIN CORP	200	500
WTRS	WATERS INSTRUMENTS	200	500
WTSC	WEST TELESERVICES CP	500	1000
Y			
YURI	YURIE SYSTEMS INC ##	500	1000
Z			
ZING	ZING TECHS INC	1000	500
ZION	ZIONS BANCORP ##	500	1000
ZNDTY	ZINDART LTD ADR	200	500
ZOMX	ZOMAX OPTICAL MEDIA	1000	500
ZONA	ZONAGEN INC ##	200	500
ZSEV	Z SEVEN FUND INC THE	500	200

NASD NOTICE TO MEMBERS 97-62

SEC Transaction Fees For Off-Exchange Transactions In Exchange-Registered Securities; Refinement Of SEC Fee Rate Algorithm

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ■ Corporate Finance
- ☐ Government Securities
- ■ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registered Representatives
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ■ Systems
- ■ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

The National Association of Securities Dealers, Inc. (NASD®) is reminding member firms that, effective October 1, 1997, the Securities and Exchange Commission (SEC) Transaction Fees for transactions in exchange-registered securities traded off an exchange will be collected by the NASD. Currently, NASD members remit these fees directly to the SEC.

Questions regarding this *Notice* should be directed to James Shelton, Billing Manager, NASD Regulation, Inc., at (301) 590-6757.

SEC Transaction Fees

In *Special Notice to Members 96-81* (December 3, 1996), the NASD published detailed information concerning the SEC Transaction Fee (SEC fee) as outlined in the National Securities Market Improvement Act of 1996. Effective January 1, 1997, the SEC fee applies to transactions by or through any member other than on a securities exchange for securities subject to prompt last-sale reporting. This included securities listed on The Nasdaq Stock Market℠ (Nasdaq®), as well as other non-Nasdaq OTC Equity Securities.

As previously reported in *Notice to Members 96-81*, the National Securities Market Improvement Act also provides that off-exchange transactions in exchange-registered securities (third-market transactions), currently paid directly to the SEC, will be paid through the NASD beginning October 1, 1997.

Covered Securities/Fee Rate

The SEC fee will apply to all third-market transactions in exchange-registered securities other than bonds, debentures and other evidences of indebtedness.

The rate for the SEC fee for third-market transactions is 1/300th of one percent of the aggregate dollar amount of sales. This rate will remain fixed through fiscal year 2006. In fiscal year 2007, the rate will decline to 1/800th of one percent.

Covered Transactions

The SEC fee for third-market transactions applies generally to all transactions by or through any member of the NASD otherwise than on a national securities exchange of securities registered on such an exchange. For transactions between two NASD members, the charge will apply to the member on the sell side. For transactions between a member and a non-member or customer, the charge will apply to the member.

Collection Mechanism—Automated Trading Reports

The SEC fee for third-market transactions will be collected in the same manner as the SEC fee for transactions in Nasdaq securities and OTC Equity Securities. Payment will be the responsibility of the NASD member clearing firms. The NASD will calculate the SEC fee based on transaction data submitted into the Automated Confirmation Transaction Service℠ (ACT℠) for reporting purposes. NASD member clearing firms with primary clearing relationships with the National Securities Clearing Corporation (NSCC) or the Stock Clearing Corporation of Philadelphia (SCCP) will have the SEC fees deducted from their respective NSCC or SCCP settlement accounts on a monthly basis. An NASD-generated invoice will be forwarded to the firm as a confirmation of the deduction from their respective settlement accounts. Member clearing firms that are considered *self-clearing* (*i.e.*, that have no relationship with NSCC

or SCCP) will be billed directly, with payment terms due upon receipt.

Collection Mechanism—Odd-Lot/Exercised Options Report

Member firms that conduct odd-lot transactions (*i.e.*, less than 100-share trading units) for third-market securities that are not trade reported to ACT, or that process exercised options that are not reported to the secondary market, will be required to submit transaction information on a monthly basis on the NASD's "SEC Fee Odd-Lot & Exercised Options Report" to pay the required fee on SEC fee-eligible securities. Member firms that do not conduct these types of transactions may request a filing exemption in writing.

SEC Fee Rate Refinement

The NASD currently uses a seven-digit decimal rate (0.0000333) for the SEC fee that is applied to all SEC fee-eligible transactions. At the request of the SEC, the billing algorithm will be refined to more clearly reflect the requirements of the National Securities Market Improvement Act. Effective for all SEC fee-eligible trades beginning January 1, 1998, the formula will be applied as follows: (contract amount times one percent times 1/300th). Please reflect this change in your business processes accordingly.

NASD NOTICE TO MEMBERS 97-63

Columbus Day: Trade Date-Settlement Date Schedule

Suggested Routing

- ☐ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ■ Internal Audit
- ■ Legal & Compliance
- ■ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registered Representatives
- ☐ Registration
- ☐ Research
- ■ Syndicate
- ■ Systems
- ■ Trading
- ☐ Training
- ☐ Variable Contracts

Columbus Day: Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 13, 1997. On this day, The Nasdaq Stock Market℠ 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.

Trade Date	Settlement Date	Reg. T Date*
Oct. 6	Oct. 9	Oct. 13
7	10	14
8	14	15
9	15	16
10	16	17
13	16	20
14	17	21

Note: October 13, 1997, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 13, will be combined with transactions made on the previous business day, October 10, for settlement on October 16. 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 13.

*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 five 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 titled "Reg. T Date."

NASD NOTICE TO MEMBERS 97-64

Fixed Income Pricing System Additions, Changes, And Deletions As Of August 22, 1997

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ■ Corporate Finance
- ☐ Government Securities
- ■ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ■ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registered Representatives
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ■ Systems
- ■ Trading
- ☐ Training
- ☐ Variable Contracts

As of August 22, 1997, the following bonds were added to the Fixed Income Pricing System℠ (FIPS℠).

Symbol	Name	Coupon	Maturity
BOR.GB	Borg-Warner Security Corp	9.625	03/15/07
FNWH.GA	First Nationwide Holdings Inc	10.625	10/01/04
PRTL.GA	Primus Telecommunication	11.750	08/01/04
WMAS.GF	Western Mass Electric Co	7.375	07/01/01
TCIC.GA	TCI Communications Inc	9.650	03/31/27
DSIO.GA	DecisionOne Corp	9.750	08/01/07
GIDL.GA	Giddings & Lewis Inc. Wis	7.500	10/01/05
HDS.GB	Hills Stores Company	12.500	07/01/03

As of August 22, 1997, the following bonds were deleted from the Fixed Income Pricing System.

Symbol	Name	Coupon	Maturity
CVC.GA	Cablevision Systems Corp	10.750	04/01/04
BGLV.GA	Bally's Grand Inc	10.375	12/15/03
BPPF.GA	Bally's Park Place Funding Inc	9.250	03/15/04
NMK.GB	Niagara Mohawk Power Corp	6.350	08/01/97
TEDP.GA	Toledo Edison Company	6.125	08/01/97
HAY.GA	Hayes Whells International Inc	9.250	11/15/02

As of August 22, 1997, changes were made to the names and symbols of the following FIPS bonds:

New Symbol	Name	Coupon	Maturity	Old Symbol
TFIP.GA	TCI Communications Fing III	9.650	03/31/27	TCIC.GA

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASD Regulation℠ Market Regulation, at (301) 590-6451.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq® Market Operations, at (203) 385-6310.

NASD NOTICE TO MEMBERS 97-65

Administrative Termination Of Registrations Inactive For Two Years For Failing To Comply With Continuing Education Regulatory Element Requirements; CRD To Provide Firms With Advisory Messages

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ■ Continuing Education
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registered Representatives
- ■ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

This *Notice* is to remind firms that registered persons whose registrations become inactive as defined in Rule 1120 of the National Association of Securities Dealers, Inc. (NASD®) Membership and Registration Rules (Continuing Education Requirements), and who remain inactive for two years, will be administratively terminated and can re-register only by reapplying for registration and requalifying by examination.

Beginning August 29, 1997, the Central Registration Depository (CRD℠) will provide firms with advisory messages approximately 60 days before the effective date of an administration termination for being inactive for two years (*see* Exhibit 1), and when the administrative termination occurs (*see* Exhibit 2).

Questions about this *Notice* may be directed to John Linnehan, Director, Continuing Education, NASD Regulation℠, at (301) 208-2932 or to the following CRD Quality & Service Teams:

Team 1 (301) 921-9499
Team 2 (301) 921-9444
Team 3 (301) 921-9445
Team 4 (301) 921-6664
Team 5 (301) 921-6665

Background

NASD Membership and Registration Rule 1120 (Continuing Education Requirements) (Rule) requires persons registered 10 years or less to take the Regulatory Element computer-based training within 120 days after the occurrence of the second, fifth, and tenth anniversaries of their initial registration date. Persons who are the subject of a significant disciplinary action, as defined by the Rule, must take the Regulatory Element training within 120 days after the effective date of the significant disciplinary action and then within 120 days after the occurrence of the second, fifth, and tenth anniversaries of the disciplinary action. Any registered person who has not completed the Regulatory Element within the prescribed time frames will have his or her registration deemed inactive until the requirements of the program have been satisfied. Any person whose registration has been deemed inactive must cease all activities as a registered person and is prohibited from performing, or being compensated for, any duties requiring a securities registration. The Rule also stipulates that a registration that is inactive for a period of two years will be administratively terminated. A person whose registration is administratively terminated must reapply for registration and requalify by examination.

EXHIBIT 1

CENTRAL REGISTRATION DEPOSITORY

P.O.BOX 9401 * GAITHERSBURG, MARYLAND 20898-9401 * (301)590-6500

CONTINUING EDUCATION PROGRAM ADVISORY MESSAGE

REGISTERED REPRESENTATIVE NAME REPORT DATE 8/29/97
CRD # SS#

CE TWO YEAR TERMINATION WARNING NOTICE

The individual listed above is subject to the Continuing Education Program. The individual has not completed the Continuing Education Session listed below and is currently INACTIVE. If the session is not completed by 10/29/97, the individual's securities registrations will be TERMINATED, and the individual will have to reapply for registration and requalify by examination.

BEGIN DATE: 7/1/95 END DATE: 10/29/95

*** Avoid surprises! Always determine a new-hire's CE status ***

BD#

BD NAME
BD STREET ADDRESS
CITY, STATE POSTAL CODE

ATTN : BD CONTACT

EXHIBIT 2

CENTRAL REGISTRATION DEPOSITORY

P.O.BOX 9401 * GAITHERSBURG, MARYLAND 20898-9401 * (301)590-6500

CONTINUING EDUCATION PROGRAM ADVISORY MESSAGE

REGISTERED REPRESENTATIVE NAME
CRD # SS#

REPORT DATE 10/30/97

CE TWO YEAR TERMINATION NOTICE

The individual listed above was subject to the Continuing Education Program. The individual did not complete the Continuing Education Session listed below and has been INACTIVE for two years. As of 10/30/97 the individual's securities registrations have been TERMINATED. The individual must now reapply for registration and requalify by examination.

BEGIN DATE: 7/1/95

END DATE: 10/29/95

*** Avoid surprises! Always determine a new-hire's CE status ***

BD#

BD NAME
BD STREET ADDRESS
CITY, STATE POSTAL CODE

ATTN : BD CONTACT

DISCIPLINARY ACTIONS

Disciplinary Actions Reported For September

NASD Regulation, Inc. (NASD Regulation℠) has taken disciplinary actions against the following firms and individuals for violations of NASD® rules; federal 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 15, 1997. The information relating to matters contained in this *Notice* is current as of the end of August 22. Information received subsequent to the end of August 22 is not reflected in this edition.

Firms Fined, Individuals Sanctioned

Litwin Securities, Inc. (Miami Beach, Florida) and **Harold A. Litwin (Registered Principal, Miami Beach, Florida)** were fined $25,000, jointly and severally, and Litwin was barred from association with any National Association of Securities Dealers, Inc. (NASD®) member as a financial and operations principal. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a March 1996 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Litwin, filed inaccurate FOCUS Part I and IIA reports and submitted false and misleading financial documents to the NASD. The firm, acting through Litwin, also failed to maintain current and accurate books and records and conducted a securities business while failing to maintain its minimum required net capital. Furthermore, the firm, acting through Litwin, failed to give notice of the capital deficiency to the SEC and the NASD.

Securities Planners, Inc. (New York, New York), Edward McKay, Jr. (Registered Principal, New York, New York), Alex David Shindman (Registered Principal, Guttenberg, New Jersey), Alex Gincherman (Registered Representative, Brooklyn, New York), Igor Shekhtman (Registered Principal, New York, New York), Michael Garber (Registered Representative, Brooklyn, New York), Mark Furman (Registered Principal, Pompano Beach, Florida), and **Eugene Flaksman (Registered Representative, Brooklyn, New York)**. The firm was fined $50,000 and McKay was fined $50,000 and barred from association with any NASD member in any supervisory and/or principal capacity. Shindman was fined $25,000 and barred from association with any NASD member in any capacity. Gincherman was fined $15,000, suspended from association with any NASD member in any capacity for 45 days, required to pay $6,093.75 plus interest in restitution to a public customer, and required to requalify as a general securities representative. Shekhtman was fined $50,000, required to pay $216,498.75 plus interest in restitution, and barred from association with any NASD member in any capacity.

Garber was fined $20,000, suspended from association with any NASD member in any capacity for six months plus 60 days, required to pay $11,925 in restitution, and required to requalify as a general securities representative by taking and passing the Series 7 exam. Furman was fined $55,000, suspended from association with any NASD member in any capacity for 30 days, required to pay $5,500 plus interest in restitution to a customer, barred from association with any NASD member in any supervisory and/or principal capacity, and required to requalify as a general securities representative by taking and passing the Series 7 exam. Flaksman was fined $10,000, suspended from association with any NASD member in any capacity for 30 days,

required to pay $22,000 in restitution, and required to requalify as a general securities representative by taking and passing the Series 7 exam.

The sanctions were based on findings that the firm, acting through McKay, failed to establish, maintain, or enforce adequate written supervisory procedures. Furthermore, Shekhtman, Gincherman, Garber, Flaksman, and Furman made material misrepresentations and omissions to customers concerning a stock. Shekhtman, Gincherman, and Flaksman also effected unauthorized transactions in customer accounts. In addition, Shekhtman failed to execute sell orders and Furman failed to supervise registered representatives who made material misrepresentations and omissions in connection with the sales of stock as well as registered representatives who made unauthorized trades, and failed to execute sell orders for customers. Garber and Shindman failed to respond to NASD requests for information.

Firms and Individuals Fined

Black & Company, Inc. (Portland, Oregon) and **Dennis Burton Reiter (Registered Principal, Portland, Oregon)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $20,000, jointly and severally. Reiter also was required to requalify by taking the Series 7 and 24 exams. In addition, the firm must retain an independent consultant to review the firm's trading and market making practices and its written procedures, make recommendations based upon that review to the firm, and prepare a written report detailing its recommendations. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm executed principal transactions and subsequently provided customers written confirmation of the transactions, incorrectly representing that the firm had acted as an agent, when in fact, they were principal transactions

The NASD also found that the firm incorrectly reported through the Automated Confirmation Transaction Service℠ (ACT℠) purchase transactions as sale transactions and sale transactions as purchase transactions, failed to use a bunched indicator on transaction reports when the firm reported multiple transactions in a trade report, and reported the transaction prices of a security incorrectly. The findings also stated that Reiter failed to establish, maintain, or implement adequate written or unwritten procedures to detect the inaccurate disclosure of principal transactions as agent, the understatement of total compensation on customer confirmations, and the inaccurate reporting of transactions through ACT.

E. C. Capital, Ltd. (Roslyn Heights, New York) and **Gregory Small (Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $7,500, jointly and severally. The firm is also required to pay $4,744.64 in restitution to customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Small, effected as principal the sales of stock to customers that were not fair and reasonable taking into consideration all relevant circumstances in that the markups on the transactions exceeded five percent. The findings also stated that the firm, acting through Small, failed to report transactions timely or otherwise properly report transactions in accordance with the transaction reporting requirements of The Nasdaq Stock Market℠ (Nasdaq®) contained in Rules 4630, et seq.

Phillips & Company Securities, Inc. (Portland, Oregon) and **Timothy Charles Phillips (Registered Principal, Portland, Oregon)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $20,000, jointly and severally. The firm also must pre-file all scripts with the NASD no later than 10 days prior to their use for one year. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Phillips, prepared telemarketing scripts that were available to the firm's sales force that failed to provide a sufficient basis for evaluating the facts regarding the specific securities offered. According to the findings, some of the scripts, standing on their own, failed to disclose certain risks associated with the subject recommendation, contained predictions and projections of investment results, and made references to the firm's past recommendations. The NASD also determined that the scripts failed to offer to furnish, upon request, available investment information in support of each recommendation and failed to include the date of first use.

Firms Fined

Genesis Merchant Group Securities, L.P. (San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $19,500 and ordered to designate a general securities principal to supervise the firm's Small Order Execution System℠ (SOES℠) activities. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it entered proprietary or non-public customer orders into the SOES and divided orders in excess of the maximum order size into smaller parts to be entered into the system. The findings also stated

that the firm entered orders into SOES for securities for which it was a registered market maker and failed to establish, maintain, and enforce adequate written supervisory procedures. Furthermore, the NASD determined that the firm did not designate a qualified general securities principal to supervise its SOES activity.

Investors Associates, Inc. (Hackensack, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which it was fined $15,000 and required to participate in a staff conference and to submit to the NASD a revised copy of its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to time stamp the time of entry or execution on order tickets. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting.

Janney Montgomery Scott Inc. (Philadelphia, Pennsylvania) submitted an Offer of Settlement pursuant to which the firm was fined $35,000 (deemed satisfied in connection with and pursuant to its settlement of proceedings instituted by the Pennsylvania Securities Commission) and undertakes that the program formulated by an independent consultant pursuant to paragraph 5(c) of the Order entered in that proceeding will be implemented as to branch office managers of branches outside of Pennsylvania as well as managers of branch offices located within Pennsylvania, and all policies and procedures adopted and implemented pursuant to the Order in the firm's branch offices located within Pennsylvania will also be adopted and implemented in its branch office outside of Pennsylvania. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to enforce various supervisory, operations and/or other procedures, rules, and policies the firm had established and implemented, including procedures, rules, and policies relating to the issuance and/or delivery of checks to customers drawn against their accounts. The findings also stated that the firm failed to reasonably and properly supervise a registered representative.

Individuals Barred Or Suspended

Mitchell Aguirre (Registered Representative, Woodhaven, New York) 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, Aguirre consented to the described sanction and to the entry of findings that he solicited customers and recommended the purchase of securities by making misrepresentations, omissions of material facts, and price predictions in order to induce the customers to place purchase orders for stock and commit to investment decisions. The findings also stated that Aguirre purchased and sold shares of stock for a customer's account without the customer's prior knowledge and consent. The NASD also found that Aguirre misappropriated to his own use and benefit $36,648.36 that was withdrawn from a customer's account without the customer's knowledge or consent. Furthermore, the NASD determined that Aguirre participated in trading activities when he was not properly registered with the NASD.

Brice Hanson Barnes (Registered Representative, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Barnes consented to the described sanctions and to the entry of findings that he participated in a private securities transaction and failed to provide written notification to his member firm describing in detail the proposed transaction and his proposed role therein, and stating whether he has received selling compensation in connection with the transaction. The NASD also determined that Barnes solicited and participated in the sale of common stock and thereby engaged in activities outside the scope of his registration.

Jack Robert Basile (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000, barred from association with any NASD member in any capacity, and ordered to disgorge $206,601 to the NASD. Without admitting or denying the allegations, Basile consented to the described sanctions and to the entry of findings that he arranged to have an imposter take the Series 7 exam on his behalf. The findings also stated that Basile failed to respond to NASD requests to appear for an on-the-record interview.

Terrence A. Buttler (Registered Principal, Denver, Colorado) and **Lori L. Foster (Associated Person, Aurora, Colorado)** submitted Offers of Settlement pursuant to which Buttler was fined $15,000 and suspended from association with any NASD member in any principal capacity for two years. Foster was fined $10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Buttler permitted his member firm to conduct a business while failing to maintain its required net capi-

tal. The findings also stated that Butler permitted his member firm to maintain inventory in amounts that exceeded the inventory limitation of the firm's restriction agreement, and permitted the firm's balance sheet to carry certain assets as allowable for net capital purposes without obtaining the NASD's prior consent to such treatment as required by the restriction agreement. Furthermore, the NASD determined that Foster failed to appear and provide information at an NASD on-the-record interview.

William K. Cantrell (Registered Principal, Los Angeles, California) was fined $2,500, suspended from association with any NASD member as a financial and operations principal for 10 days, and ordered to requalify by exam as a financial and operations principal. The SEC affirmed the sanctions following appeal of a May 1996 NBCC decision. The sanctions were based on findings that Cantrell permitted his member firm to effect securities transactions while failing to maintain the minimum required net capital.

Abdul Wadud Choudhury (Registered Representative, Jackson Heights, New York) was fined $42,663, barred from association with any NASD member in any capacity, and ordered to pay $3,092.14, plus interest, in restitution to his member firm. The sanctions were based on findings that Choudhury received $4,144.17 from a public customer to repay loans on insurance policies and, instead, he converted $2,411.10 of the funds to his own use and benefit. Choudhury also received a $2,121.50 check from a public customer to reinstate a lapsed insurance policy and converted the funds to his own use by using the funds as partial repayment of monies owed to other customers. Furthermore, Choudhury failed to respond to NASD requests for information.

Douglas E. Dawe (Registered Representative, Lansing, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dawe consented to the described sanctions and to the entry of findings that he obtained a letter from a public customer instructing him to sell shares of one mutual fund in the customer's account in exchange for another mutual fund. The NASD determined that Dawe prepared a letter and signed the customer's name to it without the customer's knowledge or consent.

The findings also stated that Dawe signed and submitted a letter on behalf of public customers to a mutual fund company with instructions to liquidate the customers' mutual fund shares and mail the redemption check to an address he maintained without the customers' knowledge or consent, and effected the purchase of shares of other mutual funds for the customers' account. Furthermore, the NASD found that Dawe submitted to a mutual fund company, on behalf of a public customer, a letter he wrote containing instructions to liquidate the customer's mutual fund shares and forward the redemption check to the customer without the customer's knowledge or consent.

Paul Thomas Fiorini (Registered Principal, Los Angeles, California) was fined $150,000, subject to offset by payment of restitution of not more than $100,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fiorini sold for his account at his member firm shares of stock he did not own and failed to deliver the shares before settlement date. Fiorini also purchased for his account shares of stock totaling $112,656.25 and failed to pay for the stock.

Michael A. Formiglia (Registered Representative, Selden, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Formiglia consented to the described sanctions and to the entry of findings that he forged the signatures of public customers on disbursement request forms without their knowledge or consent and used the documents to obtain unauthorized loans totaling $515.90. The findings also stated that Formiglia used the loans to fund policies of two different individuals. Furthermore, the NASD determined that Formiglia created an insurance policy for a non-existent individual, funded the policy by removing $390 from the policy of an existing customer, without the knowledge or consent of the customer, and used the money to fund the creation of the fictitious policy.

Ronald J. Geraci, Sr. (Registered Representative, Boynton Beach, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Geraci failed to respond to NASD requests for information.

Barry Mitchell Goldstein (Registered Representative, Plainview, New York) submitted an Offer of Settlement pursuant to which he was fined $2,500, suspended from association with any NASD member in any capacity for 30 days, and required to submit proof of restitution to customers. Without admitting or denying the allegations, Goldstein consented to the described sanctions and to the entry of findings that he instructed the back office of his member firm to issue checks totaling $49,366 from the accounts of public customers. The NASD found that Goldstein retrieved the checks from

the customers' mailbox, signed their names on the checks, double endorsed 20 of the checks totaling $19,066, and deposited the funds into his personal bank account. The findings also stated that Goldstein signed the customers' names on the checks to enable him to negotiate the checks without a written power of attorney over the customers' account. The customers involved have indicated that they had orally authorized this activity and received all funds withdrawn from the accounts.

Gerry M. Gordon (Registered Representative, Gulfport, Mississippi) submitted an Offer of Settlement pursuant to which he was fined $131,000, barred from association with any NASD member in any capacity, and ordered to pay $70,830.73 in restitution. Without admitting or denying the allegations, Gordon consented to the described sanctions and to the entry of findings that he borrowed $52,167.98 from public customers when he knew or should have known that he did not have the ability to repay the loans. The findings also stated that Gordon engaged in an outside business activity whereby he purchased and sold jewelry on behalf of customers without prior written notice to or approval from his member firm. Furthermore, the NASD determined that Gordon failed to respond to NASD requests for information.

Howard Leroy Gregg, III (Registered Representative, State College, Pennsylvania) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity and ordered to disgorge $1,500. Without admitting or denying the allegations, Gregg consented to the described sanctions and to the entry of findings that he purchased shares of a new issue that traded at a premium in the immediate aftermarket in contravention of the Board of Governors' Free-Riding and Withholding Interpretation. The findings also stated that Gregg failed to notify his member firm in writing that he intended to open an account at another member firm, nor did he advise the other firm of his association with his member firm, and purchased shares of stock without giving prior written notice to his member firm. Furthermore, the NASD determined that Gregg failed to respond to NASD requests for information.

Matthew Russell Hinton (Registered Representative, Prescott, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $2,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Hinton consented to the described sanctions and to the entry of findings that he completed and signed an inaccurate and incomplete Form U-4.

Oliver Peter Hosang, III (Registered Representative, Brooklyn, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hosang failed to respond to NASD requests for information.

Joseph Krieger Kahn (Registered Representative, Marlboro, New Jersey) 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, Kahn consented to the described sanctions and to the entry of findings that he converted customer funds totaling $8,000 from the customer's account into his own account without the customer's knowledge, consent, or authorization.

Robert W. Knorr (Registered Representative, Northumberland, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Knorr failed to respond to NASD requests for information.

Leonard J. Koenig (Registered Representative, Boynton Beach, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Koenig failed to respond to NASD requests for information.

Eric Kostyukovsky (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kostyukovsky consented to the described sanctions and to the entry of findings that he arranged to have an imposter take the Series 7, 24, and 63 exams on his behalf.

Joseph Latona (Registered Representative, Staten Island, New York) was fined $70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Latona engaged in a securities business, engaged in trading for a proprietary account of his former member firm, and received a percentage of the profits in that account, while subject to disqualification due to two felony convictions. Latona also failed to respond to NASD requests for information and to appear for an on-the-record interview.

Robert A. McDowell (Registered Representative, Elkhart, Indiana) submitted an Offer of Settlement pursuant to which he was fined $385,000, barred from association

with any NASD member in any capacity, and ordered to pay $77,546.62 in restitution. Without admitting or denying the allegations, McDowell consented to the described sanctions and to the entry of findings that he received checks totaling $77,000 from public customers and his member firm for the purchase of a variable annuity and as a refund. The NASD found that McDowell instead used the funds for some purpose other than for the benefit of the customers.

George Michael McWhorter (Registered Representative, College Station, Texas) 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 three business days. Without admitting or denying the allegations, McWhorter consented to the described sanctions and to the entry of findings that he participated in a private securities transaction and failed to provide written notice to his member firm describing in detail the proposed transaction, his proposed role therein, and stating whether he received or might receive selling compensation in connection with the transaction.

Scott Allan Miller (Registered Representative, Alpharatta, Georgia) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Miller failed to respond to NASD requests for information.

Nicholas Petrella (Registered Representative, Oakdale, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $71,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Petrella consented to the described sanctions and to the entry of findings that he participated in private securities transactions away from his member firm in the accounts of public customers. The findings also stated that Petrella failed to respond to NASD requests for information.

Edward Pyatetsky (Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pyatetsky consented to the described sanctions and to the entry of findings that he arranged to have an imposter take the Series 7 exam on his behalf. The findings also stated that Pyatetsky failed to respond to NASD requests to appear for an on-the-record interview.

Timothy D. Ross (Registered Representative, Tulsa, Oklahoma) 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, with the right to re-apply for association with a member firm after a period of one year. Without admitting or denying the allegations, Ross consented to the described sanctions and to the entry of findings that he recommended and engaged in a strategy of short-term trading of equities in the joint account of public customers without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers based on their financial situation, investment objectives, and needs.

The findings also stated that Ross executed unauthorized transactions in the account of public customers without their knowledge or consent. The NASD also found that Ross completed a new account card on behalf of public customers that inaccurately reflected a customer's investment experience and overstated the customer's income and net worth. Furthermore, the NASD determined that Ross sent correspondence to public customers that falsely reflected the value of certain securities held in the customers' account and failed to obtain prior approval of the correspondence from a principal of his member firm.

Alan J. Russo (Registered Representative, Harrison, New York) 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, Russo consented to the described sanctions and to the entry of findings that he received funds totaling $337,887.97 from a public customer for investment purposes, misappropriated these funds, and converted them to his own use. The findings also stated that Russo prepared a false confirmation of securities activity for a public customer's account, reflecting positions exceeding the customer's true and accurate positions. Furthermore, the NASD determined that Russo entered into private securities transactions without the prior knowledge or consent of his member firm.

Kevin Eric Shaughnessy (Registered Representative, Pittsburgh, Pennsylvania) was fined $11,675, barred from association with any NASD member in any capacity, required to pay $390 in losses to customers, and required to repay $1,526.37 in commissions to customers. The NBCC imposed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Shaughnessy entered into an arrangement with a non-registered individual whereby he agreed to sell

shares of stock to his retail customers in exchange for compensation, without disclosing the arrangement with the customers or his member firm. Shaughnessy also failed to provide prompt written notice of this arrangement to his member firm and accepted compensation from a stock promoter.

Shaughnessy has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Richard A Skinner, Jr. (Registered Representative, Glen Ridge, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $250,000, required to pay restitution plus interest to public customers, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Skinner consented to the described sanctions and to the entry of findings that he misappropriated between $600,000 and $1,900,000 of public customer funds and converted the funds for the use and benefit of other customers and/or for his personal use.

Scott Richard Stewart (Registered Representative, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry of findings that he participated in outside business activities without providing prior written notice to his member firm of such activities. The findings also stated that Stewart made improper use of customer funds in that he received funds from public customers for the purchase of mutual funds, failed to forward the entire amount to the funds, and kept $1,680 for his own use and benefit.

Thomas J. Stiener (Registered Representative, Commerce, Michigan) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stiener failed to respond to NASD requests for information.

Jeffrey Laurence Streich (Registered Representative, New York, New York) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Streich executed transactions in the accounts of public customers without the prior knowledge, authorization, or consent of the customers.

Randolph N. Strickland (Registered Representative, Birmingham, Alabama) was fined $120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Strickland caused three checks totaling $8,050 to be withdrawn from the IRA account of a public customer and converted the funds to his own use and benefit by forging the customer's signature on the checks and depositing them into his personal checking account, without the customer's knowledge or consent.

In addition, Strickland engaged in outside business activities without prior written notice to or approval from his member firm, received two checks totaling $4,770 that had been drawn on the IRA account of a public customer, and converted the monies to his own use and benefit, without the customer's knowledge or consent. Furthermore, Strickland recommended that a public customer transfer funds from a corporate-sponsored retirement fund into a self-directed IRA that was unsuitable for the customer on the basis of his financial situation, investment objectives, and needs. Strickland also failed to respond to NASD requests for information.

George Lorenzo Swan (Registered Principal, Ridgewood, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $170,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Swan consented to the described sanctions and to the entry of findings that he executed, or caused to be executed, securities transactions in the accounts of public customers, without the prior knowledge, authorization, or consent of the customers, that involved transfers of stock from his personal and corporate accounts to customer accounts so that he might avoid margin calls in his accounts. The findings also stated that Swan failed to respond to an NASD request to appear for an on-the-record interview and failed to apprise his member firm's financial and operations principal of certain liabilities incurred by the firm, thereby causing the firm to fail to maintain its minimum required net capital.

David Terpoilli (Registered Representative, Norristown, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Terpoilli failed to respond to NASD requests for information.

Michael E. Verity (Registered Representative, Eleva, Wisconsin) submitted an Offer of Settlement 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, Verity consented to the described sanctions and to the entry of findings that he obtained a $4,000 check from a public customer intended for the purchase of mutual

funds and, instead, used the funds for some purpose other than for the benefit of the customer. The findings also stated that Verity failed to respond to NASD requests for information.

Roland Stanley Williams (Registered Representative, Brooklyn, New York) was fined $30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Williams executed unauthorized transactions in the accounts of public customers without their knowledge or consent. Williams also attempted to negotiate a settlement with a customer without his member firm's knowledge in response to the customer's complaint regarding an unauthorized transaction.

Individual Fined

Jeffrey J. Cline (Registered Principal, Salt Lake City, Utah) submitted an Offer of Settlement pursuant to which he was fined $10,000. Without admitting or denying the allegations, Cline consented to the described sanction and to the entry of findings that a member firm, acting through Cline, recommended and sold securities that were neither registered nor exempt from registration.

Firms Expelled For Failure To Pay Fines, Costs And/Or Provide Proof Of Restitution In Connection With Violations

Everest Securities, Inc., Minneapolis, Minnesota

Windsor Reynolds Securities, Inc., Honolulu, Hawaii

Firm Suspended

The following firm was suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The action was based on the provisions of NASD Rule 8120 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Matrix Securities Corporation, Garden City, New York (August 7, 1997)

Firm Suspended Pursuant To NASD Rule 9622 For Failure To Pay Arbitration Award

Berkeley Securities Co., New York, New York

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

Daniel J. Alderman, Lake Oswego, Oregon

J. Paul Boyle, Bryn Mawr, Pennsylvania

Robert I. Burnham, San Francisco, California

Gerald J. Dols, Bloomington, Minnesota

Frank G. Kestner, Jr., Billings, Montana

NASD Regulation Fines D.H. Blair And Top Officials

NASD Regulation, Inc., announced that D.H. Blair & Co. Inc., has been fined $2 million, and will repay almost $2.4 million to investors who were overcharged as the result of excessive mark-ups in 16 securities and other fraudulent conduct. D.H. Blair's Chief Executive Officer and Head Trader were also fined a combined $525,000.

More than 3,100 retail customers from 43 states, including the District of Columbia, will receive restitution payments from D.H. Blair within 120 days. The overcharging was uncovered after a lengthy investigation by the national NASD Regulation Enforcement Department and its District Offices in Boston and Philadelphia.

In its settlement with NASD Regulation, D.H. Blair neither admitted nor denied the allegations that, from June 1993 through May 1995, the firm charged excessive markups in 16 Nasdaq SmallCap securities whose Initial Public Offerings (IPOs) were underwritten by D.H. Blair Investment Banking Corp., a formerly related company. NASD Regulation found mark-ups in excess of 10 percent (a level considered fraudulent) had occurred in 14 of the 16 securities in more than 1,100 transactions.

D.H. Blair placed virtually all of the offerings with its own customers. In addition, the firm dominated and controlled the aftermarket trading in all 16 securities, in some cases for up to four and a half months after the IPO effective date.

NASD Regulation also found that D.H. Blair fraudulently increased the price of two of the 16 securities (Skyline Multimedia and Video Update) shortly after trading began, without sufficient purchase orders to support those increases. As a result, D.H. Blair created an artificial "profit" in the securities that allowed the preferred customers of one of the firm's senior managers to benefit by selling their stock back to the firm. Thereafter, D.H. Blair's brokers used the artificial increase to solicit new investors to purchase these securities, without disclosing the circumstances of the price increase.

"Every investor, large or small, has the right to expect that the prices they

pay for securities are fair and honest. We have the responsibility to make sure that's the case," said NASD Regulation President Mary L. Schapiro.

D.H. Blair's Chief Executive Officer Kenton E. Wood was fined $225,000 and suspended in all capacities for 60 days; Head Trader Vito Capotorto was fined $300,000 and suspended for 90 days in all capacities. Following their suspensions, Wood must retake his supervisory exam and Capotorto must retake his general qualification exam. Wood and Capotorto are still employed at the firm. D.H. Blair and Wood were cited for inadequate supervision.

The 16 securities involved were: Amerigon Corp. common stock; Telepad Corporation units; AquaCare System units; Symbollon Corporation units; Skyline Multimedia units; Linda's Flame Roasted Chicken units; Skysat Communication units; Video Update units; U.S. China Industrial Exchange units; Montbatten common stock; U.S. Diagnostics Labs units; Premier Laser System units; Infosafe System units; In-Time System units; Interactive Flight units; and Sepragen Corporation units. There is no suggestion that the affected companies knew of, or were involved in, these violations.

As part of the settlement, D.H. Blair is also required to hire an independent consultant to review and monitor the firm's trading, sales, supervision, and other compliance-related policies and practices for two years. This consultant will also recommend necessary improvements which the firm must implement. For the next year, the firm also agreed not to sell more than 60 percent of a securities offering in which it participates.

D.H. Blair will make full restitution of the $2,065,520 it made through the excessive and fraudulent mark-ups, and will pay $329,336 in interest to affected customers.

D.H. Blair is a New York City-based broker/dealer firm that has been an NASD member since April 1975.

NASD Regulation Fines GKN Securities And 29 Brokers

NASD Regulation, Inc., announced that GKN Securities Corp., and 29 brokers and supervisors have been fined $725,000, and will repay more than $1.4 million to investors who were overcharged as the result of a two-year program of excessive mark-ups in eight securities.

Nearly 1,300 investors from 39 states, the District of Columbia and Puerto Rico will receive payments from GKN within 120 days. These overcharges were uncovered after an investigation by the national NASD Regulation Enforcement Department and its District Offices in New York and Atlanta.

Three of the firm's top officials—Chief Executive Officer David M. Nussbaum, President Roger N. Gladstone, and Executive Vice President Robert H. Gladstone—received significant fines and suspensions. All of the violations occurred at GKN's offices in New York City; Stamford, Connecticut; and Boca Raton, Florida.

GKN and 29 of its supervisors and brokers neither admitted nor denied the allegations that, from December 1993 through April 1996, GKN dominated and controlled the immediate aftermarket trading in eight securities it underwrote so that there was no competitive market for them. As a result, GKN was able to charge excessive markups ranging from six percent to as much as 67 percent over the prevailing market price in more than 1,500 transactions. At least 90 percent of these transactions were fraudulent because the mark-up exceeded 10 percent (a level considered fraudulent).

"Today's case is another example of our focused effort to put an end to fraudulent practices in the micro cap market. These sanctions underscore NASD Regulation's commitment to obtain restitution for victimized investors," said NASD Regulation President Mary L. Schapiro.

The eight securities involved were: European Gateway Acquisition Corp. Class A warrants; Trinity Americas, Inc. Class A and B warrants; Restructuring Acquisition Corp. Class A warrants; Entertainment/Media Acquisition Corp. Class A warrants; YES! Entertainment, Inc. warrants; Mako Marine International, Inc. warrants; and Batteries Batteries, Inc. warrants.

As part of the settlement, GKN must pay a $250,000 fine to NASD Regulation, and hire an independent consultant to review the firm's trading policies and procedures for 18 months. This consultant will also recommend necessary improvements that the firm must implement. Further, GKN is required to disclose to customers on their confirmation slips whenever a broker's compensation exceeds 10 percent of the gross transaction amount.

The following supervisors (who are still employed at GKN) were sanctioned. Unless otherwise indicated, all suspensions will begin with the opening of business on Monday, September 29, 1997.

David M. Nussbaum, Chief Executive Officer, was fined $50,000, suspended for 30 days in all capacities (beginning December 12, 1997), and censured.

Roger N. Gladstone, President, was fined $50,000, suspended for 30 days in all capacities, and censured.

Robert H. Gladstone, Executive Vice President, was fined $100,000, suspended for 30 days in all capacities (beginning November 5, 1997), suspended for three months from acting as a supervisor (beginning January 28, 1998), required to re-qualify as a registered principal, and censured.

Richard Buonocore, Head Trader, was fined $50,000, suspended for 30 days in all capacities, and censured.

Vincent Bruno, the firm's compliance director at the time, was fined $30,000, suspended for 30 days in all capacities (beginning October 22, 1997), and censured.

David Greenberg, branch manager, was fined $15,000, suspended for ten days from acting as a supervisor, and censured.

Martin Schaffer, branch manager, was fined $10,000, suspended for seven days from acting as a supervisor, and censured.

In separate settlements, 22 brokers were fined from $3,000 to $25,000 each, and suspended. NASD Regulation found that these individuals were also responsible for overcharging investors because they accepted excessive gross commissions of 10 percent to 40 percent. Unless otherwise indicated, all suspensions will begin with the opening of business on September 15, 1997. The brokers are:

Dmitry Aranovich ($8,000 fine, five-day suspension, censure)

Jeffrey Attamanuk ($3,500 fine, three-day suspension, censure)

David Baum ($6,000 fine, five-day suspension beginning September 29, 1997, censure)

Anthony Colombo ($15,000 fine, seven-day suspension, censure)

Paul Cooney ($4,000 fine, three-day suspension, censure)

Irving R. Edelstein ($5,000 fine, three-day suspension, censure)

Mario Figuero ($25,000 fine, seven-day suspension, censure)

Edward Gallagher ($4,000 fine, three-day suspension, censure)

Carlos Garceran ($11,000 fine, five-day suspension, censure)

Mark Grenier ($3,500 fine, three-day suspension, censure)

Dmitri Kardonski ($10,000 fine, required to re-qualify by examination as General Securities Representative, and censure)

Eugene Kingman ($25,000 fine, seven-day suspension, censure)

Scott Kliewe ($15,000 fine, nine-month suspension which began August 18, 1997, censure)

Elliot Kurz ($4,500 fine, three-day suspension, censure)

Robert Lesser ($7,500 fine, five-day suspension, censure)

David Macias ($15,000 fine, seven-day suspension, censure)

Richard Murnick ($4,500 fine, three-day suspension, censure)

Kevin Neumark ($4,000 fine, three-day suspension, censure)

Victor Palomino ($5,000 fine, three-day suspension, censure)

David Siegel ($6,000 fine, five-day suspension beginning September 29, 1997, censure)

Alan Weiss ($4,000 fine, three-day suspension, censure)

Steven J. White ($3,000 fine, three-day suspension, censure)

The firm will pay $1,159,245, plus interest of $313,729, to the affected investors.

A New York City-based firm, GKN currently employs approximately 350 registered representatives in five offices in New York, Connecticut and Florida.

FOR YOUR INFORMATION

Disciplinary Action Corrections

The following corrections pertain to the August 1997 *Notices to Members* Disciplinary Actions section.

• Page 428—Charles William Duquette (Registered Representative, Beaverton, Oregon) was suspended from January 6, 1996 to July 6, 1997. Lewis H. Aytes (Registered Representative, Medford, Oregon) was suspended from February 15, 1996 to August 15, 1997. The August *Notice* erroneously stated that Duquette was suspended from January 16, 1996 to July 16, 1996 and that Aytes was suspended from February 15, 1996 to August 15, 1996.

SPECIAL NASD NOTICE TO MEMBERS 97-66

Industry/Regulatory Council On Continuing Education Publishes Firm Element Practices And Council Commentary

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ■ Continuing Education
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registered Representatives
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ■ Training
- ☐ Variable Contracts

Executive Summary

On February 8, 1995, the Securities and Exchange Commission (SEC) approved Rule 1120 (formerly Schedule C, Part XII of the National Association of Securities Dealers, Inc., By-Laws) of the NASD® Membership and Registration Rules, which prescribes requirements for the Securities Industry Continuing Education Program (Program). The Program has two elements—a Regulatory Element and a Firm Element—and became effective July 1, 1995.

The Securities Industry/Regulatory Council on Continuing Education (Council) includes 13 members representing a cross-section of securities firms and six self-regulatory organizations (SROs).[1] Both the SEC and the North American Securities Administrators Association have appointed liaisons to the Council.

The Council facilitates industry/regulatory coordination of the administration and future development of the Program. Council duties include recommending and helping to develop specific content and questions for the Regulatory Element, and minimum core curricula for the Firm Element. The Council also periodically reports on the Program's progress, and issues guidelines to help broker/dealers comply with the requirements of the Firm Element (*see Notice to Members 96-69*, October 1996).

The Council has now published *Firm Element Practices and Council Commentary (Firm Element Practices)*, which contains the needs analyses and Firm Element training plans of eight broker/dealers. *Firm Element Practices* illustrates approaches to Firm Element compliance from three general securities firms, one investment banking firm, two insurance-affiliated broker/dealers, and two independent contractor broker/dealers, all ranging in size from small to large. In accompanying commentary on each firm's plan, the Council discusses what it considers the plan's strong and weak aspects.

The NASD joins the Council in recommending that every firm review *Firm Element Practices* for useful ideas and approaches to the continuing education requirements. Both the NASD and the Council caution, however, that the training plans contained in *Firm Element Practices* do not constitute a "safe harbor" of any kind. Specifically, every firm has unique needs and characteristics that should be identified and addressed in the firm's own Firm Element training plan. It is the unique features of each firm's needs analysis and training plan that SRO examiners focus on during the examination process.

The NASD encourages member firms to complete the Reader Survey included in *Firm Element Practices* so the Council can ensure that future editions of *Firm Element Practices* will address member firm needs.

Copies of *Firm Element Practices* are available for $10 from NASD MediaSource, at (301) 590-6142. The document will also be available on the NASD Regulation℠ Web Site, *www.nasdr.com*, on November 1, 1997.

Questions about this *Notice* may be directed to the following NASD Regulation staff: John Linnehan, Director, Continuing Education, at (301) 208-2932 or Daniel M. Sibears, Vice President, Member Regulation, at (202) 728-6911 for compliance or examination inquiries.

Endnotes

[1] The American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

Special Notices to Members are published on an accelerated basis and distributed independently of monthly *Notice to Members* newsletters. Numerical sequencing may thus appear to contain gaps during a given monthly publication cycle. Such temporary gaps reflect a priority in the production process and will disappear at the conclusion of monthly electronic posting and print distribution.

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NASD *Notices to Members* (December 1996 to current) are also available on the Internet at *www.nasdr.com*.