

NASD NOTICE TO MEMBERS 98-1

Arbitration Process Fees

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
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- Registered Representatives
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- Research
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- Systems
- Trading
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- Variable Contracts

Executive Summary

NASD Regulation, Inc., is announcing that, effective January 2, 1998, a new arbitration process fee will be assessed on members that are parties to arbitration proceedings, and on members that employ associated persons who are parties to arbitration proceedings. The fee will be imposed in two parts: a prehearing process fee and a hearing process fee.

Questions regarding this *Notice* may be directed to Linda Fienberg, Executive Vice President, Office of Dispute Resolution, NASD RegulationSM, at (202) 728-8407; Deborah Masucci, Vice President and Director, 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 And Discussion

On Thursday, December 11, 1998, NASD Regulation submitted a rule filing to the Securities and Exchange Commission (SEC) amending Rule 10333 of the National Association of Securities Dealers, Inc. (NASD[®]) Code of Arbitration Procedure to add a process fee to be charged to members at several stages of arbitration proceedings. The text of the new process fee rule is attached to this *Notice* as Exhibit A. The amendment is effective upon filing with the SEC and NASD Regulation plans to implement the new fee on January 2, 1998. The new fee is the last stage of a three-stage effort to make the NASD's dispute resolution program self-funding by imposing fees on participants in arbitration proceedings.¹ NASD Regulation also anticipates that its proposed increase in filing fees and hearing session deposits currently pending approval at the SEC will be approved and implemented on the same date or shortly thereafter.

The previously approved surcharge and the pending filing and hearing session fee increases will add approximately \$12 million to the revenue stream of the Office of Dispute Resolution (Office). In addition, they will shift much of the direct cost of operating the dispute resolution forum to the users of the forum. The final 1998 Budget for the Office, however, which includes transfer pricing of services provided by other NASD departments to the Office, projects total expenses of approximately \$35.2 million versus projected revenue of approximately \$29.1 million, leaving a revenue shortfall of approximately \$6.1 million. The new process fees are designed to recover all of the Office's costs that are not recovered through filing fees, hearing session deposits, forum fees,² and member surcharges, and to make the Office's activities self-funding in a way that generally reflects the extent of resources used in a given case.

The process fees will be assessed in two parts: (1) the Prehearing Process Fee for the activities in the case, from the filing of the claim up to and including the Prehearing Conference; and (2) the Hearing Process Fee for the activities relating to the evidentiary hearing, award and case closing.³ If the member concludes its involvement in a case through dismissal or settlement, the process fees accrued to that point will be assessed.⁴ Similarly, if an associated person of a member is named in a proceeding, but the member is not named, the member employing the associated person at the time of the events that gave rise to the dispute will be assessed the process fees when the associated person's involvement in the case is concluded.

The Prehearing Process Fee will accrue in three cumulative stages. First, when a claim is filed, a \$50 fee

will accrue against each member named in the claim.⁵ Next, when the first answer to the claim is received or due, an additional \$150 fee will accrue. Finally, when the arbitrators are selected, a fee of \$400 will accrue against each member in the case, for a maximum assessment against each member of \$600. The Prehearing Process Fee will be due and payable when the prehearing conference is held, or, if no prehearing conference is held, when the parties are notified of the date and location of the first hearing. These fees will not be dependent on the amount of the claim.

The Hearing Process Fee will accrue and become due and payable when the parties are notified of the date and location of the first hearing session. The Hearing Process Fee will be a graduated fee ranging from \$1,000 to \$5,000, based on the amount in dispute.

If an associated person is named, the member firm that employed the associated person at the time the claim arose will be assessed fees; however, a member will only be assessed once for each case even if both the member and an associated person (or associated persons) of the member are named as respondents.⁶

NASD Regulation believes that the structure of the process fee will result in the Office's costs being recovered even if there are significant variations

in the number of cases that proceed all the way through a hearing. Moreover, NASD Regulation believes that the new process fee may encourage settlements because significantly greater fees will be incurred by members once the matter proceeds to hearing.

Endnotes

¹ The first two stages involved increasing the surcharge on members named in arbitration proceedings and increasing filing fees and hearing session deposits. The increase in the member surcharge was submitted to the SEC for approval in rule filing SR-NASD-97-40 and was approved by the SEC. It was implemented on July 1, 1997. The proposed increases in filing fees and hearing session deposits were originally submitted to the SEC for approval in rule filing SR-NASD-97-39, resubmitted in rule filing SR-NASD-97-79, and are currently pending SEC approval.

² Forum fees are the charges for hearing sessions assessed at the end of a proceeding. Forum fees are calculated by multiplying the number of hearing sessions by the applicable hearing session deposit. The panel of arbitrators determines the fee allocation among the parties.

³ The process fee will not apply to an injunctive relief action filed under Rule 10335 of the Code until after the immediate injunctive relief stage of the proceeding. When the parties to such an action elect to proceed to a hearing on the merits before a panel of three arbitrators, the process fee will apply.

⁴ As with other fees, any overdue, unpaid process fees will be deducted from member funds maintained in member Central Registration Depository Accounts. *See Notice to Members 97-71* (October 1997).

⁵ As discussed above, if an associated person of a member is named, but the member employing the associated person is not named, the process fee will accrue against the member employing the associated person at the time of the events which gave rise to the dispute. References in this rule filing to fees assessed against members named in the proceeding will also refer to the circumstance where the member is not named in the proceeding, but is assessed the fee because a present or, where applicable, former associated person of the member is named in the proceeding.

⁶ As with the member surcharge, the new process fee will be assessed only against members. It will not be assessed against associated persons. In addition, because the process fee will be assessed against a member if an associated person of the member is named in a proceeding, members would be required to pay the process fee, for example: (1) where a member brings an arbitration case against an associated person to recover on a promissory note; (2) where an associated person brings an arbitration case against a member for defamation or wrongful discharge; or (3) where a customer brings an arbitration case against an associated person but does not name the member that employed the associated person at the time of the events that are the subject of the claim.

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New Arbitration Process Fee

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

10333. Member Surcharge and Process Fees

(a) Each member [who is named as] that is a party to an arbitration proceeding, whether in a Claim, Counter-claim, Cross-claim or Third-Party Claim, shall be assessed a non-refundable surcharge pursuant to the schedule below when the Director of Arbitration perfects service of the claim naming the member on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member or members that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be [subject to reimbursement] chargeable to any other party under Rules 10332(c) and 10205(c) of the Code.

Amount in Dispute	Surcharge
\$.01 - \$2,500	\$150
\$2,500.01 - \$5,000	\$200
\$5,000.01 - \$10,000	\$300
\$10,000.01 - \$25,000	\$400
\$25,000.01 - \$30,000	\$600
\$30,000.01 - \$50,000	\$800
\$50,000.01 - \$100,000	\$1,000
\$100,000.01 - \$500,000	\$1,500
\$500,000.01 - \$1,000,000	\$2,000
\$1,000,000.01 - \$5,000,000	\$2,500
\$5,000,000.01 - \$10,000,000	\$3,000
Over \$10,000,000	\$3,600

(b) For purposes of this Rule, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Rule 10314 of the Code.

(c) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable surcharge shall be \$1,200 or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule.

(d) Each member that is a party to an arbitration proceeding will pay a non-refundable process fee as set forth in the schedule below for each stage of a proceeding. The process fee shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code. If an associated person of a member is a party, the member that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy will be charged the process fees. The prehearing process fee will accrue according to the schedule set forth below, but will be due and payable when the prehearing conference is held, or, if no prehearing conference is held, when the parties are notified

of the date and location of the first hearing session. The hearing fee will accrue and be due and payable when the parties are notified of the date and location of the first hearing session. All accrued but unpaid fees will be due and payable at the conclusion of the member's or associated person's involvement in the proceeding. No member will pay more than one prehearing and hearing process fee for any case. The process fees will stop accruing when either the member enters into a settlement of the dispute or the member is dismissed from the proceeding or, if the member is paying a process fee as a result of an associated person being named as a party, when the associated person enters into a settlement or is dismissed from the proceeding, whichever is later.

Prehearing Process Fee Schedule
(proceedings where more than \$25,000 is in dispute)

<u>Service of Claim (accrues when the claim has been submitted and is ready to be served on the respondents)</u>	<u>\$50</u>
<u>Case Preparation (accrues when the first answer to the claim is received or due and discovery and motions proceedings commence)</u>	<u>\$150</u>
<u>Prehearing Activities (accrues when the parties are first notified of the names of any of the arbitrators selected to hear the matter or are given the names of arbitrators to select)</u>	<u>\$400</u>
<u>Total</u>	<u>\$600</u>

Hearing Process Fee Schedule
(accrues and becomes due and payable when the parties are notified of the date and location of the first hearing session)

<u>Damages Requested</u>	<u>Hearing Process Fee</u>
<u>\$1 - \$30,000</u>	<u>\$0</u>
<u>\$30,000.01 - \$50,000</u>	<u>\$1,000</u>
<u>\$50,000.01 - \$100,000</u>	<u>\$1,500</u>
<u>\$100,000.01 - \$500,000</u>	<u>\$2,500</u>
<u>\$500,000.01 - \$1,000,000</u>	<u>\$3,500</u>
<u>\$1,000,000.01 - \$5,000,000</u>	<u>\$4,500</u>
<u>More than \$5,000,000</u>	<u>\$5,000</u>
<u>Unspecified</u>	<u>\$2,000</u>

NASD NOTICE TO MEMBERS 98-2

SEC Approves Amendments To Rule 1010, 8000, And 9000 Series To Reflect Changes In NASD Corporate Organization

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On December 19, 1997, the Securities and Exchange Commission (SEC or Commission) approved various amendments to the Rules of the National Association of Securities Dealers, Inc. (NASD[®] or Association) and a related change to the By-Laws of NASD Regulation, Inc. (NASD RegulationSM) (NASD Regulation By-Laws).¹ The amendments to the Rules include changes in the membership admission Rules, the Rules relating to investigations and sanctions, and the Code of Procedure that conform the Rules to the formal changes in the NASD, NASD Regulation and The Nasdaq Stock Market, Inc. (Nasdaq[®]) corporate and committee structures approved by the SEC on November 14, 1997.² The amendments to the Rules and the NASD Regulation By-Law that are the subject of this *Notice* shall become effective on January 16, 1998, contingent upon the completion of several corporate actions by January 15, 1998, including the election of the NASD Board of Governors (NASD Board) by NASD members at the annual meeting, the appointment of the NASD Regulation Board of Directors (NASD Regulation Board) following the annual meeting, and the appointment of the National Adjudicatory Council (NAC) by the NASD Regulation Board. If any of the above actions do not occur by January 15, 1998, the NASD will publish a second *Notice to Members* providing a new effective date for the affected Rules and the NASD Regulation By-Law.

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

Mary Alice Brophy, 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

Procedures For Exemptions

Mary Dunbar, (202) 728-8252

Sharon Zackula, (202) 728-8985

Membership Application Procedures

The NASD is amending the membership application procedures to reflect changes that are required by the SEC's approval of amendments to the corporate and committee structure of NASD, NASD Regulation, and Nasdaq. The amendments to the Rule 1010 Series reflect the following changes:

– the term, “National Adjudicatory Council,” is substituted for the term, “National Business Conduct Committee” throughout the Rules;

– the Rules are amended to reflect the composition of the NAC, and that

the Chair is a member of the NASD Regulation Board and the NASD Board;

– the authority to engage in discretionary review of the decisions of the NAC is vested in the NASD Board, rather than in both the NASD Regulation Board and the NASD Board;

– specific references to NASD Regulation Directors are deleted as unnecessary because NASD Regulation Directors participate in the review of membership decisions only as members of the NASD Board.

In addition, the following Rules in the Rule 1010 Series are amended to incorporate other changes specifically described below.

Rule 1011 – Paragraph (b) of the Rule is amended to broaden the defined term “Associated Person” to include “a natural person registered under the Rules of the Association,” consistent with a recent change to NASD By-Laws, Article I.

Rule 1012 – Subparagraph (c)(1) of the Rule is amended to clarify that a majority of the Governors of the NASD Board, excluding the Chair, shall have authority to direct the disqualification of the Chair.

Rule 1013 – Subparagraph (a)(2)(C) of the Rule is amended to delete the requirement that an application for membership shall include “evidence of all registrations and licenses required by the Commission, state securities authorities, the Municipal Securities Rulemaking Board, the National Securities Clearing Corporation, and self-regulatory organizations.”

Rule 1015 – Under subparagraph (a)(2), the NAC or the Review Subcommittee of the NAC (Review Subcommittee) may call a membership decision for review. The NASD

must serve a written notice of review promptly on the Applicant if a decision is called for review. In paragraph (d), the Association is amending the Rule to authorize the Review Subcommittee to appoint a Subcommittee to review membership decisions.

Rules Regarding Investigations And Sanctions

The NASD is amending the Rule 8000 Series to reflect the changes required by the corporate reorganization (*e.g.*, the substitution of the term, “National Adjudicatory Council,” for the term, “National Business Conduct Committee”). In addition, the following Rules in the Rule 8000 Series are amended to incorporate other changes specifically described below.

Rule 8110 – The Rule is amended to allow members to keep a current copy of the *NASD Manual* electronically.

Rule 8210 – The Association is amending the notice provision in paragraph (d) to set forth more ways to give notice to a subject member or person.

Rule 8211, Rule 8212, and Rule 8213 – The Association is relocating three rules, Rule 4615, Rule 5107 and Rule 6730, which require a member or a person to submit information to the Association, to the Rule 8000 Series as Rule 8211, Rule 8212, and Rule 8213. The Association is also including in the text of Rule 8211, Rule 8212, and Rule 8213 a specific reference to the Rule 9600 Series to clarify that a person seeking exemptive relief under any of the three Rules should do so pursuant to the Rule 9600 Series.

Code Of Procedure Disciplinary Proceedings

The NASD is amending the Rules set forth in the Rule 9100 Series, the Rule 9200 Series, and the Rule 9300 Series, which are the rules applicable to most disciplinary proceedings. Other proceedings are subject to the Rule 9400 Series and the Rule 9500 Series described in the next section of this *Notice*.

Generally, the changes set forth in the Rules incorporate the changes described above that are required as a result of the corporate and committee restructuring.

In addition, throughout the Rule 9100 Series, the Rule 9200 Series and the Rule 9300 Series, the Rules have been amended to specifically authorize the Review Subcommittee to take a number of actions that previously were delegated from the National Business Conduct Committee (NBCC) to the Chair and the Vice Chair of the NBCC. The most important of these changes are set forth in amended Rule 9216(a) relating to the negotiation and conclusion of a letter of acceptance, waiver, and consent, amended Rule 9216(b) relating to the negotiation and conclusion of a minor rule violation plan letter, and amended Rule 9270 relating to the negotiation and settlement of a disciplinary matter by an offer of settlement. The Association is amending Rule 9322 (a) and (b), Rule 9331(a)(2), Rule 9344(a) and (b), and Rule 9347(a) and (b) similarly.

Other significant amendments to the Rule 9100 Series, the Rule 9200 Series, and the Rule 9300 Series are discussed specifically below.

Rule 9120 – The definitions listed below are new or are amended substantively:

- (a) “Adjudicator”;
- (d) “Counsel to the National Adjudicatory Council”;
- (e) “Department of Enforcement”;
- (f) “Director”;
- (o) “Head of Enforcement”;
- (r) “Interested Association Staff”;
- (w) “Party”;
- (z) “Review Subcommittee”;
- (aa) “Statutory Disqualification Committee”; and
- (bb) “Subcommittee.”

Rule 9141 – In paragraph (b), the Association is clarifying that the notice to be filed regarding the representation of another person is a Notice of Appearance.

Rule 9146 – The Association is amending subparagraph (j)(2) to authorize the Review Subcommittee to decide a motion on a procedural matter and a motion to dismiss a case for abandonment made under Rule 9344.

Rule 9160 – The Association is amending paragraph (a) to provide that the majority of the NASD Board, excluding the Chair of the NASD Board, is authorized to order the disqualification of the Chair. In paragraph (b), disqualification matters regarding members of the NAC, the Review Subcommittee, certain subcommittees in the Rule 9410 Series or the Rule 9600 Series, a Hearing Panel appointed under the Rule 9520 Series, and the Statutory Disqualification Committee are also addressed.

Rule 9211 – The Association is relocating a portion of paragraph (a) to Rule 9212 as subparagraph (a)(2).

Rule 9214 – The Association is clarifying that if a party to a case requests consolidation of that case with another case, the party must serve all parties to all cases proposed to be consolidated. The Association is also clarifying that the Chief Hearing Officer will decide a motion for consolidation by issuing an order.

Rule 9215 – The Association is amending paragraph (f) to provide that if a Respondent fails to answer a complaint or does not make any other filing or request related to the complaint with the Office of Hearing Officers within the period required to answer, the Department of Enforcement shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. If the Respondent fails to reply within the period specified, the Hearing Officer, in the exercise of his or her discretion, may treat as admitted by Respondent the allegations in the complaint and enter a default decision. Previously, the requirement to send a second notice to a Respondent was triggered solely by Respondent’s failure to file an answer.

IM-9216 – In the last line of IM-9216, certain violations of Rule 8211 (former Rule 4615), Rule 8212 (former Rule 5107), and Rule 8213 (former Rule 6730) may now be resolved by a minor rule violation plan letter.

Rule 9231 – New paragraph (d) provides that the Chief Hearing Officer may designate a person who is qualified to serve as a Panelist to serve as an “observer” to a disciplinary proceeding.

Rule 9235 – New paragraph (b) allows the Chief Hearing Officer or the Deputy Chief Hearing Officer to temporarily act as a Hearing Officer if the appointed Hearing Officer is temporarily unavailable.

Rule 9241 – Amended paragraph (d) requires that an initial pre-hearing conference be held within 21 days after filing, rather than service, of an answer.

Rule 9331 – Paragraph (a), which sets forth the composition of a Subcommittee and an Extended Proceeding Committee, is being modified to reflect the corporate reorganization.

Rule 9332 – New subparagraph (d) (2) provides for the disqualification of multiple members of the Review Subcommittee.

Procedures In Code Of Procedure Regarding Eligibility, Limitations On Operations, Summary And Non-Summary Suspensions, Cancellations, Bars, And Denials Of Access

The NASD is amending portions of the Rule 9400 Series and the Rule 9500 Series, which are the procedures relating to eligibility, limitations on operations, summary and non-summary suspensions, cancellations, bars, and denials of access to conform such proceedings to the current corporate structure.

The Rule 9400 Series Rules are amended to substitute the term “National Adjudicatory Council” for the former term “National Business Conduct Committee” and to make other changes that conform to the corporate reorganization discussed in greater detail above. The Rule 9500 Series Rules are similarly amended.

Procedures For Exemptions

The Rule 9600 Series Rules are amended to reflect the changes in the name of the committee from the “National Business Conduct Committee” to the “National Adjudicatory Council.” In addition, two other minor changes have been made to Rule 9610 and Rule 9630.

Rule 9610 – The Association is amending the Rule to incorporate four additional rules that are subject to the exemptive procedures set forth in the Rule 9600 Series, and is requiring that a person seeking an exemption must file a written application with the appropriate department and provide a copy of the application to the Office of the General Counsel of NASD Regulation.

Rule 9630 – The amended Rule will require that a person filing a notice of appeal of an exemptive decision must do so by filing it with the Office of the General Counsel of NASD Regulation, and filing a copy with the appropriate department.

List Of Amended Rules

The Rules, as amended, will incorporate changes to conform the membership admission Rules, the Rules relating to investigations, and the Code of Procedure to the corporate changes recently adopted by the NASD Board and approved by the SEC. For a complete understanding of the Rules, the NASD urges members and their associated persons to read the Rules, as amended.

For member convenience, the amended Rules are set forth on the NASD Regulation Web Site, www.nasdr.com. Click on the navigation bar titled, “Members Check Here” and then click on the navigation bar titled “Notices to Members.”

The following list sets forth the By-Laws and Rules that were amended including those that were deleted or renumbered.

NASD Regulation, Inc. By-Laws
Article V
Section 5.11 (added)

NASD Rules (numbered as of August 8, 1997) (only Rules that were amended on December 19, 1997 are listed)

Rule 1010 Series

Rule 1011
Rule 1012
Rule 1013
Rule 1014
Rule 1015
Rule 1016
Rule 1017
Rule 1018

Rule 4600 Series

Rule 4615 (renumbered as new Rule 8211)

Rule 5100 Series

Rule 5107 (renumbered as new Rule 8212)

Rule 6730 Series

Rule 6730 (renumbered as new Rule 8213)

Rule 8000 Series

Rule 8110 Series

Rule 8110

Rule 8220 Series

Rule 8210
Rule 8211 (previously numbered as Rule 4615)
Rule 8212 (previously numbered as Rule 5107)
Rule 8213 (previously numbered as Rule 6730)
Rule 8221
Rule 8222
Rule 8223
Rule 8225

Rule 8300 Series

Rule 8310
IM-8310-1
IM-8310-2

Rule 9000 Series

Rule 9100

Rule 9110
Rule 9120
Rule 9141
Rule 9143
Rule 9144
Rule 9146
Rule 9147
Rule 9150
Rule 9160

Rule 9200 Series

Rule 9211
Rule 9212
Rule 9214
Rule 9215
Rule 9216
IM-9216
Rule 9221
Rule 9231
Rule 9232
Rule 9235
Rule 9241
Rule 9251
Rule 9253
Rule 9270
Rule 9280

Rule 9300 Series

Rule 9311
Rule 9312
Rule 9313
Rule 9321
Rule 9322
Rule 9331
Rule 9332
Rule 9341
Rule 9343
Rule 9344
Rule 9345
Rule 9346
Rule 9347
Rule 9348

Rule 9349
Rule 9351 (deleted)
Rule 9352 (renumbered as
new Rule 9351)

Rule 9400 Series

Rule 9413
Rule 9414
Rule 9415 (deleted)
Rule 9416 (renumbered as
new Rule 9415)
Rule 9417 (renumbered as
new Rule 9416)
Rule 9418 (renumbered as
new Rule 9417)
Rule 9419 (renumbered as
new Rule 9418)
Rule 9419 (added)
Rule 9420 (deleted)

Rule 9500 Series

Rule 9511
Rule 9513
Rule 9514
Rule 9515
Rule 9522
Rule 9523
Rule 9524 (deleted)
Rule 9525 (renumbered as
new Rule 9524)
Rule 9526 (renumbered as
new Rule 9525)

Rule 9600 Series

Rule 9610
Rule 9630

Endnotes

¹ SR-NASD-97-81 was approved in Securities Exchange Act Rel. No. 34-39470 (Dec. 19, 1997), 62 F.R. 67927 (December 30, 1997). *See* SR-NASD-97-81, filed October 31, 1997, Rel. No. 34-39350 (November 21, 1997), 62 F.R. 64000 (December 3, 1997); SR-NASD-97-81, Amendment No. 1, filed November 12, 1997; SR-NASD-97-81, Amendment No. 2, filed November 18, 1997; SR-NASD-97-81, Amendment No. 3, filed December 16, 1997.

² SR-NASD-97-71, approved in Securities Exchange Act Rel. No. 34-39326 (November 14, 1997).

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NASD NOTICE TO MEMBERS 98-3

Electronic Delivery Of Information Between Members And Their Customers

Suggested Routing

- Senior Management
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Executive Summary

This *Notice* sets forth the policy of NASD Regulation, Inc. (NASD RegulationSM) applicable to electronic delivery of information between members and their customers as required or permitted by National Association of Securities Dealers, Inc. (NASD[®]) Rules.¹

Questions concerning this *Notice* may be directed to Mary Revell, Associate General Counsel, NASD Regulation, at (202) 728-8203.

Background And Discussion

On May 9, 1996, the Securities and Exchange Commission (SEC or Commission) issued an interpretive release publishing its views on the use of electronic media by broker/dealers for delivery of information.² The SEC stated that broker/dealers and others may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media within the framework established in the SEC's October 1995 interpretive release on the use of electronic media for delivery purposes.³ The SEC also indicated that an electronic communication from a customer to a broker/dealer generally would satisfy the requirements for written consent or acknowledgment under the federal securities laws.

NASD Regulation will permit members to electronically transmit documents that they are required or permitted to furnish to customers under NASD Rules, provided they adhere to the standards contained in the SEC Releases summarized below. Members also may receive electronic communications from customers. Members are urged to review the May 1996 and October 1995 Releases in their entirety to ensure they comply with all aspects of the SEC's electronic delivery requirements.

SEC Releases

According to the standards established by the SEC, broker/dealers may use electronic media to satisfy their delivery obligations, provided the electronic communication satisfies the following principles:

Notice: The electronic communication should provide timely and adequate notice to customers that the information is available electronically. If necessary, broker/dealers should consider supplementing the electronic communication with another communication that would provide notice similar to that provided by delivery in paper through the postal mail that information has been sent electronically that the recipient may wish to review.

Access: Customers who are provided information through electronic delivery should have access to that information substantially equivalent to the access that would be provided if the information were delivered in paper form (*i.e.*, the electronically transmitted document must convey all material and required information). For instance, if a paper document is required to present information in a certain order, then the information delivered electronically should be in substantially the same order. The use of a particular electronic medium should not be so burdensome that intended recipients cannot effectively access the information provided. A recipient should have the opportunity to retain the information through the selected medium or have ongoing access equivalent to personal retention.⁴ Also, as a matter of policy, the SEC believes that a person who has a right to receive a document under the federal securities laws, and chooses to receive it electronically, should be provided with a paper version of the document if consent to receive documents electronically is revoked or upon specific request.⁵

Evidence to Show Delivery:

Broker/dealers must have reason to believe that electronically delivered information will result in the satisfaction of the delivery requirements under the federal securities laws. Broker/dealers should consider the need to establish procedures to ensure that applicable delivery obligations are met, and should take reasonable precautions to ensure that information transmitted using either electronic or paper media is delivered as intended. Broker/dealers may be able to evidence satisfaction of delivery obligations, for example, by:

(1) obtaining the intended recipient's informed consent⁶ to delivery through a specified electronic medium, and ensuring that the recipient has appropriate notice and access;

(2) obtaining evidence that the intended recipient actually received the information, such as by an electronic mail return-receipt or by confirmation that the information was accessed, downloaded, or printed; or

(3) disseminating information through certain facsimile methods.

The SEC also made the following statements regarding the communication of personal financial information (e.g., confirmations and account statements).

Confidentiality and Security: Broker/dealers sending personal financial information through electronic means or in paper form should take reasonable precautions to ensure the integrity, confidentiality, and security of that information. Broker/dealers transmitting personal financial information electronically must tailor those precautions to the medium used in order to ensure that the information is reasonably secure from tampering or alteration.

Consent: Prior to delivering personal financial information electronically, the broker/dealer must notify the intended recipient that the information will be delivered electronically and obtain the recipient's informed consent. The customer's consent may be made either by a manual signature or by electronic means.

The SEC also stated that an electronic communication from a customer to a broker/dealer will satisfy requirements under certain Commission Rules to receive or obtain written customer consent or acknowledgment.⁷ Further, the SEC reminded broker/dealers that they must reasonably supervise firm personnel to prevent violations, and suggested that firms should evaluate the need for systems and procedures to deter or detect misconduct by firm personnel in connection with the delivery of information, whether by electronic or paper means.

The SEC release stated that the above standards are intended to permit broker/dealers to comply with their delivery obligations under the federal securities laws when using electronic media. While compliance with the guidelines is not mandatory for the electronic delivery of non-required information that, in some cases, is being provided voluntarily to customers, NASD Regulation believes adherence to the guidelines should be considered, especially with respect to documents furnished pursuant to agreements or other specific arrangements with customers.

Conclusion

A list of current NASD Conduct Rules, Marketplace Rules, and Procedural Rules that require or permit communications between members and their customers for which electronic delivery may be used in accordance with the standards set forth in the SEC May 1996 and October

1995 Releases is set forth below. The summary of delivery obligations provided is intended for reference only, and is not intended to be a statement of all requirements under the Rules listed. NASD Regulation believes this list is complete. The interpretation set forth in this *Notice* also will apply to a new Rule or an amendment to an existing Rule that requires or permits communications between members and their customers unless NASD Regulation specifies otherwise at the time of adoption of the Rule or amendment.

NASD Rules That Require Or Permit Delivery Of Information Between Firms and Customers Conduct Rules

Rule 2210(d)(2)(B)(i), (ii), and (iv) (Communications with the Public; Standards Applicable to Communications with the Public; Specific Standards; Recommendations) requires a member to disclose certain "conflicts of interest" situations, if applicable, when making a recommendation; requires a member to provide, or offer to furnish upon request to the customer, available investment information to support a recommendation; and allows a member to offer to furnish a list of all recommendations made within the past year or over longer periods of time.

Rule 2220(d)(2)(D)(i) (Options Communications with the Public; Standards Applicable to Communications with the Public; Specific Standards) requires a member to state in sales literature pertaining to options that supporting documentation for any claims, comparisons, recommendations, statistics, or other technical data will be supplied upon request.

Rule 2230 (Confirmations) requires a member at or before the completion of each transaction to give or send to a customer written notification dis-

closing the member's role and other facts in connection with the transaction. In addition, if the member was acting as a broker for the customer, the member must disclose from whom the security was purchased or to whom it was sold or the fact that such information will be furnished upon request of the customer.

IM-2230 ("Third Market" Confirmations) requires a member that acts as a broker for customers in listed securities in the "third market" to provide certain disclosures in a legend on the confirmation to the customer.

Rule 2240 (Disclosure of Control Relationship with Issuer) requires a member who has a control relationship with the issuer of the security being purchased or sold to provide written disclosure of the relationship to the customer at or before the completion of the transaction.

Rule 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) requires a member to provide written disclosure to the customer at or before completion of a transaction in a primary or secondary distribution of the security, if the member is participating or has an interest in the distribution.

Rule 2260 (Forwarding of Proxy and Other Materials) requires a member to forward proxy materials, annual reports, information statements, and other material to each beneficial owner of shares of a stock held by the member.

Rule 2270(a) (Disclosure of Financial Condition to Customers) requires that, upon request, a member must make available to inspection by any bona fide regular customer financial condition information disclosed in its most recent balance sheet.

Rule 2310(a) and (b) (Recommendations to Customers (Suitability)) requires a member to make a suitability determination based on information disclosed by the customer as to the customer's other security holdings, financial situation, and need, and requires a member to make reasonable efforts to obtain specified information concerning non-institutional customers.

IM-2310-2(e) (Fair Dealing with Customers with Regard to Derivative Products or New Financial Products) requires a member to make every effort to make customers aware of the pertinent information regarding certain products. To meet this obligation, members may deliver written documents to the customer under certain circumstances.

Rule 2330(c) (Customers' Securities or Funds; Authorization to Lend) requires a member to obtain from a customer a written authorization permitting the lending of securities carried by the member.

Rule 2330(f)(2)(D) and (G) (Customer's Securities or Funds; Sharing in Accounts; Extent Permissible) requires that a compensation arrangement to share profits in an account must be set forth in a written agreement executed by the customer and the member, and that the member must disclose to the customer all material information relating to the arrangement, including the method of compensation and potential conflicts of interest that may result from the compensation formula.

Rule 2340(a) (Customer Account Statements) requires delivery of a statement of account containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last state-

ment was sent to the customer (see May 1996 Release, which covers confirmations of transactions pursuant to Securities Exchange Act Rule 10b-10).

Rule 2510(b) (Discretionary Accounts; Authorization and Acceptance of Account) requires the customer's prior written authorization before a member may exercise discretionary power in a customer's account.

Rule 2510(d) (Discretionary Accounts; Exceptions) allows an exception from the requirements of the rule under certain circumstances for members utilizing negative response letters for bulk exchanges of net asset value of money market mutual funds.

Rule 2710(c)(8)(A) (Corporate Financing Rule—Underwriting Terms and Arrangements; Underwriting Compensation and Arrangements; Conflicts of Interest) requires disclosure of conflicts of interest and the name of the qualified independent underwriter assuming the role of pricing the offering and conducting due diligence.

Rule 2720(d) and (h) (Distributions of Securities of Members and Affiliates—Conflicts of Interest; Disclosure and Periodic Reports) requires a member to make certain disclosures in the registration statement, offering circular, or similar document and requires a member that makes a distribution to the public of its securities pursuant to this Rule to send to each of its shareholders or investors: (1) quarterly, a summary statement of its operations and (2) annually, independently audited and certified financial statements.

Rule 2720(k) (Distributions of Securities of Members and Affiliates—Conflicts of Interest; Suitability) requires a member underwriting an

issue of securities where a conflict of interest exists to make a suitability determination based on information furnished concerning the customer's investment objectives, financial situation, and needs.

Rule 2720(l) (Distributions of Securities of Members and Affiliates—Conflicts of Interest; Discretionary Accounts) requires specific written approval of the customer prior to execution in a discretionary account of a transaction in securities issued by a member or an affiliate of a member, or by a company with which a member has a conflict of interest.

Rule 2730(b) (Securities Taken in Trade) defines the term "taken in trade" as a purchase by a member as principal, or as agent for the account of another, of a security from a customer pursuant to an agreement or understanding that the customer purchase securities from the member that are part of a fixed price offering.

Rule 2810(b)(2) (Direct Participation Programs; Requirements; Suitability) requires a member to obtain information from a participant concerning his investment objectives, other investments, financial situation, and needs before making a recommendation.

Rule 2810(b)(3)(D) (Direct Participation Programs; Requirements; Disclosure) requires that, prior to executing a purchase transaction in a direct participation program, a member must inform the prospective participant of all pertinent facts relating to the liquidity and marketability of the program during the term of the investment.

Rule 2830(n) (Investment Company Securities; Disclosure of Deferred Sales Charges) requires, in addition to the disclosures required by Rule 2230, disclosure on written confir-

mations if the transaction involves the purchase of shares of any investment company that imposes a deferred sales charge on redemption. In addition, a specified legend on the confirmation is required.

Rule 2845 (Discretionary Accounts) requires a customer's prior written authorization for trading of warrants in a discretionary account, pursuant to the requirements of Options Rule 2860(b)(18).

Rule 2848 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants). The requirements of Rule 2220(d)(2)(D)(i) apply to communications to the public and customers concerning warrants. Rule 2848, therefore, requires the member to state in its sales literature that supporting documentation for any claims on behalf of the warrants will be supplied upon request.

Rule 2860(b)(11) (Options; Requirements; Delivery of Current Disclosure Document) requires delivery of the appropriate Options Clearing Corporation disclosure document to each customer at or prior to the time the customer's account is approved for options trading. Thereafter, delivery must be made to each customer of amendments or revisions to the disclosure document.

Rule 2860(b)(12) (Options; Requirements; Confirmations) requires members to promptly furnish customers with a written confirmation of each transaction in options contracts.

Rule 2860(b)(15) (Options; Requirements; Statements of Account) requires a member to send monthly statements to options account holders.

Rule 2860(b)(16)(A) (Options; Requirements; Opening of Accounts;

Approval Required) prohibits a member from accepting an options order from a customer or from approving a customer's account for options trading unless the broker/dealer has furnished to the customer the appropriate options disclosure document(s).

Rule 2860(b)(16)(B) (Options; Requirements; Opening of Accounts; Diligence in Opening Accounts) requires a member to exercise due diligence to ascertain the essential facts relative to a customer before approving a customer's account for options trading.

Rule 2860(b)(16)(C) (Options; Requirements; Opening of Accounts; Verification of Customer Background and Financial Information) requires that background and financial information on every new options account natural person customer be sent to the customer for verification within 15 days after the account is approved for options trading.

Rule 2860(b)(16)(D) (Options; Requirements; Opening of Accounts; Account Agreement) requires a member to obtain from the customer a written agreement that the customer is aware of and agrees to be bound by the NASD Rules applicable to the trading of option contracts within 15 days after a customer's account has been approved for trading of options contracts.

Rule 2860(b)(16)(E)(v) (Options; Requirements; Opening of Accounts; Uncovered Short Option Contracts) requires that a short written description of the risks inherent in writing uncovered short option transactions must be furnished to applicable customers.

IM-2860-2 (Diligence in Opening Options Accounts)

Paragraph (a) requires members to seek to obtain certain information at a minimum with respect to options customers who are natural persons in order to fulfill their obligations under Rule 28860(b)(16)(B).

Paragraph (c) recommends that members consider utilizing a standard account approval form to ensure the receipt of all required information.

Paragraph (e) states that the requirements of Rule 2860(b)(16)(C), regarding initial and subsequent verification of customer background and financial information, can be satisfied by sending to the customer the information required in paragraphs (a)(1) through (a)(6) of IM-2860-2 and providing the customer with an opportunity to correct or complete the information.

Rule 2860(b)(18)(A) (Options; Requirements; Discretionary Accounts; Authorization and Approval) requires the written authorization of a customer before a member may exercise any discretionary power with respect to trading an options contract in a customer account.

Rule 2860(b)(19) (Options; Requirements; Suitability) prohibits a member from recommending an options transaction unless the member has reasonable grounds to believe, based on the information furnished by the customer, that the recommended transaction is not unsuitable for the customer.

Rule 2860(b)(23)(C)(i) (Options; Requirements; Tendering Procedures for Exercise of Options: Allocation of Exercise Assignment Notices) requires notification to customers of the method used to allocate exercise

notices to customers' accounts.

Rule 3110(c) (Books and Records; Customer Account Information) requires members to obtain specified customer information.

Rule 3110(f)(3) (Books and Records; Requirements when Using Pre-dispute Arbitration Agreements with Customers) requires that a copy of the agreement containing a pre-dispute arbitration clause must be given to the customer, who must acknowledge receipt on the agreement or on a separate document.

Rule 3110(g)(2) and (3) (Books and Records; Telemarketing Requirements) requires members to obtain written customer authorization before obtaining a check drawn on a customer's account.

Rule 3230(d) (Clearing Agreements) requires notification upon the opening of an account to each customer whose account is introduced on a fully disclosed basis of the existence of the clearing or carrying agreement.

Marketplace Rules: The Nasdaq Stock Market Rules

Rule 4643 (Customer Confirmations) prohibits members from effecting transactions in Nasdaq SmallCap MarketSM securities unless, at or before completion of the transaction, the member gives or sends the customer written notification disclosing specified information.

Procedural Rules: Complaints, Investigations & Sanctions

Rule 8110 (Availability to Customers of Certificate, By-Laws and Rules) requires a member to provide customer access to copies of the NASD Certificate of Incorporation, By-Laws, and Rules.

Procedural Rules: Uniform Practice Code

Rule 11860(a)(3) and (4) (Acceptance and Settlement of COD Orders) requires a member to deliver to the customer a confirmation, or all relevant data customarily contained in a confirmation, not later than the close of business on the next business day after any such execution and to obtain an agreement from the customer to furnish instructions regarding the receipt or delivery of the securities involved in the transaction.

Rule 11870(c) (Customer Account Transfer Contracts; Transfer Instructions): customers must be informed of the conditions for account transfers and must authorize the transfer.

Endnotes

¹ This *Notice* was filed with the Securities and Exchange Commission in SR-NASD-97-57 and was approved in Securities Exchange Act Release No. 39356 (November 25, 1997); 62 FR 64421 (December 5, 1997).

² See Securities Act Release No. 7288 (May 9, 1996); 61 FR 24644 (May 15, 1996) (May 1996 Release). The release also contained a list of current Rules to which broker/dealers apply the guidance provided in the interpretation.

³ See Securities Act Release No. 7233 (October 6, 1995); 60 FR 53458 (October 13, 1995) (October 1995 Release).

⁴ The SEC stated that the ability to download the document or print from the electronic medium would be sufficient to satisfy this need.

⁵ See May 1996 Release, n.17.

⁶ The SEC described an informed consent as one that specifies the electronic medium or source through which the information will be delivered and the period during which the consent will be effective, and describes the information that will be delivered using such

means. Except where manual consent is required under the Penny Stock Rules (*see* discussion *infra*), broker/dealers may obtain consents either manually or electronically. *See* May 1996 Release, n.23.

⁷ The SEC, however, cautioned broker/dealers that they should be aware of their responsibilities to prevent unauthorized transactions. In this regard, the Commission stated its belief that broker/dealers should have reasonable assurance that the response received from a customer is authentic. The

SEC also will continue to require broker/dealers to obtain the manual signature of customers on certain disclosure documents required under the Penny Stock Rules. *See* May 1996 Release, nn.23, 29, & 50.

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NASD NOTICE TO MEMBERS 98-4

Reminder Of Members' Obligations To Comply With Rule 15c2-4

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) requests that members review their compliance procedures with respect to Securities and Exchange (SEC) Rule 15c2-4, which is applicable to public and private offerings of securities distributed on a best-efforts basis. In order to assist members in their review, attached to this *Notice* is *Notice to Members 84-7*, which sets forth in questions-and-answer format interpretations of the SEC with respect to Rule 15c2-4.

Questions concerning this *Notice* should be directed to Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, at (202) 974-2747.

Discussion

Recently, NASD Regulation has considered a number of disciplinary actions in which it found violations of SEC Rule 15c2-4, adopted under the Securities Exchange Act of 1934. This rule applies to public and private offerings of securities that are distributed by members on a best-efforts basis. Subsection (b) of Rule 15c2-4 applies to those best-efforts offerings that include a contingency that may result in the return of investors' funds if the contingency is not met.

Members are urged to review their compliance procedures with respect to Rule 15c2-4. In *Notice to Members 84-7* (January 30, 1984), the National Association of Securities Dealers, Inc. (NASD[®]) published SEC staff interpretations of Rule 15c2-4 set out in question-and-answer format.¹ NASD Regulation is attaching to this *Notice* a copy of *Notice to Members 84-7* in order to provide guidance to members in their efforts to comply with this rule. In particular, members should note the position of the SEC in Question 7, that a broker/dealer affiliated with the

issuer may only deposit investors' funds in an escrow account with a bank independent of the issuer and the broker/dealer; Question 10, that no person other than a bank may act as an escrow agent; and Question 11, that the member's attorney may not act as the "agent or trustee" of a separate bank account.²

Endnotes

¹ In that *Notice* there is a reference to net capital requirements of \$5,000 and \$25,000 to differentiate between members that are prohibited from or permitted to hold funds, securities and accounts, which have subsequently been amended. See *Notice to Members 92-72* (December 15, 1992).

² The NASD also issued *Notice to Members 84-64* (November 26, 1984) publishing an interpretive letter of the SEC with respect to the application of Rule 15c2-4 to public and private offerings of direct participation programs. In addition, the NASD issued *Notice to Members 87-61* (September 10, 1987) that contained suggested escrow agreement provisions and suggested language for the member's Selected Dealers Agreement with respect to compliance with Rule 15c2-4. Members are urged to consult with their attorney, however, with respect to the drafting of any escrow agreement or Selected Dealers Agreement.

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NASD

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Telephone: (202) 739-3000
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notice to members 84-7

January 30, 1984

I M P O R T A N T

OFFICERS, PARTNERS AND PROPRIETORS

TO: All NASD Members and Other Interested Persons

RE: SEC Staff Interpretations of Rule 15c2-4

SUMMARY

In response to a request by the Association, the staff of the SEC's Division of Market Regulation has recently issued its views on frequently raised interpretive questions regarding Rules 15c2-4 (the "Rule") under the Securities Exchange Act of 1934 (the "Act"). The SEC staff's views are set forth in a question and answer format and are presented to assist Association members who are involved in best efforts, "all or none" or other contingency underwritings.

The Rule applies to best efforts distributions of securities. The Rule prescribes procedures for such distributions conducted on an "all-or-none" basis, or on any other basis on which payment will not be made to the issuer until some further event or contingency occurs (e.g., a "minimum-maximum" offering). It requires a broker-dealer participant either to promptly deposit investors' funds received into a separate bank account, as agent or trustee for those investors, or to promptly transmit such funds to a bank escrow agent, pending the occurrence of the contingency. The purpose of the Rule is to insulate offering proceeds from unlawful activities by, or the financial reverses of, the broker-dealer participating in the offering and thus to ensure that the issuer will receive the full proceeds promptly if the contingency occurs or that investors will receive a prompt reimbursement of all of their funds if the contingency does not occur. Under the Rule, a broker's obligation with regard to funds received depends on whether it is a "\$5,000 broker-dealer" or a "\$25,000 broker-dealer" under the SEC's net capital rules. Upon receipt of an investor's funds, a "\$25,000 broker-dealer" has two options:

- (1) To act as agent or trustee for a separate bank account until the contingency occurs; or
- (2) To transmit the monies to an unaffiliated bank to hold in escrow for the investors until the contingency occurs.

Pursuant to Rule 15c3-1(a)(2) under the Act, a "\$5,000 broker-dealer" may only receive and promptly transmit investors' checks which are payable to an unaffiliated bank escrow agent.

QUESTIONS AND ANSWERS

The SEC staff has prepared the following answers to a list of questions raised by the NASD concerning Rule 15c2-4.

- (1) **Question:** Where a customer's check is payable to the issuer or the bank escrow agent, but is physically received by the broker-dealer, is money "received" within the meaning of the Rule?

Answer: Yes, this situation is governed by the provisions of the Rule. A check constitutes "money" under the Rule, and in the above situation money has been "received" for the purposes of the Rule. ^{1/} A "\$5,000 broker-dealer" may only physically receive and promptly transmit checks payable to an unaffiliated bank escrow agent.
- (2) **Question:** Where a customer's check is payable to the issuer (or an affiliate of the issuer) but a broker-dealer does not physically receive the check, is money "received" within the meaning of the Rule?

Answer: Direct receipt of an investor's funds by an issuer (or an affiliate of the issuer) is not a circumstance addressed by the Rule. ^{2/} Although a narrow construction of the Rule's provisions might arguably lead to the conclusion that direct receipt by the issuer does not violate the Rule, direct receipt by

^{1/} Broker-dealers are also required by Rules 17a-3 under the Act to record by memorandum any receipt of customer funds for the purchase of a security even if the customer's check is payable to the issuer or bank escrow account.

^{2/} Direct receipt of investors' funds by the issuer in a best efforts contingent underwriting was not anticipated or addressed by the Commission when it adopted the Rule in 1962. See Securities Exchange Act No. 6737 (February 21, 1962) and Securities Exchange Act Release No. 6689 (December 21, 1961).

the issuer could result in difficulties with respect to the maintenance of required books and records by the broker-dealer. In addition, if funds are sent directly to the issuer, and the issuer converts the funds or goes bankrupt, the broker may expose itself to liability. The Commission's staff, therefore, believes that the better practice is to have investors' funds sent directly to the broker-dealer. ^{3/}

- (3) **Question:** Is the Rule complied with if an investor's check is made payable to the broker-dealer with the understanding that it will be held or not deposited in a separate bank account or transmitted into escrow until some later date (such as until shortly before the termination of the offering)?

Answer: Under the Rule, such a delay is inappropriate. The monies must be deposited or transmitted "promptly" (as defined in Answer 6). The broker-dealer may not delay depositing or transmitting checks.

- (4) **Question:** In a contingent offering of limited partnership interests, is money "received" within the meaning of the Rule under the following arrangement?

A broker-dealer receives an investor's check accompanied by a signed subscription, which it forwards to the general partner for acceptance. Pending acceptance, the broker-dealer is authorized by the investor to invest his funds in a money market fund registered under the Investment Company Act of 1940. Upon acceptance of the subscription by the general partner, the broker-dealer, pursuant to a revocable letter of authorization, will sell a number of shares of the money market fund equal in value to the subscription price and forward the proceeds to the general partner.

Answer: In this situation, because the customer's check is accompanied by a signed subscription agreement,

^{3/} However, a "\$5,000 broker-dealer" may not receive customer funds unless the customer's check is payable to a bank escrow agent. See Rule 15c3-1(a)(2).

money is "received" within the meaning of the Rule and the broker-dealer must "promptly deposit" it in a separate bank account or "promptly transmit" it to a bank to be held in escrow. The broker-dealer is not permitted to temporarily invest the funds in a money market fund.

(5) **Question:** Is the Rule complied with if an investor writes a check payable to a "\$25,000 broker-dealer" who, in turn, promptly writes its own check or wires funds to a separate bank account or escrow account?

Answer: Yes, this complies with Rule 15c2-4. However, Rule 10b-9 would also have to be considered. ^{4/} In "all-or-none" or "minimum-maximum" offerings, investors' funds may not be forwarded to the issuer until the required minimum number of securities has been sold and fully paid for in customer funds that have cleared the banking system. A broker-dealer may not substitute its own good check for the check of a customer that has insufficient funds in order to satisfy the contingency. See SEC No-Action Letter issued to Brodis Securities Incorporated (November 14, 1983).

(6) **Question:** What do the terms "promptly deposited in a separate bank account" and "promptly transmitted" mean under the Rule?

Answer: Absent unusual circumstances, funds should be deposited or transmitted as soon as practicable after receipt. In contingent offerings not requiring suitability determinations by the issuer or the general partner, funds should be deposited or transmitted by noon of the next business day. In contingent offerings requiring suitability determinations by the issuer or general partner (for example, most direct participation programs) where investors' checks are made payable solely to the bank escrow agent but delivered to the broker-dealer, prompt transmittal may be accomplished by forwarding the checks to the escrow agent either by noon of the

^{4/} Under Rule 10b-9 a representation that an offering is on an "all or none" or "minimum-maximum" basis constitutes a manipulative or deceptive device prohibited by Section 10(b) unless prompt refunds are made to purchasers if the represented number of securities are not sold in bona fide transactions at the specified price within the specified time and if the total amount due the seller is not received by it by the specified date.

next business day or by noon of the second business day after receipt of the subscription by the issuer or general partner. If the latter option is used, the subscription must be forwarded to the issuer or general partner by noon of the next business day after receipt of the funds. See SEC Interpretive Letter issued to Lowell H. Listrom & Company, Inc. (April 27, 1983).

(7) **Question:** How is compliance with the Rule affected where the issuer (or general partner of the issuer) and a broker-dealer participating in the distribution are affiliated?

Answer: Where an investor sends his check directly to an issuer that is affiliated with a participating broker-dealer, "receipt" of the funds is considered to be made by the broker-dealer when the issuer receives the check. Therefore, the Rule applies and the broker-dealer is responsible for ensuring that the issuer promptly transmits the funds to an independent escrow account.

Since the Rule imposes an obligation on a broker-dealer to ensure that funds received by it are not dissipated in any fashion and not disbursed to the issuer unless the contingency has been fully satisfied, where an issuer and a broker-dealer are affiliated, the broker-dealer should not act as agent or trustee for the funds. See Securities Exchange Act Release No. 11532 (July 11, 1975). Instead, an escrow agent should be used that is a bank unaffiliated with both the issuer (or the general partner of the issuer) and the broker-dealer.

(8) **Question:** In an offering of securities (such as limited partnership interests) where an "all-or-none" or "minimum-maximum" is involved, how does a requirement that the issuer or general partner personally approve each prospective investor or limited partner for suitability affect compliance with either Rule 15c2-4 or Rule 10b-9?

Answer: In an "all-or-none" or "minimum-maximum" offering, Rule 10b-9 must be considered if the issuer or general partner is required to approve the investor for suitability or otherwise. The specified minimum or total will be not be considered "sold" in bona fide transactions until such minimum or total has been accepted for subscription by the issuer or general partner.

- (9) **Question:** Does the Rule apply to private placements done on a best efforts basis in light of the use of the term "distribution" in the Rule?
- Answer:** Yes, the Rule does apply to such private placements. This issue was addressed by the SEC in a recent decision. See Baikie & Alcantara, Inc., Securities Exchange Act Release No. 19410 (January 6, 1983). To the extent a private placement meets the definition of a distribution under Rule 10b-6, a private placement would be a distribution under Rule 10b-6(c)(5) under the Act, which defines the term "distribution."
- (10) **Question:** May some person other than a bank (e.g., an attorney for the broker-dealer) act as an escrow agent within the meaning of the Rule?
- Answer:** No, the escrow agent must be a bank that is unaffiliated with either the issuer or the broker-dealer.
- (11) **Question:** May the lawyer for the broker-dealer be the "agent or trustee" for the separate bank account established pursuant to paragraph (b)(1) of the Rule?
- Answer:** No, the lawyer of the broker-dealer or some other person could not act as agent or trustee of the separate bank account. The phrase "as agent or trustee" in the Rule refers to the broker-dealer. Among other things, this affords the SEC and the NASD clear examination authority of the separate bank account. Also, only a "\$25,000 broker-dealer" may be the agent or trustee of the separate bank account.
- (12) **Question:** If a "\$25,000 broker-dealer" establishes an escrow account or separate bank account to hold customer funds received in connection with an "all-or-none" or other contingency-type offering in accordance with Rule 15c2-4(b)(1) or (2), must the broker-dealer include the customer funds so held as "Item 1" credits for purposes of computing the reserve formula requirements under Exhibit A to Rule 15c3-3 under the Act?
- Answer:** No.
- (13) **Question:** What are the permissible investments that may be made by an agent, trustee or bank escrow agent under Rule 15c2-4?
- Answer:** Rule 15c2-4(b)(1) and (2) specify that funds must be deposited in, or transmitted to, a bank by such persons. Therefore, bank accounts, including saving

accounts and bank money market accounts, are the types of investments permitted under Rule 15c2-4. ^{5/} The monies must be held in a bank account that enables the agent, trustee, or escrow agent to "promptly" or "directly" transmit or return such funds to the person entitled thereto when the appropriate event or contingency has occurred or failed to occur. The definition of a "bank" is contained in Section 3(a)(6) of the Act and does not, for example, include a savings and loan association. ^{6/}

In addition, with respect to offering proceeds transmitted to a bank escrow account pursuant to Rule 15c2-4(b)(2), the staff of the Division of Market Regulation will not recommend that the SEC take enforcement action under the Rule if the bank escrow agent invests offering proceeds in either short-term certificates of deposit issued by a bank, or short-term securities issued or guaranteed by the United States Government.

Any such investment in time deposits, short term bank certificates of deposit, or short term U. S. Government-backed securities must be made in recognition of the Rule's requirement that offering proceeds held in a separate bank account or escrow be transmitted promptly to the issuer or the investor once the contingency has or has not occurred. Thus, it would be inappropriate for a bank escrow agent to invest in an otherwise permissible instrument under the Rule if that instrument's maturity date extends beyond the anticipated contingency occurrence date, unless such instrument can be readily sold or otherwise disposed of for cash by the time the contingency occurs without any dissipation of the offering proceeds invested.

The following securities are not permissible investments within the meaning of Rule 15c2-4:

- (a) money market funds;
- (b) corporate equity or debt securities;
- (c) repurchase agreements;

^{5/} A trustee may also be restricted to certain investments by the fiduciary laws of a particular state.

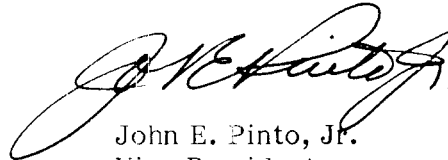
^{6/} But cf., Investment Company Act Release No. 13666 (December 12, 1983).

- (d) banker's acceptances;
- (e) commercial paper; and
- (f) municipal securities.

* * * *

Questions or comments with regard to the interpretations in this Notice should be addressed to William Schief, Director of Regional Attorneys, Surveillance Department at (202) 728-8229 or the SEC's Division of Market Regulation (Office of Trading Practices) at (202) 272-2848.

Sincerely,



John E. Pinto, Jr.
Vice President
Surveillance

NASD NOTICE TO MEMBERS 98-5

SEC Approves Changes To Third Market Trading Rules

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On November 26, 1997, the Securities and Exchange Commission (SEC or Commission) approved changes to National Association of Securities Dealers, Inc. (NASD[®]) rules governing trading in exchange-listed securities in the over-the-counter market (the Third Market). The amendments: (1) codify permissible uses of computer-generated quote systems; (2) eliminate the excess spread rule; (3) reduce the minimum quotation size applicable to Consolidated Quotation System (CQS) market makers to one unit of trading (*i.e.*, 100 shares) regardless of whether the market maker is displaying a customer's limit order or quoting for its own proprietary account; (4) extend pertinent provisions of the NASD's limit order protection rule applicable to securities listed on The Nasdaq Stock MarketSM (the Manning Rule) to exchange-listed securities; and (5) change the Computer Assisted Execution SystemSM (CAESSM) to automatically execute at the firm's displayed price and up to the firm's displayed size only. The rule changes are effective December 16, 1997, with the exception of the rules relating to computer-generated quotations, which are effective December 22, 1997.¹

Questions concerning this *Notice* may be directed to Thom Bennett, Manager, Nasdaq[®] Market Operations, at (203) 385-6305, or Andrew S. Margolin, Senior Attorney, The Nasdaq Stock Market, Inc., at (202) 728-8869.

Background

The SEC has approved several amendments to NASD rules governing trading in exchange-listed securities by market makers in the Third Market.² The NASD proposed these amendments in light of the implementation of the SEC's Order Handling Rules, which enhanced the

obligations CQS market makers³ have with respect to the quotation and trading in exchange-listed securities. Specifically, the SEC adopted a new rule 11Ac1-4 (Limit Order Display Rule) and amendments to SEC Rule 11Ac1-1 (Quote Rule).⁴ In particular, an amendment to the Quote Rule expanded the quotation requirements of substantial OTC market makers and exchange specialists to require that they publicly disseminate continuous two-sided quotations for any exchange-listed security for which they account for 1 percent or more of the trading volume (commonly referred to as the 1 Percent Rule).⁵ Prior to those rule changes, mandatory quotations were only required from OTC market makers and exchange specialists who transacted more than 1 percent of the volume in a Rule 19c-3 security.⁶ Those rule changes are intended to improve transparency and provide the public with information about significant market participants. The NASD rule changes are described below.

Summary Of Rule Changes

1. Codification Of Permissible Uses Of Computer-Generated Quote Updates For Non-Rule 19c-3 Securities

In expanding the 1 Percent Rule, and requiring active market makers to quote in the Third Market, the Commission recognized that it raised issues with respect to the ability of NASD members to employ computer-generated quote systems in light of the constraints imposed by the plan governing the Intermarket Trading System (ITS Plan) and the NASD policy on autoquoting. Under the ITS Plan, exchange specialists and CQS market makers can use "automated quotation tracking systems," provided that the quotations generated by such systems are for 100 shares or less (100-Share Autoquoting Limitation). Despite the ITS

Plan's allowance of 100-share autoquotes, CQS market makers were prohibited from using computer-generated quotes under the NASD's autoquoting policy, which prohibited firms from using such systems to effect automated quote updates or track the inside market. In addition, the NASD's rule requiring CQS market makers to quote a minimum quote size of 500 shares when they were not displaying a customer limit order effectively prohibited CQS market makers from autoquoting.

The Commission, however, believes that the existing prohibition on the use of computer-generated quotes is no longer appropriate. Such an approach may excessively limit the use of sophisticated trading strategies that rely on automation in the quotation process for their success. It also may act as a competitive disadvantage to market makers and specialists that would otherwise rely on technology to meet their quotation obligations more efficiently.⁷ Given the enhanced quotation obligations imposed on some market participants under the revised Quote Rule, therefore, the Commission urged the NASD, ITS participants, and other interested market participants to develop revised standards that would permit the use of computer-generated quotes, provided that such quotations contribute value to the market.

To this end, the NASD has eliminated certain restrictions on the use of automation to update quotes in exchange-listed securities.⁸ These changes do not apply to securities listed on The Nasdaq Stock Market. The rule governing automated quote updates for Nasdaq securities (IM-4613) is being retained in its current form. **Furthermore, it should be noted that these restrictions have been eliminated only for non-Rule 19c-3 securities.** Thus, restrictions will remain for those exchange-listed securities eligible for trading through

ITS, because lifting the ban on computer-generated quotations for these securities would still conflict with the ITS Plan in its current form.

As amended, NASD Rule 6330(d) now explicitly permits, for non-Rule 19c-3 securities only, the following uses of computer-generated quote updates:

- an update in response to an execution;
- a manual entry into a firm's system that then routes the update to the Nasdaq system;
- an update to reflect the receipt, execution, or cancellation of a customer limit order;
- exposing an order for price improvement; and
- equaling or improving either or both sides of the national best bid or offer (NBBO), or adding size to the NBBO.

These changes explicitly accommodate computer-generated quotations that add value to the market and do not raise quotation accessibility concerns or compromise the capacity or integrity of Nasdaq. **In this regard, it is important to note that market makers are prohibited from using computer-generated quotes to track away from the inside market ("autoquoting away").** Thus, the new rule will permit computer-generated quotations in exchange-listed securities that generate proprietary quotes for 100 shares or more if such quote systems **equal or improve** either or both sides of the NBBO.

For example, if a CQS market maker utilized a computer-generated quotation program to match the best offer (bid) and the market responsible for the best offer (bid) subsequently increased (decreased) its offer (bid)

price, the CQS market maker could not use the program to track such inferior price. Thus, if the best offer is 20 1/4, a CQS market maker could use the program to improve its offer to 20 1/4. If the market responsible for the 20 1/4 offer moved to 20 3/8, however, the CQS market maker **could not** use the program to move its offer to 20 3/8.

2. Elimination Of Excess Spread Rule For All Exchange-Listed Securities

In conjunction with the amendments to permit only certain types of computer-generated quote updates while retaining the ban on autoquoting away as discussed above, the NASD determined to enhance the quotation flexibility of CQS market makers by eliminating the current excess spread rule, Rule 6330(c). That rule, as applied to CQS securities, provided that a CQS market maker could not enter a quotation spread in excess of 125 percent of the average of the three narrowest market maker spreads in such security, which average spread calculation should include quotations from national securities exchanges. In an environment that retains the ban on autoquoting away, the elimination of the excess spread rule will provide CQS market makers with the ability to update their quotes in an efficient and cost-effective manner while minimizing the impact on the operation and capacity of Nasdaq systems that collect, process, and disseminate quotation changes. This should serve to minimize the potential adverse competitive consequences on highly automated CQS market making.

3. Changes To Minimum Quote Size For CQS Market Makers

NASD Rule 6330(b) previously provided that a CQS market maker must display a minimum quotation size of 500 shares, with the exception of dis-

playing a customer limit order, which could be for less than 500 shares. In an environment where CQS market makers were the only market participants who could impact quotes in the Third Market, it was desirable and appropriate to impose a minimum quotation size requirement to ensure an acceptable level of market liquidity and depth.

Now that the SEC's Limit Order Display Rule permits investors to directly impact quoted prices in the Third Market by having their limit orders displayed publicly, however, it is appropriate to treat CQS market makers in a manner equivalent to exchange specialists and not subject them to minimum quote size requirements. Accordingly, Rule 6330(b) now provides that CQS market makers may post quotations commensurate with their own freely-determined trading interest, provided that the quotations are for at least one normal unit of trading.

4. Modifications To CAES

The implementation of the SEC's Limit Order Display Rule exacerbated a shortcoming in the design of the CAES system.⁹ Specifically, while in the past CAES volume was minimal, it permitted other CQS market makers to send preferenced orders of up to 1,000 shares to another CQS market maker for automatic execution at the best bid or offer among CQS market makers. CAES would execute such orders regardless of whether the CQS market maker was at the best bid or offer, the quote driving the BBO was for less than 1,000 shares, or the CQS market maker wanted to accept preferenced orders from the order entry firm or market maker.

Now, because the Order Handling Rules require market makers to display customer limit orders, CQS market makers are not only obligated

to execute trades up to 1,000 shares at another market maker's quote, they must also execute trades at superior-priced limit orders displayed by any other CQS market maker, even if such limit orders are only for 100 shares.

Accordingly, CAES has been modified in order to facilitate the best execution of customer orders and not subject CQS market makers to automatic executions at prices other than their posted quotes. Specifically, CAES will now automatically execute at the firm's price and up to the firm's displayed size.

5. Modifications To The Limit Order Protection Rule Applicable To CQS Securities

NASD Rule 6440 provides that no member shall trade ahead of a customer limit order. Unlike the limit order protection rule applicable to Nasdaq securities (the Manning Rule), however, the limit order protection rule applicable to exchange-listed securities does not explicitly permit a member to negotiate special terms and conditions with a customer. Specifically, under the Manning Rule, member firms may attach terms and conditions with respect to the handling of limit orders that are either: (1) for institutional accounts;¹⁰ or (2) limit orders that are for 10,000 shares or greater, regardless of whether they are for institutional accounts, provided that the order is \$100,000 or more in value.

The NASD believes there is no basis to differentiate between limit orders in Nasdaq securities and limit orders in exchange-listed securities with respect to the protections afforded under NASD rules. Accordingly, the NASD is extending the "terms and conditions" language of the Manning Rule to the CQS limit order protection rule.

Text Of Amendments

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

6330. Obligations of CQS Market Makers

(a) No Change

(b) [CQS market makers shall be required to input a minimum quotation size of 200 or 500 shares in each reported security (as established and published from time to time by the Association) depending on trading characteristics of the security; provided that a CQS market maker may input a quotation size less than such minimum quotation size to display a limit order in compliance with SEC Rule 11Ac1-4. A limit order displayed in a] A CQS market maker's quotation [pursuant to SEC Rule 11Ac1-4] must be for at least one normal unit of trading [or a multiple thereof].

[(c) Excess Spreads.

A market maker shall not enter quotations in CQS securities that exceed the parameters for maximum allowable spreads as approved by the Association's Board of Governors and that may be published from time to time by the Association. The maximum allowable spreads for CQS securities shall be 125 percent of the average of the three (3) narrowest market maker spreads in each security, which average spread calculations shall include quotations from national securities exchanges (if the number of CQS market makers in a security plus the number of national securities exchanges trading that security is less than three (3), the maximum allowable spread will be 125 percent of the average spread); provided, however, that the maximum allowable spread shall never be less than 1/4 of a point.]

(d) redesignated as paragraph (c)

(d) Computer-Generated Quotations.

(1) General Prohibition - Except as provided below, this rule prohibits the automatic updating or tracking of inside quotations in CQS by computer-generated quote systems. This ban is necessary to offset the negative impact on the capacity and operation of Nasdaq systems regarding certain systems that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market, without any cognizable human intervention.

(2) Exceptions to the General Prohibition — Automated updating of quotations is permitted when: (1) the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size); (2) it requires a physical, cognizable entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to a Nasdaq system); (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order; (4) it is used to expose a customer's market or marketable limit order for price improvement opportunities; or (5) it is used to equal or improve either or both sides of the national best bid or offer ("NBBO"), or add size to the NBBO.

6440. Trading Practices

(a) – (e) No Change

(f)(1) No Change

(f)(2) No Change

(3) The provisions of this paragraph shall not apply:

(A) No Change

(B) No Change

(C) No Change

(D) to any purchase or sale for which a member has negotiated specific terms and conditions applicable to the acceptance of limit orders that are:

(i) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or

(ii) for 10,000 shares or more, unless such orders are less than \$100,000 in value.

Endnotes

¹ A brief announcement of these rule changes was made by fax to members dated December 16, 1997, and posted on the Nasdaq TraderSM Web Site (www.nasdaqtrader.com).

² See Exchange Act Release No. 39367 (November 26, 1997), 62 FR 64242 (December 4, 1997).

³ Quotations and quotation sizes in reported securities may be entered into the Consolidated Quotations Service (CQS) through The Nasdaq Stock Market only by an Association member registered with it as a CQS market maker. See NASD Rule 6320.

⁴ See Securities Exchange Act Release No. 37619A (September 6, 1997), 61 FR 48290 (September 12, 1997) ("Adopting Release").

⁵ See Adopting Release at 48317. An OTC market maker must, within 10 business days of the end of each calendar quarter, compute its trading volume for each subject security, and if the volume exceeds 1 percent, the market maker must begin publishing two-sided quotations.

⁶ Exchange Act Rule 19c-3 prohibits the application of off-board trading restrictions to securities that: (1) were not traded on an exchange on or before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. According-

ly, exchange-traded securities not subject to off-board trading restrictions are referred to as Rule 19c-3 securities. While the amendments to the Quote Rule extended the quotation requirement to all exchange-listed securities, the Commission, by exemptive order, provided relief from compliance with the 1 Percent Rule with respect to non-Rule 19c-3 securities until September 30, 1997. See Exchange Act Release No. 38870 (July 24, 1997), 62 FR 40732 (July 30, 1997).

⁷ See Adopting Release at Section III.B.3.c.i.

⁸ These uses are in addition to three other forms of computer-enhanced quotation maintenance programs referenced in the NASD's existing Autoquote Policy with respect to securities listed on Nasdaq, which are also being incorporated into Rule 6330 with respect to exchange-listed securities. See NASD IM-4613. Specifically, these three forms are: (1) quotation updates in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size); (2) quotation updates that require a physical entry (such as manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); and (3) quotation updates that reflect the receipt, execution, or cancellation of a customer limit order. With the exception of these types of computer-generated quotation and maintenance systems, all other types of computer-generated quotations would continue to be prohibited. Thus, market makers could not use computer-generated quotations to track away from the inside market ("autoquoting away").

⁹ CAES is an automated system operated by Nasdaq that allows NASD members to direct both agency and principal orders (in stocks in which they make a market) in exchange-listed securities to CAES for automated execution in the third market. All CQS market makers must be CAES market makers.

¹⁰ Institutional limit orders are orders for institutional accounts. NASD Rule 3110(c) defines an institutional account as an account for: (1) banks, savings and loan associations, insurance companies, or registered invest-

ment companies; (2) investment advisors registered under Section 203 of the Investment Advisers Act of 1940; and (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.

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NASD NOTICE TO MEMBERS 98-6

SEC Approves Changes To Rules On Market Maker Withdrawals And Reinstatements

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On December 10, 1997, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD[®]) rules governing market maker withdrawals and reinstatements.¹ Specifically, the rule changes: (1) establish objective standards for the reinstatement of market makers who have been “SOESed out of the Box” or accidentally withdraw from a stock; (2) broaden the bases for excused withdrawal and require that requests based on religious holidays or vacation be made only one day in advance; and (3) transfer jurisdiction concerning appeals of staff determinations to the Market Operations Review Committee. The rule changes are effective immediately.

Questions concerning this *Notice* may be directed to Richard H. Bush, Assistant Director, Nasdaq[®] Market Operations, at (203) 385-6242, or Andrew S. Margolin, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8869.

Background

In order to ensure that market makers are complying with their obligation to make continuous, firm, two-sided markets, NASD Rule 4620 provides that market makers who voluntarily withdraw from an issue cannot re-register in that issue for 20 business days (the 20-Day Rule). A corollary rule to the 20-Day Rule is NASD Rule 4730(b)(6), a Small Order Execution SystemSM (SOESSM) rule that provides that a market maker in a Nasdaq National Market[®] (NNM) security will be deemed to have voluntarily withdrawn from a stock, and therefore subject to the 20-Day Rule, if it has failed to restore a two-sided quotation within five minutes after its bid or offer has been completely decremented due to an SOES execution. When a market maker is dereg-

istered from a stock because it failed to restore its quotation, it is referred to as being “SOESed out of the Box.” To avoid being “SOESed out of the Box,” members can do one of several things. They can elect to not have their quote size decremented upon the execution of SOES orders, provided the market maker’s quote size is equal to or greater than the applicable SOES tier size; set a supplemental exposure size; or utilize Nasdaq’s auto-refresh feature that automatically updates a market maker’s quote after its quote size has been decremented.

Notwithstanding the 20-Day Rule, NASD Rule 4619 affords market makers the ability to obtain an “excused” market maker withdrawal in certain limited circumstances, as described below in Section 2. Market makers receiving “excused” withdrawals are not subject to the 20-Day Rule and can re-enter their quotes once the circumstances justifying the withdrawal no longer exist.

The NASD believes that amendments are necessary to establish objective standards for the reinstatement of market makers while ensuring that market makers are not able to avoid or circumvent their market making obligations through inappropriate excused market maker withdrawals or inappropriate market maker reinstatements, and to otherwise align the rules with the realities of the market place. Accordingly, the NASD is adopting the following rule changes.

Summary Of Rule Changes

1. Reinstatement Of Market Makers Upon Being “SOESed Out Of The Box” And For Accidental Withdrawals

A. Reinstatements Upon Being “SOESed Out Of The Box”

The rule changes are designed to ensure that market maker reinstatement

ments will only be made when it is clear that a market maker was not attempting to avoid its market making obligations. Specifically, the changes to Rule 4730 provide that a market maker can be reinstated only upon satisfaction of all of the following:

(1) the market maker notifies Market Operations to request reinstatement as soon as practicable, but within one hour of being "SOESed out of the Box," and immediately thereafter provides written notification of the request;

(2) it was a Primary Market Maker at the time it was SOESed out of the Box;

(3) a designated Nasdaq officer determines that the withdrawal was not an attempt by the market maker to avoid its obligations to make a continuous two-sided market, taking into account factors including market conditions at the time, the frequency with which the firm has been SOESed out of the Box, procedures adopted by the firm to avoid doing so inadvertently, and the length of time before the firm sought reinstatement; and

(4) the reinstatement will not result in the market maker's firm exceeding certain limitations on the number of reinstatements per year. In particular, under the rule change, firms that simultaneously made markets in less than 250 stocks during the previous calendar year could receive no more than four (4) reinstatements per year; firms that simultaneously made markets in 250 or more, but less than 500, stocks during the previous calendar year could receive no more than six (6) reinstatements per year; and firms that simultaneously made markets in 500 or more stocks during the previous calendar year could receive no more than twelve (12) reinstatements per year.

Decisions to reinstate a market maker will be made by Nasdaq Market Operations staff and appeals of such decisions will be considered by the Market Operations Review Committee (MORC).

Notwithstanding the numerical limitations and requirements set forth above, the NASD staff has the authority to reinstate a market maker that has been "SOESed out of the Box" if such reinstatement is necessary to protect investors or the integrity of the market in instances where:

(1) a member firm experiences a documented technological constraint or failure involving either its own automated system (other than chronic failures within the firm's control) or an automated system operated by Nasdaq;

(2) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten (10) days after the offering is complete; or

(3) there has been a significant decline in the number of market makers in a particular issue, as defined in Rule 4730.

Before any such reinstatement could occur, Nasdaq staff will have to make a finding that the reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determine that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market.

B. Reinstatements For Accidental Withdrawals

There have been instances in the past where market makers have accidentally withdrawn from a stock because they inadvertently typed the wrong

stock symbol. Because the rules currently do not provide that market makers can be reinstated in these instances, the NASD has amended Rule 4620 to permit such reinstatements, provided the withdrawal was clearly accidental and did not reflect an attempt by the market maker to avoid its market making obligations.

Specifically, under the rule change, a market maker that accidentally withdraws as a market maker may be reinstated if all of the following requirements are met:

(1) the market maker notifies Market Operations of the accidental withdrawal within one hour of such withdrawal, and immediately thereafter provides written notification of the withdrawal and request;

(2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and

(3) the market maker's firm will not exceed specific reinstatement limitations per year. In particular, firms that simultaneously made markets in less than 250 stocks during the previous calendar year could receive no more than two (2) reinstatements per year; firms that simultaneously made markets in 250 or more, but less than 500, stocks could receive no more than three (3) reinstatements per year; firms that simultaneously made markets in 500 or more stocks could receive no more than six (6) reinstatements per year.

In addition, factors that will be considered in granting a reinstatement include:

(1) the number of accidental withdrawals by the market maker in the past as compared to other market makers making markets in a comparable number of stocks;

(2) the similarity between the symbol of the stock intended to be withdrawn and the symbol of the stock actually withdrawn;

(3) market conditions;

(4) whether the withdrawal served to reduce the market maker's exposure to market risk; and

(5) the timeliness with which the market maker notified Nasdaq Market Operations of the error.

Determinations initially will be made by Nasdaq Market Operations staff and be subject to review by the MORC.

2. Bases For Excused Withdrawals

Rule 4619(b) presently provides that excused withdrawal status may be granted for a variety of reasons provided that certain conditions are satisfied. Specifically, as noted above, excused withdrawal status may be granted for: (1) the duration of "cooling off" periods mandated by Regulation M; (2) physical circumstances beyond the market maker's control; (3) religious holidays (provided the request is submitted five business days in advance of the holiday); (4) vacations (provided the request is received 20 business days in advance of the vacation and is made by a market maker with three or less Nasdaq terminals); (5) involuntary failures to maintain clearing arrangements; and (6) other legal requirements (*e.g.*, the market maker is in possession of material non-public information). While the NASD and Nasdaq continue to believe that it is critical for the maintenance of the integrity of the market for Nasdaq to grant excused withdrawals only when warranted, the NASD nevertheless believes that the present excused withdrawal rule is not drafted broadly enough to encompass all of the legitimate reasons for an

excused withdrawal. The NASD and Nasdaq also believe that the time parameters for advance notice of vacations and religious holidays are unnecessary.

Accordingly, the NASD is amending Rule 4619(b) as follows. First, excused withdrawals may be granted for "circumstances" beyond the market maker's control, not just "physical circumstances" beyond its control. With this amendment, unpredictable events, such as jury duty, bomb threats, the birth of a child, or a sudden illness, could be used as a basis for an excused withdrawal. Second, requests for excused withdrawals based on vacations (for firms with three or less Nasdaq level 3 terminals) and religious holidays may be submitted one business day in advance of the proposed withdrawal. Requests for excused withdrawals based on legal or regulatory requirements will continue to be made in writing, although Nasdaq recognizes that counsel to market makers often do not want to disclose the specific legal basis for their withdrawal request, particularly when the basis for the withdrawal is that the market maker is in possession of material, non-public information. In this connection, Nasdaq will continue its current practice of apprising NASD Regulation, Inc., of all such requests.

3. Jurisdiction Of The MORC Over Excused Market Maker Withdrawals And Market Maker Reinstatements

Presently, appeals of Nasdaq staff determinations concerning excused withdrawal requests and market maker reinstatements are within the purview of the NASD's Qualifications Committee's jurisdiction pursuant to NASD Rule 4730(b)(8). Pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, however, the

Board of Directors of The Nasdaq Stock MarketSM has delegated the Market Operations Review Committee jurisdiction over such matters. Accordingly, the NASD is amending Rules 4619, 4620, and 4730, to effectuate the transfer of jurisdiction over these matters from the Qualifications Committee to the MORC.

Text Of Amendments

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

4619. Withdrawal of Quotations and Passive Market Making

(a) A market maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact Nasdaq Market Operations to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq Market Operations only upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on [physical] circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq Market Operations. Excused withdrawal status [or passive market maker status] based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted

only if written notice is received by the Association [five] one business day[s] in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if:

(1) the written request for withdrawal is received by the Association [twenty (20)] one business day[s] in advance, and is approved by the Association;

(2) the request includes a list of the securities for which withdrawal is requested; and

(3) the request is made by a market maker with three (3) or fewer Nasdaq level 3 terminals. Excused withdrawal status may be granted to a market maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611, above, provided the market maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(c) - (d) No changes.

(e) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule 4619, or the conditions imposed on their reentry.

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its quotations from The Nasdaq Stock Market. A market

maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from SOES participation as a market maker in a Nasdaq National Market security shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq National Market issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

(b) Notwithstanding the above, a market maker that accidentally withdraws as a market maker may be reinstated if:

(1) the market maker notified Market Operations of the accidental withdrawal as soon as practicable under the circumstances, but within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;

(2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and

(3) the market maker's firm would not exceed the following reinstatement limitations:

(A) for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than

two (2) reinstatements per year;

(B) for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than three (3) reinstatements per year; and

(C) for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year.

(c) Factors that the Association will consider in granting a reinstatement under paragraph (b) of this rule include, but are not be limited to:

(1) the number of accidental withdrawals by the market maker in the past, as compared with market makers making markets in a comparable number of stocks;

(2) the similarity between the symbol of the stock that the market maker intended to withdraw from and the symbol of the stock that the market maker actually withdrew from;

(3) market conditions at the time of the withdrawal;

(4) whether, given the market conditions at the time of the withdrawal, the withdrawal served to reduce the exposure of the member's position in the security at the time of the withdrawal to market risk; and

(5) the timeliness with which the market maker notified Market Operations of the error.

(d) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Market Makers seeking review of their denial of a reinstatement pursuant to paragraph (b) above.

4730. Participant Obligations in SOES

(b)(6) In the case of an NNM security, a Market Maker will be suspended from SOES if its bid or offer has been decremented to zero due to SOES executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. A Market Maker that fails to re-enter a two-sided quotation in a NNM security within the allotted time will be deemed to have withdrawn as a Market Maker (“SOESed out of the Box”). Except as provided below in this subparagraph and in subparagraph (7) [below], a Market Maker that withdraws in an NNM security may not reenter SOES as a Market Maker in that security for twenty (20) business days.

(A) Notwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Market Operations as soon as practicable under the circumstances, but within at least one hour of having been SOESed out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) it was a Primary Market Maker at the time it was SOESed out of the Box;

(iii) the market maker’s firm would not exceed the following reinstatement limitations:

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;

b. for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year;

c. for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time of the SOES exposure limit exhaustion;

b. the frequency with which the firm has been SOESed out of the Box in the past;

c. procedures the firm has adopted to avoid being inadvertently SOESed out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm’s automated system) or involving an automated system operated by Nasdaq;

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently SOESed out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.

(b)(8) [The Rule 9700 Series of the Code of Procedure] The Market Operations Review Committee shall [apply to] have jurisdiction over proceedings brought by Market Makers seeking review of [(A)] their removal from SOES pursuant to subparagraphs (6) or (7) above [, (B) the denial of an excused withdrawal pursuant to Rule 4619, or (C) the conditions imposed on their reentry].

Endnote

¹ See Exchange Act Release No. 39423 (December 10, 1997), 62 FR 66160 (December 17, 1997).

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NASD NOTICE TO MEMBERS 98-7

Unregistered Foreign Equities And ADRs No Longer Eligible For Quotation In OTC Bulletin Board; Effective April 1, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Effective April 1, 1998, foreign equities and American Depositary Receipts (ADRs) that are not registered with the Securities and Exchange Commission (SEC) under Section 12 of the Exchange Act will no longer be eligible for quotation in the OTC Bulletin Board® (OTCBB). Ineligible securities currently quoted in the OTCBB will be removed on April 1. In addition, beginning April 1, last sale transaction reports for all eligible foreign equities and ADRs that are quoted in the OTCBB will be disseminated on a real-time basis in the same manner as domestic OTC equity securities. These rule changes do not affect the quotation of domestic securities quoted in the OTCBB.

Questions concerning this *Notice* may be directed to Adena Friedman, Director, Nasdaq® Trading and Market Services, at (202) 728-8832, or Andrew S. Margolin, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8869. Questions concerning the filing of Form 211 may be directed to OTC Compliance Unit, NASD Regulation, Inc., at (301) 208-2802.

Background

The OTC Bulletin Board is a quotation medium used by National Association of Securities Dealers, Inc. (NASD®) members to display quotes, last sale prices, and volume information for securities **not** listed on The Nasdaq Stock MarketSM or a national securities exchange (OTC Equity Securities). As originally proposed, the OTCBB sought to provide increased transparency through a centralized electronic quotation system for all such OTC Equity Securities, including foreign equities and ADRs.

Accordingly, since inception of the OTCBB, foreign OTC Equity Securities and ADRs have been potential-

ly eligible for quotation in the OTCBB without regard to their registration status under the federal securities laws. This includes foreign securities exempt from registration under Section 12 of the Exchange Act pursuant to the information-supplying exemption of SEC Rule 12g3-2(b). That SEC rule exempts from registration certain issuers if the issuer provides the SEC with whatever information the issuer must provide in its home country. The exemption is not available, however, to issuers whose securities are quoted in an "automated interdealer quotation system."¹

Preliminarily, the SEC believed that the OTCBB was not such a system for purposes of the exemption from registration, and thus NASD members have been permitted to quote foreign equity securities and ADRs in the OTCBB notwithstanding that they were not registered, or were exempt from registration under the Exchange Act, provided that market makers could only update their quotations on a limited basis. Market makers have been allowed to update their quotations in these securities only twice daily, once between 8:30 and 9:30 a.m. and once between 12:00 and 12:30 p.m. This was intended to distinguish the OTCBB from a market such as Nasdaq or an exchange, which feature continuous and firm two-sided quotations updated throughout the trading day, and which require that listed securities be fully registered with the SEC. In contrast, members have always been able to update quotations in domestic OTC Equity Securities in the OTCBB on a real-time basis.

After much consideration, however, the SEC approved rule changes earlier this year, concluding that the benefits of providing transparency for these foreign securities in the OTCBB are outweighed by the potential for including unregistered

securities on a visible U.S. market operated by a self-regulatory organization. Thus, the SEC believes that to continue the quotations for these securities in a system such as the OTCBB may be inconsistent with the full disclosure goals of the securities laws in facilitating a regulated public marketplace for unregistered foreign securities. The rule changes are attached at the end of this *Notice*. Interested parties are invited to review the full text of the Commission's findings in Exchange Act Release No. 38456.²

Summary Of Treatment Of Foreign Equities And ADRs In The OTCBB Beginning April 1, 1998

Effective Wednesday, April 1, 1998, the treatment of foreign equities and ADRs in the OTCBB will be as follows:

- Only foreign equities or ADRs registered with the SEC pursuant to Section 12 of the Exchange Act may be quoted in the OTCBB. Securities exempt from registration under SEC Rule 12g3-2(b) may not be quoted.
- Foreign equities and ADRs that are fully registered will remain eligible for quotation as of April 1 and will no longer be subject to the twice-daily update limitation. Thus, any priced quotation will no longer be indicative, but will be firm. Members will continue to be permitted to post unpriced or "name only" quotations for eligible securities.
- Prior to the April 1 effective date, more information will be provided to members to identify which securities currently quoted in the OTCBB will remain eligible. Ineligible securities will be removed from the OTCBB on Wednesday, April 1, if quoted as of the previous trading day. The quotations of eligible securities quoted in the OTCBB as of March 31 will be carried over to April 1, except

that the price and size of any priced quotation from March 31 will be deleted overnight on that night only. **Members must re-enter any priced quotation on April 1, and should be aware that any such priced quotation will become firm.** Beginning April 1, members will no longer be required to re-enter priced quotations each day for eligible foreign equities and ADRs. That is, priced entries will carry over to the next trading day, similar to domestic stocks.

- Beginning April 1, last sale transaction reports for all transactions in foreign and ADR securities quoted on the OTCBB and that are required to be reported under current NASD rules will be disseminated on a real-time basis, similar to domestic OTC Equity Securities.³

- After April 1, other foreign equities or ADRs that are eligible for quotation in the OTCBB pursuant to this rule change may be quoted in the OTCBB in accordance with existing procedures, *i.e.*, after the appropriate filing of a Form 211 pursuant to NASD Rule 6740 and SEC Rule 15c2-11, or pursuant to any applicable exemption.

Text Of Amendments

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

6530. OTCBB-Eligible Securities

The following categories of securities shall be eligible for quotation in the Service:

(a) No change

[(b) any foreign equity security or American Depositary Receipt (ADR) that is not listed on Nasdaq or a registered national securities exchange in the U.S., except those foreign equity securities or ADRs that are (1)

listed on one or more regional stock exchanges and (2) do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape shall be considered eligible.]

(b) any foreign equity security or American Depositary Receipt (ADR) that:

(1) prior to April 1, 1998, is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall be considered eligible if it is:

(A) listed on one or more regional stock exchanges and;

(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

(2) after March 31, 1998, is registered with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 and is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall be considered eligible if it is:

(A) listed on one or more regional stock exchanges and;

(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

6540. Requirements Applicable to Market Makers

(a) No change

(b) No change

(1) Permissible Quotation Entries

(A) No change

(B) A priced bid and/or offer entered

into the Service for [a domestic equity security] any security other than a Direct Participation Program must be firm up to the minimum quotation size specified in Rule 6750. This firmness requirement applies only during normal business hours, i.e., 9:30 a.m. to 4:00 p.m. Eastern Time.

(C) A priced bid and/or offer entered into the Service for a [foreign equity security, an ADR, or a] Direct Participation Program security shall be non-firm.* Moreover, a market maker is only permitted to update quotation entries in such securities twice daily, i.e., once between 8:30

a.m. and 9:30 a.m. Eastern Time, and once between noon and 12:30 p.m. Eastern Time.

Footnote To Rule Language

* The non-firm or indicative nature of a priced entry [in a foreign or ADR issue] is specifically identified on the montage of market maker quotations accessible through the Nasdaq Workstation service for this subset of OTCBB-eligible securities.

Endnotes

¹ See SEC Rule 12g3-2(b). Foreign issuers whose securities or ADRs were included in Nasdaq on or before October 5, 1983, and who are exempt from registration under Rule 12g3-2(b) are permitted to remain listed on Nasdaq. These securities are not affected by the rule changes involving the OTCBB discussed in this *Notice*.

² Exchange Act Release No. 38456 (March 31, 1997), 62 FR 16635 (April 7, 1997).

³ See NASD Rule Series 6600.

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NASD NOTICE TO MEMBERS 98-8

Treasury Requires Reporting Of Claims Against Government Of North Korea

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

As requested by the Department of Treasury (Treasury), the National Association of Securities Dealers, Inc. (NASD[®]) provides members with information from the Office of Foreign Assets Control (OFAC) about persons and entities identified as "Specially Designated Nationals and Blocked¹ Persons" and about other OFAC regulations. On December 9, 1997, OFAC amended its regulations to require a mandatory, one-time reporting of all outstanding claims held by U.S. nationals against the Government of North Korea or any North Korean government entity. The reports must be submitted by March 9, 1998.

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 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 identi-

fies certain individuals and entities located worldwide that are acting on behalf of sanctioned governments, and that 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 may also 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, Bosnian Serb military and civilian leaders, North Korea, and Cuba. In addition, OFAC 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's 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, is also authorized; however, certain restrictions and reporting requirements apply.

North Korean Claims

On December 9, 1997, OFAC amended its regulations to require all U.S. nationals that have outstanding claims against the Government of North Korea or any North Korean government entity to report the

claims by letter by March 9, 1998. OFAC stressed that it is extremely important for firms to observe the filing deadline.

The claim letters must be submitted to the Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220. Firms are required to maintain a copy of all submissions. Detailed information about who must report, how the report must be certified, and what information the report must contain is described in OFAC's release in the December 9, 1997, *Federal Register*, which is attached to this *Notice*.

Availability Of OFAC Regulations And 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 and is available through several other government services provided free of charge to the general public.

In addition, members can use the NASD Regulation, Inc., Web Site (www.nasdr.com) to link to OFAC's list of individuals and companies subject to economic or trade sanctions. OFAC's Web Site contains additional information that may be helpful to members and may be accessed directly (www.ustreas.gov/treasury/services/fac/fac.html). Members also may refer to *NASD Notices to Members* 97-87, 97-35, 97-4, 96-23, and 95-97.

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.

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.

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CCEM makes much of the so-called "uneven playing field" that it allegedly will endure without the masking provision, we find this concern to be unfounded. The Order No. 889 version of §§ 37.6(e)(1)(iii) and 37.6(e)(3)(I) treated all market participants making a request for transmission service (or whose transactions were curtailed or interrupted) equally, by allowing parties to such transactions to mask their identities for thirty days, upon request. The current (Order No. 889-A) version treats all market participants making a request for transmission service (or whose transactions are curtailed or interrupted) equally, by requiring the identity of parties to such transactions to be posted. Although the Commission has revised its policy on masking, all market participants making a request for transmission service, whether affiliated or non-affiliated with the Transmission Provider are treated equally in both instances. Thus, under the revised rule, the playing field is just as level as before.

Moreover, we are not persuaded that eliminating the masking provision will have the dire anticompetitive consequences that CCEM predicts. To the contrary, we continue to believe that fuller disclosure of customer and transaction information is necessary to implement the discounting provisions added by Order Nos. 888-A and 889-A and to ensure that customers (actual or potential) are able to detect any affiliate abuse or undue discrimination.

If actual experience proves different, CCEM or other interested persons may bring these facts to our attention and we will consider taking appropriate remedial action.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)²⁴ requires any proposed or final rule issued by the Commission to contain a description and analysis of the impact that the proposed or final rule would have on small entities or to contain a certification that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Order No. 889 contained a certification under section 605(b) of the RFA that the OASIS Final Rule would not impose a significant economic impact on a substantial number of small entities within the meaning of the RFA.²⁵

Given that Order No. 889-A made only minor revisions to Order No. 889,

none of which was substantive, that this order makes no revisions to Order No. 889-A, and that we are granting waivers from the requirements of the OASIS Final Rule to small entities where appropriate, we reaffirm our earlier certification in Order Nos. 889 and 889-A that the requirements in 18 CFR Part 37, to establish and participate in an OASIS and to comply with the Standards of Conduct, will not have a significant economic impact on a substantial number of small entities and that no regulatory flexibility analysis is required pursuant to section 603 of the RFA.

VI. Environmental Statement

As explained in Order Nos. 888-A and 889-A, Order Nos. 888 and 889 were the joint subjects of the Final Environmental Impact Statement issued in the Open Access NOPR proceeding in Docket Nos. RM95-8-000 and RM94-7-001 on April 12, 1996. Given that this order makes no revisions to Order No. 889-A, no separate environmental assessment or environmental impact statement has been prepared in this proceeding.

VII. Information Collection Statement

As explained in Order Nos. 889-A, Order No. 889 contained an information collection statement for which the Commission obtained approval from the Office of Management and Budget (OMB).²⁶ Given that Order No. 889-A made only minor revisions to Order No. 889, none of which was substantive, and given that this order makes no revisions to Order No. 889-A, OMB approval for this order will not be necessary. However, the Commission will send a copy of this order to OMB, for informational purposes only.

The information reporting requirements under this order are unchanged from those contained in Order No. 889-A. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention Michael Miller, Information Services Division, (202) 208-1415], and the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395-3087].

The Commission Orders

As discussed in the body of this order, the requests for rehearing are hereby denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97-31856 Filed 12-8-97; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations: Reporting of Claims of U.S. Nationals Against the Government of North Korea

AGENCY: Office of Foreign Assets Control

ACTION: Final rule; amendment.

SUMMARY: The Office of Foreign Assets Control is amending the Foreign Assets Control Regulations to require the reporting, no later than March 9, 1998, of all outstanding claims held by U.S. nationals against the Government of North Korea or any North Korean government entity. The reports are needed to obtain information, on a one-time basis, for planning and administrative purposes in contemplation of future claims settlement negotiations. The control number assigned by the Office of Management and Budget to this information collection requirement is also included.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Loren L. Dohm, Chief, Blocked Assets Division, tel.: 202/622-2440, or William B. Hoffman, Chief Counsel, tel.: 202/622-2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512-1387 and type "/GO FAC," or call 202/512-1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document can also be downloaded in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem, dial 703/321-3339, and select

²⁴ 5 U.S.C. 601-612.

²⁵ See Order No. 889, FERC Stats. & Regs. at 31,628.

²⁶ OMB Control No. 1902-0173.

the appropriate self-expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control ("OFAC") is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through OFAC's 24-hour fax-on-demand service: call 202/622-0077 using a fax machine, fax modem, or (within the United States) touch-tone telephone.

Background

The Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), are being amended to establish a mandatory, one-time census with respect to all outstanding claims of U.S. nationals against the Government of North Korea or any North Korean government entity.

Section 500.602 is added to the Regulations to require all U.S. nationals having such claims to report the claims by letter, including the information required by paragraph (f) of that section, by March 9, 1998. The definition of the term "U.S. national" is contained in § 500.602(g). Observance of the filing deadline is extremely important. The reports are needed to obtain information, on a one-time basis, for planning and administrative purposes in contemplation of future claims settlement negotiations.

For naturalized U.S. citizens, only claims arising after becoming a U.S. citizen should be reported. Similarly, an entity must have been organized under the laws of a U.S. jurisdiction at the time of loss to have a reportable claim.

The submission of a report of a claim against the Government of North Korea or a North Korean government entity does not constitute the filing with the United States Government of a formal claim for compensation. No formal claims adjudication program currently exists. However, failure to file a complete report with respect to claims in a timely fashion would constitute not only a failure to comply with the Regulations, but would also prevent the inclusion of the information in U.S. Government planning and may therefore be prejudicial to the interests of the claimant and other U.S. claimants. Espousal of claims of U.S. nationals against a foreign government is within the discretion of the United States Government.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply.

Paperwork Reduction Act

This final rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collection of information contained in this final rule has been submitted to and approved by the Office of Management and Budget ("OMB") pending public comment, and has been assigned control number 1505-0160. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in the Regulations is contained in new § 500.602 of the Regulations. This information is needed by the Office of Foreign Assets Control and the U.S. Department of State for planning and administrative purposes in contemplation of future claims settlement negotiations. The likely respondents and recordkeepers are individuals and business organizations.

New § 500.602(e) provides that "[r]eports submitted pursuant to this section are regarded as privileged and confidential." It is the policy of the Office of Foreign Assets Control to protect the confidentiality of information in appropriate cases pursuant to the exemptions from disclosure provided under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a).

Estimated total one-time reporting and/or recordkeeping burden: 100 hours.

The estimated one-time burden per respondent/recordkeeper varies from 1 hour to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents and/or recordkeepers: 50.

Estimated frequency of responses: 1.

Comments are invited on: (a) whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's

estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimated capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments concerning the above information, the accuracy of estimated average burden, and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project, control number 1505-0160, Washington, DC 20503, with a copy to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220. Any such comments should be submitted not later than February 9, 1998. Comments on aspects of the Regulations other than those involving collections of information should not be sent to the OMB.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, banking, Blocking of assets, Cambodia, Exports, Fines and penalties, Finance, Foreign claims, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, International organizations, North Korea, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Travel restrictions, Trusts and estates, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. App. 1-44; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748.

Subpart F—Reports

2. Section 500.602 is added to Subpart F to read as follows:

§ 500.602 Reporting of claims of U.S. nationals against North Korea.

(a) *Requirement for reports.* Reports are required to be filed on or before March 9, 1998, in the manner prescribed in this section, with respect to all

outstanding claims held by United States nationals against the Government of North Korea or any North Korean government entity.

(b) *Who must report.* A report must be submitted by each U.S. national having a claim outstanding against the Government of North Korea or any North Korean government entity. Reports should be submitted only by persons who were U.S. citizens or entities organized under the laws of a U.S. jurisdiction on the date of the loss.

(c) *How to register.* U.S. nationals filing reports of claims must submit a letter containing the information required by paragraph (f) of this section. The letter must be sent to the Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, to arrive by March 9, 1998. A copy of the submission should be kept by the claimant.

(d) *Certification.* Every report shall bear the signature of the claimant or a person authorized by the claimant to sign the report. The signature will certify that, to the best of the reporter's knowledge, the statements set forth in the report, including any papers attached to or filed with the report, are true and accurate, and that all material facts in connection with the report have been set forth.

(e) *Confidentiality of reports.* Reports submitted pursuant to this section are regarded as privileged and confidential.

(f) *Contents of report.* The report must contain the following information (with responses numbered to correspond with the numbers used below):

(1) Identification of claimant.

(i) Claimant's Legal Name.

(ii) Claimant's Address.

(iii) Telephone number of individual to contact regarding the report.

(iv) If claimant is a naturalized citizen of the United States, state the place and date of naturalization.

(v) If claimant is a corporation or business, state the place of incorporation and principal place of business.

(2) Information concerning claim.

(i) Amount of loss in U.S. dollars (indicate exchange or interest rates and relevant dates utilized for any currency translation or interest calculation).

(ii) Describe the circumstances of the loss. Include the date of the loss and a description of the property, business, obligation, injury or other damage which is the subject of the claim.

(g) *Definition of United States national.* For purposes of this section, the term *United States national* or *U.S. national* means:

(1) An individual who is a citizen of the United States;

(2) An individual who, though not a citizen of the United States, owes permanent allegiance to the United States, and is not an alien; or

(3) A partnership, corporation, or other juridical entity organized under the laws of the United States or any jurisdiction within the United States.

(h) *Definition of the Government of North Korea; North Korean government entity.* For purposes of this section:

(1) The term *Government of North Korea* means the government of the territory of Korea north of the 38th parallel of north latitude, as well as any political subdivision, agency, or instrumentality thereof, or any territory, dependency, colony, protectorate, mandate, dominion, possession, or place subject to the jurisdiction thereof as of the "effective date."

(2) The term *North Korean government entity* means any corporation, partnership, or association, or other organization, wherever organized or doing business, that is owned or controlled by the Government of North Korea.

Subpart I—Miscellaneous Provisions

3. Section 500.901 is amended by adding a sentence to the end thereof to read as follows:

§ 500.901 Paperwork Reduction Act notice.

* * * The information collection requirement in § 500.602 has been approved by the Office of Management and Budget and assigned control number 1505-0160.

Dated: November 10, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 19, 1997.

James E. Johnson,

*Assistant Secretary (Enforcement),
Department of the Treasury.*

[FR Doc. 97-32094 Filed 12-3-97; 3:54 pm]

BILLING CODE 4810-25-F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-A160

Guidelines for Furnishing Sensorineural Aids (e.g., Eyeglasses, Contact Lenses, Hearing Aids)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms the Department of Veterans Affairs (VA)

medical regulations concerning when VA will furnish veterans with sensorineural aids (e.g., eyeglasses, contact lenses, hearing aids), which implement a requirement imposed in the Veteran's Health Care Eligibility Reform Act of 1996, Public Law 104-262.

DATES: Effective Date: This final rule is effective December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Frederick Downs, Jr., Chief Consultant, Prosthetics and Sensory Aids Service Strategic Healthcare Group (113), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-8515.

SUPPLEMENTARY INFORMATION: On June 3, 1997, VA published in the **Federal Register** an interim final rule with request for comments (62 FR 30240). This added a new section (17.149, 38 CFR part 17). A 60-day comment period ended August 4, 1997, and one comment was received. However, that comment dealt with resources rather than substantive content of the interim final rule.

Based on the rationale set forth in the interim final rule document, we are adopting the provisions of the interim final rule as a final rule without change. This final rule also affirms the information in the interim final rule document concerning the Regulatory Flexibility Act.

Approved: December 1, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97-32106 Filed 12-8-97; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA042-4065; FRL-5925-7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania New Source Review and Emissions Registry Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision requires major new and modified sources of volatile organic compounds (VOCs), nitrogen oxides (NO_x), particulate matter (PM), particulate matter with an aerodynamic diameter of less than 10 microns (PM-

NASD NOTICE TO MEMBERS 98-9

1997-98 Renewal Rosters And Final Adjusted Invoices

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The 1997-98 National Association of Securities Dealers, Inc. (NASD®) broker/dealer and agent registration renewal cycle begins its second phase this month. The NASD is publishing information in this *Notice* to help members review, reconcile, and respond to the Final Adjusted Invoice packages that are mailed to all member firms in mid-January.

Final Adjusted Invoice Packages

On or about January 15, 1998, the NASD will mail final adjusted invoices and renewal rosters to all NASD member firms. The invoice will reflect the year-end 1997 total fees for NASD personnel assessments, NASD branch office assessments, New York Stock Exchange (NYSE), American Stock Exchange (ASE), Chicago Board Options Exchange (CBOE), Pacific Exchange (PSE), and Philadelphia Stock Exchange (PHLX) maintenance fees, state agent renewal fees, and state broker/dealer renewal fees. It will also reflect payment submitted by an NASD member in response to the initial renewal invoice mailed in November 1997.

The final invoice will include a renewal roster that lists each firm's NASD and, if applicable, NYSE-, ASE-, CBOE-, PSE- and PHLX-registered personnel, as of year-end 1997. The roster will alphabetically list all firm agents whose registrations were renewed in states. Firms with registered branch offices that were active as of December 31, 1997, will also receive a branch office roster.

A member's final invoice will reflect an "amount due," a "credit due," or a "zero balance." If a firm's year-end 1997 total of NASD, NYSE, ASE, CBOE, PSE, PHLX and state renewal fees *exceeded* the firm's payment submitted in response to the initial

renewal invoice, the NASD paid the jurisdictions the additional renewal fees due at year-end on behalf of the firm and will mail an "amount due" invoice to collect that sum from the member firm.

If the firm's invoice reflects an amount due, the NASD requests payment by wire transfer or company check. Wire transfer instructions will be included in the renewal invoice packet or can be obtained by calling the NASD's Finance Department at (301) 590-6088. Make the check payable to NASD Regulation, Inc., with reference to the firm's Central Registration Depository (CRDSM) number and the word "Renewal," and mail it with the top portion of the invoice. **Payments must be received by the NASD no later than March 6, 1998.**

If the firm's payment submitted in response to the initial renewal invoice exceeds its year-end 1997 total of NASD, NYSE, ASE, CBOE, PSE, PHLX, and state renewal fees, a "credit due" invoice will be issued. If the firm's invoice reflects a credit due of \$100 or more and the firm would like a refund check, it should sign the top portion of the invoice and send it to:

CRD Accounting
NASD Regulation, Inc.
1390 Piccard Drive, 2nd Floor
Rockville, MD 20850

This invoice stub *must* be signed by an officer or principal of your firm and should include the name and address of the firm's contact to whom the check should be sent. The refund requests will be processed as soon as possible. The average turnaround time for receiving a check last year was about two weeks. Credit due amounts of less than \$100 will be automatically transferred to the firm's CRD account. If the NASD does not receive a request for a

refund check by March 6, 1998, the full credit amount will be transferred to the firm's CRD account.

Final adjusted invoices that reflect zero balances require no further action by the member.

Reviewing The Renewal Roster

Member renewal rosters include all agent registrations renewed for 1998.

Registrations that were pending approval or were deficient at year-end 1997 were not assessed renewal fees; therefore, they will not be

reported on the renewal roster.

Members should examine their roster carefully to ensure that all registration approvals and terminations are properly listed.

NASD discrepancies should be reported by calling the CRD/PD Call Center at (301) 590-6500. Copies of supporting documentation, such as Notices of Approval/Termination, Forms U-4 or U-5, or Schedule E amendments, should be readily available. All other discrepancies should be reported directly to the jurisdictions involved—NYSE, ASE,

CBOE, PSE, PHLX, or the applicable state(s). **All renewal roster discrepancies must be reported by March 13, 1998.**

The inside cover of the renewal roster contains detailed instructions to help members complete the renewal process. Questions regarding this *Notice* may be directed to the CRD/PD Call Center at (301) 590-6500.

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NASD NOTICE TO MEMBERS 98-10

Transaction Reporting And Quotation Obligations Under The Fixed Income Pricing System (FIPS)

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On April 11, 1994, The Nasdaq Stock Market Inc., began operation of the Fixed Income Pricing SystemSM known as FIPSSM for members trading high-yield bonds. FIPS was created to facilitate the over-the-counter trading of high-yield, corporate debt securities rated BB+ or lower by Standard & Poor's Corporation. The goals in the creation of FIPS were similar to those which led to the creation of The Nasdaq Stock MarketSM—to increase information and transparency in the marketplace, thereby encouraging investment and growth.

Reporting Transactions (Market Place Rule 6240A and 6240B)

FIPS securities may be classified into two categories:

1. Mandatory Bonds consist of the most active top-tier FIPS securities **(currently totaling 50 bonds)**. These bonds must be reported within five minutes after trade execution.

2. Non-Mandatory Bonds are all other FIPS securities. There are approximately 1,400 bonds **which must be reported anytime during the trading day**.

The obligation to report transactions on FIPS securities depends on the role of each party in the trade. In transactions between:

- A FIPS dealer and a FIPS broker's broker—only the broker's broker reports the trade
- Two FIPS dealers—only the sell-side dealer reports the trade.
- A FIPS participant and non-participant—only the FIPS participant reports the trade.

Quotation Obligations (Market Place Rule 6230)

If you are actively trading in one or more FIPS mandatory bonds as a FIPS dealer as described in Market Place Rule 6230, **you may be obligated to enter and maintain firm quotations** into the FIPS system. The failure to quote in accordance with the FIPS rules may result in disciplinary action.

FIPS participants must continuously display firm bids/offers in the FIPS mandatory bonds in which they are actively trading. Quotations may be one- or two-sided and must be reasonably related to the prevailing market in each bond. Quotes must reflect a minimum size of 100 bonds (\$100,000 par value) and be in increments of 1/8 of a point. FIPS dealers may enter firm quotations into FIPS under their own names or through a FIPS broker. Quotes entered under a dealer's own name will be identified as such; all others will bear the name of the broker with the dealer remaining anonymous.

A FIPS broker must transmit all quotes received from FIPS dealers to the FIPS system for dissemination to all FIPS participants and to the public through market data vendors (via the Bond Quotation Dissemination Service (BQDS) data feed).

Please Note: If you are not actively trading in a particular FIPS security and only execute trades to accommodate customer orders, you still have an obligation to **report these trades** to the National Association of Securities Dealers, Inc. (NASD[®]).

Common Questions

The following questions may arise regarding the reporting of FIPS trades:

Question: If I believe that my firm is not a FIPS dealer or broker's broker,

do I have to report a trade in a FIPS security to the NASD?

Answer: Yes, all transactions in FIPS securities must be reported, subject to limited exceptions. The reporting guidelines are set forth according to mandatory or non-mandatory bond categories. This would include all firms who trade high-yield bonds for their own (inventory) account and/or who execute trades on behalf of customers. Any trade executed by a firm in a FIPS bond must be reported to the NASD.

Question: What securities are eligible for quoting in FIPS?

Answer: FIPS securities are OTC high-yield, fixed-income corporate debt securities rated BB+ or lower by Standard & Poor's Corporation. It is also possible that a non-rated issue may be a FIPS eligible security.

Question: If I am a broker/dealer who is a correspondent of a clearing firm, will my clearing firm report the trades on my behalf?

Answer: Not necessarily. The obligation to report falls on the shoulders of the firm that executes the trade, whether it be for inventory or to accommodate a customer order. Most clearing firms will not assume the responsibility to report trades they did not execute on behalf of their correspondents. **It should not be assumed** that the clearing firm is reporting your trades in FIPS securities.

Question: As a compliance officer, do I have a certain responsibility for all FIPS trades to be reported?

Answer: Yes, all compliance officers should be certain that every part of their firm is reporting FIPS trades. Many traders assume that, in a normal course of business, the high-yield trading desk is reporting all of the firm's FIPS transactions and the firm's obligations to the rules are being fulfilled. **This may not be completely accurate. For example, there are high grade desks that trade crossover bonds and utility desks that trade bonds that are rated BB+ or lower.** These desks may be located in different areas and/or different floors in a particular firm. The firm is obligated to report all of its FIPS transactions, regardless of the desk that trades the bonds.

It is important that all Compliance Officers and Head Traders are aware of this situation. We have found firms of all sizes who have made this error.

If you have any questions or concerns regarding FIPS, please contact:

Nasdaq

General Questions

Justin Tubiolo
(212) 858-4419

Technology Questions

Jim Schroder
(212) 858-4321

FIPS Service Desk

Cheryl Glowacki
(203) 385-6373

FIPS Subscriber Services

Stacey Galullo
(800) 777-5606

FIPS Literature

Joanie Rizzo
(212) 858-3975

MarketWatch

TradeWatch
(800) 211-4953
Additional Number, (301) 590-6890

NASD Regulation, Inc.

Regulatory Questions

Stephen Simmes
(301) 590-6451

For your convenience, enclosed is a portion of the bonds that may be crossover bonds. Also, please find a list of utility bonds that are rated BB+ or lower by S&P; they must be reported to the NASD.

Please note that these are partial listings. In order to ensure that you are in compliance with the reporting of all FIPS bonds, you must review the entire list. The entire list can be obtained by calling Joanie Rizzo at 212-858-3975. Many of these bonds may be traded by other trading desks.

In February 1998, this list can be obtained through our FIPS Web Site located at www.nasdaqfips.com. If a daily e-mail subscription containing the complete list of FIPS mandatory and non-mandatory issues would be of interest to your firm, please send us an e-mail at fipsfeedbk@nasd.com.

FIPS Crossover Bonds

<u>Symbol</u>	<u>Name</u>	<u>Coupon</u>	<u>Maturity</u>
APSO.GA	APPLE SOUTH INC	9.75	06/01/06
ARAG.GC	ARA GROUP INC	8.5	06/01/03
BORN.GA	BORDEN INC	8.375	04/15/16
BORN.GC	BORDEN INC	9.25	06/15/19
BORN.GD	BORDEN INC	9.2	03/15/21
BORN.GE	BORDEN INC	7.875	02/15/23
BVID.GA	BLOCKBUSTER ENTERTAINMENT CORP	6.625	02/15/98
CAWS.GA	CAI WIRELESS SYSTEMS INC	12.25	09/15/02
CBBS.GA	CBS INC	7.625	01/01/02
CBBS.GB	CBS INC	7.75	06/01/99
CBBS.GC	CBS INC	7.125	11/01/23
CBBS.GD	CBS INC	8.875	06/01/22
CCVS.GC	CONT'L CABLEVISION INC	11	06/01/07
CCVS.GD	CONT'L CABLEVISION INC	8.625	08/15/03
CCVS.GE	CONT'L CABLEVISION INC	9	09/01/08
CCVS.GF	CONT'L CABLEVISION INC	8.5	09/15/01
CCVS.GG	CONT'L CABLEVISION INC	8.875	09/15/05
CCVS.GH	CONT'L CABLEVISION INC	9.5	08/01/13
CE.GA	CALIFORNIA ENERGY INC	10.25	01/15/04
CE.GB	CALIFORNIA ENERGY INC	9.875	06/30/03
CE.GC	CALENERGY CO INC	9.5	09/15/06
CE.GD	CALENERGY CO INC	7.63	10/15/07
CIT.GA	CITGO PETROLEUM CORP	7.875	05/15/06
CMCS.GB	COMCAST CORP	10.25	10/15/01
CMCS.GC	COMCAST CORP	10.625	07/15/12
CMCS.GD	COMCAST CORP	9.5	01/15/08
CMCS.GE	COMCAST CORP	9.125	10/15/06
CMCS.GF	COMCAST CORP	9.375	05/15/05
COT.GA	COLTEC INDUSTRIES INC	9.75	04/01/00
COT.GC	COLTEC INDUSTRIES INC	9.75	11/01/99
DEC.GA	DIGITAL EQUIP CORP	7.125	10/15/02
DEC.GC	DIGITAL EQUIP CORP	8.625	11/01/12
DEC.GD	DIGITAL EQUIP CORP	7.75	04/01/23
FBP.GA	FIRSTBANK PUERTO RICO	7.625	12/20/05
FUR.GA	FIRST UN RE EQUITY & MTG INVTS	8.875	10/01/03
FUSA.GA	FIRST USA BANK WILMINGTON DEL	7.65	08/01/03
GNFC.GA	G N F CORP	10.625	04/01/03
GNSF.GA	GNS FINANCE CORP	4.812	03/15/94
HNTC.GA	HUNTSMAN CORP	10.625	04/15/01
HNTC.GB	HUNTSMAN CORP	11	04/15/04
KR.GD	KROGER COMPANY	10	05/01/99
KR.GF	KROGER COMPANY	9.875	08/01/02
KR.GH	KROGER COMPANY	8.5	06/15/03
KR.GI	KROGER COMPANY	9.25	01/01/05
KR.GJ	KROGER CO DTD	8.15	07/15/06
MBN.GA	MBNA CAPITAL I	8.278	12/01/26
MBN.GB	MBNA CAPITAL I	6.518	02/01/26
MCU.GA	MAGMA COPPER COMPANY NEW	12	12/15/01
MCU.GB	MAGMA COPPER COMPANY NEW	11.5	01/15/02

<u>Symbol</u>	<u>Name</u>	<u>Coupon</u>	<u>Maturity</u>
MCU.GC	MAGMA COPPER COMPANY NEW	8.7	05/15/05
MDEP.GA	MCDERMOTT	9.375	03/15/02
MDFG.GA	MIDLAND FDG CORP I	10.33	07/23/02
MDFG.GB	MIDLAND FDG CORP I	10.33	07/23/02
NAV.GD	NAVISTAR INTL TRANSN CORP	6.25	03/01/98
NAV.GE	NAVISTAR INTL TRANSN CORP	9	06/15/04
NOE.GA	NORTH ATLANTIC ENERGY CORP	9.05	06/01/02
OI.GC	OWENS-ILL INC	11	12/01/03
OI.GI	OWENS-ILL INC	7.85	05/15/04
OI.GJ	OWENS-ILL INC	8.1	05/15/07
ORX.GC	ORYX ENERGY COMPANY	10	04/01/01
ORX.GE	ORYX ENERGY COMPANY	10	06/15/99
ORX.GF	ORYX ENERGY COMPANY	9.5	11/01/99
ORX.GG	ORYX ENERGY COMAPNY	8	10/15/03
ORX.GH	ORYX ENERGY COMPANY	8.125	10/15/05
ORX.GI	ORYX ENERGY COMPANY	8.375	07/15/04
PARA.GC	PARAMOUNT COMMUNICATIONS INC	7.5	01/15/02
PARA.GD	PARAMOUNT COMMUNICATIONS INC	8.25	08/01/22
PARA.GE	PARAMOUNT COMMUNICATIONS INC	5.875	07/15/00
PARA.GF	PARAMOUNT COMMUNICATIONS INC	7.5	07/15/23
RIGS.GA	RIGGS NATL CORP WASHINGTON DC	9.65	06/15/09
RIGS.GB	RIGGS NATL CORP WASHINGTON DC	8.5	02/01/06
SCR.GA	SEA CONTAINERS LTD	12.5	12/01/04
SCR.GB	SEA CONTAINERS LTD	9.5	07/01/03
SCR.GC	SEA CONTAINERS LTD	12.5	12/01/04
SCR.GD	SEA CONTAINERS LTD	10.5	07/01/03
TPLP.GA	TANGER PROPERTIES LP	8.75	03/11/01
TPLP.GB	TANGER PROPERTIES LP	7.875	10/24/04
TRIP.GA	TRIANGLE PACIFIC CORP DEL	10.5	08/01/03
UAL.GA	UNITED AIR LINES INC	10.25	07/15/21
UAL.GB	UNITED AIR LINES INC	9.75	08/15/21
UAL.GC	UNITED AIR LINES INC	9	12/15/03
UAL.GD	UNITED AIR LINES INC	9.125	01/15/12
UAL.GN	UNITED AIR LINES INC	10.67	05/01/04
UAL.GO	UNITED AIR LINES INC	11.21	05/01/14
UPC.GA	UNION PLANTERS CAPITAL TRUST	8.2	12/15/26
VCI.GA	VALASSIS COMMUNICATIONS INC	9.55	12/01/03
VIA.GA	VIACOM INC	8	07/07/06
VIA.GB	VIACOM INC	7.75	06/01/05
VIA.GC	VIACOM INC	6.75	01/15/03
VIA.GD	VIACOM INC	7.625	01/15/16
VICN.GA	VIACOM INT'L INC	10.25	09/15/01
VICN.GB	VIACOM INT'L INC	9.125	08/15/99
VICN.GC	VIACOM INT'L INC	8.75	05/15/01
VICN.GD	VIACOM INT'L INC	7	07/01/03
VICN.GE	VIACOM INT'L INC	7	07/01/03
VLIN.GA	VALASSIS INSERTS INC	8.875	03/15/99
VLIN.GC	VALASSIS INSERTS INC	9.375	03/15/99
WHCR.GA	WESTINGHOUSE CREDIT CORP	8.875	06/14/14
WX.GB	WESTINGHOUSE ELECTRIC CORP	8.875	06/01/01
WX.GC	WESTINGHOUSE ELECTRIC CORP	8.375	06/15/02
WX.GD	WESTINGHOUSE ELECTRIC CORP	8.625	08/01/12

<u>Symbol</u>	<u>Name</u>	<u>Coupon</u>	<u>Maturity</u>
WX.GE	WESTINGHOUSE ELECTRIC CORP	6.875	09/01/03
WX.GF	WESTINGHOUSE ELECTRIC CORP	7.875	09/01/23

FIPS Utility Bonds

<u>Symbol</u>	<u>Name</u>	<u>Coupon</u>	<u>Maturity</u>
CNLP.GA	CONN L&P CO	6.5	01/01/98
CNLP.GB	CONN L&P CO	7.25	07/01/99
CNLP.GC	CONN L&P CO	7.375	12/01/25
CNLP.GD	CONN L&P CO	5.75	07/01/00
CNLP.GE	CONN L&P CO	7.5	07/01/23
CNLP.GF	CONN L&P CO	5.5	02/01/99
CNLP.GG	CONN L&P CO	6.125	02/01/04
CNLP.GH	CONN L&P CO	8.5	06/01/24
CNLP.GI	CONN L&P CO	7.875	06/01/01
CTP.GB	CENTRAL MAINE POWER COMPANY	8.5	09/15/01
CTP.GC	CENTRAL MAINE POWER COMPANY	7.375	01/01/99
CTP.GD	CENTRAL MAINE POWER COMPANY	7.05	03/01/08
CTP.GE	CENTRAL MAINE POWER COMPANY	7.875	06/01/23
CTP.GF	CENTRAL MAINE POWER COMPANY	6.25	11/01/98
CVXP.GA	CLEVELAND ELEC ILLUM CO	8.75	11/15/05
CVXP.GC	CLEVELAND ELEC ILLUM CO	8.375	12/01/11
CVXP.GD	CLEVELAND ELEC ILLUM CO	8.375	08/01/12
CVXP.GG	CLEVELAND ELEC ILLUM CO	7.625	08/01/02
CVXP.GH	CLEVELAND ELEC ILLUM CO	9	07/01/23
CVXP.GI	CLEVELAND ELEC ILLUM CO	7.375	06/01/03
CVXP.GK	CLEVELAND ELEC ILLUM CO	9.5	05/15/05
CYAP.GA	CONN YANKEE ATOMIC PWR CO	12	06/01/00
EE.GA	EL PASO ELECTRIC COMPANY	7.25	02/01/99
EE.GB	EL PASO ELECTRIC COMPANY	7.75	05/01/01
EE.GC	EL PASO ELECTRIC COMPANY	8.25	02/01/03
EE.GD	EL PASO ELECTRIC COMPANY	8.9	02/01/06
EE.GE	EL PASO ELECTRIC COMPANY	9.4	05/01/11
GSTS.GA	GULF STS UTILS CO	9.72	07/01/98
LIL.GE	LONG ISLAND LTG COMPANY	7.3	07/15/99
LIL.GF	LONG ISLAND LTG COMPANY	8.9	07/15/19
LIL.GG	LONG ISLAND LTG COMPANY	9	11/01/22
LIL.GH	LONG ISLAND LTG COMPANY	7.3	01/15/00
LIL.GI	LONG ISLAND LTG COMPANY	7.5	03/01/07
LIL.GJ	LONG ISLAND LTG COMPANY	7	03/01/04
LIL.GK	LONG ISLAND LTG COMPANY	7.05	03/15/03
LIL.GL	LONG ISLAND LTG COMPANY	8.2	03/15/23
LIL.GM	LONG ISLAND LTG COMPANY	7.125	06/01/05
LIL.GN	LONG ISLAND LTG COMPANY	6.25	07/15/01
NMK.GC	NIAGARA MOHAWK POWER CORP	6.5	08/01/98
NMK.GD	NIAGARA MOHAWK POWER CORP	9.25	10/01/01
NMK.GE	NIAGARA MOHAWK POWER CORP	9.5	06/01/00
NMK.GF	NIAGARA MOHAWK POWER CORP	9.75	11/01/05

<u>Symbol</u>	<u>Name</u>	<u>Coupon</u>	<u>Maturity</u>
NMK.GG	NIAGARA MOHAWK POWER CORP	9.5	03/01/21
NMK.GH	NIAGARA MOHAWK POWER CORP	8.75	04/01/22
NMK.GI	NIAGARA MOHAWK POWER CORP	8	06/01/04
NMK.GJ	NIAGARA MOHAWK POWER CORP	8.5	07/01/23
NMK.GK	NIAGARA MOHAWK POWER CORP	7.375	08/01/03
NMK.GL	NIAGARA MOHAWK POWER CORP	6.875	04/01/03
NMK.GM	NIAGARA MOHAWK POWER CORP	6.625	07/01/05
NMK.GN	NIAGARA MOHAWK POWER CORP	7.875	04/01/24
NMK.GO	NIAGARA MOHAWK POWER CORP	5.875	09/01/02
NMK.GP	NIAGARA MOHAWK POWER CORP	6.875	03/01/01
NMK.GQ	NIAGARA MOHAWK POWER CORP	7.75	05/15/06
NU.GA	NORTHEAST UTILITIES	8.58	12/01/06
PNH.GB	PUBLIC SERVICE COMPANY N H	9.17	05/15/98
PNM.GB	PUBLIC SERVICE COMPANY N.MEX	7.25	04/01/99
PNM.GC	PUBLIC SERVICE COMPANY N.MEX	8.125	09/15/01
PNM.GD	PUBLIC SERVICE COMPANY N.MEX	7.5	06/15/02
PNM.GE	PUBLIC SERVICE COMPANY N.MEX	9.125	03/15/05
PNM.GF	PUBLIC SERVICE COMPANY N.MEX	8.125	06/15/07
PNM.GG	PUBLIC SERVICE COMPANY N.MEX	9	05/01/08
PPPC.GA	PENNA PWR CO	8.5	07/15/22
PPPC.GB	PENNA PWR CO	7.5	08/01/03
PPPC.GC	PENNA PWR CO	6.625	07/01/04
PPPC.GD	PENNA PWR CO	7.625	07/01/23
PPPC.GE	PENNA PWR CO	6.375	09/01/04
TEDP.GB	TOLEDO EDISON COMPANY	7.5	08/01/02
TEDP.GC	TOLEDO EDISON COMPANY	8	11/01/03
TEDP.GD	TOLEDO EDISON COMPANY	7.25	08/01/99
TEDP.GE	TOLEDO EDISON COMPANY	7.875	08/01/04
TEDP.GF	TOLEDO EDISON COMPANY	8.7	09/01/02
TEP.GA	TUCSON ELECTRIC POWER COMPANY	8.5	11/01/99
TEP.GB	TUCSON ELECTRIC POWER COMPANY	8.125	09/01/01
TEP.GC	TUCSON ELECTRIC POWER COMPANY	7.55	03/01/02
TEP.GD	TUCSON ELECTRIC POWER COMPANY	7.65	05/01/03
TEP.GE	TUCSON ELECTRIC POWER COMPANY	8.5	10/01/09
TEXN.GA	TEXAS NEW MEXICO POWER COMPANY	8.7	09/01/06
TEXN.GB	TEXAS NEW MEXICO POWER COMPANY	9.625	07/01/19
TEXN.GC	TEXAS NEW MEXICO POWER COMPANY	10	07/01/17
TEXN.GD	TEXAS NEW MEXICO POWER COMPANY	9.25	09/15/00
TEXN.GE	TEXAS NEW MEXICO POWER COMPANY	12.5	01/15/99
TEXN.GG	TEXAS NEW MEXICO POWER COMPANY	10.75	09/15/03
WMAS.GA	WEST'N MASS ELECTRIC CO	6.75	03/01/98
WMAS.GB	WEST'N MASS ELECTRIC CO	7.75	12/01/02
WMAS.GC	WEST'N MASS ELECTRIC CO	6.875	01/01/00
WMAS.GD	WEST'N MASS ELECTRIC CO	6.25	03/01/99
WMAS.GE	WEST'N MASS ELECTRIC CO	7.75	03/01/24
WMAS.GF	WEST'N MASS ELECTRIC CO	7.375	07/01/01

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NASD NOTICE TO MEMBERS 98-11

SEC Approves
Rules Regarding
Supervision, Review,
And Record Retention
Of Correspondence;
Effective February 15, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On December 31, 1997, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD[®]) Rules 3010 and 3110. The amendments will allow firms to develop flexible supervisory procedures for the review of correspondence with the public. The rule amendments will be effective on February 15, 1998. The text of the amended Rules and the *Federal Register* version of the SEC Release are attached. This *Notice to Members* is being issued to provide guidance on how to implement these rules. This guidance is being issued in coordination with the New York Stock Exchange, which has issued an Information Memo providing guidance to members and member organizations on how to implement similar rules that recently were approved by the SEC.

Questions concerning this *Notice* should be directed to R. Clark Hooper, Senior Vice President, Office of Disclosure and Investor Protection, NASD Regulation, Inc., at (202) 728-8325, or Mary N. Revell, Associate General Counsel, Office of General Counsel, NASD RegulationSM, at (202) 728-8203.

Background

Technology has greatly expanded how communications between members and their customers take place. These new means of communication (e.g., e-mail, Internet) will continue to significantly affect the manner in which members and their associated persons conduct their business. While these changes allow timely and efficient communication with customers, prospective customers, and others, the significant changes in communications media and capacity raise questions regarding supervision, review, and retention of correspondence with the public.

To address these issues, NASD Regulation proposed changes to NASD Rules 3010 and 3110 to revise supervision and record retention rules to provide each firm with the flexibility to adopt and implement its own supervisory procedures relating to correspondence with the public based on the firm's structure; the nature and size of its business; and its customer base. In developing these procedures, members should continue to provide for appropriate supervision of the public correspondence of their registered representatives and other associated persons, consistent with their overall duty to supervise their employees.

Amended Rules

NASD Regulation has received SEC approval of amendments to Rule 3010 (Supervision) and Rule 3110 (Books and Records). See Securities Exchange Act Release No. 39510 (January 31, 1997), 63 FR 1131 (January 8, 1998), attached.

Rule 3010(d)(1), as amended, provides that procedures for review of correspondence with the public relating to a member's investment banking or securities business be designed to provide reasonable supervision for each registered representative, be described in an organization's written supervisory procedures, and be evidenced in an appropriate manner.

New Rule 3010(d)(2) requires each member to develop written policies and procedures for review of correspondence with the public relating to its investment banking or business, tailored to its structure and the nature and size of its business and customers. The rule requires that any member that does not conduct either an electronic or manual pre-use review will be required to:

- develop appropriate supervisory procedures;

- monitor and test to ensure these policies and procedures are being implemented and complied with;
- provide education and training to all appropriate employees concerning the member's current policies and procedures governing correspondence, and update this training as policies and procedures are changed; and
- maintain records documenting how and when employees are educated and trained.

The current requirement in Rule 3010(d) to review all correspondence of registered representatives will be retained to require review of all incoming correspondence received in non-electronic format directed to registered representatives and related to a member's investment banking or securities business. Incoming non-electronic correspondence directed to associated persons and all correspondence related to a member's investment banking or securities business received in electronic format (*e.g.*, e-mail and facsimile) will be subject to the overall supervisory and review procedures established by the member pursuant to amended Rule 3010(d)(1) and new Rule 3010(d)(2).

Given the complexity and cost of establishing appropriate systems for effectively reviewing electronic communications, some members may determine to conduct a pre-use review of all outgoing correspondence (written or electronic).

The retention requirements of new Rule 3010(d)(3) cross-reference Rule 3110 and state that the names of persons who prepared, reviewed and approved correspondence must be readily ascertainable from the retained records. Amended Rule 3110 states that these records must be retained in a format or medium that complies with Rule 17a-4 under

the Securities Exchange Act of 1934.

Guidelines For Supervision And Review

In adopting review procedures pursuant to Rule 3010, members must:

- specify, in writing, the firm's policies and procedures for reviewing different types of correspondence;
- identify how supervisory reviews will be conducted and documented;
- identify what types of correspondence will be pre- or post-reviewed;
- identify the organizational position(s) responsible for conducting review of the different types of correspondence;
- specify the minimum frequency of the reviews for each type of correspondence;
- monitor the implementation of and compliance with the firm's procedures for reviewing public correspondence; and
- periodically re-evaluate the effectiveness of the firm's procedures for reviewing public correspondence and consider any necessary revisions.

In conducting reviews, members may use reasonable sampling techniques. As an example of appropriate evidence of review, e-mail related to the member's investment banking or securities business may be reviewed electronically and the evidence of review may be recorded electronically.

In developing supervisory procedures for the review of correspondence with the public, each member must consider its structure, the nature and size of its business, other pertinent characteristics, and the appropriateness of implementing uniform

firm-wide procedures or tailored procedures (*i.e.*, by specific function, office/location, individual, or group of persons).

In adopting review procedures pursuant to Rule 3010, members must, at a minimum:

- specify procedures for reviewing registered representatives' recommendations to customers;
- require supervisory review of some of each registered representative's public correspondence, including recommendations to customers;
- consider the complaint and overall disciplinary history, if any, of registered representatives and other employees (with particular emphasis on complaints regarding written or oral communications with clients); and
- consider the nature and extent of training provided registered representatives and other employees, as well as their experience in using communications media (although a firm's procedures may not eliminate or provide for minimal supervisory reviews based on an employee's training or level of experience in using communications media).

Although members may consider the number, size, and location of offices, as well as the volume of correspondence overall or in specific areas of the organization, members must nonetheless develop appropriate supervisory policies and procedures in light of their duty to supervise their associated persons. The factors listed above are not exclusive and members must consider all appropriate factors when developing their supervisory procedures and implementing their supervisory reviews.

Supervisory policy and procedures must also:

- provide that all customer complaints, whether received via e-mail or in written form from the customer, are reported to the NASD in compliance with Rule 3070(c);¹

- describe any firm standards for the content of different types of correspondence; and

- prohibit registered representatives' and other employees' use of electronic correspondence to the public unless such communications are subject to supervisory and review procedures developed by the firm. For example, NASD Regulation would expect members to prohibit correspondence with customers from employees' home computers or through third party systems unless the firm is capable of monitoring such communications.

Members must continually assess the effectiveness of these supervisory systems.

Education and training must be timely (prior to or concurrent with implementation of the policies and procedures) and must include all appropriate employees. Members may incorporate the required education and training on correspondence into their Continuing Education Firm Element Training Program (*see* Rule 1120—Continuing Education Requirements). The requirement for training regarding correspondence may also apply to employees who are not included under the Continuing Education requirements.

NASD Regulation examiners periodically will review each member's procedures and systems to ensure that they are reasonable in view of each firm's structure and the nature and size of its business and customer base.

Text Of Rule Amendments

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

Rule 3010. Supervision

(a) through (c) No change

(d) Review of Transactions and Correspondence [Written Approval]

(1) Supervision of Registered Representatives. Each member shall establish procedures for the review and endorsement by a registered principal in writing, on an internal record, of all transactions and for the review by a registered principal of [all] incoming and outgoing written and electronic correspondence of its registered representatives with the public relating to the investment banking or securities business of such member [pertaining to the solicitation or execution of any securities transactions]. Such procedures should be in writing and be designed to provide reasonable supervision of each registered representative. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Association upon request.

(2) Review of correspondence. Each member shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written and electronic correspondence with the public relating to its investment banking or securities business. Where such procedures for the review of correspondence do not require pre-use review of all correspondence, they must include provision for the education and training of associated persons as to the firm's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

(3) Retention of correspondence. Each member shall retain correspondence of registered representatives relating to its investment banking or securities business in accordance with Rule 3110 ("Books and Records"). The names of the persons who prepared outgoing correspondence and who reviewed the correspondence shall be ascertainable from the retained records and the retained records shall be readily available to the Association, upon request.

(e) through (g) No change

Rule 3110. Books and Records

(a) Requirements

Each member shall make [keep] and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by Rule 17a-3. The record keeping format, medium, and retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934.

(b) through (g) No change

Endnote

¹ Among other things, NASD Rule 3070(c) requires members to report to the NASD statistical information regarding customer complaints relating to matters specified by the NASD.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 13e-3 and Schedule 13E-3, SEC File No. 270-1, OMB Control No. 3235-0007

Form S-8, SEC File No. 270-66, OMB Control No. 3235-0066

Regulations 14D & E and Schedules 14D-1 and 14D-9, SEC File No. 270-114, OMB Control No. 3235-0102

Industry Guides, SEC File No. 270-69, OMB Control No. 3235-0069

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request[s] for extension of the previously approved collection[s] of information discussed below.

Rule 13e-3 and Schedule 13E-3 under the Securities Exchange Act of 1934 ("Exchange Act"), contains requirements regarding going private transactions by certain issuers or their affiliates. Issuers of affiliates engaging in a Rule 13e-3 transaction file a Schedule 13E-3 to disclose information to security holders about the transaction. Schedule 13E-3 results in an estimated total annual reporting burden of 30,996 hours.

Form S-8 is used by registrants to register employee benefit plan securities under the Securities Act of 1933 ("Securities Act"). The form provides information to the registrant's employees about the plan and registrant that enables them to make informed investment decisions. Form S-8 results in an estimated total annual reporting burden of 131,284 hours.

Regulations 14D applies to tender offers subject to Section 14(d)(1) of the Exchange Act, including, but not limited to any tender offer for securities of a class described in that section which is made by an affiliate of the issuer of such class. Regulation 14E applies to any tender offer for securities other than exempted securities. Schedule 14D-1 contains disclosure about tender offers subject to Section 14(d)(1) of the Exchange Act. Schedule 14D-9 contains disclosure about solicitation/recommendation statements with respect to certain tender offers. The

Regulations and Schedule result in an estimated total annual reporting burden of 129,656 hours.

The Industry Guides provide guidelines for disclosure in documents submitted by registrants in specific industry groups such as oil and gas, insurance, and mining. They do not directly impose any reporting burden and therefore are assigned a total annual reporting burden of one reporting hour.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 23, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-423 Filed 1-7-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39510; File No. SR-NASD-97-24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Supervision and Record Retention Rules

December 31, 1997.

I. Introduction

On April 11, 1997, the NASD Regulation, Inc. ("NASDR") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the supervision and record retention rules of the National Association of Securities

Dealers, Inc.'s ("NASD" or "Association") to provide firms with flexibility in developing reasonable procedures for the review of correspondence with the public. The proposed rule change was published for comment in the **Federal Register** on May 2, 1997.³ One comment was received on the proposal.⁴

On December 4, 1997, NASDR submitted Amendment No. 1 to the proposed rule change.⁵ This order approves the proposal, and approves Amendment No. 1 to the proposed rule change on an accelerated basis. The Commission also is approving a substantially identical proposal by the New York Stock Exchange, Inc. ("NYSE").⁶

II. Background and Description of the Proposal

In May 1996, the Commission issued an Interpretive Release on the Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information.⁷ The release expressed the views of the Commission with respect to the delivery of information through electronic media pursuant to the federal securities laws, but did not address the applicability of any self-regulatory organization ("SRO") rules. In the release the Commission did, however, strongly encourage the SROs to work with broker-dealer firms to adapt SRO supervisory review requirements governing communications with customers to accommodate the use of electronic communications.⁸

On September 12, 1996, the NYSE filed with the Commission a proposal to update its rules governing supervision of its member firms' communications

³ See Securities Exchange Act Release No. 38548 (April 25, 1997), 62 FR 24147.

⁴ See Letter from William P. Hayes, Chairman, PSA The Bond Market Trade Association ("PSA") Fixed Income Practices and Procedures Working Group, to Jonathan G. Katz, Secretary, Commission, dated June 3, 1997 ("PSA Letter").

⁵ See Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 1, 1997 ("Amendment No. 1"). Amendment No. 1 contains a Notice to Members ("Notice to Members"), to be issued following Commission approval of the proposed rule change, which describes the new rules for supervision of public correspondence and provides guidance to NASD members on the implementation of the new rules.

⁶ See Securities Exchange Act Release No. 39511 (December 31, 1997) (order approving File No. SR-NYSE-96-26).

⁷ See Release Nos. 33-7288, 34-37182, IC-21945, IA-1562 (May 9, 1996) 61 FR 24644 (May 15, 1996) (File No. S7-13-96).

⁸ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

with the public.⁹ Similarly, NASDR proposes to amend NASD Rules 3010, "Supervision," and 3110, "Books and Records," to provide firms with flexibility in developing reasonable procedures for the review of correspondence with the public. The NASDR's proposal, like the NYSE's proposal, reflects the growing use of new technology and means of communication (e.g., "e-mail" and the Internet) which have affected the way broker-dealers and their associated persons conduct business and communicate with customers and other members of the public. According to NASDR, to ensure a coordinated regulatory framework for the supervision of written and electronic correspondence, its proposal is designed to be consistent with the NYSE's proposal.

Currently, NASD Rule 3010(d) requires each member firm to establish procedures for the review and endorsement by a registered principal of all transactions and all correspondence of its registered representatives pertaining to the solicitation or execution of any securities transactions. Under the proposal, a review of each item of correspondence no longer will be required. Instead, proposed NASD Rule 3010(d)(1) provides that a firm must establish procedures for the review by a registered principal of each registered representative's outgoing and incoming written and electronic correspondence with the public relating to the member's investment banking or securities business. Under the proposal, member firms must: (1) Develop written supervisory policies and procedures; (2) design policies and procedures to provide reasonable supervision of each registered representative; and (3) maintain evidence that supervisory policies and procedures have been implemented and executed and make that evidence available to the Association upon request.

A broker-dealer's policies and procedures for reviewing the public correspondence of registered representatives also must satisfy the requirements of new NASD Rule 3010(d)(2). As proposed, NASD Rule 3010(d)(2) requires each member to develop written procedures for review of incoming and outgoing written and electronic correspondence that are appropriate to the broker-dealer's business, size, structure and customers. Pursuant to the proposal, a broker-

dealer that does not require pre-use review of all correspondence must: (1) Educate and train associated persons as to the firm's procedures governing correspondence; (2) document such education and training; and (3) monitor and test to ensure implementation of and compliance with the firm's policies and procedures.

The NASD has developed a Notice to Members that provides additional guidance and requirements for supervisory procedures adopted pursuant to NASD Rule 3010. In developing written supervisory procedures, members should, among other things: (1) Specify the firm's policies and procedures for reviewing different types of communications; (2) identify how supervisory reviews will be conducted and documented; (3) identify what types of communications will be pre-reviewed or post-reviewed; (4) identify the organizational positions responsible for conducting reviews of the different types of communications; (5) specify the minimum frequency of reviews for each type of communication; (6) monitor the implementation of and compliance with the firm's procedures for reviewing public correspondence; and (7) periodically re-evaluate the effectiveness of the firm's procedures for reviewing public communications and consider any necessary revisions.

In addition, the Notice to Members requires broker-dealer to: (1) Specify procedures for reviewing registered representatives' recommendations to customers; (2) require supervisory review of some of each registered representative's public communications, including his or her recommendations to customers; and (3) consider the complaint and overall disciplinary history, if any, of registered representatives and other employees. The Notice to Members also states that a broker-dealer's supervisory policies and procedures must ensure that all customer complaints, whether received via e-mail or in written form from the customer, are reported to the NASD in compliance with NASD Rule 3070(c)¹⁰ and that a broker-dealer must prohibit employees' use of electronic correspondence to the public unless the communications are subject to the supervisory and review procedures developed by the firm.

Moreover, under new NASD 3010(d)(3), each member must retain correspondence in accordance with

amended NASD Rule 3110. NASD Rule 3010(d) (3) further requires that the names of the persons who prepared and reviewed outgoing correspondence must be ascertainable from the retained records and the records must be made available to the NASD upon request.

Finally, the NASD proposes to amend NASD Rule 3110 to require that records must be made and preserved as prescribed by all applicable laws, rules, regulations, NASD rules and with Rule 17a-3 under the Act. The record keeping format, medium, and retention period must comply with Rule 17a-4 under the Act.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change.¹¹ The commenter generally supported the proposal. Specifically, the PSA believes the proposal will provide flexibility for member firms to develop procedures for review of correspondence. The PSA believes that procedures tailored by individual firms to meet their needs are preferable to a uniform set of detailed requirements that may be inappropriate for many firms or that may quickly become obsolete. The PSA expressed its support for the Association's efforts to ensure a coordinated regulatory framework for the supervision of manual and electronic communications by harmonizing its new requirements with those of the Commission and the NYSE.¹²

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹³ Specifically, the Commission believes the proposal is consistent with the requirements of Section 15A(b)(6) of the Act¹⁴ in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. As noted above, NASD Rule 3010(d)(1), as amended, will allow broker-dealers to establish reasonable procedures for review of registered representatives' correspondence with the public relating to their business. New NASD Rule 3010(d)(2) will require broker-dealers to develop written policies and procedures for the review of all associated persons'

¹¹ See PSA Letter, *supra* note 4.

¹² *Id.*

¹³ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78o-3(b)(6).

⁹ See Securities Exchange Act Release No. 37941 (November 13, 1996) 61 FR 58919 (November 19, 1996) (File No. SR-NYSE-96-26) (soliciting comment on the NYSE's proposed rule change).

¹⁰ Among other things, NASD Rule 3070(c) requires members to report to the NASD statistical information regarding customer complaints relating to matters specified by the NASD.

public communications that are appropriate for the broker-dealer's business, size, structure, and customers. The Commission believes that the proposed rules will provide broker-dealers with some flexibility in adopting and implementing supervisory procedures for reviewing associated persons' public communications while establishing minimum requirements, guidelines, and standards governing the supervisory procedures a broker-dealer may adopt. The Commission believes that these standards and guidelines will help to ensure that broker-dealers continue to provide appropriate supervision of the public communications of their associated persons.

The Commission believes that the proposal does not diminish the general supervisory responsibilities of broker-dealers. In this regard, the Commission emphasizes, as it has stated previously, that broker-dealers must monitor the trading and sales activities of their associated persons and establish effective compliance and supervisory procedures to prevent and detect possible violations of firm policies and procedures, rules of the SROs, and federal and state securities laws.¹⁵ The Commission believes that review of registered representatives' and other associated persons' public correspondence is an important component of a broker-dealer duty to supervise its employees, and that broker-dealers have substantial supervisory obligations arising from the public communications of their associated persons.

The Commission believes that the minimum standards and requirements specified in NASD Rule 3010 and in the Notice to Members will help to ensure that broker-dealers continue to provide appropriate supervision of the public communications of their registered representatives and other associated persons. In this regard, the Commission notes that NASD Rule 3010(d)(1) states that a broker-dealer's supervisory policies and procedures must be designed to reasonably supervise each registered representative. Under NASD Rule 3010(d)(2), a broker-dealer that chooses not to require pre-use review of public communications must educate employees about the firm's current communications policies and procedures, document the employees' education and training, and ensure that

the firm's policies are implemented and adhered to.

In addition, the Notice to Members require broker-dealers to: (1) Specify, in writing, the firm's policies and procedures for reviewing different types of communications; (2) identify how supervisory reviews will be conducted and documented; (3) identify what types of communications will be pre-reviewed or post-reviewed; (4) identify the positions within the organization responsible for conducting reviews of the different types of communications; (5) specify the minimum frequency of reviews for different types of communications; (6) monitor the implementation of and compliance with the firm's procedures for reviewing public communications; and (7) periodically re-evaluate the effectiveness of the firm's procedures for reviewing public communications and consider any necessary revisions.

The Commission believes that these requirements will provide guidance to broker-dealers in developing policies for supervising public communications and to associated persons in complying with the firm's policies. The requirements should help to ensure that broker-dealers carefully consider the supervisory procedures appropriate for different types of communications, closely monitor compliance with their firm's policies, and periodically reevaluate their firm's policies and procedures. The Commission expects broker-dealers to monitor the effectiveness of their supervisory policies and procedures and to promptly make any necessary revisions.

The Notice to Members also requires broker-dealers to: (1) Specify procedures for reviewing registered representatives' recommendations to customers; (2) require supervisory review of some of each registered representative's public communications, including his or her recommendations to customers; (3) consider the complaint and overall disciplinary history, if any of registered representatives and other employees in developing procedures for supervising their communications with the public; (4) provide that all customer complaints, whether received via e-mail or in written form from the customer, are reported to the NASD in compliance with NASD Rule 3070(c); and (5) prohibit employees' use of electronic communications to the public unless the communications are subject to supervisory and review procedures developed by the firm.

The Commission believes that these standards will help to ensure that broker-dealers adopt effective and appropriate supervisory procedures. For

example, reviewing at least some of each registered representative's recommendations¹⁶ and providing for the reporting of customer complaints in compliance with NASD Rule 3070(c) may help firms to identify potential sales practice problems. Similarly, considering a registered representative's complaint and overall disciplinary history will help to ensure that broker-dealers implement supervisory procedures appropriate for each representative. In this regard, the Commission would expect a broker-dealer to consider providing heightened supervision for a registered representative with a history or pattern of customer complaints, disciplinary actions or arbitrations.¹⁷ Moreover, the Commission notes that the requirements specified in NASD Rule 3010 and in the Notice to Members are minimum requirements; the Commission expects each broker-dealer to implement any additional procedures the broker-dealer believes are necessary to provide appropriate supervision of all of its associated persons.

The Commission believes that several requirements specific to electronic communications will further help to ensure that firms adopt appropriate supervisory procedures. In this regard, the Commission notes that the Notice to Members provides that a firm's policies and procedures must prohibit registered representatives' and other employees' use of electronic communications to the public unless those communications are subject to supervisory and review procedures developed by the firm. The NASD Notice to Members also states that the Association expects members to prohibit communications with the public from employees' home computers or through third party computer systems unless the firm is

¹⁶ With regard to recommendations, the Commission notes that NASD Rule 2310 requires, among other things, that a recommendation have a basis which can be substantiated as reasonable. Regardless of the supervisory procedures a broker-dealer adopts, the broker-dealer must continue to ensure compliance with NASD Rule 2310 and any other relevant rule.

¹⁷ Similarly, the Joint Sweep Report stated that "[f]irms that hire registered persons that have a history or pattern of customer complaints, disciplinary actions, or arbitrations are responsible for imposing close supervision over those persons. 'Normal' supervision is simply not enough; firms must craft special supervisory procedures tailored to the individual representative." See Joint Sweep Report, *supra* note 21, at vi. See also NASD Notice to Members 97-19 (firm that hires a registered representative with a recent history of customer complaints, final disciplinary actions involving sales practice abuse or other customer harm, or adverse arbitration decision should determine if it is necessary to develop and implement special supervisory procedures tailored to the individual registered representative).

¹⁵ See NASD, NYSE, North American Securities Administrators Association, Inc. and Office of Compliance, Inspections and Examinations, Commission, *Joint Regulatory Sales Practice Sweep* (1996) ("Joint Sweep Report") at 1.

capable of monitoring the communications.

The Commission believes that the provision for review of incoming non-electronic correspondence also is designed to protect investors. The Commission notes that the Notice to Members mandates that Rule 3010(d) will continue to require review of all incoming non-electronic correspondence directed to registered representatives.¹⁸ The Commission believes that this requirement may provide a broker-dealer with early notice of sales practice problems and help to ensure proper handling of customer funds. Incoming non-electronic correspondence directed to associated persons other than registered representatives, and all incoming communications in electronic format, will be subject to the policies and procedures the firm establishes pursuant to NASD Rule 3010(d).

The NASD represents that it will review members' procedures and systems periodically to ensure that they are reasonable in view of the firm's structure, the nature and size of its business, and its customer base.¹⁹ The Commission expects the NASD to monitor closely the policies and procedures firms adopt pursuant to the proposal to ensure that they satisfy the requirements of NASD Rule 3010. In addition, the Commission expects the NASD to review NASD Rule 3010 as it gains experience with the rules and to consider any necessary revisions, including additional minimum requirements for broker-dealers' communication policies.

Finally, the Commission believes that it is reasonable for the NASD to amend NASD Rule 3110 to indicate that members must preserve books and records as required under SEC Rule 17a-3 and comply with the recordkeeping format, medium and retention period specified in SEC Rule 17a-4 in order to clarify the recordkeeping requirements applicable to broker-dealers.

The Commission finds good cause for approving proposed Amendment No. 1

¹⁸ See Notice to Members, *supra* note 5. The requirement to review all incoming non-electronic correspondence directed to registered representatives is not specified in the text of the rule language. This requirement parallels a NYSE provision contained in Interpretation 342.16/04 in the NYSE *Interpretation Handbook*. The NASD's requirement is set forth only in its Notice to Members which was submitted by NASDR as an amendment to the original rule filing; therefore, NASD member firms must comply with this additional requirement, as well as with the other specific requirements set forth in the Notice to Members.

¹⁹ *Id.*

prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1, which incorporates the Notice to Members into the proposal, further clarifies the Association's new rules by providing additional guidance to NASD members. As discussed more fully above, the Notice to Members provides additional requirements and guidelines for broker-dealers' supervisory policies. Accordingly, the Commission believes that it is consistent with Section 15(b)(6) of the Act²⁰ to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of all such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-24 and should be submitted by January 29, 1998.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ That the proposed rule change (SR-NASD-97-24), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.²²

[FR Doc. 98-418 Filed 1-7-98; 8:45 am]

BILLING CODE 8010-01-M

²⁰ 15 U.S.C. 78o-3(b)(6).

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39504; File No. SR-NASD-97-96]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Incorporated Relating to the Hearing Process Fees on Members That Are Parties to Arbitration Proceedings

December 31, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1997, the National Association of Securities Dealers, Incorporated ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10333(d) of the NASD's Code of Arbitration Procedure ("Code") to adjust the Hearing Process Fee Schedule so that the amounts in dispute of the lowest brackets in the Rule 10333(d) hearing Process Fee Schedule are consistent with the dollar amount at which the Prehearing Process Fee is imposed. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

10333. Member Surcharge and Process Fees

* * * * *

Hearing Process Fee Schedule (accrues and becomes due and payable when the parties are notified of the date and location of the first hearing session)

Damages requested	Hearing process fee
\$1-\$25,000[30,000]	\$0
\$25,000.01[30,000.01]-\$50,000	1,000
\$50,000.01-\$100,000	1,500
\$100,000.01-\$500,000	2,500
\$500,000.01-\$1,000,000	3,500
\$1,000,000.01-\$5,000,000	4,500
More than \$5,000,000	5,000

NASD NOTICE TO MEMBERS 98-12

Presidents' Day: Trade Date–Settlement Date Schedule

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Presidents' Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, February 16, 1998, in observance of Presidents' Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Feb. 9	Feb. 12	Feb. 17
10	13	18
11	17	19
12	18	20
13	19	23
16	Markets Closed	—
17	20	24

*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."

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NASD NOTICE TO MEMBERS 98-13

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of December 30, 1997

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of December 30, 1997, the following bonds were added to the Fixed Income Pricing SystemSM (FIPSSM).

Symbol	Name	Coupon	Maturity
NAT.GA	North Atlantic Trading Inc	11.000	06/15/04
OEI.GA	Ocean Energy Inc	8.875	07/15/07
VC.GA	Vencor Inc	8.625	07/15/07
BYUS.GA	Bucyrus International Inc	9.750	09/15/07
VSYS.GA	Viasystems Inc	9.750	06/01/07
ITLW.GB	International Wire Group	11.750	06/01/05
HAUL.GA	Allied Holdings Inc	8.625	10/01/07
AS.GG	Armco Inc	9.000	09/15/07
EMER.GA	Emergent Group Inc	10.750	09/15/04
FRVS.GA	Frontier Vision Hlds L.P.	11.875	09/15/07
GST.GA	GST Telecommunication Inc.	12.750	11/15/07
AURO.GA	Aurora Foods Inc	9.875	02/15/07
AURO.GB	Aurora Foods Inc	9.875	02/15/07
MCLD.GB	McLeodUSA Inc	9.250	07/15/07
STUA.GA	Stuart Entertainment Inc	12.500	11/15/04
SFWA.GA	Shoppers Food Warehouse Corp	9.750	06/15/04
SPBR.GA	Spanish Broadcasting System Inc	11.000	03/15/04
SRET.GA	Specialty Retailers Inc	8.500	07/15/05
SHRE.GA	Shoppers Retailers Inc	9.000	07/15/07
SMED.GA	Sun Media Corp	9.500	02/15/07
CLNP.GB	Callon Petroleum Co	10.125	09/15/02
ADLA.GE	Adelphia Communication Corp	10.500	07/15/04
PDQ.GB	Prime Hospitality Corp	9.750	04/01/07
FSH.GA	Fischer Scientific Intl Inc	7.125	12/15/05
RDIO.GA	Radio One Inc	7.000	05/15/04
BYD.GC	Boyd Gaming Corp	9.500	07/15/07
CVC.GI	Cablevision Systems Corp	7.875	12/15/07
CLKS.GA	Clark-Schwebel Inc	10.500	04/15/06
ROLB.GA	Roller Bearing Co Of America Inc	9.625	06/15/07
SRET.GB	Specialty Retailers Inc	9.000	07/15/07
MHR.GA	Magnum Hunter Res Inc	10.000	06/01/07
USNU.GA	USN Communications Inc	14.625	08/15/04
IHS.GD	Integrated Health Svs Inc	9.500	09/15/07
CTYA.GI	Century Communications Corp	8.375	12/15/07
WYMN.GB	Wyamn-Gordon Co	8.000	12/15/07
NEBC.GA	Nebco Evans Hldg Co	12.375	07/15/07
UREF.GA	United Refining Co	10.750	06/15/07
HGHI.GA	High Voltage Engineering Corp	10.500	08/15/04
ASVF.GA	Ameriserve Food Distr Inc	8.875	10/15/06
ASVF.GB	Ameriserve Food Distr Inc	10.125	07/15/07
JCPF.GA	James Cable Partners L.P.	10.750	08/15/04
EWRL.GA	Evans Withycombe Residential L.P.	7.500	04/15/04
AURO.GA	Aurora Foods Inc	9.875	02/15/07
AURO.GB	Aurora Foods Inc	9.875	02/15/07
AEN.GC	AMC Entertainment Inc	9.500	03/15/09
CMM.GA	CRIIMI MAE Inc	9.125	12/01/02
DBG.GB	Dyersburg Corp	9.750	09/01/07
LAMR.GC	Lamar Advertising Co	8.625	09/15/07
NEGX.GB	National Energy Group Inc	10.750	11/01/06

Symbol	Name	Coupon	Maturity
TGNT.GA	Teligent Inc	11.500	12/01/07
CMZ.GD	Cincinnati Milacron Inc	7.875	05/12/00
CWRA.GA	Carpenter(W.R) North America Inc	10.625	06/15/07
FWBI.GA	First Western Cap Tr I	9.875	02/01/27
GFSI.GA	GFSI Inc	9.625	03/01/07
FOMX.GD	Foamex L.P./Foamex Cap Corp	9.875	06/15/07
JCOM.GB	Jacor Communications Co	8.750	06/17/97
PXTR.GB	Peublo Extra Int'l Inc	9.500	08/01/03
TXPC.GB	Texas Petrochemical Corp	11.125	07/01/06
TTRR.GD	Tracor Inc	8.500	03/01/07
CMS.GD	CMS Energy Corp	7.625	11/15/04
FRTG.GA	Fortress Group Inc	13.750	05/15/03
HSRS.GB	HS Resources Inc	9.250	11/15/06
OEI.GA	Ocean Energy Inc	8.875	07/15/07
MVER.GA	McSaver Finl Svs Inc	7.875	08/01/03
MVER.GB	McSaver Finl Svs Inc	7.400	02/15/02
MVER.GC	McSaver Finl Svs Inc	7.600	08/05/97
FEDD.GA	Fedders North America Inc	9.375	08/15/07
HWYM.GA	HighwayMaster Communications Inc	13.750	09/15/05
ACOH.GA	Argo-Tech Corp	8.625	10/01/07

As of December 30, 1997, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
CRBR.GB	Chancellor Radio Broadcasting Co.	12.500	10/01/04
SPOT.GB	Panamsat LP/Cap Corp.	11.375	08/01/03
ALG.GB	Arkla Inc.	8.000	01/15/97
ALG.GC	Arkla Inc.	9.875	02/15/18
ALG.GE	Arkla Inc.	9.875	04/15/97
CBLV.GA	Cablevision Inds Corp.	10.750	01/30/02
CVXP.GB	Cleveland Elec Illuminating Co.	9.250	05/01/09
CVXP.GE	Cleveland Elec Illuminating Co.	9.375	03/01/17
CMS.GB	CMS Energy Corp.	9.875	10/01/99
AMR.GQ	AMR Corp. Del	6.875	11/15/95
CYRX.GA	Cyrix Corp.	5.500	06/01/01
SPOT.GB	Panamsat LP/Cap Corp	11.375	08/01/03
ALG.GB	Arkla Inc	8.000	01/15/97
ALG.GC	Arkla Inc	9.875	02/15/18
ALG.GE	Arkla Inc	9.875	04/15/97
CBLV.GA	Cablevision Inds Corp	10.750	01/30/02
CVXP.GB	Cleveland Elec Illuminating Co	9.250	05/01/09
CVXP.GE	Cleveland Elec Illuminating Co	9.375	03/01/17
CVXP.GF	Cleveland Elec Illuminating Co	10.000	06/01/00
CMS.GB	CMS Energy Corp	9.875	10/01/99
AMR.GQ	AMR Corp Del	6.875	11/15/95
RAPA.GA	Rapid American Corp Del	7.000	05/15/94
RAPA.GB	Rapid American Corp Del	7.000	05/15/94
RAPA.GC	Rapid American Corp Del	10.750	12/01/03
RAPA.GD	Rapid American Corp Del	12.000	01/15/99
RAPA.GE	Rapid American Corp Del	10.750	10/01/04

Symbol	Name	Coupon	Maturity
RAPA.GF	Rapid American Corp Del	11.000	10/01/05
RAPA.GG	Rapid American Corp Del	10.000	08/01/06
RAPA.GH	Rapid American Corp Del	14.500	03/01/94
CG.GA	Colombia Gas System Inc	6.250	10/01/91
CFCN.GA	Commercial Fed Cap	10.250	12/15/99
CAG.GA	Conagra Inc	9.750	11/01/97
FTX.GA	Freepport-McMoran Inc	10.875	05/15/01
HSX.GA	Hook-Suprex Inc	10.125	06/01/02
IMD.GA	IMO Industries Inc	12.250	08/15/97
IMD.GB	IMO Industries Inc	12.000	11/01/01
KEMM.GA	Kemmerer Bottling Group Inc	10.875	06/01/00
KR.GA	Kroger Co	9.750	02/15/04
KR.GC	Kroger Co	9.750	02/15/04
KR.GG	Kroger Co	9.000	08/15/99
MACK.GA	Mack Truck Inc	7.875	09/15/97
MVL.GA	Manville Corp	9.000	12/31/03
MAT.GA	Mattel Inc	10.125	08/15/02
SPOT.GA	Panamsal LP/Cap Corp	9.750	08/01/01
AGY.GB	Argosy Gaming Co	12.000	06/01/01
APLC.GA	APL Corp	10.750	08/01/97
MXS.GA	Maxus Energy Corp	8.500	04/01/08
MXS.GB	Maxus Energy Corp	11.250	05/01/13
MXS.GC	Maxus Energy Corp	11.500	11/15/15
NEV.GA	Nuevo Energy Co	12.500	06/15/02
NVFC.GA	NVF Co	5.000	01/01/94
NVFC.GB	NVF Co	10.000	11/15/03
OI.GE	Owens ILL Inc	9.750	08/15/04
OI.GF	Owens ILL Inc	9.950	10/15/04
OI.GH	Owens ILL Inc	10.000	08/01/02
RBK.GA	Reebok Int'l Ltd	9.750	09/15/98
RFED.GA	Roosevelt Fin'l Grp nc	9.500	08/01/02
SPT.GA	Southern Pacific Trans Co	8.200	12/01/01
TRON.GA	Third Nat'l Corp	7.500	11/15/02
TWA.GB	Trans World Airlines	8.000	11/03/00
UNBK.GA	Union Bank Los Angeles Calif	7.350	02/01/01
MRO.GA	USX-Marathon Group	4.625	01/01/96
MRO.GD	USX-Marathon Group	8.875	09/15/97
VINL.GA	Virginia Nat'l Bank Norfolk	7.600	10/01/96
VON.GB	Vons Cos Inc	8.375	10/01/99
ZOS.GA	Zapata Corp	10.875	05/01/01
MAFC.GA	Mafco Inc	11.875	11/15/02
HAR.GA	Harman Intl Ind Inc New	12.000	08/01/02
RDC.GA	Rowan Cos Inc	11.875	12/01/01

As of December 30, 1997, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
PAX.GA	PXN.GA	Paxson Communications Corp	11.625	10/01/02

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASD RegulationSM 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.

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DISCIPLINARY ACTIONS

Disciplinary Actions Reported For January

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (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, January 19, 1998. The information relating to matters contained in this *Notice* is current as of the end of December 23.

Firm Expelled, Individual Sanctioned

S.C. Costa Company (Tulsa, Oklahoma) and **Steven C. Costa (Registered Principal, Tulsa, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$100,000, jointly and severally. The firm was expelled from NASD membership and Costa was 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 Costa, failed to exercise reasonable and proper supervision over an individual.

Firm Expelled

M.G.S.I. Securities, Inc. (Houston, Texas) submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it recommended and sold highly volatile, highly complex Collateralized Mortgage Obligation (CMO) derivatives to a public customer, contrary to the customer's stated investment objectives and needs. The findings also stated that the firm failed to disclose to the cus-

tommer the unsuitability of the recommended investments and made numerous material misrepresentations and material omissions of fact to the customer in connection with the recommendation. The NASD also found that the firm failed to implement, maintain, and enforce adequate supervisory procedures.

Firm And Individual Fined

City Securities Corporation (Indianapolis, Indiana) and **James Allen Merten (Registered Principal, Zionsville, Indiana)** were fined \$15,000, jointly and severally. The National Business Conduct Committee (NBCC) imposed the sanction following review of a Chicago District Business Conduct Committee (DBCC) decision. The sanction was based on findings that the firm, acting through Merten, failed adequately to supervise an individual. In addition, the firm allowed an individual to engage in selling option contracts without proper registration.

Firm Fined

C.P. Baker & Company, Ltd. (Boston, Massachusetts) 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 held, on behalf of a customer account, unhedged short position contracts that exceeded the application position limit. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations concerning the NASD's option position limit rules.

Individuals Barred or Suspended

James Adams (Associated Person, Littleton, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$313,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Adams consented to the described sanctions and to the entry of findings that he made improper use of customer securities and funds totaling \$62,422.14 by transferring the amount to an account over which he exercised control and/or ownership without the customer's authorization.

Max Curt Altolaguirre (Registered Representative, Bellerose, New York) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Altolaguirre engaged in acts of misrepresentations, forgery, falsification of records, and improper use of customer funds.

Michael Allen Aragon (Registered Representative, Newport Beach, California) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Aragon failed to respond to NASD requests for information.

Jose Antonio Caballero (Registered Representative, Allen, Texas) was fined \$40,000, barred from association with any NASD member in any capacity, and ordered to requalify by exam. The sanctions were based on findings that Caballero received a \$9,813.11 check from a public customer for investment purposes and failed to invest such monies on behalf of the customer. Caballero also failed to respond to NASD requests to appear for an on-the-record interview.

Jane E. Cipriani (Registered Representative, Baltic, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$6,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cipriani consented to the described sanctions and to the entry of findings that she forged the names of public customers onto insurance disbursement forms to obtain checks totaling \$1,021.85. The NASD found that Cipriani converted the funds to her own use and benefit without the customers' knowledge or consent.

Miguel Angel Cruz (Registered Representative, Shelby Township, Michigan) was fined \$30,000, suspended from using sales literature and advertisements for one year, and required to file and obtain from the NASD Advertising Department a "no objection" letter concerning all of his advertisements and sales literature prior to use. In addition, Cruz must pay \$6,544.12 in restitution to customers and requalify by exam as an investment company and variable contracts representative. The NBCC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Cruz made unsuitable recommendations and misrepresentations of material facts to public customers in connection with sales of variable life insurance policies. In addition, Cruz circulated radio advertisements to the public that were misleading and did not comport with the NASD's advertising rule. Cruz also engaged in outside business activities without providing prompt written notice to his member firm.

John Gregory D'Angelo (Registered Principal, Newport Beach, California) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member as a financial and

operations principal for 30 days. Without admitting or denying the allegations, D'Angelo consented to the described sanction and to the entry of findings that a member firm, acting through D'Angelo, failed to compute accurately the amount required to be deposited into the Special Reserve Bank Account for the Exclusive Benefit of Customers. The findings also stated that D'Angelo, acting on behalf of a member firm, failed to maintain possession and control of all fully paid for customer securities.

Gregory D. Dial (Registered Representative, Baton Rouge, Louisiana) was fined \$65,000, barred from association with any NASD member in any capacity, and ordered to pay \$30,590.24 in restitution to a member firm. The sanctions were based on findings that Dial exercised discretion in the account of public customers without having obtained prior written authorization from the customers and prior written acceptance of the account as discretionary by his member firm. Dial also recommended and engaged in purchase and sale transactions in the account of public customers without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. In addition, Dial failed to properly indicate on 14 trade order tickets, for transactions in mutual funds, that such transactions involved mutual fund switches, thus causing his member firm's books and records to be inaccurate. Furthermore, Dial failed to respond timely and completely to NASD requests for information.

Frank DiGiovanni (Registered Representative, Elmont, New York) 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, DiGiovanni consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Vincent R. DiGiulio (Registered Principal, Warwick, Rhode Island) was fined \$90,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DiGiulio engaged in private securities transactions outside the regular scope of his employment with his member firm without giving prior written notice to his member firm. DiGiulio also failed to respond to NASD requests for information.

Ezenwa Myke Ekenyere (Registered Representative, Brooklyn, New York) was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$40,918.73. The sanctions were based on findings that Ekenyere arranged to have an impostor take the Series 7 exam on his behalf. Ekenyere also failed to respond to NASD requests for information and to appear for an on-the-record interview.

Mark R. Fabello (Registered Representative, Sheridan, Oregon) 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, Fabello consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Samuel Feratovic (Registered Representative, Brooklyn, New York) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay dis-

gorgement. The sanctions were based on findings that Feratovic arranged to have an impostor take the Series 7 exam on his behalf. Feratovic also failed to respond to NASD requests to appear for an on-the-record interview.

John Edward Flanagan, Jr. (Registered Representative, Hauppauge, New York) submitted an Offer of Settlement 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, Flanagan consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers to applications for the purchase of variable contracts and to variable annuity surrender forms without the authorization or consent of the customers. The findings also stated that Flanagan purchased annuities for the accounts of public customers and effected the surrender of the annuities without the prior authorization and consent of the customers. Furthermore, the NASD found that Flanagan failed to respond to NASD requests for information and appear at an on-the-record interview.

Del Brooks Gieche (Registered Representative, Imlay City, Michigan) was fined \$180,000, barred from association with any NASD member in any capacity, and required to pay \$32,039.65 in restitution. The sanctions were based on findings that Gieche withdrew \$32,039.65 from the securities account of a public customer without the customer's knowledge or consent and used the proceeds for some purpose other than for the benefit of the customer. Gieche also failed to respond to NASD requests for information.

Richard L. Goodrich (Registered Representative, San Diego, California) was fined \$20,000 and barred

from association with any NASD member in any capacity. The sanctions were based on findings that Goodrich failed to respond to NASD requests for information.

Peter E. Gradwohl (Registered Representative, Montlake Terrace, Washington) 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, Gradwohl consented to the described sanctions and to the entry of findings that he accepted \$50,000 from public customers intended for investment in securities. The findings stated that Gradwohl failed to establish an account for the customers, failed to use the funds for their intended purposes, and instead, used the funds for his own purposes.

Tazeem Hasham (Registered Representative, Kirkland, Washington) submitted an Offer of Settlement pursuant to which she was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hasham consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information.

Anthony Wayne Heuermann (Registered Representative, Spring, Texas) was fined \$120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Heuermann effected private securities transactions and failed to provide written notice to his member firm. Furthermore, Heuermann engaged in the investment banking business, but failed to register with the NASD in the category of registration appropriate to the function he performed. Heuermann also failed to respond to NASD requests for information.

Michael J. Hewitt, Jr. (Registered Representative, Linwood, Michigan) was fined \$95,000, barred from association with any NASD member in any capacity, and ordered to pay \$15,081 in restitution to a member firm. The sanctions were based on findings that Hewitt purchased, for his combined assets program account at his member firm, stock index put option contracts totaling \$9,616 and failed to pay his member firm for the purchase. Furthermore, Hewitt withdrew \$5,465 from his account at his member firm when he had insufficient funds in the account and used the funds for some purpose other than for the benefit of his member firm. Hewitt also failed to respond to NASD requests for information.

Eugene Gerome Johnson, II (Registered Representative, Waukegan, Illinois) was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$300 in restitution. The sanctions were based on findings that Johnson obtained \$300 from a public customer intended for the purchase of an insurance policy, failed to follow the customer's instructions, and used the funds for some purpose other than the benefit of the customer. Johnson also failed to respond to NASD requests for information.

John F. Keenan (Registered Representative, Warwick, Rhode Island) was fined \$90,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Keenan engaged in private securities transactions outside the regular scope of his employment with his member firm without giving prior written notice to his member firm. Keenan also failed to respond to NASD requests for information.

David A. Leonard (Registered Representative, Exeter, New Hampshire) was fined \$30,000 and

barred from association with any NASD member in any capacity. The sanctions were based on findings that Leonard withheld and misappropriated to his own use and benefit policyholder funds totaling \$2,000. Leonard also failed to respond to NASD requests for information.

Dean James Liakos (Registered Representative, Rego Park, New York) was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$105,419.36. The sanctions were based on findings that Liakos arranged to have an impostor take the Series 7 exam on his behalf. Liakos also failed to respond to NASD requests for information.

John L. Lopez (Registered Representative, Marietta, Georgia) was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by exam as an investment company and variable contracts products representative. The sanctions were based on findings that Lopez forged the signature of a registered representative on a variable annuity application, suitability questionnaire and disclosure form for a public customer. Lopez also failed to respond to NASD requests for information.

Todd J. Loucks (Registered Representative, Oneonta, New York) was fined \$25,000 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Loucks prepared and filed with his member firm a fictitious application wherein he forged the signature of a public customer on a variable annuity application without the customer's knowledge or consent.

Christos Margaritis (Registered Representative, Bayside, New York) was fined \$50,000, barred

from association with any NASD member in any capacity, and required to pay disgorgement. The sanctions were based on findings that Margaritis arranged to have an impostor take the Series 7 exam on his behalf. Margaritis also failed to respond to NASD requests to appear for an on-the-record interview.

Frank A. McCanham (Registered Representative, Columbus, Georgia) was fined \$5,000, suspended from association with any NASD member in any capacity for two years, required to requalify as a general securities representative, and required to pay restitution. The sanctions were based on findings that McCanham effected private securities transactions outside the regular course or scope of his employment with his member firm and failed to provide written notice to, or obtain approval from, his member firm.

McCanham's suspension began on February 14, 1995 and concluded on February 14, 1997.

Thomas W. Medici (Registered Representative, Macungie, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Medici failed to respond to NASD requests for information.

Tony Hyung Park (Registered Representative, Mission Viejo, California) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Park failed to respond to NASD requests for information.

David Grayland Pate, Sr. (Registered Representative, San Antonio, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$18,100 and suspended from association with any

NASD member in any capacity for two years. Without admitting or denying the allegations, Pate consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with written notice describing in detail the proposed transaction and his proposed role therein. The findings also stated that Pate was employed by or accepted compensation from another member firm as a result of business activity outside the scope of his relationship with his member firm, even though he had not provided prompt written notice to his member firm.

Kenneth Alan Rosenfield (Registered Representative, Mission Viejo, California) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rosenfield failed to respond to NASD requests for information.

Stephen Phillip Ross (Registered Representative, Agoura Hills, California) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ross failed to respond to NASD requests to appear for an on-the-record interview.

Scott A. Richards (Registered Representative, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for one year and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Richards consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm describing

the proposed transactions and his proposed role therein.

John N. Salerno (Registered Principal, Chicago, Illinois) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Salerno purchased and sold securities for the account of a public customer without their knowledge or consent. Salerno also failed to respond to NASD requests for information.

Peter Adam Schur (Registered Representative, San Diego, California) 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 five business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Schur consented to the described sanctions and to the entry of findings that he effected purchases of securities in the account of public customers without their knowledge or consent.

Susan A. Shackleton (Registered Representative, Woodland Hills, California) submitted an Offer of Settlement pursuant to which she was fined \$5,800 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Shackleton consented to the described sanctions and to the entry of findings that she sent correspondence to the attorney of a public customer that was misleading. The findings also stated that Shackleton sent correspondence to the attorney of a public customer on the letterhead of a bank instead of her member firm.

Neville L. Sinclair (Registered Representative, Baltimore, Maryland) was fined \$20,000 and barred

from association with any NASD member in any capacity. The sanctions were based on findings that Sinclair failed to respond to NASD requests for information.

Andrew L. Solice (Registered Representative, Philadelphia, Pennsylvania) 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 15 business days. Without admitting or denying the allegations, Solice consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Gerald James Stoiber (Registered Representative, Mokena, Illinois) was fined \$450,000, suspended from association with any NASD member in any capacity for six months, and required to pay \$450,000 in restitution to public customers. However, the fine may be reduced by any amounts Stoiber pays in restitution to public customers. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a March 1996 NBCC decision. The sanctions were based on findings that Stoiber engaged in private securities transactions while failing to give prior written notice to, and obtain prior written approval from, his member firm to engage in such activities.

Stoiber filed a petition for judicial review in the U.S. Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

Robert Joseph Sucarato (Registered Representative, Old Bridge, New Jersey) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sucarato failed to respond completely to NASD requests for information.

Gary P. Taylor (Registered Representative, Newbury, California) was fined \$663,167, barred from association with any NASD member in any capacity, and required to pay \$128,633.36 in restitution to public customers. The sanctions were based on findings that Taylor received checks totaling \$128,633.36 from public customers for the purchase of shares of common stocks. Taylor failed to purchase the stocks, cashed the checks, and converted the funds for his own use. Furthermore, Taylor fabricated confirmation notices in order to make it appear that purchases had been made on behalf of customers. In addition, Taylor failed to respond to NASD requests for information.

Individuals Fined

James Howard Stovesand (Registered Principal, Santa Barbara, California) submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Stovesand consented to the described sanctions and to the entry of findings that he engaged in a course of conduct that resulted in the mishandling and/or misuse of his member firm's branch office budget. The NASD found that Stovesand directed another individual to pay salaries to non-registered individuals either from his own personal funds or deductions from his income and reimbursed the individual for the payment through directed commissions. Furthermore, the NASD determined that Stovesand effected the reimbursements by submitting false seminar expense receipts to his member firm.

Bruce Nairn Whitman (Registered Representative, Stamford, Connecticut) submitted an Offer of Settlement pursuant to which he was fined \$13,268, ordered to requalify by exam as a general securities representative, and ordered to pay \$15,550

in restitution to a public customer. Without admitting or denying the allegations, Whitman consented to the described sanctions and to the entry of findings that he executed numerous purchase and sale transactions in various securities without authorization from the respective account holder.

Decisions Issued

The following decisions have been issued by the DBCC and have been appealed to the NBCC as of December 31, 1997. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NBCC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Kunz & Cline Investment Management Inc. (Salt Lake City, Utah) and **Kevin D. Kunz (Registered Principal, Fruit Heights, Utah)** were fined \$30,000, jointly and severally. The firm was suspended from participation in any public or private offering of securities in the capacities of lead underwriter, primary placement, or sales agent until it retains an independent consultant to review its operational, compliance, and supervisory procedures pertaining to participation in such offerings in such capacities. Kunz was fined \$5,000, suspended from association with any NASD member in any principal capacity for one year, suspended from association with any NASD member in any capacity for one month, and required to requalify by exam as a principal.

The sanctions were based on findings that the firm, acting through Kunz, sold securities pursuant to private placement memoranda that contained material misrepresentations and omissions. The firm, acting through Kunz, also offered and sold securities that were neither registered nor

exempt from registration. Furthermore, the firm, acting through Kunz, made recommendations to purchase securities that were unsuitable for certain customers and permitted an unregistered person to recommend the securities and execute the transactions that resulted from those recommendations. In addition, Kunz compensated an unregistered person in connection with his participation in securities transactions.

The firm and Kunz have appealed this action to the NBCC and the sanctions are not in effect pending consideration of the appeal.

Brian Prendergast (Registered Representative, Engelwood, Colorado) was barred from association with any NASD member in any capacity. The sanction was based on findings that Prendergast acted as a securities broker without complying with the registration provisions of the federal securities law and induced and effected securities transactions by means of a deceptive and fraudulent device or contrivance. Prendergast also solicited transactions by using a private placement memorandum that contained materially misleading projections of returns, exaggerated claims, and misleading representations and omitted to disclose material information. In addition, Prendergast distributed sales literature that failed to conform to the standards for sales literature and placed an advertisement in a newspaper that failed to comply with requirements for advertisements. Furthermore, Prendergast failed to disclose to his member firm that he had established accounts at another member firm and failed to disclose to the other firm his association with his member firm. Prendergast also failed to respond to NASD requests for information.

Prendergast has appealed this action to the NBCC and the sanctions are

not in effect pending consideration of the appeal.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD 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 these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

SFI Investments, Inc. (New York, New York), Frank Joseph Fasano (Registered Principal, Summit, New Jersey), Kevin Maurice Smith (Registered Principal, Brooklyn, New York), and Jeffrey Barnett Bronfman (Registered Principal, Fort Lee, New Jersey) were named as respondents in an NASD complaint alleging that the firm, acting through Fasano, Smith, and Bronfman, engaged in a variety of improper trading practices, which included utilizing two customer accounts to serve as the firm's *de facto* trading accounts and executing more than 1,700 trades in those accounts over a six-month period; effecting fictitious transactions in those and other accounts; multiple violations of SEC Rule 15c3-1; and several violations of the firm's restriction agreement with the NASD. Further, the complaint alleges that the firm, acting through Fasano, permitted two individuals to function as general securities representatives without the benefit of NASD registration and failed to respond timely to several NASD requests for information. In addition, the firm, acting through Fasano, is alleged to have failed to adequately enforce its supervisory procedures and failed to detect and

prevent the violations alleged in the complaint.

Edward F. Escamilla (Registered Representative, Los Angeles, California) was named as a respondent in an NASD complaint alleging that he converted customer funds in the amount of \$1,000 to his own use and benefit. Specifically, the complaint alleged that a public customer gave Escamilla two money orders totaling \$1,000 for purposes of making an investment in a mutual fund. Instead of making the investment, Escamilla cashed the money orders and converted the funds. The complaint also alleged that Escamilla failed to respond to NASD requests for information.

Donald Turney (Registered Representative, Babylon Village, New York) was named as a respondent in an NASD complaint alleging he made material misrepresentations and omitted to disclose material information to members of the public in connection with the recommendation to purchase securities. Turney also is alleged to have projected the future price of a security to a member of the public without a reasonable basis for the projection and effected four transactions in customer accounts without the prior authorization and consent of the customers.

Michael C. Young (Registered Representative, Los Angeles, California) was named as a respondent in an NASD complaint alleging that he converted funds from the account of a bank customer while he was dually employed by the bank and an affiliated member firm. Young also is alleged to have converted \$9,100 from the bank customer's account to his own use and benefit without the knowledge or consent of the customer.

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.

Amerivest Financial Group,
Woodland Hills, California
(November 25, 1997)

WM B Austin & Associates,
Moulins, France
(November 25, 1997)

Conservative Securities Company,
Colorado Springs, Colorado
(November 25, 1997)

Delco Securities Company,
Houston, Texas
(November 25, 1997)

Great American Securities,
Phoenix, Arizona
(November 25, 1997)

ZI Securities Corporation,
Dallas, Texas
(December 8, 1997)

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

Greenway Capital Corporation, (n/k/a Cortlandt Capital Corporation), 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

Charles S. Beck,
Chino Hill, California

Robert W. Campbell,
Tucker, Georgia

Charles M. Francis,
Staten Island, New York

Jerry A. Hurni, Jr.,
Farmington Hills, Michigan

Peter J. Matera, Jr.,
Brooklyn, New York

Richard B. Perry,
Southampton, Pennsylvania

Robert W. Vallair,
Houston, Texas

Individual Whose Registration Was Canceled/Suspended Pursuant To NASD Rule 9622 For Failure to Pay Arbitration Award

Jack Basile, Brooklyn, New York

21 Brokerage Firms and Bank Fined \$325,000 For Violating MSRB Rules

NASD Regulation and the Office of the Comptroller of the Currency (OCC) today announced that, as the result of coordinated investigations with the Securities and Exchange Commission (SEC), 21 brokerage firms and a division of a national bank have been fined a total of \$325,000 and censured for violating Municipal Securities Rulemaking Board (MSRB) rules that require disclosure to investors in municipal securities. NASD Regulation sanctioned the 21 brokerage firms and the OCC sanctioned the bank.

All 21 brokerage firms and the bank,

which neither admitted nor denied the allegations, were sanctioned for violating MSRB Rule G-36 by filing municipal securities underwriting documents late. Without the filings mandated by Rule G-36, investors lack easy access to key information about the issuer, including its ability to repay bonds and, in the case of an advance refunding, information about an escrow account that has been established.

Rule G-36 requires that the sole or managing underwriter of a municipal securities offering send the MSRB two copies of the final official statement within one business day of receiving the information from the issuer. In no case can the information be sent later than 10 business days after the final agreement to purchase, offer, or sell the securities. In the case of an advance refunding, the documents must be sent within five business days of the delivery of the securities. Investors can gain access to this important information about municipal securities through the MSRB's Municipal Securities Information Library.[®]

Eight of the 21 firms were also sanctioned, in certain instances, for failing to file required documents at all; and a separate group of eight of the 21 firms were also sanctioned for not properly mailing the documents to the MSRB—both of which are mandated by Rule G-36.

Eleven of the 21 firms and the bank were also sanctioned for not keeping records showing when they received required documents from the issuer, or when they sent those documents to the MSRB, as required by MSRB Rule G-8.

“Every investor has the right to the information Rule G-36 provides. Not supplying that critical disclosure, or making it available well after the fact, does not serve investors well.

As a result, it's very important that every municipal securities firm lives up to its responsibilities to keep investors informed,” said Mary L. Schapiro, NASD Regulation President.

“It is important that banks and securities firms alike provide the information required under municipal securities Rule G-36,” said Comptroller of the Currency Eugene A. Ludwig. “The OCC intends to make sure that every national bank that sells municipal securities provides the information that individual investors need to make informed decisions.”

NASD Regulation and the OCC thanked the SEC's Office of Compliance Inspections and Examinations for its assistance in bringing these cases.

The following firms were sanctioned and fined the indicated amounts by NASD Regulation:

Bear, Stearns & Co. Inc.
\$25,000

First of America Securities, Inc.
\$10,000

First Southwest Company
\$10,000

First Union Capital Markets Corp.
\$10,000

Goldman, Sachs & Co.
\$25,000

J.P. Morgan Securities Inc.
\$25,000

**Merrill Lynch, Pierce,
Fenner & Smith Inc.**
\$10,000

Miller, Johnson & Kuehn, Inc.
\$10,000

Morgan, Keegan & Co., Inc.
\$10,000

**Morgan Stanley & Co.,
Incorporated**
\$10,000

Oppenheimer & Co., Inc.
\$10,000

PaineWebber Incorporated
\$25,000

Piper Jaffray Inc.
\$10,000

PNC Capital Markets, Inc.
\$10,000

Prudential Securities Incorporated
\$25,000

Raymond James and Associates
\$10,000

Seattle-Northwest Securities Corp.
\$10,000

Smith Barney Inc.
\$25,000

Stone & Youngberg, LLC.
\$10,000

SunTrust Capital Markets, Inc.
\$10,000

Sutro & Co. Inc.
\$25,000

The following bank division was sanctioned and fined the indicated amount by the OCC:

**Commerce Capital, a division of
Commerce Bank, N.A.**
\$10,000

**NASD Regulation Issues Complaint
Against HGI, Maidstone Financial,
And Principals Of Both Firms;
Fraud And Illegal Profits Of \$16.2
Million Alleged**

NASD Regulation issued a complaint against HGI, Inc. (formerly known as The Harriman Group, Inc.), Maidstone Financial, Inc., and four principals of the two firms alleging fraud in connection with three public offerings, which resulted in more than \$16.2 million in illegal profits.

The complaint names HGI; Maidstone; and HGI's Vice President and Director, Brian Douglas Scanlon, and Secretary and Chairman, Mark Arthur Hanna. Maidstone's Chief Executive Officer and Chairman of the Board, Marshall Bernstein, and President, Stuart Litman, were also named.

The complaint alleges that, as underwriters of three securities, HGI and Maidstone made more than \$16.2 million in illicit profits, defrauding scores of investors in the process. The three securities are: Sims Communications, Inc., Natural Health Trends Corp., and International Cutlery, Ltd. The violations occurred in 1995, shortly after the commencement of trading in each security.

According to the complaint, the two firms, working through the four individuals, illegally profited by purchasing stock at below market prices to cover large short positions each firm had intentionally created in its inventories. In each offering, the firms purchased the covering shares from shareholders who had received their securities prior to the initial public offerings (IPOs) through private placements and bridge financing arrangements. In registration statements and amendments filed by the two firms with the SEC, the shares of these "selling shareholders" were restricted and therefore could not be

sold for up to two years after the IPO, unless the lead underwriter granted permission.

The complaint further alleges that both firms entered into private transactions with the "selling shareholders" to purchase their shares to cover the short positions in their inventories. The firms' undisclosed distribution of these securities violates federal securities laws and NASD rules.

As alleged, the two firms, acting through the four principals, engaged in fraud by failing to disclose the private transactions with the selling shareholders; the firms' plans to distribute the selling shareholders' securities to the public; and the receipt of unlawful underwriting compensation.

HGI, according to the complaint, made \$12 million in excessive and undisclosed underwriting compensation, and Maidstone Financial, Inc., received more than \$4.2 million in excessive and undisclosed underwriting compensation.

Neither firm currently operates a securities business. In June 1997, HGI (which was based in Jericho, N.Y.) filed to withdraw its membership from the NASD. In early December 1997, Maidstone (which was based in Manhattan) also filed to withdraw from the NASD. Scanlon left HGI in February 1997, and Litman left Maidstone in October 1996. Hanna remained at HGI until the firm closed its doors, and Bernstein remained at Maidstone until the firm filed to withdraw from the NASD earlier this month.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD 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 respondents before drawing any conclusion regarding the allegations in the complaint.

Under NASD Regulation rules, the individuals and the firms named in the complaint can file a response and request a hearing before an NASD Regulation disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from the NASD.

NASD Regulation Bars Nicholas Rudi; Key Figure In Armacon Probe Also Censured And Fined For Failure To Cooperate

NASD Regulation announced that it has barred Nicholas A. Rudi, the former President and Financial Operations Principal of Armacon Securities Inc., for failing to cooperate with an NASD Regulation investigation. Rudi was also fined \$20,000 and censured.

The decision barring Rudi by NASD Regulation's National Business Conduct Committee (NBCC), the regulatory organization's appellate body, affirmed an August 1, 1997, decision by NASD Regulation's District Business Conduct Committee (DBCC) for District 9 (Philadelphia). Rudi appealed the initial decision to the NBCC. The bar is effective immediately.

Under NASD Regulation rules, all registered brokers are required to provide information on request. Failure to do so can result in sanctions, up to and including being barred from the securities industry. The NBCC decision added that failure to provide information fully and promptly undermines the NASD's ability to carry out its regulatory mandate.

In the course of NASD Regulation's investigation into whether Armacon violated federal securities laws or NASD Regulation rules by receiving illegal payments from brokerage firms or registered brokers, Rudi was called on to provide on-the-record

interviews with NASD Regulation investigators. To date, investigators have focused on Armacon's activities between 1991 and 1993.

In numerous attempts to arrange interviews with Rudi and his lawyer, specific dates and times for interviews with NASD Regulation were scheduled—and Rudi subsequently failed to appear at any of them. A full chronology of NASD Regulation's efforts to schedule an interview with Rudi is part of the NBCC's decision, which is publicly available.

Rudi registered with the NASD in February 1991. He was terminated from Armacon in May 1995, and has not worked in the securities industry since then. Shortly after receiving subpoenas from the Department of Justice and the SEC, Armacon voluntarily suspended its business activities in February 1995. NASD Regulation retains disciplinary jurisdiction over all registered brokers for two years after they leave the industry.

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FOR YOUR INFORMATION

NASD Regulation Reminds Members To Develop Year 2000 Plans

NASD Regulation, Inc., urges National Association of Securities Dealers, Inc. (NASD[®]) members to develop and implement an action plan to ensure and achieve Year 2000 compliance. The scope of Year 2000 plans should extend to all information technology systems (internal and external) used to conduct a securities business and other business support systems (e.g., telephone, power, elevators, etc.). 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.

Be aware that computer failures related to Year 2000 problems generally will not be considered a defense to violations of firms' regulatory or compliance responsibilities or a mitigation of sanctions for such violations.

By now, you should have already completed and returned to NASD RegulationSM the mandatory "Year 2000 Compliance Survey" distributed with *NASD Special Notice to Members 97-96*. This survey must be returned by January 31, 1998. Member firms that have returned a completed "Year 2000 Survey" to the New York Stock Exchange are not required to complete the NASD Regulation survey at this time. If you need an additional copy of the survey, it is posted on the Year 2000 Web Pages of both the NASD Regulation (www.nasdr.com) and NASD Web Sites (www.nasd.com).

Remember, the deadline **for Year 2000 compliance** is December 31, 1999, and there are no extensions.

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SPECIAL NASD NOTICE TO MEMBERS 98-14

NASD Requests Comment
On Limiting Quotations On
Over-The-Counter Bulletin
Board (OTCBB) To
Securities Of Reporting
Issuers; **Comment Period
Expires February 16, 1998**

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On December 11, 1997, the National Association of Securities Dealers, Inc. (NASD[®]) Board of Governors approved the solicitation of comment on a proposed rule that would amend Rule 6530 to limit quotations on the OTC Bulletin Board[®] (OTCBB) to the securities of issuers that are current in their reports filed with the Securities and Exchange Commission (SEC) or other regulatory authority, and on a proposed rule that would amend Rule 6540 to prohibit a member from quoting a security on the OTCBB unless the issuer has made current filings.

Questions regarding this rule change should be directed to Sara Nelson Bloom, Associate General Counsel, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8294 or David Spotts, Senior Attorney, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8071.

Request For Comment

The NASD 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
National Association of Securities
Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1500;

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 **February 16, 1998**.

NASD REQUEST FOR COMMENT 98-14

Executive Summary

On December 11, 1997, the National Association of Securities Dealers, Inc. (NASD[®]) Board of Governors approved the solicitation of comment on a proposed rule that would amend Rule 6530 to limit quotations on the OTC Bulletin Board[®] (OTCBB) to the securities of issuers that are current in their reports filed with the Securities and Exchange Commission (SEC) or other regulatory authority, and on a proposed rule that would amend Rule 6540 to prohibit a member from quoting a security on the OTCBB unless the issuer has made current filings.

Questions regarding this rule change should be directed to Sara Nelson Bloom, Associate General Counsel, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8294 or David Spotts, Senior Attorney, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8071.

Background And Summary

The OTC Bulletin Board is a quotation service that displays real-time quotes, last sale prices, and volume information in domestic securities. Eligible securities include national, regional, and foreign equity issues, warrants, units, and American Depositary Receipts (ADRs) not listed on any other U.S. national securities market or exchange. Unlike The Nasdaq Stock MarketSM (Nasdaq[®]) or registered exchanges where individual companies apply for listing on the market—and must meet and maintain strict listing standards—individual brokerage firms, or market makers, enter quotations for specific securities on their own behalf through the OTCBB.

The NASD has actively studied the over-the-counter market in an effort to address abuses in the trading and sales of thinly traded, thinly capital-

ized (microcap) securities. These securities are not listed on The Nasdaq Stock Market or any exchange. Rather, they trade on the OTCBB, in the “pink sheets” published by the National Quotation Bureau, Inc., and in other quotation media where there are no listing requirements. The staff is concerned with the potential for fraud in this market, given the lack of reliable and current financial information about the issuers, and the perception by the public that the OTCBB is similar to a highly regulated market, such as the registered exchanges or The Nasdaq Stock Market. These proposals were developed in an effort to balance the benefits that transparency provides with the need for public information about the issuers. While the OTCBB provides real-time quotations for these securities, and other quotation media for OTC securities do not, transactions in OTC securities are nonetheless subject to real-time last sale trade reporting. These trade reports are publicly disseminated through market data vendors on a real-time basis.

In light of the above, the NASD Board approved the solicitation of comment on rules that would:

(i) limit quotations on the OTCBB to the securities of issuers that make current filings pursuant to the Securities Exchange Act of 1934 (Exchange Act), including depository institutions that report to their appropriate regulatory agencies pursuant to section 12(i) of the Exchange Act, registered closed-end investment companies, and insurance companies that are exempt from registration under section 12(g)(2)(G) (Eligibility Rule); and

(ii) prohibit member firms from quoting an issuer’s security if the issuer has not made current reports with the SEC or the appropriate insurance or bank regulatory authority, and for

those issuers that do not file with the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, require a member to provide such reports to the NASD (Ineligible Quotation Rule).

Under these rules, members will be permitted to enter quotations only for issuers that are current in their reporting obligations. With regard to most of these issuers, the filings would be made through EDGAR.¹ With regard to non-EDGAR filers, such as foreign issuers, insurance companies and depository institutions, members must provide the reports to the NASD, but the reports may be provided to the NASD by any market maker in the security.

The NASD proposes that the continued quotation of non-current issuers be permitted for a 10-calendar day grace period. If the issuer does not become current in its filing requirement during the 10 calendar days, quotations would not be permitted on the OTCBB. The NASD is also considering affixing a modifier to the symbol of the OTCBB security to reflect when an issue is not current during this 10-day grace period. The NASD encourages comment on whether 10 calendar days is an appropriate grace period.

While the proposed rule language limits the eligibility of securities issued by depository institutions to those that provide reports pursuant to Section 12(i) of the Exchange Act, we specifically request comment on whether non-Exchange Act reporting depository institutions that provide publicly available financial reports to federal banking regulators (such as Call Reports) should also be eligible for quotation.

The NASD contemplates delaying the effectiveness of the rule for up to one year for those securities quoted on the OTCBB on the rule's effective

date, in order to permit market makers, issuers, and investors to take appropriate action. The NASD encourages comment on means of accommodating the potential large influx in Exchange Act registration statements, including phasing in issuers over six, nine and 12-month staggered periods.

Request For Comment

The NASD 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
National Association of Securities
Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1500;

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 **February 16, 1998**.

Text Of Amendments

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

6530. OTCBB Eligible Securities

A Member shall be permitted to quote the[The] following categories of securities [shall be eligible for quotation] in the Service:

(a) any domestic equity security that meets the following criteria:

(1) the security [that] is not listed on The Nasdaq Stock Market ("Nasdaq") or a registered national securities exchange in the U.S., except that an equity security [securities that are] shall be considered eligible if it:

(A[1]) is listed on one or more regional stock exchanges, and

(B[2]) [do] does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape [shall be considered eligible.];

(2) the security is issued by:

(A) an issuer whose securities are registered pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act"),

(B) an insurance company meeting the conditions of Section 12(g)(2)(G) of the Exchange Act, or

(C) a closed-end investment company registered under the Investment Company Act of 1940; and

(3) subject to a ten calendar day grace period, the issuer of the security is current in the filing of all required periodic reports with the appropriate regulatory agency as set forth in Section 12 of the Exchange Act; is current in the filing of periodic reports pursuant to Section 13(a) or 15(d) of the Exchange Act; or is current in the reporting requirements of the Investment Company Act of 1940.

(b) any foreign equity security or American Depositary Receipt (ADR) that meets the following criteria:

(1) prior to April 1, 1998, the security is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall be considered eligible if it is:

(A) listed on one or more regional stock exchanges, and

(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

(2) after March 31, 1998, the security:

(A) is registered with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934,

(B) meets the standards set forth in paragraph (a)(3) above, and

(C) is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall be considered eligible under this subparagraph (C) if it is:

[(A)](i) listed on one or more regional stock exchanges, and

[(B)](ii) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

(c) any equity security that [is] meets the following criteria:

(1) the security is undergoing delisting from either the New York Stock Exchange, Inc. (NYSE) or the American Stock Exchange, Inc. (AMEX) for non-compliance with maintenance-of-listing standards; and

(2) the security is subject to a trading suspension imposed by the NYSE or AMEX preceding the actual delisting; and

(3) the security meets the standards set forth in paragraphs (a)(2) and (3) above; and

(d) any Direct [District] Participation Program as defined in Rule 6910 that is not listed on Nasdaq or a registered national securities exchange in the U.S. and that meets the standards

set forth in paragraphs (a)(2) and (3) above.

(e) Paragraphs (a)(2) and (a)(3) above will not apply with respect to any security quoted in the Service on the effective date of this rule change until **{insert date one year after approval of rule change}**.

Rule 6540. Requirements Applicable to Market Makers

(a) No change

(b) No change

(1) Permissible Quotation Entries: no change

(2) Impermissible Quotation Entries

(A) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" or "offer wanted" indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security that is not an OTCBB-eligible security as set forth in Rule 6530.

(B) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" or "offer wanted" indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security of an issuer that does not make filings with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system unless the member:

(i) notifies the Association of the issuer of the security's schedule for the filing of all periodic reports required pursuant to the Exchange Act and the identity of the regulatory authority with which such reports are filed or ensures that such notice is provided; and

(ii) provides to the Association the issuer's periodic reports required pursuant to the Exchange Act prior to the expiration of the ten calendar day grace period described in Rule 6530(a)(3) or ensures that the required periodic reports are provided to the Association within that time period.

(3) [(2)] Voluntary Termination of Registration

(4) [(3)] More Than One Trading Location

(5) [(4)] Clearance and Settlement

(c) Compliance with Market Maker Requirements

Failure of a member or a person associated with a member to comply with this Rule may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

Endnote

¹ EDGAR (Electronic Data Gathering, Analysis, and Retrieval) is the SEC system for the receipt, acceptance, review and dissemination of documents submitted in electronic format.

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SPECIAL NASD NOTICE TO MEMBERS 98-15

NASD Regulation Requests
Comment On Proposal To
Adopt Recommendation
And Disclosure Rules For
Over-The-Counter (OTC)
Equity Securities;
**Comment Period Expires
February 16, 1998**

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) requests comment on two proposed rules, National Association of Securities Dealers, Inc. (NASD[®]) Rules 2315 and 2350, which would require members to review current issuer financial statements prior to recommending a transaction to a customer in an over-the-counter (OTC) equity security, and to deliver a disclosure statement to a customer prior to an initial purchase of an OTC equity security, respectively.

Questions concerning this *Notice* may be directed to David Spotts, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8071.

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, N.W.
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received by **February 16, 1998**. Before becoming effective, any rule change developed as a result of the 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 98-15

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) requests comment on two proposed rules, National Association of Securities Dealers, Inc. (NASD[®]) Rules 2315 and 2350, which would require members to review current issuer financial statements prior to recommending a transaction to a customer in an over-the-counter (OTC) equity security, and to deliver a disclosure statement to a customer prior to an initial purchase of an OTC equity security, respectively.

Questions concerning this *Notice* may be directed to David Spotts, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8071.

Background

On December 11, 1997, the NASD Board of Governors (NASD Board) approved the solicitation of comment on four rule proposals regarding the OTC market and the OTC Bulletin Board[®] (OTCBB). This *Notice* will specifically address in detail two of the four rule proposals. First, proposed Rule 2315 requires a member and associated person to review reasonably current financial statements of an issuer prior to recommending a transaction to a customer in an OTC equity security (Recommendation Rule). Second, proposed Rule 2350 requires a member to deliver a disclosure statement to customers prior to an initial purchase of an OTC equity security and annually (Disclosure Rule). The text of proposed Rules 2315 and 2350 follows this *Notice*.

The two other rule proposals the NASD Board approved for solicitation of comment include: a proposed rule prohibiting a member from quoting a security on the OTCBB unless the issuer has made current filings with the Securities and Exchange

Commission (SEC) or other regulatory authority, and a proposed rule limiting quotations on the OTCBB to the securities of issuers that are current in their reports filed with the SEC or other regulator. These two rule proposals will amend existing NASD Rules 6530 and 6540. The accompanying *Notice to Members 98-14* separately discusses these proposed rule amendments.

Staff of NASD Regulation and The Nasdaq Stock MarketSM (Nasdaq[®]) have actively studied the OTC market in an effort to address the abuses in the trading and sales of thinly traded, thinly capitalized (microcap) securities. These securities are not listed on The Nasdaq Stock Market or any exchange and trade on the OTCBB, in the "pink sheets" published by the National Quotation Bureau, Inc. (Pink Sheets), and in other quotation media where there are no listing requirements. NASD Regulation and Nasdaq are concerned with actual and potential fraud or manipulation in the markets for these securities, and the connection between potential fraud and manipulation and the lack of reliable and current financial information about issuers of microcap securities. The regulatory proposals concerning the microcap market by NASD Regulation and Nasdaq are meant to address these issues and the public perception that the OTCBB is equivalent to The Nasdaq Stock Market or exchange markets in terms of standards, regulatory structure and oversight.

These proposals were developed in an effort to balance the benefits that transparency provides with the need for public information about the issuers. While the OTCBB provides real-time quotations for these securities, and other quotation media for OTC securities do not, transactions in OTC securities are nonetheless subject to real-time last sale trade

reporting. These trade reports are publicly disseminated through market data vendors on a real-time basis.

In light of the above, the staff recommended, and the NASD Board approved, the solicitation of comment on four rule proposals that would address certain identifiable issues in the OTC market. These proposed rules would: (1) limit quotations on the OTCBB to the securities of issuers that make current filings pursuant to the Securities Exchange Act of 1934 (Exchange Act), registered closed-end investment companies, and insurance companies and banks that provide current financial reports to their regulatory authorities; (2) prohibit member firms from quoting an issuer's security if the issuer has not made current filings with the SEC or the appropriate insurance or bank regulatory authority, and for those issuers that do not file through EDGAR,¹ require a member to provide such reports to the NASD; (3) require members and associated persons to review current financial statements prior to making a recommendation to a customer in an OTC equity security (Recommendation Rule); and (4) require members to provide each customer with a disclosure statement prior to effecting an initial purchase in an OTC equity security and annually (Disclosure Rule).

Proposed Recommendation Rule

This proposed rule would prohibit a member or associated person from recommending a transaction to a customer in an OTC equity security that is published or quoted regularly in a quotation medium unless the member or associated person has first reviewed reasonably current financial statements of the issuer, and determined that these financial statements, along with other information available, provide a reasonable basis for making the recommendation.

The proposed rule would be limited to equity securities that are not listed on Nasdaq or any exchange, and that are quoted on the OTCBB, in the Pink Sheets, or in any other system that regularly disseminates indications of interest and quotation information. Such systems would include Web sites, issuer trading services, and other non-member systems that provide this data to the public. The requirements in the proposed rule would be in addition to other requirements under the federal securities laws and under NASD rules that a broker/dealer that recommends securities to its customers is required to have a reasonable basis for those recommendations.²

The proposed rule is specifically designed to cover transactions in the over-the-counter market. Paragraph (e) of the proposed rule sets forth exemptions involving issuer transactions. The proposed rule exempts from its coverage transactions in registered initial public offerings, Regulation A offerings under the Securities Act of 1933 (Securities Act), transactions that are exempt from registration under Section 4(2) of the Securities Act, and transactions that meet the requirements of Rules 504, 505 and 506 of Securities Act Regulation D. These exemptions are based on the specific disclosure requirements that apply to registered and other offerings, and on the reduced manipulative potential associated with initial offers in private offerings. The existence of these exemptions is not, however, intended to provide an exception from the independent obligation to review such financial information as may be necessary to support a recommendation in a particular case. Transactions with institutional investors are, however, subject to the requirements of the proposed rule.

The proposed rule requires a member or associated person to obtain and

review reasonably current financial statements of the issuer before making a recommendation to a customer. Paragraph (c) of the proposed rule sets forth time frames in which an issuer's financial statements will satisfy the "reasonably current" requirement of paragraph (a). This language is similar to language in paragraph (a)(5) of SEC Rule 15c2-11, which governs the initiation or resumption of quotations for non-reporting issuers.³ To satisfy paragraph (c), a member or associated person would be required to obtain and review a balance sheet of the issuer that is dated within 16 months of the date of the recommendation, and an associated profit and loss statement of the issuer for the period of 12 months preceding the date of the balance sheet.

If the date of the proposed recommendation to the customer is not within six months of the date of the balance sheet, the member or associated person would be required to obtain and review an additional profit and loss statement of the issuer from the date of the balance sheet to a date within six months of the proposed recommendation to the customer (interim statement). For example, if a member is proposing to make a recommendation to a customer on March 15, 1998, the member would be required to obtain and review the following information to satisfy paragraph (c) of the proposed rule: a balance sheet of the issuer with a calendar year-end of December 31, 1996; a profit and loss statement for the 12-month period ended December 31, 1996; and a nine-month interim profit and loss statement for the period of January 1, 1997, through September 30, 1997.

As a result of these requirements, members or associated persons may not recommend those OTC equity securities of issuers that fail to prepare or provide interim profit and

loss statements to members or associated persons longer than six months after the balance sheet dates unless an exemption applies. NASD Regulation is specifically requesting comment on whether requiring the preparation of interim profit and loss statements would be unduly burdensome for issuers or members in connection with these specific issuers that may typically prepare only year-end financial statements (*e.g.*, certain foreign private issuers, insurance companies).

NASD Regulation is also soliciting comment on whether an additional exemption should be adopted that would exempt certain equity securities from the proposed rule if the issuer meets certain financial size requirements (*e.g.*, Nasdaq SmallCap initial financial listing requirements). This would exempt from the proposed rule equity securities of certain issuers with significant financial conditions and operations.

Because the proposed rule will place an increased burden on retail firms, NASD Regulation is specifically soliciting comment on whether both the member firm and its registered representative must perform the review required by the proposed rule, or whether it would be sufficient if either the firm or the representative making the recommendation conducted the review.

NASD Regulation is specifically soliciting comment on whether a record keeping requirement should be imposed on the member broker/dealer under this proposed rule or, if such a requirement is not imposed, how compliance with the proposed rule could be monitored. The record keeping requirement could obligate a member to maintain a record of the actual date and the name of the person performing the review of the required financial statements and other information under the proposed rule.

Proposed Disclosure Rule

This proposed rule would require the member to provide a "Disclosure Statement" to an investor, and obtain a signed acknowledgment of receipt, prior to the initial purchase of an OTC equity security, and annually thereafter. The requirement to deliver a Disclosure Statement annually, however, would be suspended with respect to any year during which the customer effects no purchases in OTC equity securities. The Disclosure Statement would be a standard form, prepared by the NASD. It would inform the investor of the differences between the OTC market and Nasdaq and listed exchange markets, including the differences in market characteristics, the liquidity of the securities, and the obligations of market makers.⁴

The proposed rule would apply to all transactions (solicited or unsolicited) in OTC equity securities, including an initial registered public offering not listed on an exchange or on Nasdaq.⁵ The OTC equity securities in these offerings are included in the proposed rule, since these securities could potentially be quoted by broker/dealers in the OTC market, and investors should receive certain disclosures regarding the characteristics of the potential trading market and the corresponding regulatory structure and oversight of the market. In addition, the proposed rule would not apply to exempt transactions under Section 4(2) of the Securities Act and transactions meeting the requirements of Rules 505 and 506 of Securities Act Regulation D. These transactions are excluded from the scope of the proposed rule since they are deemed either transactions not involving a public offering or transactions generally involving certain qualified or sophisticated investors (*i.e.*, accredited investors).

Further, transactions with certain institutional customers and institutional

accounts that meet the requirements of Section 3(c)(7) of the Investment Company Act of 1940 and NASD Rule 3110(c)(4), respectively, are exempt from the requirements of the proposed rule. This particular class of customer or account is excluded from the proposed rule since it is assumed that these customers and accounts maintain a certain level of sophistication in financial markets and products and would not have a particular need for the Disclosure Statement. Transactions relying on the exemption provided in Rule 504 of Securities Act Regulation D would, however, be subject to the proposed rule because, for regulatory purposes, these offerings are treated as public offerings provided that they are made within the quantitative requirements of Rule 504.

NASD Regulation is soliciting comment on whether any alternative approaches exist to the requirement that the firm obtain from the customer a written acknowledgment of receipt of the Disclosure Statement prior to effecting an initial purchase of an OTC equity security and annually. For example, should members accept customer acknowledgments electronically? Another alternative is to permit members to mail the Disclosure Statement to the customer with the confirmation statement. Comment is requested on all approaches that would achieve the regulatory goal.

NASD Regulation is also specifically soliciting comment on the impact that this rule proposal will have on customer trades effected through automated computer systems, and soliciting comment on the specific content of the Disclosure Statement to customers. *See* endnote number 4 of this *Notice* for a summary of the proposed contents of the Disclosure Statement.

NASD Regulation is also aware that members may have an additional obligation under Exchange Act Rule 15g-2 to deliver a disclosure statement to customers prior to a recommended transaction in penny stocks, as defined in Exchange Act Rule 3a51-1. As contrasted to the requirements in Rule 15g-2, the proposed rule applies to all transactions in OTC equity securities with customers and is not limited to penny stocks or to recommended transactions. During the comment process, NASD Regulation will particularly consider the need and ability to integrate these two requirements so they can be satisfied by one disclosure document.

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, N.W.
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

Comments must be received by **February 16, 1998**. Before becoming effective, any rule change developed as a result of the 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 Rule 2315

(Note: All language is new.)

Rule 2315. Recommendation to Customers in OTC Equity Securities

(a) No member or person associated with a member shall recommend to a customer the purchase, sale, or exchange of any equity security that is not listed on Nasdaq or on a national securities exchange and is published or quoted in a quotation medium unless the member or person associated with a member has reviewed reasonably current financial statements of the issuer, and such financial statements and other information available provides a reasonable basis under the circumstances for making the recommendation.

(b) For purposes of this Rule, an issuer's "financial statements" include a balance sheet and a statement of profit and loss (or an income statement), and, if available, a statement of changes in stockholders' equity and a statement of cash flows.

(c) The requirement in paragraph (a) of this Rule that financial statements be "reasonably current" will be satisfied, unless the member has more current financial statement information in its possession, if:

(1) the balance sheet is as of a date less than 16 months before the date of the recommendation;

(2) the statement of profit and loss is for the 12 months preceding the date of the balance sheet; and

(3) if the balance sheet is not as of a date less than 6 months before the date of the recommendation, it shall be accompanied by additional statements of profit and loss for the period from the date of the balance sheet to a date less than 6 months before the date of the recommendation.

(d) For purposes of this Rule, "quotation medium" shall mean any quotation system, publication, electronic communication network, or any other device, including any issuer or inter-dealer quotation system, that is used to regularly disseminate quotations or indications of interest in transactions in equity securities that are not listed on Nasdaq or on a national securities exchange, including offers to buy or sell at a stated price or otherwise or invitations of offers to buy or sell.

(e) The requirements of this Rule shall not apply to transactions in a registered initial public offering, transactions in a Regulation A offering, transactions that meet the requirements of Rules 504, 505, and 506 of Regulation D under the Securities Act of 1933 ("Securities Act"), and transactions with an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act.

Text of Proposed Rule 2350

(Note: All language is new.)

Rule 2350. Disclosure Document to Customers

(a) It shall be unlawful for a member to effect a purchase for a customer in any equity security, other than a transaction described in paragraph (b), unless, prior to effecting the first purchase, and on an annual basis thereafter, the member has furnished to the customer a document containing the information set forth in Schedule ___ below and has obtained from the customer a manually signed and dated written acknowledgment of receipt of the Schedule.

(b) This Rule shall not apply to transactions:

(1) in securities listed on Nasdaq or on a national securities exchange;

securities issued by registered investment companies; and options issued by the Options Clearing Corporation.

(2) with an issuer involving a public offering of securities that are listed or conditionally approved for listing on Nasdaq or a national securities exchange, or not involving a public offering under Section 4(2) of the Securities Act of 1933 (“Securities Act”), or meeting the requirements of Rule 505 or Rule 506 of Regulation D under the Securities Act; or

(3) with or for an account that qualifies as an “institutional account” under Rule 3110(c)(4) or with a customer that is a “qualified purchaser” under Section 3(c)(7) of the Investment Company Act of 1940.

(c) A member will not be required to deliver the annual disclosure document referred to in paragraph (a) of this Rule to any customer who has not effected through it a purchase in any equity security, other than those set forth in paragraph (b), for 12 months from the date of receipt of the previous disclosure Schedule.

(d) The member shall preserve, as part of its records, a copy of the written acknowledgment required by paragraph (a) of this Rule for the period specified in Securities Exchange Act Rule 17a-4(b).

Endnotes

¹ EDGAR (Electronic Data Gathering, Analysis, and Retrieval) is the SEC system for the receipt, acceptance, review and dissemination of documents submitted in electronic format.

² See, e.g., *SEC v. Hasho*, 784 F. Supp. 1059 (S.D.N.Y. 1992), citing *SEC v. Hanley*, 415 F. 2d 589 (2nd Cir. 1969), Securities Exchange Act Release No. 29094 (April 17, 1991), 56 FR 19148 (April 25, 1991) (adopting amendments to Rule 15c2-11), n.22, and NASD Rule 2310 (Suitability Rule).

³ SEC Rule 15c2-11 requires a broker/dealer to collect and review certain issuer information before initiating or resuming quotations in a quotation medium. See SEC Rel. No. 34-29094 (April 17, 1991), 56 FR 19148 (April 25, 1991).

⁴ The Disclosure Statement would be prepared by the NASD in order to standardize

the contents. It would contain, at a minimum, the following information: (1) a clear statement that: OTC equity securities are not listed on The Nasdaq Stock Market or on a national securities exchange; the OTCBB is a quotation medium, not an issuer listing service; and the OTCBB should not be confused with The Nasdaq Stock Market; (2) a description of the special characteristics and risks of the OTC equities markets and the operation of the OTCBB and the Pink Sheets, highlighting the fact that there are not quantitative or qualitative standards for issuers to be quoted in this market; (3) a statement emphasizing that, because a significant number of OTC equities do not file financial reports with the SEC, an investor may be unable to gain access to any financial or operational information regarding the issuer; and (4) a comparison of the OTC equities market with The Nasdaq Stock Market and other listed markets, including differences in liquidity and market maker obligations.

⁵ Delivery of the Disclosure Statement would not be required if the issuer has received conditional approval for listing.

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NASD NOTICE TO MEMBERS 98-16

SEC Approves New Qualification Examination For Government Securities Representatives (Series 72) And New Registration Requirements For Registered Options Representatives (Series 42)

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
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- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On August 25, 1997, the Securities and Exchange Commission (SEC) approved amendments to the National Association of Securities Dealers, Inc. (NASD[®]) Rules regulating qualifications of government securities representatives. As of April 1, 1998, the effective date of the rule, registered representatives will be required to pass a qualification examination in order to sell or otherwise engage in government securities activities. A new NASD qualification examination, the Government Securities Limited Representative Examination (Series 72), will be available on April 1, 1998, and will provide an alternative to the General Securities Registered Representative Examination (Series 7) for qualification of individuals who function solely as government securities representatives.¹ The rule change approved by the SEC also conforms to the registration requirements of the existing Registered Options Representative (Series 42) category to take into consideration the new qualification requirements.

Background

Prior to 1986, government securities were "exempt" from various provisions of the Securities Exchange Act of 1934 (1934 Act). As a consequence, a broker/dealer engaged solely in a government securities business was not required to be registered with the SEC and its associated persons were not subject to any qualification standards. The Government Securities Act of 1986 (1986 Act) amended these provisions of the 1934 Act. Among other things, the 1986 Act required sole government securities broker/dealers to register with the SEC for the first time. It also granted the NASD authority to require the associated persons of these firms to register with the NASD, but it did not authorize the NASD to establish qualification examination standards. As a result,

since January of 1989, the NASD has required these associated persons to register as government securities representatives or government securities principals, but has not required them to pass a qualification examination. Under a 1993 amendment to the 1934 Act, the NASD was authorized for the first time to apply its qualification examination standards to government securities representatives and government securities principals. The first of these examinations, the Government Securities Limited Representative Examination (Test Series 72), has been approved by the SEC.

Qualification Requirements

As of April 1, 1998, a registered representative must pass a qualification examination in order to sell or trade government securities. This may be either the Series 7 Examination or the new Series 72 Examination. The fee for new applicant registration is \$85; for the Series 7 Examination, \$150; and for the Series 72 Examination, \$60. The Government Securities Limited Representative Qualification Examination (Series 72) has been developed to qualify persons seeking registration with the NASD under By-Laws Article II, Section 2 and new Rule 1032(g) thereunder.² Registered representatives in this limited category of registration are permitted to transact a member's business in Treasury securities, Agency securities, and Agency mortgage-backed securities. This category, by itself, does not allow registered representatives to transact a member's business in options on government securities. Candidates seeking to do transactions in this latter product also must meet additional qualification and registration standards as described below.

Grandfathering

NASD Regulation, Inc. (NASD RegulationSM) adopted a “grandfather” provision for certain government securities representatives. Persons who were registered with the NASD as government securities representatives and/or government securities principals on or before April 1, 1996 (two years prior to the effective date of the rule) will be grandfathered and may register as government securities representatives without having to take an examination. This grandfather provision assumes that the representative is not currently subject to a statutory disqualification as defined in Section 3(a)(39) of the 1934 Act or has not been subject to a suspension or fine of \$5,000 or more imposed by a securities or commodities regulator in the 10 years before the effective date of the rule.

This grandfather provision is not available for individuals who registered as government securities representatives or government securities principals from April 1, 1996, to March 31, 1998. However, such individuals may continue to function as government securities representatives for up to six months from the effective date of the rule, that is, until September 30, 1998. During this time, these representatives must take and pass either the Series 72 Exam or the Series 7 Exam. Should the individual fail to pass the exam within the grace period, his or her registration as a government securities representative will terminate on October 1, 1998. The member firm should be aware that the normal periods a candidate must wait before retaking a failed exam apply. Consequently, should a candidate in this category fail the exam three times, the candidate’s registration will terminate on October 1, 1998.

Those individuals who register as government securities representatives on or after April 1, 1998, are subject to the NASD’s normal qualification procedure. That is, the candidate must take and pass either the Series 7 Exam or the new Series 72 Exam before functioning as a government securities representative.

Government Securities Principals

The registration requirements for government securities principals remain unchanged. NASD Rule 1111 requires all persons associated with a member who function as government securities principals to register as such, but does not require them to pass a principal-level qualification examination. This requirement to register without passing an exam applies only if the individual is not registered as a principal in any other capacity. To the extent such principals also function as representatives, they would be subject to the qualification/registration requirements for government securities representatives discussed above.

Qualification To Sell Options On Government Securities

Currently, individuals who sell options on government securities are not required to pass a qualification examination. Rule 1032(d) for registered options representatives has been amended to establish registration and qualification requirements for such individuals, and to add the Series 72 Examination to the list of those examinations that pre-qualify an individual to take the Limited Representative—Options (Series 42) Examination. As of April 1, 1998, a person selling options on government securities will be required to pass the new Series 72 Examination and the existing Series 42 Examination. Such a person’s qualification is limited to the sale of options on gov-

ernment securities. Alternatively, a person could qualify for the sale of government securities and options on government securities by passing the Series 7 Examination.

Alternative Qualification As A General Securities Representative³

As of the April 1, 1998 effective date of the rule, the new Series 72 Examination will be added to the “family” of limited exams that convey NASD General Securities Representative status when completed as a group. Passing this family of six modular exams in lieu of the Series 7 Exam offers members more flexibility in satisfying NASD registration requirements. The five NASD⁴ and one Municipal Securities Rulemaking Board (MSRB) examinations are:

- Investment Companies and Variable Contracts Representative Examination (Series 6)
- Direct Participation Programs Limited Representative Examination (Series 22)
- Registered Options Limited Representative Examination (Series 42)
- MSRB Municipal Securities Representative Examination (Series 52)
- Corporate Securities Limited Representative Examination (Series 62)
- Government Securities Limited Representative Examination (Series 72)

Registration Procedures

There are various registration scenarios that could apply to representatives engaged in government securities activities and/or solicitation

or sale of options on government securities. These are presented below in a question and answer format. Although the term "selling" will be used for simplicity, these discussions refer to any activity in government securities or options on government securities. This includes selling to retail or institutional customers, trading, or any applicable form of investment banking.

Question: What is the status of an individual who is registered as a general securities representative (Test Series 7) or who takes the Series 7 Exam after April 1, 1998?

Answer: Such a person is qualified to sell both government securities and/or options on government securities, without meeting any further qualification requirements.

Question: An individual has been registered as a representative in another category, *e.g.*, Series 6 or Series 62. This representative also sells government securities, but never registered as a government securities representative because it was not required.⁵ May this representative continue to sell government securities without taking an exam?

Answer: No. An individual in this category must pass either the Series 72 Exam or the Series 7 Exam in order to continue selling government securities.

Question: There are individuals in our firm who were registered as government securities representatives on or before April 1, 1996. Must they take the new Exam?

Answer: No. Such individuals are grandfathered as government securities representatives and are not subject to the examination requirement.

Question: If individuals are grandfathered as government securities representatives, and they also sell options on government securities, are they also grandfathered as registered options representatives?

Answer: No. This person must pass the Registered Options Representative (Series 42) Exam in order to continue selling options on government securities on and after April 1, 1998. However, this person has met the prequalification requirement for the Series 42 Exam by virtue of being grandfathered as a government securities representative.

Question: Various individuals in our firm were registered as government securities representatives after April 1, 1996, but before April 1, 1998. May they continue to sell government securities without first passing the qualification exam?

Answer: Yes. Such persons have a six-month grace period to take the Exam. If they have not passed the Exam by the end of this grace period, that is, by September 30, 1998, then they must cease functioning as government securities representatives until they have passed the Exam.

Question: What is the status of an application to be a government securities representative that is received on or after April 1, 1998?

Answer: These applications will be handled in the normal manner, that is, the applicant must take and pass either the Series 72 or the Series 7 Exam before functioning as a government securities representative.

Question: Our firm accidentally submitted a revised Form U-4 requesting the Series 72 Exam for a candidate who already has the "GS" (General Securities Representative—Series 7) status. What effect will this have?

Answer: When you request an examination, CRD will schedule the exam irrespective of the candidate's qualification status. It then becomes the firm's responsibility to correct this situation by contacting CRD/Public Disclosure Gateway, at 301-590-6500.

The New Series 72 Examination

The new Series 72 Exam is comprised of 100 questions, and 180 minutes of testing time is allowed to complete the test. A candidate must correctly answer 70 percent of the questions to receive a passing grade. The test is administered as a closed book exam. Scratch paper and basic electronic calculators will be provided by the proctor. At the completion of the test, each candidate will be provided with an informational breakdown of his or her performance in each of the major sections, along with his or her overall score and the grade derived therefrom.

Topics in this examination may be tested by requiring a candidate to apply the concepts to real life situations. In some instances, this may require basic level computations. Questions used in the examination will be updated to reflect the most current interpretations of the rules and regulations on which they are based. Questions on new rules will be added to the examination within a reasonable time period after the rules' effective dates. Questions on rescinded rules will be deleted promptly from the examination.

A study outline has been prepared to assist member firms in preparing candidates for the Series 72 Examination. It may be used to structure or prepare training material, develop lecture notes and seminar programs, and as a training aide for the candidates themselves. The outline and the test are divided into six topical

sections, which are listed below along with the number of questions in each section:

Section 1—Government Securities (25 questions)

Section 2—Mortgaged-Backed Securities (25 questions)

Section 3—Other Related Securities and Financial Instruments (9 questions)

Section 4—Economic Activity, Government Policy, and the Behavior of Interest Rates (16 questions)

Section 5—Legal Considerations (10 questions)

Section 6—Customer Considerations (15 questions)

Copies of the study outline and registration applications may be obtained from NASD MediaSource, at (301) 590-6142, or from any of the NASD Regulation District Offices. There is a \$5 fee for the study outline.

Contact Persons

The following persons in NASD Regulation's Qualifications and Exams Department may be contacted for additional information concerning the new qualification requirements and the Series 72 Examination:

Elaine P. Warren, Senior Qualifications Analyst, at (301) 590-6135

Frank J. McAuliffe, Vice President, at (301) 590-6694

Eva E. Cichy, Qualifications Analyst, at (301) 208-2789

Text Of Rule Changes

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

Rule 1032. Categories of Representative Registration

[(d) Registered Options Representative]

[Each person associated with a member whose activities in the investment banking or securities business include the solicitation and/or sale of option contracts shall be required to be certified as a Registered Options Representative and to pass an appropriate certification examination for such or an equivalent examination acceptable to the Association. Registered Options Representatives qualified in either put or call options shall not engage in both put and call option transactions until such time as they are qualified in both such options. Members shall be required to report to the Association the names of any associated persons certified as Registered Options Representatives pursuant to an examination approved by the Association. Registered Options Representatives must also be qualified with the Association as either General Securities Representatives or as Limited Representatives—Corporate Securities; provided, however, Registered Options Representatives of members that are members of a national securities exchange which has standards of approval acceptable to the Association may be deemed to be approved by and certified with the Association, so long as such representatives are approved by and registered with such exchange.]

(d) Limited Representative—Options

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register

with the Association as a Limited Representative—Options if:

(A) such person's activities in the investment banking or securities business of the member involve the solicitation or sale of option contracts, including option contracts on government securities as that term is defined in Section 3(a)(42)(D) of the Act, for the account of a broker, dealer or public customer; and

(B) such person passes an appropriate qualification examination for Limited Representative—Options.

(2) Each person seeking to register and qualify as a Limited Representative—Options must, concurrent with or before such registration may become effective, become registered pursuant to the Rule 1032 Series, either as a Limited Representative—Corporate Securities or Limited Representative—Government Securities.

(3) A person registered as a Limited Representative—Options shall not be qualified to function in any area not prescribed by subparagraph (1)(A) hereof.

(g) Limited Representative—Government Securities

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with the Association as a Limited Representative—Government Securities if:

(A) such person's activities in the investment banking or securities business involve the solicitation, purchase or sale of "government securities," as that term is defined in Section 3(a)(42)(A) through (C) of the Act, for the account of a broker, dealer or public customer, and

(B) such person passes an appropriate qualification examination for Limited Representative—Government Securities.

(2) A person registered solely as a Limited Representative—Government Securities shall not be qualified to function in any area not prescribed by subparagraph (1)(A) hereof.

(3) A person who has been performing the functions of a Limited Representative—Government Securities on or before April 1, 1996, may register as such without first meeting the requirement of subparagraph (1)(B) above unless (A) such person is currently subject to a statutory disqualification as defined in Section 3(a)(39) of the Act or (B) during the past ten years before the effective date of that requirement was the subject of a suspension or fine of \$5,000 or more by the Association, the Securities and Exchange Commission, the Commodity Futures Trading Commission, state securities commission, foreign financial regulatory authority, or any other regulatory organization responsible for the investment banking or securities business.

[1112. Registration of Representatives]

[All persons associated with a member who are to function as government securities representatives who

have not previously been registered shall be registered as such with the Association.

(a) Definition of Representative

Persons associated with a member, including assistant officers other than principals, who are engaged in the government securities business for the member including:

(1) underwriting, trading or sales of government securities;

(2) financial advisory or consultant services for issuers in connection with the issuance of government securities;

(3) research or investment advice, other than general economic information or advice, with respect to government securities in connection with the activities described in subparagraphs (1) and (2) above;

(4) activities other than those specifically mentioned that involve communication, directly or indirectly, with public investors in government securities in connection with the activities described in subparagraphs (1) and (2) above;

are designated as representatives.

(b) Notification of Representative Status

A member shall promptly notify the Association of the assumption by an individual not previously registered with the member of representative status on the form designated by the Board of Governors accompanied by the applicable fees.]

Endnotes

¹ This alternative means to qualification may not be available to joint NASD/NYSE member firms.

² New Rule 1032 (g) replaces Rule 1112, which has been deleted.

³ This alternative route to general securities qualification is not available to joint NASD/NYSE member firms.

⁴ The new Equity Traders Examination (Series 55) is not part of this group.

⁵ Former NASD Rule 1112 required all persons associated with a member who functioned as government securities representatives to register as such without first passing a qualification examination. But this requirement applied only if the individual was not registered as a representative in any other capacity.

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NASD NOTICE TO MEMBERS 98-17

SEC Approves New NASD Qualification Requirements And Examination For Equity Traders (Series 55)

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The Securities and Exchange Commission (SEC) recently approved amendments to the National Association of Securities Dealers, Inc. (NASD[®]) Registration Rules regulating qualifications of representatives who trade equity securities in The Nasdaq Stock MarketSM (Nasdaq[®]) and/or over-the-counter. The new rule language is included at the end of this *Notice*. As of April 1, 1998, the effective date of the rule, such traders will be required to pass the new Limited Representative—Equity Trader Examination (Series 55). This is an “add on” exam, and Equity Traders must also pass or have passed either the General Securities Registered Representative Examination (Series 7)¹ or the Corporate Securities Limited Representative Examination (Series 62). Registered persons who currently are functioning as Equity Traders have a two-year grace period within which to pass the examination, provided the member firm with which they are associated applies for Equity Trader registration within 30 days of the effective date of the rule. There is no “grandfather” provision for this new qualification requirement.

Background

In 1995, NASD Regulation, Inc., staff and the National Business Conduct Committee (NBCC) became concerned about the escalating number of rule violations by traders conducting market making and principal trading functions in both the Nasdaq market and over-the-counter. With the view that better training and qualification of traders was necessary, the Market Surveillance staff conducted an assessment of how traders were prepared to trade or make markets in equity securities. Staff visited member firms and discussed the issue with several senior managers of the NASD, as well as

with several members of the Market Surveillance Committee. All parties supported the establishment of a qualification examination requirement designated specifically for traders of equity securities on Nasdaq and/or over-the-counter. This issue was then addressed by the NASD RegulationSM Membership Committee, which recommended the establishment of a category of registration and a qualifying examination for Nasdaq and OTC equity traders. This recommendation was reviewed and approved by the NASD parent and subsidiary Boards in late 1996 and subsequently filed with the SEC. A task force comprising industry representatives and NASD Regulation/Nasdaq staff completed development of the new qualification examination in early 1997 and has maintained the program's currency pending final approval by the SEC.

Qualification Requirements

The new rule establishes a registration category (ET) and qualification examination (Series 55) for Equity Traders. In the context of this new qualification requirement, the term “equity trader” includes market makers, agency traders, and proprietary traders in equity or convertible debt securities and persons who directly supervise these activities. The inclusion of convertible debt securities reflects the fact that, under certain conditions, convertible debt securities trade similarly to equity securities and many of the same regulatory issues and concerns apply to trading in both types of securities. The Equity Trader category does NOT include traders whose primary activities are executing orders on behalf of an affiliated investment company that is registered with the SEC under the Investment Company Act of 1940. This exemption recognizes that such traders are generally in the same position as “buy-side” professionals

employed within investment companies, who would not be subject to the examination requirement.

Prerequisite Examination

As noted above, an individual must pass two examinations in order to be qualified as an Equity Trader. In addition to the required trader's examination (Series 55), Equity Traders must pass (or have passed) either the General Securities Registered Representative Examination (Series 7) or the Corporate Securities Limited Representative Examination (Series 62). This requirement is consistent with the requirements applicable to other specialized registration categories.

Grandfathering

The new qualification requirement for Equity Traders does NOT have a "grandfather" provision. The NASD believes that such a provision is not appropriate due to the necessity of ensuring even knowledge of existing rules among traders, as well as the large number of rule and structural changes occurring in the equity markets.

Grace Period

Individuals are allowed two years to pass the new Series 55 Exam if they are currently functioning as Nasdaq or OTC Equity Traders. The two-year grace period is intended to provide registered persons who presently are functioning as Equity Traders sufficient time to study and pass the examination without causing undue disruption in securities markets and in carrying out their responsibilities with their employer.

In order to avail itself of this grace period, the member firm must submit for the trader a registration application (or amendments thereto) with the NASD before **May 1, 1998**—30

days from the effective date of the rule. These traders then have until May 1, 2000, to pass the necessary examination(s). Should a trader fail to pass the exam within the two-year grace period, his or her registration as an Equity Trader will terminate on May 1, 2000.

Those individuals who apply for registration as Equity Traders after May 1, 1998, are subject to the NASD's normal qualification procedure. That is, such candidates must have passed either the Series 7 Exam or the Series 62 Exam, as well as the new Series 55 Exam, before functioning as Equity Traders.

Retaking Failed Exams

Member firms should be aware that the normal policy regarding waiting periods for candidates retaking a failed exam has been modified for candidates subject to the two-year grace period described above. Candidates in this category must wait 30 days before retaking a failed Series 55 Exam. Should the candidate fail the Series 55 Exam more than three times, the waiting period continues to be 30 days, rather than the 180-day waiting period normally required after the third and all subsequent failures. Please note that this exemption applies only to the Series 55 Exam, and it is only for those candidates who are allowed the two-year grace period. The normal waiting periods apply in all other circumstances, including those instances where an Equity Trader must pass either the Series 7 or Series 62 exams within the two-year grace period.

Registration Procedures

An application must be submitted to the NASD in order to register an individual as an Equity Trader. For persons already registered in one of the prerequisite categories, the member need only submit page one of Form

U-4 requesting Equity Trader (ET) registration. For new employees, a member must submit a full Form U-4 application requesting all necessary registrations and any other documents required for registration. The Series 55 Exam fee is \$60 and the registration fee for new applicants is \$85. The member firm should be aware of several details in submitting this form:

- In order to obtain the two-year grace period for the trader, the member firm must request the ET position before May 1, 1998.
- There may be instances when an applicant who is being registered as an Equity Trader before May 1, 1998, has not met the prerequisite. In this situation, a member also must request either the General Securities Representative (GS) or Corporate Securities Representative (CS) registration. Otherwise, the system will default to the CS position and show a deficiency. Such applicants must satisfy the prerequisite as soon as possible, but no later than the usual 90-day period from the time a prerequisite exam is scheduled.
- It is possible that a candidate who is within the two-year grace period may transfer to another member firm. If so, the grace period will continue to be available to the candidate. In other words, the candidate will continue to be allowed until May 1, 2000, to pass the examination.
- There will be instances when Equity Traders have become qualified as Limited General Securities Representatives by means of the various modules of the Series 7 Exam for foreign candidates.² These examinations meet the prerequisite for the Series 55 Exam. However, the member firm must contact the NASD Testing and Continuing

Education Department at (301) 590-6970 to make special arrangements for such persons.

The New Series 55 Examination

A study outline has been prepared to assist member firms in preparing candidates for the new Limited Representative–Equity Trader Examination (Series 55). It may be used to structure or prepare training material, develop lecture notes and seminar programs, and as a training aide to the candidates themselves.

The Series 55 Examination comprises 90 questions, and 180 minutes of testing time is allowed to complete the examination. A candidate must correctly answer 70 percent of the questions to receive a passing grade. The test is administered as a closed book exam. Scratch paper and a basic electronic calculator will be provided by the proctor. At the completion of the test, candidates will be provided with an informational breakdown of their performance on each of the sections, along with their overall score and grade.

The outline and the test are divided into four topical sections, which are described below along with the number of questions from each section:

Section 1—The Nasdaq Market and Market Maker Activities (47 questions)

Section 2—Automated Execution and Trading Systems (10 questions)

Section 3—Trade Reporting Requirements (13 questions)

Section 4—Securities Industry Regulations (20 questions)

The questions used in the examination will be updated to reflect the most current interpretations of the rules and regulations on which they

are based. Questions on new rules will be added to the examination within a reasonable period of the rules' effective dates. Questions on rescinded rules will be promptly deleted from the examination. Candidates will only be asked questions pertaining to rules that are effective at the time they take their exams.

Copies of the study outline and registration applications may be obtained from NASD MediaSourceSM, at (301) 590-6142, or from any of the NASD Regulation District Offices. There is a \$5 fee for the study outline.

Contact Persons

The following persons in NASD Regulation's Testing and Continuing Education Department may be contacted for additional information concerning the new qualification requirements and the Series 55 Examination:

Carole B. Hartzog, Lead Qualifications Analyst, at (301) 590-6696

Elaine P. Warren, Senior Qualifications Analyst, at (301) 590-6135

Eva E. Cichy, Qualifications Analyst, at (301) 208-2789

Text Of Rule Changes

(Note: New text is underlined.)

Rule 1032. Categories of Representative Registration

(f) Limited Representative–Equity Trader

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 must register with the Association as a Limited Representative–Equity Trader if, with respect to transactions in equity, preferred or convertible debt securities

effected otherwise than on a securities exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the member.

(2) Before registration as a Limited Representative–Equity Trader as defined in subparagraph (1) hereof may become effective, an applicant must:

(A) be registered pursuant to Rule 1032, either as a General Securities Representative or a Limited Representative–Corporate Securities; and

(B) pass an appropriate Qualification Examination for Limited Representative–Equity Trader. Any person who has filed an application to take this examination by May 1, 1998, must pass the examination by May 1, 2000. Any person who is eligible for this extended qualification period and who fails this examination during such twenty-four (24) month time period must wait (30) days from the date of failure to take the examination again. Any person who files an application to take this qualification examination after May 1, 1998, must pass this examination before conducting such activities as described in paragraph (f)(1) above. In no event may a person who is eligible for the extended qualification period function as an Equity Trader beyond the 24-month period without having successfully passed the appropriate qualification examination.

Endnotes

¹ In this context, references to the Series 7 Examination include the various submodules of the Series 7 Exam for foreign candidates.

² These currently are the Series 17 exam (IE) for candidates from the U.K. and the two Canadian modules—the Series 37 Exam (CD) and the Series 38 Exam (CN).

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NASD NOTICE TO MEMBERS 98-18

NASD Regulation Permits Electronic Methods For Holding Annual Interviews Or Meetings With Registered Representatives

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
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- Municipal
- Mutual Fund
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Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) is clarifying the application of the annual compliance meeting requirements of National Association of Securities Dealers, Inc. (NASD[®]) Rule 3010. Such meetings may be conducted by electronic means, provided certain safeguards are met.

Questions concerning this *Notice* should be directed to Daniel M. Sibears, Vice President, Member Regulation, NASD Regulation, at (202) 728-6911.

Interpretation

Rule 3010 governs supervisory issues for NASD members. Under subpart (a)(7), the rule requires the participation of each registered representative, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the member at which compliance matters relevant to the activities of the representative are discussed (hereinafter "compliance conference" or "conference"). Compliance conferences may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's place of business.

Technological advances in electronic communications led NASD Regulation to consider the various means of communication through which members can effectively conduct the compliance conference required by Rule 3010(a)(7). In this regard, NASD Regulation will permit members to hold the required conference with registered representatives via video conference, interactive classroom setting, or other electronic means, provided certain safeguards are in place.¹

Members choosing to conduct compliance conferences other than in

person with representatives must ensure that the communication means used permit interactive communication. This means, at a minimum, that the representatives that attend the compliance conference must be able to hear presenters live and, in an interactive environment, ask questions and engage in dialogue with the presenters. Presenters may use supplemental learning and communications tools such as video tapes or computer programs that include informational or instructional materials from persons who are not physically present.

In addition to ensuring an interactive environment for all compliance conferences, members conducting such conferences through electronic means or aids may bear a heightened responsibility associated with electronic communications. As with all compliance conferences, members must ensure that representatives scheduled to appear at a particular location in fact arrive at and stay for the entire conference.

While no standardized procedures are mandated, firms' written supervisory procedures must be designed and implemented to reasonably ensure compliance with Rule 3010(a)(7). These procedures may include, among other things:

- designating an appropriate person to oversee compliance with the rule;
- implementing and maintaining a tracking system that includes the identities of representatives participating in compliance conferences, the time and place of the conference for each representative, the means through which the conference was conducted, the identity of the person conducting the conference, and the substantive areas covered during the conference; and

- proctoring the compliance conference to ensure that representatives required to be present attend and remain at the conference for the designated period of time.

Endnote

¹ This position reflects the reversal of a previous staff position with respect to the holding of compliance meetings via video conference technology in a letter dated March 31, 1997.

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NASD NOTICE TO MEMBERS 98-19

SEC Requests Comment On Proposed Amendments To Net Capital Rule

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The Securities and Exchange Commission (SEC) is requesting comment on proposed amendments to Rule 15c3-1, the Net Capital Rule. The SEC proposes to create a new category of broker/dealer for affiliates conducting an OTC derivatives business that would have special capital, margin, and other regulatory requirements. Comments on this proposal are due by March 2, 1998. Also, comments are due by March 2, 1998, on the SEC's proposed definition for designating an organization as a "nationally recognized statistical rating organization" (NRSRO), and by March 30, 1998, on changes to the haircuts for certain interest rate instruments held in a broker/dealer's proprietary account. In addition, the SEC is soliciting comment on its Concept Release in which the SEC is considering possible alternative methods for calculating credit and market risk capital requirements for broker/dealers. Specifically, the SEC seeks comment on whether the Net Capital Rule should be amended to allow broker/dealers to use statistical models to calculate net capital requirements. Comments on the Concept Release are due by March 30, 1998.

Questions concerning this *Notice* may be directed to Samuel Luque, Jr., Associate Director, Compliance Department, NASD Regulation, Inc., at (202) 728-8472, or Anne Harpster, Regional Compliance Supervisor, Compliance Department, NASD RegulationSM, at (202) 728-8092.

Background

SEC Rule 15c3-1, the Net Capital Rule, requires broker/dealers to have sufficient liquid capital to protect the assets of customers and to meet their obligations to other broker/dealers. In calculating the amount of net capital required, broker/dealers reduce the market value of the securities they own by certain charges or

haircuts as a precaution against adverse market movements or financial and operational risks.

The SEC has proposed amendments to the Net Capital Rule and issued a related Concept Release that will affect how net capital requirements are determined. These proposals are summarized briefly below.

Proposed Amendments To Rule 15c3-1 Creation Of OTC Derivatives Dealer

The SEC proposes to create a new registration category for OTC derivatives dealers. An OTC derivatives dealer would be defined as any dealer that limits its securities activities to: 1) engaging as a counterparty in transactions in eligible OTC derivative instruments with permissive derivatives counterparties, as these terms are defined in proposed Rules 3b-13 and 3b-14; 2) issuing and reacquiring issued securities through a fully regulated broker/dealer; or 3) engaging in other securities transactions which are designated by SEC order and, with regard to these activities, engaging in permissible risk management, arbitrage, and trading transactions, as defined in proposed Rule 3b-15.

Under the SEC proposal, registration as an OTC derivatives dealer would be an alternative to full broker/dealer registration, and OTC derivatives dealers would be subject to modified capital and margin requirements. The proposed rule requires OTC derivatives dealers to maintain tentative net capital of not less than \$100 million and net capital of not less than \$20 million.

OTC derivatives dealers would be prohibited from accepting or holding customer funds or securities, or acting as a "dealer" in securities, as

defined in Section 3(a)(5) of the Securities Exchange Act of 1934. Moreover, proposed Rule 15a-1 requires an OTC derivatives dealer to effect any securities transaction through a fully regulated broker/dealer. The dealer's counterparties in such securities transactions would be considered customers of the fully regulated broker/dealer, and all persons having contact with counterparties would need to be properly qualified registered representatives of the fully regulated broker/dealer.

Under proposed amendments to Rules 17a-3, 17a-4, 17a-11, proposed Rule 17a-12, and proposed revisions to Form X-17A-5 (FOCUS report), OTC derivatives dealers would maintain certain records regarding transactions and provide certain information regarding their financial condition and operations. In addition, these dealers must maintain internal risk management controls under proposed Rule 15c3-4.

Definition Of NRSRO

The SEC is proposing amendments to the definition of NRSRO in the Net Capital Rule by including a list of attributes that will be considered by the SEC in designating rating organizations as NRSROs.

The proposed attributes are: 1) national recognition; 2) adequate staffing, financial resources, and organizational structure; 3) use of systematic rating procedures designed to ensure credible and accurate ratings; 4) extent of contacts with the management of issuers; and 5) internal procedures to prevent misuse of non-public information and compliance with these procedures.

Under the proposal, those rating organizations that have been designated as NRSROs following receipt of a no-action letter from the SEC will retain their designation and will not

have to reapply. However, current NRSROs will be subject to SEC review and any NRSRO that does not meet the requirements in the proposed definition will have its designation revoked.

Haircuts On Interest Rate Instruments

The SEC is proposing changes to the haircuts for certain interest rate instruments held in a broker/dealer's proprietary account.

Under the proposed amendments, the net capital rule would recognize various hedges among a portfolio of government securities, investment grade nonconvertible debt securities or corporate debt securities, pass-through mortgage-backed securities, repurchase and reverse repurchase agreements, money market instruments, futures and forward contracts on these debt instruments, and other types of debt-related derivatives (fixed income products).

The proposed amendments do not affect the haircuts for municipal securities or non-investment grade debt securities.

Concept Release On Statistical Models

The SEC is soliciting comment on possible alternative methods for calculating credit and market risk capital requirements for broker/dealers. Specifically, the SEC seeks comment on whether the Net Capital Rule should be amended to allow broker/dealers to use statistical models to calculate net capital requirements.

Currently, net capital is calculated by deducting fixed percentages from the market value of securities, and the Net Capital Rule only recognizes certain limited hedging activities. The SEC is concerned that, by failing to recognize offsets between and

among asset classes, the Rule may cause firms with large, diverse portfolios to reserve capital that actually overcompensates for market risk.

The SEC is requesting response to 51 specific questions on the following topics: 1) modifying the current haircut approach; 2) the potential use of statistical models; 3) abnormal market conditions; 4) qualitative and quantitative criteria for models; 5) additional risks; and 6) a two-tiered approach. Commenters are encouraged also to submit statements on any aspect of the current Net Capital Rule.

National Association of Securities Dealers, Inc. (NASD[®]) members are urged to review the SEC's proposals and the Concept Release in their entirety. They appear in the December 30, 1997, *Federal Register*, or may be accessed at the SEC's Web site at www.sec.gov. Members also may contact the Compliance Department, NASD Regulation, Inc., (202) 728-8221, to request a copy of the proposals or the Concept Release.

Members that wish to comment must do so by March 2, 1998, concerning the creation of an OTC derivatives dealer and the proposed definition for an NRSRO, and by March 30, 1998, concerning proposed haircut changes for interest rate instruments and the Concept Release on the use of statistical models for setting net capital requirements.

Comment letters should be sent in triplicate to:

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549.

Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov.

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NASD NOTICE TO MEMBERS 98-20

Treasury Updates List Of Specially Designated Persons And Entities

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

As requested by the Department of Treasury (Treasury), the National Association of Securities Dealers, Inc. (NASD[®]) provides members with information from the Office of Foreign Assets Control (OFAC) about persons and entities identified as "Specially Designated Nationals and Blocked¹ Persons." Effective December 23, 1997, OFAC updated its master list, adding the names of 30 foreign terrorist organizations whose funds must be blocked by U.S. financial institutions, and removing one individual under sanctions administered against Iraq.

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 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 that 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, Bosnian Serb military and civilian leaders, North Korea, and Cuba. In addition, OFAC 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 repre-

sent 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's 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 is 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 and is available through several other government services provided free of charge to the general public.

In addition, members can use the NASD Regulation, Inc., Web site (www.nasdr.com) to link to OFAC's list of individuals and companies subject to economic or trade sanctions. OFAC's Web site contains additional information that may be helpful to members and may be accessed directly (www.ustreas.gov/treasury/services/fac/fac.html). Members also may refer to *NASD*

Notices to Members 98-8, 97-87, 97-35, 97-4, 96-23, and 95-97.

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.

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.

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§ 4022.26 [Corrected]

9. In § 4022.26(a), the words "subpart A" are corrected to read "subpart A (subject to the limitations in § 4022.21)".

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

10. The authority citation for Part 4042 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

§ 4044.13 [Corrected]

11. In § 4044.13(a), the last sentence is corrected by adding, before the period at the end thereof, the words "and § 4022.21 of this chapter".

Issued in Washington, D.C., this 22d day of December, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97-33874 Filed 12-29-97; 8:45 am]

BILLING CODE 7708-01-P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Chapter V****Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Narcotics Traffickers, and Blocked Vessels: Addition of Foreign Terrorist Organizations; Removal of One Individual**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is adding to appendix A to 31 CFR chapter V the names of 30 foreign terrorist organizations whose funds are required to be blocked by U.S. financial institutions, and removing from appendices A and B the name of one individual determined to no longer be subject to the criteria for designation under sanctions administered against Iraq.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 22201; tel.: 202/622-2420.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

This document is available as an electronic file on *The Federal Bulletin*

Board the day of publication in the **Federal Register**. By modem, dial 202/512-1387 and type "/GO FAC," or call 202/512-1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem, dial 703/321-3339, and select the appropriate self-expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622-0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

In furtherance of section 303 of the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132, 110 Stat. 1214-1319 (the "Act"), implemented in part by the Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 (62 FR 52493, Oct. 8, 1997—the "Regulations") the Office of Foreign Assets Control is adding the following 30 foreign terrorist organizations ("FTOs") to appendix A to 31 CFR chapter V. Section 303 of the Act (new 18 U.S.C. 2339B), as implemented in § 597.201 of the Regulations, requires financial institutions in possession or control of funds in which a foreign terrorist organization or its agent has an interest to block such funds except as authorized pursuant to the Regulations, and to file reports in accordance with the Regulations. Financial institutions that violate of 18 U.S.C. 2339B(a)(2) and the Regulations are subject to civil penalties administered by the Treasury Department.

These 30 FTOs were designated by the Secretary of State in a notice published in the **Federal Register** on October 8, 1997 (62 FR 52650) pursuant to section 302 of the Act (new 8 U.S.C. 1189), which authorizes the Secretary of

State, in consultation with the Secretary of the Treasury and the Attorney General, to designate organizations meeting stated requirements as FTOs, with prior notification to Congress of the intent to designate. Appendix A contains the names of blocked persons, specially designated nationals, specially designated terrorists, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control (62 FR 34934, June 27, 1997).

Finally, the entry "Akram Al-Ogaily" is removed from appendices A and B as a specially designated national of Iraq, since he has been determined to no longer meet the criteria for designation under sanctions administered against Iraq.

Since this rule involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply.

For the reasons set forth in the preamble, and under the authority of 18 U.S.C. 2339B, 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1701-1706; 50 U.S.C. App. 1-44, appendices A and B to 31 CFR chapter V are amended as set forth below:

1. The notes to the appendices to chapter V are revised to read as follows:

APPENDICES TO CHAPTER V

Notes: The alphabetical lists below provide the following information (to the extent known) concerning blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, specially designated narcotics traffickers and blocked vessels:

1. For blocked individuals: name and title (known aliases), address, (other identifying information), (the notation "individual"), [sanctions program under which the individual is blocked].

2. For blocked entities: name (known former or alternate names), address, [sanctions program under which the entity is blocked].

3. For blocked vessels: name, sanctions program under which the vessel is blocked, registration of vessel, type, size in dead weight and/or gross tons, call sign, vessel owner, and alternate names.

4. Abbreviations: "a.k.a." means "also known as"; "f.k.a." means "formerly known as"; "n.k.a." means "now known as"; "DOB" means "date of birth"; "DWT" means "Deadweight"; "FRY (S&M)" means Federal

Republic of Yugoslavia (Serbia and Montenegro)"; "GRT" means "Gross Registered Tonnage"; "POB" means "place of birth"; "SRBH" refers to the suspended sanctions against the Bosnian Serbs.

5. U.S. financial institutions are cautioned to review the details of a transaction prior to blocking in which the abbreviation of a foreign terrorist organization ("FTO") appears in appendix A to ensure that the transaction relates to the FTO.

6. References to regulatory parts in chapter V:

- [CUBA]: Cuban Assets Control Regulations, part 515;
- [FRY (S&M)]: Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, part 585;
- [FTO]: Foreign Terrorist Organizations Sanctions Regulations, part 597;
- [IRAN]: Iranian Transactions Regulations, part 560;
- [LIBYA]: Libyan Sanctions Regulations, part 550;
- [NKOREA]: Foreign Assets Control Regulations, part 500;
- [SDNT]: Narcotics Trafficking Sanctions Regulations, part 536;
- [SDT]: Terrorism Sanctions Regulations, part 596;
- [SRBH]: Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, part 585.

2. The heading of appendix A is revised and appendix A, section I, is amended by removing the entry for the name "AL-OGAILY, Akram H.," removing all entries that end in "[SDT]" where "[SDT]" is not preceded by the word "(individual)" and by adding the following entries in numerical or alphabetical order to read as follows:

**Appendix A to Chapter V—
Alphabetical Listing of Blocked
Persons, Specially Designated
Nationals, Specially Designated
Terrorists, Foreign Terrorist
Organizations, and Specially
Designated Narcotics Traffickers**

I. * * *
* * * * *

17 NOVEMBER (see REVOLUTIONARY ORGANIZATION 17 NOVEMBER) [FTO]

* * * * *

A.I.C. COMPREHENSIVE RESEARCH INSTITUTE (see AUM SHINRIKYO) [FTO]

A.I.C. SOGO KENKYUSHO (see AUM SHINRIKYO) [FTO]

* * * * *

ABU GHUNAYM SQUAD OF THE HIZBALLAH BAYT AL-MAQDIS (see PALESTINE

ISLAMIC JIHAD – SHAQAQI FACTION) [SDT, FTO]

* * * * *

ABU NIDAL ORGANIZATION (a.k.a. ANO; a.k.a. BLACK SEPTEMBER; a.k.a. FATAH

REVOLUTIONARY COUNCIL; a.k.a. ARAB REVOLUTIONARY COUNCIL; a.k.a. ARAB REVOLUTIONARY BRIGADES; a.k.a. REVOLUTIONARY ORGANIZATION OF SOCIALIST MUSLIMS) [SDT, FTO]

ABU SAYYAF GROUP (a.k.a. AL HARAKAT AL ISLAMIYYA) [FTO]

* * * * *

AIG (see ARMED ISLAMIC GROUP) [FTO]

AIB (see JAPANESE RED ARMY) [FTO]

* * * * *

AL-FARAN (see HARAKAT UL-ANSAR)

[FTO]

AL-GAMA'AT (see GAMA'A AL-

ISLAMIYYA) [SDT, FTO]

* * * * *

AL-HADID (see HARAKAT UL-ANSAR)

[FTO]

AL-HADITH (see HARAKAT UL-ANSAR)

[FTO]

* * * * *

AL HARAKAT AL ISLAMIYYA (see ABU SAYYAF GROUP) [FTO]

* * * * *

AL-JAMA'AH AL-ISLAMIYAH AL-

MUSALLAH (see ARMED ISLAMIC GROUP)

[FTO]

* * * * *

AL-JIHAD (a.k.a. EGYPTIAN AL-JIHAD; a.k.a. VANGUARDS OF CONQUEST; a.k.a. VANGUARDS OF VICTORY; a.k.a. TALAI'I

AL-FATH; a.k.a. TALA'AH AL-FATAH; a.k.a. TALA'AL AL-FATEH; a.k.a. TALA'

AL-FATEH; a.k.a. TALA'AH AL-FATAH; a.k.a. TALA'AL-FATEH; a.k.a. NEW JIHAD; a.k.a. EGYPTIAN ISLAMIC JIHAD; a.k.a. JIHAD GROUP) [SDT, FTO]

* * * * *

ANO (see ABU NIDAL ORGANIZATION)

[SDT, FTO]

ANSAR ALLAH (see HIZBALLAH) [SDT, FTO]

[FTO]

ANTI-IMPERIALIST INTERNATIONAL BRIGADE (see JAPANESE RED ARMY) [FTO]

ANTI-WAR DEMOCRATIC FRONT (see JAPANESE RED ARMY) [FTO]

* * * * *

ARAB REVOLUTIONARY BRIGADES (see ABU NIDAL ORGANIZATION) [SDT, FTO]

ARAB REVOLUTIONARY COUNCIL (see ABU NIDAL ORGANIZATION) [SDT, FTO]

* * * * *

ARMED ISLAMIC GROUP (a.k.a. GIA; a.k.a. GROUPEMENT ISLAMIQUE ARME; a.k.a. AIG; a.k.a. AL-JAMA'AH AL-

ISLAMIYAH AL-MUSALLAH) [FTO]

* * * * *

AUM SHINRIKYO (a.k.a. AUM SUPREME TRUTH; a.k.a. A.I.C. SOGO KENKYUSHO; a.k.a. A.I.C. COMPREHENSIVE RESEARCH INSTITUTE) [FTO]

AUM SUPREME TRUTH (see AUM SHINRIKYO) [FTO]

* * * * *

BASQUE FATHERLAND AND LIBERTY (see EUZKADI TA ASKATASUNA) [FTO]

* * * * *

BLACK SEPTEMBER (see ABU NIDAL ORGANIZATION) [SDT, FTO]

* * * * *

COMMITTEE FOR THE SAFETY OF THE ROADS (see KACH) [SDT, FTO]

* * * * *

DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE (see DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE – HAWATMEH FACTION) [SDT, FTO]

DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE – HAWATMEH FACTION (a.k.a. DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE; a.k.a. DFLP; a.k.a. RED STAR FORCES; a.k.a. RED STAR BATTALIONS) [SDT, FTO]

* * * * *

DEV SOL (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/Front) [FTO]

DEV SOL ARMED REVOLUTIONARY UNITS (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/Front) [FTO]

DEV SOL SDB (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/Front) [FTO]

DEV SOL SILAHLI DEVRIMCI BIRLIKLERI (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/Front) [FTO]

DEVRIMCI HALK KURTULUS PARTISI-CEPHESI (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/Front) [FTO]

DEVRIMCI SOL (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/Front) [FTO]

DFLP (see DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE – HAWATMEH FACTION) [SDT, FTO]

DHKP/C (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/Front) [FTO]

* * * * *

DIKUY BOGDIM (see KACH) [SDT, FTO]

* * * * *

DOV (see KACH) [SDT, FTO]

* * * * *

EGP (see SHINING PATH) [FTO]

EGYPTIAN AL-GAMA'AT AL-ISLAMIYYA (see GAMA'A AL-ISLAMIYYA)

[SDT, FTO]

EGYPTIAN AL-JIHAD (see AL-JIHAD)

[SDT, FTO]

EGYPTIAN ISLAMIC JIHAD (see AL-JIHAD)

[SDT, FTO]

EJERCITO DE LIBERACION NACIONAL (see NATIONAL LIBERATION ARMY) [FTO]

EJERCITO GUERRILLERO POPULAR (PEOPLE'S GUERRILLA ARMY) (see SHINING PATH) [FTO]

EJERCITO POPULAR DE LIBERACION (PEOPLE'S LIBERATION ARMY) (see SHINING PATH) [FTO]

ELA (see REVOLUTIONARY PEOPLE'S STRUGGLE) [FTO]

* * * * *

ELLALAN FORCE (see LIBERATION TIGERS OF TAMIL EELAM) [FTO]

ELN (see NATIONAL LIBERATION ARMY) [FTO]

* * * * *

EPANASTATIKI ORGANOSI 17 NOEMVRI (see REVOLUTIONARY ORGANIZATION 17 NOVEMBER) [FTO]

EPANASTATIKOS LAIKOS AGONAS (see REVOLUTIONARY PEOPLE'S STRUGGLE) [FTO]

EPL (see SHINING PATH) [FTO]

* * * * *

ETA (see EUZKADI TA ASKATASUNA) [FTO]

* * * * *
EUZKADI TA ASKATASUNA (a.k.a. BASQUE FATHERLAND AND LIBERTY; a.k.a. ETA) [FTO]

* * * * *
FARC (see REVOLUTIONARY ARMED FORCES OF COLOMBIA) [FTO]

* * * * *
FATAH REVOLUTIONARY COUNCIL (see ABU NIDAL ORGANIZATION) [SDT, FTO]

* * * * *
FOLLOWERS OF THE PROPHET MUHAMMAD (see HIZBALLAH) [SDT, FTO]

* * * * *
FPMR (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]
FPMR/A (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]
FPMR/D (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]
FRENTE PATRIOTICO MANUEL RODRIGUEZ (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]
FRENTE PATRIOTICO MANUEL RODRIGUEZ - AUTONOMOS (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]

* * * * *
FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA (see REVOLUTIONARY ARMED FORCES OF COLOMBIA) [FTO]

* * * * *
GAMA'A AL-ISLAMIYYA (a.k.a. ISLAMIC GROUP; a.k.a. IG; a.k.a. AL-GAMA'AT; a.k.a. ISLAMIC GAMA'AT; a.k.a. EGYPTIAN AL-GAMA'AT AL-ISLAMIYYA) [SDT, FTO]

* * * * *
GIA (see ARMED ISLAMIC GROUP) [FTO]

* * * * *
GROUPEMENT ISLAMIQUE ARME (see ARMED ISLAMIC GROUP) [FTO]

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HALHUL GANG (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

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HALHUL SQUAD (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

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HAMAS (a.k.a. ISLAMIC RESISTANCE MOVEMENT; a.k.a. HARAKAT AL-MUQAWAMA AL-ISLAMIYA; a.k.a. STUDENTS OF AYYASH; a.k.a. STUDENTS OF THE ENGINEER; a.k.a. YAHYA AYYASH UNITS; a.k.a. IZZ AL-DIN AL-QASSIM BRIGADES; a.k.a. IZZ AL-DIN AL-QASSIM FORCES; a.k.a. IZZ AL-DIN AL-QASSIM BATTALIONS; a.k.a. IZZ AL-DIN AL-QASSAM BRIGADES; a.k.a. IZZ AL-DIN AL-QASSAM FORCES; a.k.a. IZZ AL-DIN AL-QASSAM BATTALIONS) [SDT, FTO]

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HARAKAT AL-MUQAWAMA AL-ISLAMIYA (see HAMAS) [SDT, FTO]

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HARAKAT UL-ANSAR (a.k.a. HUA; a.k.a. AL-HADID; a.k.a. AL-HADITH; a.k.a. AL-FARAN) [FTO]

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HIZBALLAH (a.k.a. PARTY OF GOD; a.k.a. ISLAMIC JIHAD; a.k.a. ISLAMIC JIHAD ORGANIZATION; a.k.a. REVOLUTIONARY JUSTICE ORGANIZATION; a.k.a.

ORGANIZATION OF THE OPPRESSED ON EARTH; a.k.a. ISLAMIC JIHAD FOR THE LIBERATION OF PALESTINE; a.k.a. ORGANIZATION OF RIGHT AGAINST WRONG; a.k.a. ANSAR ALLAH; a.k.a. FOLLOWERS OF THE PROPHET MUHAMMAD) [SDT, FTO]

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HOLY WAR BRIGADE (see JAPANESE RED ARMY) [FTO]

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HUA (see HARAKAT UL-ANSAR) [FTO]

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IG (see GAMA'A AL-ISLAMIYYA) [SDT, FTO]

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ISLAMIC GAMA'AT (see GAMA'A AL-ISLAMIYYA) [SDT, FTO]

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ISLAMIC GROUP (see GAMA'A AL-ISLAMIYYA) [SDT, FTO]

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ISLAMIC JIHAD (see HIZBALLAH) [SDT, FTO]

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ISLAMIC JIHAD FOR THE LIBERATION OF PALESTINE (see HIZBALLAH) [SDT, FTO]

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ISLAMIC JIHAD IN PALESTINE (see PALESTINE ISLAMIC JIHAD - SHAQAQI FACTION) [SDT, FTO]

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ISLAMIC JIHAD OF PALESTINE (see PALESTINE ISLAMIC JIHAD - SHAQAQI FACTION) [SDT, FTO]

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ISLAMIC JIHAD ORGANIZATION (see HIZBALLAH) [SDT, FTO]

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ISLAMIC RESISTANCE MOVEMENT (see HAMAS) [SDT, FTO]

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IZZ AL-DIN AL-QASSAM BATTALIONS (see HAMAS) [SDT, FTO]

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IZZ AL-DIN AL-QASSAM BRIGADES (see HAMAS) [SDT, FTO]

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IZZ AL-DIN AL-QASSAM FORCES (see HAMAS) [SDT, FTO]

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IZZ AL-DIN AL-QASSIM BATTALIONS (see HAMAS) [SDT, FTO]

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IZZ AL-DIN AL-QASSIM BRIGADES (see HAMAS) [SDT, FTO]

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IZZ AL-DIN AL-QASSIM FORCES (see HAMAS) [SDT, FTO]

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JAPANESE RED ARMY (a.k.a. NIPPON SEKIGUN; a.k.a. NIHON SEKIGUN; a.k.a. ANTI-IMPERIALIST INTERNATIONAL BRIGADE; a.k.a. HOLY WAR BRIGADE; a.k.a. ANTI-WAR DEMOCRATIC FRONT; a.k.a. JRA; a.k.a. AIIB) [FTO]

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JIHAD GROUP (see AL-JIHAD) [SDT, FTO]

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JRA (see JAPANESE RED ARMY) [FTO]

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JUDEA POLICE (see KACH) [SDT, FTO]

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JUDEAN VOICE (see KAHANE CHAI) [SDT, FTO]

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KACH (a.k.a. REPRESSION OF TRAITORS; a.k.a. DIKUY BOGDIM; a.k.a. DOV; a.k.a. STATE OF JUDEA; a.k.a. COMMITTEE FOR THE SAFETY OF THE ROADS; a.k.a. SWORD OF DAVID; a.k.a. JUDEA POLICE) [SDT, FTO]

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KAHANE CHAI (a.k.a. KAHANE LIVES; a.k.a. KFAR TAPUAH FUND; a.k.a. JUDEAN VOICE) [SDT, FTO]

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KAHANE LIVES (see KAHANE CHAI) [SDT, FTO]

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KFAR TAPUAH FUND (see KAHANE CHAI) [SDT, FTO]

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KHMER ROUGE (a.k.a. PARTY OF DEMOCRATIC KAMPUCHEA; a.k.a. NATIONAL ARMY OF DEMOCRATIC KAMPUCHEA) [FTO]

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KURDISTAN WORKERS' PARTY (a.k.a. PKK; a.k.a. PARTIYA KARKERAN KURDISTAN) [FTO]

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LIBERATION TIGERS OF TAMIL EELAM (a.k.a. LTTE; a.k.a. TAMIL TIGERS; a.k.a. ELLALAN FORCE) [FTO]

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LTTE (see LIBERATION TIGERS OF TAMIL EELAM) [FTO]

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MANUEL RODRIGUEZ PATRIOTIC FRONT (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]
MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS (a.k.a. FPMR/D; a.k.a. FRENTE PATRIOTICO MANUEL RODRIGUEZ - AUTONOMOS; a.k.a. FPMR/A; a.k.a. MANUEL RODRIGUEZ PATRIOTIC FRONT; a.k.a. FRENTE PATRIOTICO MANUEL RODRIGUEZ; a.k.a. FPMR) [FTO]

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MEK (see MUJAHEDIN-E KHALQ ORGANIZATION) [FTO]

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MKO (see MUJAHEDIN-E KHALQ ORGANIZATION) [FTO]
MOVIMENTO REVOLUCIONARIO TUPAC AMARU (see TUPAC AMARU REVOLUTIONARY MOVEMENT) [FTO]
MRTA (see TUPAC AMARU REVOLUTIONARY MOVEMENT) [FTO]

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MUJAHEDIN-E KHALQ (see MUJAHEDIN-E KHALQ ORGANIZATION) [FTO]

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MUJAHEDIN-E KHALQ ORGANIZATION (a.k.a. MEK; a.k.a. MKO; a.k.a. MUJAHEDIN-E KHALQ; a.k.a. PEOPLE'S MUJAHEDIN ORGANIZATION OF IRAN; a.k.a. PMOI; a.k.a. ORGANIZATION OF THE PEOPLE'S HOLY WARRIORS OF IRAN; a.k.a. SAZEMAN-E MUJAHEDIN-E KHALQ-E IRAN) [FTO]

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NATIONAL ARMY OF DEMOCRATIC KAMPUCHEA (see KHMER ROUGE) [FTO]

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NATIONAL LIBERATION ARMY (a.k.a. ELN; a.k.a. EJERCITO DE LIBERACION NACIONAL) [FTO]

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NEW JIHAD (see AL-JIHAD) [SDT, FTO]

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NIHON SEKIGUN (see JAPANESE RED ARMY) [FTO]

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NIPPON SEKIGUN (see JAPANESE RED ARMY) [FTO]

ORGANIZATION OF RIGHT AGAINST WRONG (see HIZBALLAH) [SDT, FTO]
 ORGANIZATION OF THE OPPRESSED ON EARTH (see HIZBALLAH) [SDT, FTO]
 ORGANIZATION OF THE PEOPLE'S HOLY WARRIORS OF IRAN (see MUJAHEDIN-E KHALQ ORGANIZATION) [FTO]

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PALESTINE ISLAMIC JIHAD - SHAQAQI FACTION (a.k.a. PIJ-SHAQAQI FACTION; a.k.a. PIJ; a.k.a. ISLAMIC JIHAD IN PALESTINE; a.k.a. ISLAMIC JIHAD OF PALESTINE; a.k.a. ABU GHUNAYM SQUAD OF THE HIZBALLAH BAYT AL-MAQDIS) [SDT, FTO]

PALESTINE LIBERATION FRONT (see PALESTINE LIBERATION FRONT - ABU ABBAS FACTION) [SDT, FTO]

PALESTINE LIBERATION FRONT - ABU ABBAS FACTION (a.k.a. PALESTINE LIBERATION FRONT; a.k.a. PLF; a.k.a. PLF-ABU ABBAS) [SDT, FTO]

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PARTIDO COMUNISTA DEL PERU (COMMUNIST PARTY OF PERU) (see SHINING PATH) [FTO]

PARTIDO COMUNISTA DEL PERU EN EL SENDERO LUMINOSO DE JOSE CARLOS MARIATEGUI (COMMUNIST PARTY OF PERU ON THE SHINING PATH OF JOSE CARLOS MARIATEGUI) (see SHINING PATH) [FTO]

PARTIYA KARKERAN KURDISTAN (see KURDISTAN WORKERS' PARTY) [FTO]

PARTY OF DEMOCRATIC KAMPUCHEA (see KHMER ROUGE) [FTO]

PARTY OF GOD (see HIZBALLAH) [SDT, FTO]

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PCP (see SHINING PATH) [FTO]

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PEOPLE'S MUJAHEDIN ORGANIZATION OF IRAN (see MUJAHEDIN-E KHALQ ORGANIZATION) [FTO]

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PFLP (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

PFLP-GC (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE - GENERAL COMMAND) [SDT, FTO]

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PIJ (see PALESTINE ISLAMIC JIHAD - SHAQAQI FACTION) [SDT, FTO]

PIJ-SHAQAQI FACTION (see PALESTINE ISLAMIC JIHAD - SHAQAQI FACTION) [SDT, FTO]

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PKK (see KURDISTAN WORKERS' PARTY) [FTO]

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PLF (see PALESTINE LIBERATION FRONT - ABU ABBAS FACTION) [SDT, FTO]

PLF-ABU ABBAS (see PALESTINE LIBERATION FRONT - ABU ABBAS FACTION) [SDT, FTO]

PMOI (see MUJAHEDIN-E KHALQ ORGANIZATION) [FTO]

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POPULAR FRONT FOR THE LIBERATION OF PALESTINE (a.k.a. PFLP; a.k.a. RED EAGLES; a.k.a. RED EAGLE GROUP; a.k.a.

RED EAGLE GANG; a.k.a. HALHUL GANG; a.k.a. HALHUL SQUAD) [SDT, FTO]

POPULAR FRONT FOR THE LIBERATION OF PALESTINE - GENERAL COMMAND (a.k.a. PFLP-GC) [SDT, FTO]

POPULAR REVOLUTIONARY STRUGGLE (see REVOLUTIONARY PEOPLE'S STRUGGLE) [FTO]

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RED EAGLE GANG (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

RED EAGLE GROUP (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

RED EAGLES (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

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RED STAR BATTALIONS (see DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE - HAWATMEH FACTION) [SDT, FTO]

RED STAR FORCES (see DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE - HAWATMEH FACTION) [SDT, FTO]

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REPRESSION OF TRAITORS (see KACH) [SDT, FTO]

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REVOLUTIONARY ARMED FORCES OF COLOMBIA (a.k.a. FARC; a.k.a. FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA) [FTO]

REVOLUTIONARY JUSTICE ORGANIZATION (see HIZBALLAH) [SDT, FTO]

REVOLUTIONARY LEFT (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/Front) [FTO]

REVOLUTIONARY ORGANIZATION OF SOCIALIST MUSLIMS (see ABU NIDAL ORGANIZATION) [SDT, FTO]

REVOLUTIONARY ORGANIZATION 17 NOVEMBER (a.k.a. 17 NOVEMBER; a.k.a. EPANASTATIKA ORGANOSI 17 NOEMVRI) [FTO]

REVOLUTIONARY PEOPLE'S LIBERATION PARTY/Front (a.k.a. DEVRIMCI HALK KURTULUS PARTISI-CEPHESI; a.k.a. DHKP/C; a.k.a. DEVRIMCI SOL; a.k.a. REVOLUTIONARY LEFT; a.k.a. DEV SOL; a.k.a. DEV SOL SILAHLI DEVRIMCI BIRLIKLERI; a.k.a. DEV SOL SDB; a.k.a. DEV SOL ARMED REVOLUTIONARY UNITS) [FTO]

REVOLUTIONARY PEOPLE'S STRUGGLE (a.k.a. EPANASTATIKOS LAIKOS AGONAS; a.k.a. ELA; a.k.a. REVOLUTIONARY POPULAR STRUGGLE; a.k.a. POPULAR REVOLUTIONARY STRUGGLE) [FTO]

REVOLUTIONARY POPULAR STRUGGLE (see REVOLUTIONARY PEOPLE'S STRUGGLE) [FTO]

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SAZEMAN-E MUJAHEDIN-E KHALQ-E IRAN (see MUJAHEDIN-E KHALQ ORGANIZATION) [FTO]

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SENDERO LUMINOSO (see SHINING PATH) [FTO]

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SHINING PATH (a.k.a. SENDERO LUMINOSO; a.k.a. SL; a.k.a. PARTIDO

COMUNISTA DEL PERU EN EL SENDERO LUMINOSO DE JOSE CARLOS MARIATEGUI (COMMUNIST PARTY OF PERU ON THE SHINING PATH OF JOSE CARLOS MARIATEGUI); a.k.a. PARTIDO COMUNISTA DEL PERU (COMMUNIST PARTY OF PERU); a.k.a. PCP; a.k.a. SOCORRO POPULAR DEL PERU (PEOPLE'S AID OF PERU); a.k.a. SPP; a.k.a. EJERCITO GUERRILLERO POPULAR (PEOPLE'S GUERRILLA ARMY); a.k.a. EGP; a.k.a. EJERCITO POPULAR DE LIBERACION (PEOPLE'S LIBERATION ARMY); a.k.a. EPL) [FTO]

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SL (see SHINING PATH) [FTO]

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SOCORRO POPULAR DEL PERU (PEOPLE'S AID OF PERU) (see SHINING PATH) [FTO]

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SPP (see SHINING PATH) [FTO]

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STATE OF JUDEA (see KACH) [SDT, FTO]

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STUDENTS OF AYYASH (see HAMAS) [SDT, FTO]

STUDENTS OF THE ENGINEER (see HAMAS) [SDT, FTO]

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SWORD OF DAVID (see KACH) [SDT, FTO]

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TALA' AL-FATEH (see AL-JIHAD) [SDT, FTO]

TALA' AH AL-FATAH (see AL-JIHAD) [SDT, FTO]

TALAAH AL-FATAH (see AL-JIHAD) [SDT, FTO]

TALA' AL AL-FATEH (see AL-JIHAD) [SDT, FTO]

TALA' AL-FATEH (see AL-JIHAD) [SDT, FTO]

TALAI' AL-FATH (see AL-JIHAD) [SDT, FTO]

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TAMIL TIGERS (see LIBERATION TIGERS OF TAMIL EELAM) [FTO]

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TUPAC AMARU REVOLUTIONARY MOVEMENT (a.k.a. MOVIMIENTO REVOLUCIONARIO TUPAC AMARU; a.k.a. MRTA) [FTO]

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VANGUARDS OF CONQUEST (see AL-JIHAD) [SDT, FTO]

VANGUARDS OF VICTORY (see AL-JIHAD) [SDT, FTO]

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YAHYA AYYASH UNITS (see HAMAS) [SDT, FTO]

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Appendix B [Amended]

3. Appendix B to chapter V of 31 CFR is amended by removing the entry for the name "AL-OGAILY, Akram H." under the heading "England."

Dated: October 31, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved:

James E. Johnson,

Assistant Secretary (Enforcement),
Department of the Treasury.

[FR Doc. 97-33840 Filed 12-23-97; 10:46 am]

BILLING CODE 4810-25-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 89

[AMS-FRL-5939-5]

Control of Air Pollution: Emission Standards for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts; Preemption of State Regulation for Nonroad Engine and Vehicle Standards; Amendments to Rules

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This direct final rulemaking, consistent with an order and opinion from the U.S. Court of Appeals for the District of Columbia Circuit, amends EPA's regulations setting emission standards for large (at or above 37 kilowatts) nonroad compression ignition engines, and EPA's regulations establishing procedures for EPA authorization of California nonroad emission standards. Specifically, EPA is withdrawing portions of an interpretive rule which set forth the Agency's position on the Clean Air Act (Act) regarding the status of certain internal combustion engines manufactured before the effective date of the final rulemaking promulgating EPA's definition of nonroad engine. Additionally, consistent with the D.C. Circuit opinion, EPA also is amending the remaining text of this interpretive rule, as well as EPA's regulations issued under section 209(e) of the Act regarding the Agency's California nonroad standards authorization process, to clarify that California must seek authorization from EPA prior to enforcing standards and other requirements relating to emissions from any nonroad vehicles or engines, and not just new nonroad vehicles and engines, which was the original language used in these regulations.

DATES: This direct final rule is effective on March 2, 1998 unless notice is received by January 29, 1998 that any person wishes to submit adverse

comments and/or request a hearing. Should EPA receive such notice, EPA will publish a timely document in the **Federal Register** withdrawing this direct final rule. Any party who sends EPA notice of intent to submit adverse comments must in turn submit the adverse comments by March 2, 1998, unless a hearing is requested. Any party objecting to this direct final rule, at the time it notifies EPA of its intent to submit adverse comments, can request EPA to hold a public hearing on this action. If a hearing is requested, it will take place on March 2, 1998, and interested parties will have an additional 30 days after the hearing (until March 30, 1998) to submit comments on any information presented at the hearing. Because no hearing will occur absent a request for one, interested parties should contact Robert M. Doyle at the number listed below after January 29, 1998 to determine whether a hearing will take place.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: Air Docket Section (6102), Attention: Docket No. A-91-24, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, or hand-delivered to the Air Docket at the above address, in Room M-1500, Waterside Mall. A copy of written comments should also be submitted to Robert M. Doyle at the address below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney/Advisor, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C. 20560, (202) 564-9258, FAX (202) 233-9596, E-Mail, Doyle.Robert@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this direct final rule are the California Air Resources Board and other state air quality agencies. Regulated categories and entities include:

Category	Examples of regulated entities
State and local government.	California Air Resources Board. State and local air quality agencies.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be

regulated. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Obtaining Electronic Copies of Documents

Electronic copies of the preamble and the regulatory text of this direct final rule are available via the Internet on the Office of Mobile Sources (OMS) Home Page (<http://www.epa.gov/OMSWWW/>). Users can find these documents and other nonroad engine and vehicle related information and documents by accessing the OMS Home Page and looking at the path entitled "Nonroad engines and vehicles." This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version is made available on the day of publication on the primary Web site (<http://www.epa.gov/docs/fedrgstr/EPA-AIR/>).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

III. Legal Authority and Background

Authority for the actions set forth in this direct final rule is granted to EPA by sections 209, 213, and 301 of the Clean Air Act as amended (42 U.S.C. 7543, 7547, and 7601).

A. Amendments and Redesignation of Appendix Containing Interpretive Rule on Date and Scope of Nonroad Preemption

On May 17, 1993, EPA proposed rules setting standards for emissions from nonroad compression ignition engines at or above 37 kilowatts (approximately 50 horsepower) in power (large nonroad engine rule).¹ In this NPRM, EPA was faced with the question (among many issues) of the manner and the extent to which states could regulate nonroad engines, which some states and localities previously had regulated as stationary sources. EPA noted that while emissions from nonroad engines are excluded from the Act's section 302(z) definition of stationary source,² the exclusion would apply only to those nonroad internal combustion engines that are manufactured after the effective

¹ 58 FR 28809 (May 17, 1993).

² Section 302(z) states that the "term 'stationary source' means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216."

NASD NOTICE TO MEMBERS 98-21

SEC Approves Amendments To Rule On Clearly Erroneous Transactions

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On January 14, 1998, the Securities and Exchange Commission (SEC) approved changes to National Association of Securities Dealers, Inc. (NASD[®]) Rule 11890 regarding the handling of clearly erroneous transactions.¹ The NASD and The Nasdaq Stock MarketSM (Nasdaq[®]) believe that the process for resolving erroneous transaction complaints will become fairer, more efficient, and more timely, thereby promoting the maintenance of fair and orderly markets and exposing the parties to an allegedly erroneous transaction to less market risk. This *Notice* is being issued to alert members to the changes involved, **which will become effective on Monday, February 23, 1998.**

The rule as amended gives designated Nasdaq officials the authority to adjust the price and size of erroneous transactions, where previously Nasdaq officials had authority only to nullify, affirm or decline to act with respect to an allegedly erroneous transaction. Nasdaq officials also will now be able to cancel or adjust erroneous transactions on their own motion rather than merely being able to respond to member complaints as the rule formerly required.

In addition, the amendment shortens the time period to submit erroneous transaction complaints from any time during the trading day to within 30 minutes of the transaction. Furthermore, the time period to appeal an erroneous transaction determination has been shortened from four "market" hours to 30 minutes.

The new rule also clarifies several points, including:

- the procedures by which the parties to an allegedly erroneous transaction may submit written information concerning the transaction;

- the fact that an appeal of an erroneous transaction determination does not operate as a stay of the determination; and
- the requirement that both parties to an erroneous transaction must agree if they wish a complaint to be withdrawn after it has been filed, but before a decision is rendered.

Questions concerning this *Notice* may be directed to Glen Shipway, Senior Vice President, Nasdaq Market Operations, at (203) 385-6250, or Andrew S. Margolin, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8869.

Background

In April 1990, the SEC approved an NASD proposal to add Section 70 to the Uniform Practice Code (now NASD Rule 11890) to permit the NASD to declare clearly erroneous transactions null and void if they arise out of the use or operation of any automated quotation, execution, or communication system owned or operated by the NASD. Previously, the NASD had no authority to cancel a transaction, even if one or more terms of the transaction clearly were in error. For example, one of the catalysts for adopting Rule 11890 was that a member had complained that a trade executed over Nasdaq's SelectNetSM service was 10 points away from the inside quotation, clearly an error, but the contra party refused to cancel the trade. With the adoption of Rule 11890, the NASD now has the ability to resolve disputes involving obvious errors in an expeditious manner.

Experience with Rule 11890, however, revealed shortcomings in the scope of Nasdaq's authority to take certain actions with respect to clearly erroneous transactions. In particular, there have been instances in the

past where it would have been appropriate for Nasdaq to declare a series of transactions erroneous even though the parties to the transactions were immediately unaware of any error. The changes to the rule discussed below are intended to eliminate the current rule's shortcomings and to provide additional capabilities to resolve clearly erroneous transactions.

Prior to these changes, the procedure for canceling a clearly erroneous trade required a member to contact the NASD on trade date and state in writing the basis for his or her complaint. An officer of Nasdaq would then: (1) advise the other party involved in the trade that the transaction was in dispute; (2) obtain additional information concerning the transaction, if necessary; (3) review the trade information; and (4) make a determination as to whether the trade should stand or be revoked. Either party could appeal to the Market Operations Review Committee (MORC or Committee) independently. Although Nasdaq officers had the authority to nullify, affirm or decline to act with respect to an allegedly erroneous transaction, only the MORC had authority to adjust the terms of an erroneous transaction.

Description Of Amendments Authority Of Nasdaq Officers To Adjust The Terms Of Erroneous Transactions

Under the amended rule, Nasdaq officers now have the authority to adjust the price and/or size of a transaction to equitably resolve an error involving a clearly erroneous transaction. This will enhance the efficiency with which erroneous trade disputes are resolved.

Authority Of Nasdaq To Cancel Or Adjust Clearly Erroneous Trades On Its Own Motion

Previously, only members could seek to have an allegedly erroneous transaction nullified. There have been occasions, however, where Nasdaq system malfunctions have caused erroneous trades. Accordingly, the amendment grants Nasdaq officials the authority to cancel or modify the terms of transactions in the event of a disruption or malfunction in the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq. These officials would be authorized to cancel or adjust an erroneous transaction on their own motion within 30 minutes of detection of the erroneous transaction, absent extraordinary circumstances, but in no event later than 6:00 p.m. on the next trading day after the date of the trade(s). As with any other erroneous transaction determination, members would have the right to appeal such actions to the MORC.

Time Parameters For The Submission Of Erroneous Transaction Complaints

Rule 11890 previously provided that a member could submit an erroneous transaction complaint "during Nasdaq operating hours on the same business day the transaction occurs..." Because members could file erroneous transaction complaints any time during the trading day, however, the rule had been used by some firms to seek to cancel trades that were not erroneous at the time of execution, but which became unprofitable due to subsequent market movement. For example, when a trade occurred on SelectNet at 10:00 a.m. and a party did not complain of an error until 5:00 p.m., the complainant had the opportunity to watch for positive or negative market move-

ments, prior to requesting NASD action. If the market moved in a direction that was unfavorable to the trade, the member would contact the NASD to cancel the trade after the close of the market, leaving the other side of the transaction at risk, without giving adequate notice of the disputed trade in close proximity to the time of execution.

The amended rule now requires the timely submission of notifications of allegedly erroneous transactions. Because of the pace and volume of trades that occur in the first half-hour of trading each morning, the amendment establishes a separate time frame for reporting clearly erroneous transactions that occur between 9:30 and 10:00 a.m. Thus, notifications would be required according to the following time table:

- (1) for transactions occurring prior to 10:00 a.m., Eastern Time, complaints must be submitted by 10:30 a.m., Eastern Time; and
- (2) for transactions occurring at or after 10:00 a.m., Eastern Time, complaints must be submitted within 30 minutes.

Time Parameter To Appeal Erroneous Transaction Determinations

Previously, members had four "market" hours to appeal an erroneous transaction determination, unduly extending the period of time that both parties to the trade were subject to market risk. Accordingly, the amendment provides that, once a member has received verbal notification of an erroneous transaction determination from the staff, it shall have 30 minutes to appeal the determination. The amendment also clarifies that once a written appeal has been received, the counter-party to the trade will be notified of the appeal and both parties will be able to sub-

mit any additional supporting written information up until the time the appeal is considered by the Committee. In addition, either party to a disputed trade may request the written information provided by the other party during the appeal process.

Procedure For Submission Of Complaints

The amendment clarifies several procedural aspects concerning the submission of erroneous transaction complaints. Specifically, the amendment clarifies that:

- (1) a complaint will not be deemed to have been submitted until Market Operations receives a written complaint, via facsimile or otherwise;
- (2) once a timely complaint is received, a complainant will have up to 30 minutes to submit any supporting written information concerning the complaint, via facsimile or otherwise;
- (3) once a timely complaint is received, the counter-party will be notified by Market Operations of the complaint and afforded a 30-minute period to submit any supporting written information concerning the disputed trade, via facsimile or otherwise;
- (4) either party to a disputed trade may request the written information submitted by the other party;
- (5) notwithstanding the 30-minute period to submit information, once a party to a disputed trade communicates that it has no further information to provide, it may not thereafter provide additional information unless requested to do so by the staff; and
- (6) if both parties to a disputed trade indicate that they have no further

information to provide concerning the complaint before their respective 30-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination.

Clarification Of The Appeal Process For Erroneous Transaction Determinations

In order to clarify the current operation of the appeal process for erroneous transaction determinations, the rule now provides that:

- (1) an appeal of an erroneous transaction determination does not operate as a stay of the initial ruling; and
- (2) any decisions by the MORC or the staff are rendered without prejudice as to the rights of the parties to seek arbitration of the disputed transactions.

Withdrawal Of Erroneous Transaction Complaints

Rule 11890 previously permitted a member to unilaterally withdraw an erroneous transaction complaint at any time. Because there are no restrictions on when a complaint can be withdrawn, market participants have in the past withdrawn their complaints when the market moved in their favor subsequent to filing the complaint. This amendment prohibits the withdrawal of a complaint or an appeal of an erroneous transaction determination unless both parties to the trade agree to withdraw the matter.

Text Of Amendments

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

11890. Clearly Erroneous [Trades] Transactions

(a) Authority to [Declare] Review Transactions [Void]

(1) [In circumstances in which the Association deems it necessary to maintain a fair and orderly market and to protect investors and the public interest, the Association may, pursuant to the procedures set forth in paragraph (b) below, declare any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by the Association or any subsidiary thereof and approved by the Commission, null and void on the grounds that one or more of the terms of the transaction are clearly erroneous.

(2)] For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

(2) Officers of The Nasdaq Stock Market, Inc. ("Nasdaq") designated by the President of Nasdaq shall, pursuant to the procedures set forth in paragraph (b) below, have the authority to review any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the Officer shall decline to act upon a disputed transaction if the officer believes that the transaction under dispute is not clearly erroneous, or, if the officer

determines the transaction in dispute is clearly erroneous, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, that they would have been in had the error not occurred. Nasdaq shall promptly provide oral notification of a determination to the parties involved in a disputed transaction and thereafter issue a written confirmation of the determination.

(b) Procedures for Reviewing [Declaring a] Transactions [Void]

(1) Any member or person associated with a member that seeks to have a transaction reviewed [declared null and void] pursuant to paragraph (a) hereof, shall submit a written complaint, via facsimile or otherwise, to Nasdaq Market Operations in accordance with the following time parameters:

(A) for transactions occurring prior to 10:00 a.m., Eastern Time, complaints must be submitted by 10:30 a.m., Eastern Time; and

(B) for transactions occurring on or after 10:00 a.m., Eastern Time, complaints must be submitted within thirty minutes.

[notify an officer of the Association designated by the President of the transaction during Nasdaq operating hours on the same business day the transaction occurs, and shall provide such official all facts and information necessary for a determination under paragraph (a). Information communicated orally shall be confirmed promptly in writing.]

(2) Once a complaint has been received in accord with subparagraph (b)(1) above:

(A) the complainant shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise;

(B) the counterparty to the trade shall be verbally notified of the complaint by Nasdaq staff and shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise; and

(C) either party to a disputed trade may request the written information provided by the other party pursuant to this subparagraph.

(3) Notwithstanding paragraph (b)(2) above, once a party to a disputed trade communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination pursuant to paragraph (a)(2) above.

(4) Each member and/or person associated with a member involved in the transaction shall provide Nasdaq with any information that it requests in order to resolve the matter on a timely basis notwithstanding

the time parameters set forth in paragraph (b)(2) above.

(5) Once a party has applied to Nasdaq for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph (a)(2).

[(2) An officer of the Association designated by the President shall review the information submitted and determine whether the transaction in dispute is clearly erroneous and detrimental to the maintenance of a fair and orderly market and the protection of investors and the public interest and may declare that the transaction be null and void. The official may decline to act upon a disputed transaction if he or she believes that action is unnecessary or inappropriate. The Association shall immediately issue a written determination of the matter, setting forth the actions taken and the reasons therefor.]

(c) Procedures for Reviewing Transactions Executed During System Disruptions or Malfunctions

In the event of a disruption or malfunction in the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission, Nasdaq, acting through an officer designated by the President of Nasdaq pursuant to paragraph (a)(2), may, on its own motion pursuant to the standards set forth in paragraph (a), declare transactions arising out of the use or operation of such systems during the period of such disruption or malfunction null and void or modify the terms of these transactions; provided that, in the absence of extraordinary circumstances, a Nasdaq officer must take action pursuant to this para-

graph within thirty (30) minutes of detection of the erroneous transaction(s), but in no event later than 6:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue. When Nasdaq takes action pursuant to this subparagraph, the member firms involved in the transaction shall be notified as soon as is practicable and shall have a right to appeal such action in accordance with paragraph (d)(1) below.

(d) [(3)] Review by the Market Operations Review Committee ("MORC")

(1) A member or person associated with a member may appeal a determination made under paragraphs (a)(2) or (c) [the determination under subparagraph (2)] to the MORC [Market Operations Review Committee] provided such appeal is made in writing, via facsimile or otherwise, within [four market hours of] thirty (30) minutes after the member or person associated with a member receives verbal notification of such determination, except that if Nasdaq notifies the parties of action taken

pursuant to paragraph (c) after 4:00 p.m., either party has until 9:30 a.m. the next trading day to appeal. [For the purposes of this Rule, "market" hours shall mean those hours the Nasdaq market is open in the United States, Eastern Time.] Once a written appeal has been received, the counterparty to the trade will be notified of the appeal and both parties shall be able to submit any additional supporting written information, via facsimile or otherwise, up until the time the appeal is considered by the Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Committee shall not operate as a stay of the determination made pursuant to paragraph (a)(2) or (c) above. Once a party has appealed a determination to the Committee, the determination shall be reviewed and a decision rendered, unless both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the Committee. Upon consideration of the record, and after

such hearings as it may in its discretion order, the Committee, pursuant to the standards set forth in paragraph (a), shall affirm, modify, reverse, [dismiss,] or remand the determination made under [sub]paragraph (a)(2) or (c) above.

(2) [(4)] The decision of the Committee shall be final and binding upon any member or person associated with a member and shall constitute final Association action on the matter in issue. Any adverse determination by a Nasdaq officer pursuant to paragraph (a)(2) or (c) or any adverse decision by the Committee pursuant to paragraph (d)(1) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

Endnote

¹ See Exchange Act Release No. 39550 (January 14, 1998), 63 FR 4333 (January 28, 1998).

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NASD NOTICE TO MEMBERS 98-22

Year 2000 Frequently Asked Questions

Suggested Routing

- Senior Management
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- Government Securities
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- Insurance
- Internal Audit
- Legal & Compliance
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- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

In December 1997, NASD Regulation, Inc. (NASD RegulationSM) sent a compliance survey (*Special Notice to Members 97-96*) to find out the status of member firms' Year 2000 efforts. Member firms have the responsibility to determine the readiness of their internal computer systems, and other computer systems that they rely upon, for the Year 2000 challenge.

Since that time, the National Association of Securities Dealers, Inc. (NASD[®]) and NASD Regulation have found that there are still many questions surrounding Year 2000-related issues. In order to help facilitate member firms' awareness and understanding of Year 2000, following are frequently asked questions (and associated answers) concerning the Year 2000 and industry issues, the NASD Year 2000 Program, and the NASD Regulation Year 2000 Survey.

Questions regarding this *Notice* or Year 2000 issues should be directed to Lyn Kelly, NASD Year 2000 Program Director, at (301) 590-6342, or send an e-mail to y2k@nasd.com. For further information about the NASD Year 2000 Program, visit the Year 2000 Web Pages on the NASD (www.nasd.com) and NASD Regulation (www.nasdr.com) Web Sites.

Frequently Asked Questions Industry Overview Of The Year 2000 Problem

Question 1: What is the Year 2000 challenge?

Answer 1: The Year 2000 challenge is not only a technical issue. It is a business problem—with various components and implications—requiring a technical solution.

Stated simply, the Year 2000 challenge is that computers typically have been programmed to use a two-digit number, instead of a four-digit number, to represent the year for any date. Since dates are essential to many automated functions, it is absolutely critical for each and every firm to act now to assess its information technology environment and make necessary changes to ensure that automated processes with date-sensitive components will correctly identify "00" as the year 2000, rather than 1900, when processing dates on and after January 1, 2000.

This system carried over when writing computer programs. However common this practice, it causes computer software performing arithmetic operations, comparisons, or sorting of data fields to yield incorrect results when working with years beyond 1999. It also affects facilities, utilities, and office automation equipment—such as fax machines, phones, and security and elevator systems.

Question 2: Who does this impact?

Answer 2: It is a significant, worldwide challenge across all business and industry lines for any company, social or government agency, institution, or individual using computers or other certain automated applications/systems to accomplish a task. Any system or program, including desktop software, could be affected if two digits are used for year representation.

Question 3: What actually happens if the Year 2000 issue isn't corrected?

Answer 3: Any system application calculation that involves a date—such as a consumer credit card transaction, a payroll billing, an electric company statement, a mortgage calculation—could yield incorrect answers.

Question 4: What should computer users do?

Answer 4: Computer users need to update applications and data fields that do not handle century markers or dates beyond 1999. Specifically, they should:

- Determine the magnitude of the problem by assessing their entire portfolio of system and application software source code, including any off-the-shelf applications, to determine what needs to be updated and made Year 2000 ready.
- Decide the best way to make the updates—most likely on an individual, program-by-program basis.
- Implement the updates to the source code; test to make sure it handles both 199X and 2XXX data correctly; and establish a procedure to ensure the source code cannot be inadvertently changed back to a two-digit format.

Question 5: What needs to be done to a computer user's hardware?

Answer 5: Computer users should review their users manual or, if necessary, contact their vendor or sales representative to determine whether the internal timing mechanism in their computer hardware can handle the change of century.

Question 6: Is there any information on costs and timing associated with addressing the Year 2000 challenge?

Answer 6: This information depends upon firm size, industry, level and types of technology, but following are some estimates:

- Overall costs to meet the Year 2000 challenge are estimated to exceed \$600 billion worldwide.

- Costs for automated Wall Street firms estimated to be \$3 to \$4 billion.
- Costs for large organizations estimated to be \$200 million.
- Securities firms will spend up to 63 percent of technology budgets on Year 2000 and maintenance solutions.
- As time passes, the demand for resources to address this issue will accelerate and costs will increase.
- In a September 1997 survey from the Securities Industry Association (SIA)—84 percent of the industry expects to complete Year 2000 conversion by December 1998; most have started conversion but are less than 20 percent complete as of September 1997; 83 percent stated Year 2000 was not a full-time effort of the project manager assigned to this issue.
- External industry experts predict that only 70 percent of all companies will be ready in time.
- The majority of securities firms will rely upon service bureaus and outside consultants to solve the problem.

Question 7: What are the potential risks to the industry?

Answer 7: There are liability issues for corporations, directors, and officers. There may be an inability to provide accurate regulatory/compliance-based reporting/information. There will be a significant impact to all business-critical operations. Such risks could include incorrect market data, settlement agent system failures, inaccurate reconciliation of accounts, incorrect time-based calculations, and customer failure to settle trades, among others.

NASD Year 2000 Program

Question 8: What is the NASD's Year 2000 Program?

Answer 8: The NASD has instituted a Year 2000 Program to address the unique challenges this coming century poses for the NASD's and its members' date-sensitive systems. (The NASD urges all of its members to conduct a comprehensive Year 2000 plan as well.) The NASD Year 2000 Program Office (the Office) is responsible for the control, review, and reporting functions of NASD, NASD Regulation, and The Nasdaq Stock MarketSM (Nasdaq[®]) Year 2000 activities. The Office is responsible for development of metrics and reporting; oversight for standardization for testing and certification; and development and implementation of various processes (*i.e.*, correspondence tracking, different types of reporting).

Question 9: Where can I find out more about the NASD Program?

Answer 9: The NASD communicates regularly about Year 2000 issues through various publications, including the *NASD Regulatory & Compliance Alert*, *NASD Notices to Members*, and Nasdaq's *Subscriber Bulletin*. Also, in May 1997, Nasdaq Trading and Market Services began including Year 2000 as a topic at its quarterly vendor focus groups. And, there are Year 2000 Web Pages on both the NASD Web Site (www.nasd.com) and the NASD Regulation Web Site (www.nasdr.com). For more information about Year 2000, contact Lyn Kelly, NASD Year 2000 Program Director, at (301) 590-6342, or send an e-mail to y2k@nasd.com.

Question 10: What is the NASD's role, as a self-regulatory organization, with respect to its members and the Year 2000 issue?

Answer 10: The NASD's Year 2000 mission in terms of member compliance is "to raise industry awareness of the Year 2000 technology problem and educate member firms on the importance of analyzing the readiness of all computer systems and facilities used to conduct a securities business."

NASD members are expected to:

- Analyze the readiness of internal computer systems, facilities, and external systems/companies critical to operations.
- Take appropriate steps to ensure automated systems used to meet regulatory, market participant, and investor protection obligations are Year 2000 compliant.
- Develop and implement action plans to address required system changes.
- Complete the NASD Regulation Year 2000 Survey (if the firm has not completed the New York Stock Exchange [NYSE] survey).
- Contact vendors of hardware, software, office products, and facilities to ensure they are addressing the Year 2000 challenge.
- Obtain written assurances from all service providers (including clearing firms) that they will be Year 2000 ready.
- Accomplish all system changes by year-end 1998.
- Perform monitoring operations of all converted systems in 1999.
- Perform quality assurance and interface tests with external organizations in 1999.

Question 11: My firm has specific systems or products that it uses from

(or with) the NASD. How will member firms know that the NASD and its systems and services will be Year 2000 compliant?

Answer 11: The NASD, NASD Regulation, and Nasdaq all have programs in place to ensure systems or products they use will be Year 2000 ready. A complete inventory of these systems has been published on the NASD and NASD Regulation Web Sites, with current status and quarterly updates. You may also contact the NASD Year 2000 Program Office, Attn: Lyn Kelly, (301) 590-6342 (y2k@nasd.com), if you wish to be put on our mailing list for updates.

Question 12: What type of testing will the NASD Year 2000 Program undertake?

Answer 12: NASD, NASD Regulation, and Nasdaq have established test centers available for testing those systems that interact with our organizations. Testing will be available in July 1998. Details regarding testing are available via the NASD Regulation and NASD Internet Web Sites.

The securities industry, coordinated by the SIA, is planning for industry-wide testing from August 1998 to December 1999. This testing is intended to allow firms and other market participants to perform integrated, industry-wide testing.

Question 13: Under the NASD's Year 2000 Program, will member firms be "certified" in any way with respect to their individual Year 2000 programs?

Answer 13: The NASD plans to require that members certify to NASD Regulation later in 1998 the status of their Year 2000 compliance program and their readiness for testing. Subsequently, NASD Regulation also plans to require that each mem-

ber certify that its systems have been remediated and other necessary steps have been taken to address systems compliance for Year 2000.

Question 14: Will the Year 2000 issue be addressed through the examination cycles of member firms?

Answer 14: As one measure to ascertain whether members are taking appropriate steps to make certain that the automated systems they rely upon to meet their regulatory, market participant, and investor protection obligations are Year 2000 compliant, NASD Regulation has included a special Year 2000 section in all cycle examinations. NASD Regulation examiners will also use member firm survey responses in the examinations process.

NASD Regulation Year 2000 Survey

Question 15: Why does my firm have to fill out the survey? What is the NASD's purpose in conducting this survey?

Answer 15: The NASD has regulatory responsibilities with respect to its member firms and has mandated that its members complete the survey. The deadline for submission of the survey was January 31, 1998, but if you have not yet submitted the survey, please do so immediately. As an NASD member, you are an integral part of the securities industry. As a self-regulatory organization, the NASD is seeking to educate its members and to assure that its members have the tools to remain stable and viable, for the integrity of the marketplace and the protection of investors, as we enter the next century. Furthermore, you should remember that computer failures related to Year 2000 problems generally will be considered neither a defense to violations of firms' regula-

tory or compliance responsibilities nor a mitigation of sanctions for such violations.

Question 16: What is the NASD going to do with this information?

Answer 16: The information collected through this survey will help the NASD ensure that its member firms are implementing their own Year 2000 initiatives, and are aware of issues and risks surrounding the Year 2000 challenge. The NASD will also use this data to track and compile statistical information on the industry as a whole, and to help adjust or fine-tune NASD Year 2000 objectives/activities currently in place.

Question 17: If my firm completed and submitted an NYSE Year 2000 survey, do I need to complete an NASD Regulation survey?

Answer 17: No.

Question 18: I don't know if my firm submitted the NYSE survey. How do I find out?

Answer 18: If you are unsure, your firm should submit the NASD Regulation survey. You should also contact the NYSE to find out if your firm, in fact, submitted the survey.

Question 19: My firm lost/did not receive a copy of the NASD Regulation survey. How do we get a second copy?

Answer 19: If members need an additional copy of the survey, it is posted on both the NASD Regulation and NASD Web Sites. To download the survey, go to either Web Site's Year 2000 section or to the *Notices*

to Members Web Pages (and seek *Special Notice to Members 97-96*). Or, members may call Lyn Kelly, NASD Year 2000 Program Director, at (301) 590-6342, to have another copy mailed to their attention.

Question 20: What does a firm do if it discovers the survey has not been properly signed? And, can someone other than my firm's Chief Executive Officer (CEO) sign the survey?

Answer 20: You must resubmit the survey, along with the appropriate signature (CEO signature required), and write "2nd Copy" on the top of the form.

Question 21: What if the member firm now realizes that it improperly or did not fully complete the survey?

Answer 21: You must submit a fully executed copy of the survey marked "2nd Copy."

Question 22: This Year 2000 issue does not affect my firm. My firm has no computers—we only use personal computers (PCs). Does my firm need to complete the survey?

Answer 22: The full scope of the Year 2000 challenge is not to be underestimated. Facilities, phones, fax machines, power, and elevators, as well as service bureaus and other vendors that you conduct business with, will all be affected. In other words, yes, your firm must fill out the survey indicating that it has a plan to ensure that anything that operates by computer or automated business system will be Year 2000 ready.

As a due diligence exercise, firms must also be cognizant and assured that any third-party vendors upon

which the firms depend are doing their part to be ready to meet Year 2000 challenges; your firm's plan should also indicate steps to validate their readiness. In fact, member firms should obtain written assurances from all service providers that the software and hardware products they use are being reviewed for Year 2000 compliance.

As for firms only having PCs, your plan should include making sure your hardware and desktop software are tested for Year 2000 readiness as well. Even PCs sold and delivered in the last six months may have components that will have problems.

Question 23: In reference to question #1 of the NASD Regulation survey, my firm is neither an "introducing" nor "clearing" firm. Does the firm still need to fill out the survey?

Answer 23: Yes. You should fill in what type of firm you are and complete the survey. The survey applies to every NASD member firm.

Question 24: Does my firm have to fill out the survey if it uses a service bureau?

Answer 24: Yes. As mentioned above, your firm must have a plan in place to work with third-party service providers—including service bureaus—to ensure they will be able to support your firm and will be operational in the year 2000. If possible, your firm should offer to test with them.

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NASD NOTICE TO MEMBERS 98-23

SEC Requests Comment On Proposed Amendments To Continuing Education Rules

Suggested Routing

- Senior Management
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- Continuing Education
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- Executive Representatives
- Government Securities
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- Insurance
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- Legal & Compliance
- Municipal
- Mutual Fund
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- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Members are advised that the National Association of Securities Dealers, Inc. (NASD[®]) has filed a proposed rule change to its Membership and Registration Rule 1120 (Continuing Education Requirements) with the Securities and Exchange Commission (SEC). The SEC noticed the proposed change and assigned Release Number 34-39574 on January 23, 1998. The text of the filing as it appears in the *Federal Register* is attached, and member firms have until February 19, 1998, to submit comments on the rule (refer to File No. SR-NASD-98-03) to the SEC. See 63 FR 4510 (January 29, 1998). If approved by the SEC, the changes will become effective July 1, 1998.

Questions concerning this *Notice* may be directed to John Linnehan, Director, Continuing Education, NASD Regulation, Inc., at (301) 208-2932, or Daniel M. Sibears, Vice President, Member Regulation, NASD RegulationSM, at (202) 728-6911.

The following is a synopsis of the proposed changes to Rule 1120.

Changes To The Regulatory Element A New Regulatory Element Training Module For Registered Principals

Currently, the Regulatory Element computer-based training does not distinguish between registered representatives and principals. All registered persons take the same computer-based training material. The proposed rule calls for the development of a new Regulatory Element computer-based training module related to the specific needs of registered principals. Persons registered as principals who are required to take the Regulatory Element will participate in the training module desig-

nated for principals, while all other registrations will participate in the current Regulatory Element module.

The new module for registered principals will have the scenario-based format of the current Securities Industry Continuing Education Program (Program). What will be different is that the scenarios illustrate principal-specific situations and will be rendered more realistic through multimedia use of audio and visual techniques.

One-Time Grandfathering From The Program

Proposed Rule 1120 allows a one-time exemption for persons currently graduated from the Program by providing that those persons who have been registered for more than 10 years as of the effective date of the proposed rule (anticipated to be July 1, 1998), and who have not been the subject of a disciplinary action during the past 10 years, will continue to be excluded from required ongoing participation in the Regulatory Element. However, persons registered as principals will have to have been registered in this capacity for more than 10 years in order to be grandfathered from participation in the program. Therefore, those principals who have graduated from the Program requirements based on their initial registration date, but who have not been registered as a principal for over 10 years, will be required to re-enter the Program.

Required Regulatory Element Training Time Frames

The proposed rule also addresses the time frames in which registered persons must participate in the Regulatory Element computer-based training. Currently, all registered persons are required to complete Regulatory Element training on three occasions, *i.e.*, within 120 days of the second, fifth and 10th anniversaries

of their initial securities registration. After a person completes the 10th anniversary training requirement, he or she is graduated from the program and is not required to participate further in the Regulatory Element unless he or she is subject to significant disciplinary action. The revised rule does away with graduation from the Program by requiring ongoing participation in the Program throughout registered persons' careers, specifically, on the second anniversary

of their initial securities registration and every three years thereafter.

Changes To The Firm Element

Finally, the current rule requires that, for the Firm Element, each member conduct an annual analysis of its training needs and administer such training, as is appropriate, to its registered persons on an ongoing basis. Training topics must be specifically related to its business, such as new

products, sales practices, risk disclosure, and new regulatory requirements and concerns. The proposed rule will require members to also focus specifically on supervisory needs in conducting their analysis of training needs, and if it is determined that there is a specific need for supervisory training for registered principals, it must be addressed in the Firm Element training plan.

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supervisory capacity will have to have been registered in a supervisory capacity for more than 10 years in order to be covered by this one-time provision for graduation from participation in the program. Therefore, those supervisors who have graduated from the program requirements based on their initial registration date who have not completed 10 years as a supervisor, will be required to re-enter the program.

The Firm Element requires that each broker, dealer and municipal securities dealer conduct annually an analysis of their training needs and administer such training, as is appropriate, to their registered persons who have direct contact with customers and the immediate supervisors of such registered persons, on an ongoing basis in topics specifically related to their business such as new products, sales practices, risk disclosure and new regulatory requirements and concerns. The proposed rule change will require brokers, dealers and municipal securities dealers to specifically focus on supervisory training needs in conducting their analysis of training needs and, if it is determined that there is a specific need for supervisory training, it must be addressed in the Firm Element training plan.

These amendments, which will be adopted uniformly with rule changes of the other SRO Council members, will significantly enhance the continuing education program by requiring all registered persons to participate in the Regulatory Element on an ongoing basis throughout their securities industry careers. In addition, the Board believes that rule amendments allowing for the implementation of a program specifically geared towards supervisors and the issues that may arise in that role will result in more effective regulatory training of supervisors as well as improved front-line supervision overall of brokers, dealers and municipal securities dealers.

2. Statutory Basis

The Board believes the proposed rule change is consistent with the Act and the rules and regulations thereunder. The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act,⁴ which states that the rules of the Board, as a minimum, shall provide such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. The proposed rule change is also consistent with Section

15B(b)(2)(C) of the Act,⁵ which requires, in pertinent part, that the Board's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. Pursuant to this statutory obligation, the Board has proposed this rule change in order to enhance the established continuing education program for registered persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-98-2 and should be submitted by February 19, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-2184 Filed 1-28-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39574; File No. SR-NASD-98-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Continuing Education Requirements

January 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 22, 1998, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. ("NASD Regulation"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.²

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to Amend Rule 1120 regarding the continuing education requirements for registered persons. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

⁶ 17 CFR 200-30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission is concurrently publishing notice of parallel proposed rule changes from other self-regulatory organizations relating to continuing education for registered persons. See Securities Exchange Act Releases Nos. 39575 (CBOE); 39576 (MSRB); and 39577 (NYSE).

⁴ 15 U.S.C. 78o-4.

⁵ 15 U.S.C. 78o-4.

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with the Association. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1) *Requirements:* No member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person unless such person has complied with the requirements of paragraph (a) hereof.

(A) Each registered person shall complete the Regulatory Element on [three occasions, after] the occurrence of their second[, fifth and tenth] registration anniversary [dates] *date and every three years thereafter*, or as otherwise prescribed by the Association. On each [of three occasions] occasion, the Regulatory Element must be completed within [one hundred twenty] 120 days after the person's registration anniversary date. *A person's initial registration date shall establish the cycle of anniversary dates for purposes of this Rule.* The content of the Regulatory Element shall be [prescribed by the Association] *determined by the Association and shall be appropriate to either the registered representative or principal status of person subject to the Rule.*

(B) *Persons Exempted from the Rule—*[Registered persons] *Persons* who have been continuously registered for more than 10 years [as of the effective date of this Rule] *on July 1, 1998*, shall be exempt from participation in the Regulatory Element programs for registered representatives, provided such persons have not been subject *within the last ten years* to any disciplinary action [within the last 10 years] as enumerated in paragraph (a)(3). *A person who has been continuously registered as a principal for more than 10 years on July 1, 1998, shall be exempt from participation in the Regulatory Element programs for registered principals, provided such person has not been subject within the last ten years to any disciplinary action as enumerated in paragraph (a)(3).* In the event [of such disciplinary action,] *that a [person] registered representative or principal who was exempt from participation in Regulatory Element programs subsequently becomes the subject of a disciplinary action as enumerated in paragraph (a)(3), such*

person shall [will] be required to satisfy the requirements of the Regulatory Element [by participation for the period from the effective date of this Rule to 10 years after the occurrence of the disciplinary action] as if the date of such disciplinary action is such person's initial registration date with the Association.

(C) Persons who have been currently registered for 10 years or less as of [the effective date of this Rule] *July 1, 1998*, shall [initially] participate in the Regulatory Element within 120 days after the occurrence of the second[, fifth or tenth] registration anniversary date, *or every third year thereafter*, whichever anniversary date first applies[, and on the applicable registration anniversary date(s) thereafter. Such persons will have satisfied the requirements of the Regulatory Element after participation on the tenth registration anniversary].

(D) All registered persons who have satisfied the requirements of the Regulatory Element shall be exempt from further participation in the Regulatory Element subject to re-entry into the program as set forth in paragraph (a)(3).]

(2) *Failure to Complete—*No change.

(3) *Re-entry into Program:* Unless otherwise determined by the Association, a registered person will be required to re-enter the Regulatory Element and satisfy all of its requirements in the event such person: (A)–(C) No change.

Re-entry shall commence with initial participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (A) above, or the disciplinary action becoming final, in the case of (B) and (C) above[, and on three additional occasions thereafter, at intervals of two, five and 10 years after re-entry, notwithstanding that such person has completed all or part of the program requirements based on length of time as a registered person or completion of ten years of participation in the program].

The date of the disciplinary action shall be treated as such person's initial registration date with the Association.

(4) *Reassociation in a Registered Capacity:* Any registered person who has terminated association with a member and who has, within two years of the date of termination, become reassociated in a registered capacity with a member shall participate in the Regulatory Element at such intervals [(two, five and 10 years)] that may apply *(second anniversary and every three years thereafter)* based on the initial registration anniversary date rather than based on the date of reassociation in a registered capacity.

(5) *Definition of Registered Person:* For purposes of this Rule, the term "registered person" means any person registered with the Association as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series.

(b) Firm Element

(1) *Persons Subject to the Firm Element—*No change.

(2) *Standards for the Firm Element:*

(A) Each member must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill, and professionalism. At a minimum, each member shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the member's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element. *If a member's analysis establishes the need for supervisory training for persons with supervisory responsibilities, such training must be included in the member's training plan.*

(B) *Minimum Standards for Training Programs—*Programs used to implement a member's training plan must be appropriate for the business of the member and, at a minimum must cover the following matters concerning securities products, services, and strategies offered by the member:

- (i) General investment features and associated risk factors;
- (ii) Suitability and sales practice considerations; *and*
- (iii) Applicable regulatory requirements.

(C) *Administration of Continuing Education Program—*A member must administer its continuing education programs in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by covered registered persons.

(3) *Participation in the Firm Element:* Covered registered persons included in a member's plan must take all appropriate and reasonable steps to participate in continuing education programs as required by the member.

(4) *Specific Training Requirements:* The Association may require a member, individually or as part of a larger group, to provide specific training to its covered registered persons in such areas as the Association deems appropriate. Such a requirement may stipulate the class of covered registered persons for

which it is applicable, the time period in which the requirement must be satisfied, and, where appropriate, the actual training content.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise Rule 1120. Rule 1120 provides for a continuing education program for certain persons registered with the NASD. The program, which is uniform within the industry, consists of two parts, a Regulatory Element and a Firm Element. The Regulatory Element requires registered persons to participate in interactive computer-based training at specified intervals and encompasses regulatory and compliance issues, sales practice concerns, and business ethics. The Regulatory Element program applies generally to all registered persons and currently does not distinguish among registration types or categories. The existing program contains content common to registered representatives, supervisors, and other registration categories. The Securities Industry/Regulatory Council on Continuing Education³ has recommended development of a new program component specifically for supervisors. In addition, it is contemplated that in the future, specific programs may be implemented for other

³The Securities Industry/Regulatory Council on Continuing Education was created in November 1993 and comprises six self-regulatory organizations ("SROs") and 13 broker-dealers to represent the interests and needs of a wide cross-section of the industry. The SROs include the American Stock Exchange; the Chicago Board Options Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers Inc.; the New York Stock Exchange, Inc.; and the Philadelphia Stock Exchange. In addition, the Commission and the North American Securities Administrators Association have each assigned liaisons to the Council.

registration categories. The proposed amendments to Rule 1120 would allow for NASD Regulation to require new programs as appropriate with customized training for various registration categories, with the supervisor's program being the first initiative. For purposes of the proposed rule, all the principal registration categories under Rule 1022 would be included in the supervisory program.

The proposed amendments also address the time frames at which registered persons must participate in the Regulatory Element computer-based training. Rule 1120 currently requires all registered persons to complete the training on three occasions, *i.e.*, their second, fifth and tenth registration anniversaries. After a person is registered for more than ten years, he or she is graduated from the program and not required to participate further in the Regulatory Element. However, if at any time a registered person is subject to certain disciplinary actions enumerated in the Rule, then the registered person is required to re-enter the Regulatory Element program. The Council has recommended that these requirements be revised to require ongoing participation in the program by registered persons. In accordance with that recommendation, the proposed amendments to Rule 1120 would require participation in the Regulatory Element throughout a registered person's career, specifically, on the second registration anniversary and every three years thereafter, with no graduation from the program.

Proposed Rule 1120 would allow a one-time exemption for persons currently graduated from the program by providing that those persons who have been registered for more than ten years as of the effective date of the proposed rule, and who have not been the subject of a disciplinary action enumerated in the Rule during the past ten years, would continue to be excluded from required ongoing participation in the Regulatory Element. Persons registered in a supervisory capacity would have to have been registered in a supervisory capacity for more than 10 years in order to be covered by this one-time provision for graduation from participation in the program. Therefore, those supervisors who have graduated from the program requirements based on their initial registration date but who have not completed 10 years as a supervisor would be required to re-enter the program.

The Firm Element requires that each member conduct annually an analysis of their training needs and administer such

training, as is appropriate, to their registered persons who have direct contact with customers and the immediate supervisors of such registered persons, on an ongoing basis. Topics must be specifically related to their business, such as new products, sales practices, risk disclosure, and new regulatory requirements and concerns. The proposed amendments to Rule 1120 would require members to focus specifically on supervisory training needs in conducting their analysis of training needs, and if it is determined that there is a specific need for supervisory training, it must be addressed in the Firm Element training plan.

These amendments, which would be adopted uniformly with rule changes of the other SRO Council members, would significantly enhance the continuing education program by requiring all registered persons to participate in the Regulatory Element on an ongoing basis throughout their securities industry careers. In addition, NASD Regulation believes that the proposed rule allowing for the implementation of a program specifically geared towards supervisory and the issues that may arise in that role would result in more effective regulatory training of supervisors as well as improved overall supervision of members.

NASD Regulation proposes to make the rule change effective on July 1, 1998.

2. Statutory Basis

NASD Regulation believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, and in particular, Section 15A(g)(3).⁴ Under that Section, it is the NASD's responsibility to prescribe standards of training, experience, and competence for persons associated with NASD members. Pursuant to this statutory obligation, NASD Regulation has proposed this rule change in order to enhance the established continuing education program for registered persons.

The proposed rule change also is consistent with Section 15A(b)(6) of the Act,⁵ which requires, among other things, that the rules of a registered securities association be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

⁴ 15 U.S.C. 78o-3(g)(3).

⁵ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD Regulation. All submissions should refer to the file number in the caption above and should be submitted by February 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

⁶ 17 CFR 300.30(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-2186 Filed 1-28-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39577; File No. SR-NYSE-97-33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Education for Registered Persons

January 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 8, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.²

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 345A ("Continuing Education for Registered Persons"). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Continuing Education for Registered Persons

Rule 345A

(a) *Regulatory Element*—No member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of Section (a) of this Rule.

Each registered person shall complete the Regulatory Element of the continuing education program on [three occasions, after] the occurrence of their second[, fifth and tenth] registration anniversary date[s] and every three years thereafter or as otherwise prescribed by the Exchange. On each [of

¹ 15 U.S.C. 78s(b)(1).

² The Commission is concurrently publishing notice of parallel proposed rule changes from other self-regulatory organizations relating to continuing education for registered persons. See Securities Exchange Act Releases Nos. 39574 (NASD); 39575 (CBOE); and 39576 (MSRB).

the three] occasion[s], the Regulatory Element must be completed within one hundred twenty days after the person's registration anniversary date. A person's initial registration date shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be [prescribed] determined by the Exchange for each registration category of persons subject to the rule.

(1) [Registered] Persons who have been continuously registered for more than ten years as of the effective date of this rule [shall be] are exempt from the requirements of this rule relative to participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subsection (a)(3)(i)–(ii) of this Rule. However, persons delegated supervisory responsibility or authority pursuant to Rule 342 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than ten years as of the effective date of this rule and provided that such supervisory person has not been subject to any disciplinary action under subsection (a)(3)(i)–(ii) of this Rule.

In the event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in subsection (a)(3)(i)–(ii), such person shall be required to satisfy the requirements of the Regulatory Element as if the date the disciplinary action becomes final is the person's initial registration anniversary date. [Persons who have been currently registered for ten years or less as of the effective date of this Rule shall initially participate in the Regulatory Element of the continuing education program within one hundred twenty days after the occurrence of the second, fifth or tenth registration anniversary date, whichever anniversary date first applies, and on the applicable registration anniversary dates thereafter. Such persons will have satisfied the requirements of the Regulatory Element of the program after participation on the tenth registration anniversary.]

[All registered persons who have satisfied the requirements of the Regulatory Element shall be exempt from further participation in the Regulatory Element of the program, subject to re-entry into the program as set forth in subsection (a)(3) of this Rule.]

(2) No change.

NASD NOTICE TO MEMBERS 98-24

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The National Association of Securities Dealers, Inc. (NASD[®]) published the following *Notices to Members* during 1997. Duplicate copies are available for \$25 per monthly or special issue. A two-volume, bound and indexed edition of the entire year's *Notices* is also available for \$100. Requests, accompanied by a self-addressed mailing label and a check payable to the National Association of Securities Dealers, Inc., or credit card information, should be sent to NASD MediaSourceSM, P.O. Box 9403, Gaithersburg, MD 20898-9403. Credit card telephone orders can be made by calling (301) 590-6142, Monday through Friday, 9 a.m. to 5 p.m., Eastern Time.

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97-97 Mail Vote—NASD Solicits Member Vote On Amendments To NASD By-Laws To Require Members To Update Information Electronically And Maintain Electronic Mail Accounts; And For Other Purposes; **Last Voting Date: January 30, 1998**787

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NASD NOTICE TO MEMBERS 98-25

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of January 23, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of January 23, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPSSM).

Symbol	Name	Coupon	Maturity
CSTR.GA	Coinstar Inc	13.000	10/01/06
EPHO.GA	Econophone Inc	13.500	07/15/07
RDMS.GA	RDM Sports Group Inc	11.750	07/15/02
RPCD.GA	Rap-American Corp Del	10.750	12/01/03
TUES.GA	Tuesday Morning Corp	11.000	12/15/07
UAG.GA	United Auto Group Inc	11.000	07/15/07
IHS.GE	Integrated Health Svs Inc	9.250	01/15/08
NBTY.GA	NBTY Inc	8.625	09/15/07
PANA.GA	Panaco Inc	10.625	10/01/04
WSEQ.GA	Winstar Equipment Corp	12.500	03/15/04
GSNP.GB	Garden State Newspaper Inc	8.750	10/01/09
SCIN.GB	SC International Services Inc	9.250	09/01/07
BFIT.GA	Bally Total Fitness Holding Corp	9.875	10/15/07
CSNI.GA	Color Spot Nurseries Inc	10.500	12/15/07
FCX.GA	Freeport-McMoRan	7.500	11/15/06
FCX.GB	Freeport-McMoRan	7.200	11/15/26
STBR.GB	Stater Brothers Holding Inc	9.000	07/01/04
FRND.GA	Friendly Inc Cream Corp	10.500	12/01/07
SIGR.GA	Signature Resorts Inc	9.750	10/01/07
EKO.GA	Ekcogroup Inc	9.250	04/01/06
BRZS.GA	Brazos Sportswear Inc	10.500	07/01/07
ENOA.GA	Energy Corp of America	9.500	05/15/07
CLNH.GA	CLN Holdings Inc	0.000	05/15/01
RVPC.GA	Revlon Worldwide Parent Corp	0.000	03/15/01
GULS.GA	Gulf States Steel Inc	13.500	04/15/03
CNLP.GJ	Conn Light & Power Co	7.875	10/01/24
SCTG.GB	Scotsman Group Inc	8.625	12/15/07
FSH.GB	Fisher Scientific Int'l Inc	9.000	02/01/08
KCS.GB	KCS Energy Inc	8.875	01/15/08
AMSD.GA	American Standard Inc	7.375	02/01/08
REMG.GA	Remington Producers Co LLC	11.000	05/15/06

As of January 23, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
TLXC.GA	Telex Communications Inc	12.000	07/15/04
PCS.GA	Payless Cahways Inc	9.125	04/15/03
CNLP.GA	Connecticut Light & Power Co	6.500	01/01/98
BLHT.GA	Bally's Health & Tennis Corp	13.000	01/15/03
BLH.GA	Bankers Life Hldg Corp	13.000	11/01/02
HMTT.GA	HMT Technology Corp	5.750	01/15/04
TWA.GC	Transworld Airlines Inc	12.000	11/03/98

As of January 23, 1998, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
RVWD.GA	REVL.GB	Revlon Worldwide Corp	00.000	03/15/98

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASD RegulationSM 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.

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NASD NOTICE TO MEMBERS 98-26

SEC Approves Temporary Changes To NYSE Circuit Breaker/Trading Halt Rules

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On January 26, 1998, the Securities and Exchange Commission (SEC or Commission) granted accelerated approval of a New York Stock Exchange (NYSE) proposal to temporarily modify its circuit breaker rules.¹ Effective February 1, 1998 until April 30, 1998, NYSE trading will halt under the following circumstances:

1. If before 3:00 p.m., the Dow Jones Industrial Average (DJIA) falls 350 points from the previous day's close, NYSE trading will halt for one-half hour.
2. If at 3:00 p.m. or thereafter, the DJIA falls 350 points from the previous day's close, NYSE trading will not halt unless the fall continues to 550 points.
3. If before 2:00 p.m., the DJIA falls 550 points from the previous day's close, NYSE trading will halt for one hour.
4. If at 2:00 p.m. or thereafter, but before 3:00 p.m., the DJIA falls 550 points from the previous day's close, NYSE trading will halt for one-half hour.
5. If at 3:00 p.m. or thereafter, the DJIA falls 550 points from the previous day's close, NYSE trading will halt for the remainder of the trading day.

The National Association of Securities Dealers, Inc. (NASD[®]), in conjunction with all other U.S. equity and equity-related markets, has also agreed to halt, upon Commission request, trading in the securities listed on The Nasdaq Stock MarketSM (Nasdaq[®]) or those traded in the over-the-counter market if NYSE trading were to halt under the circumstances described above. This agreement reflects NASD's long-standing policy of cooperation and

coordination with the SEC and other markets on issues relating to trading halts during periods of market stress. The new standards are temporary and can be expected to change when a final resolution of circuit breaker and related issues is achieved between the SEC and all market participants.

In the interim, members are encouraged to become familiar with these new circuit breaker benchmarks and prepare themselves for halts in Nasdaq or over-the-counter trading should the NYSE declare a trading halt pursuant to the standards outlined above. Any such NASD trading halt will be initiated through Nasdaq Market Operations in Trumbull, Connecticut.

Questions regarding this NYSE rule change should be directed to Thomas P. Moran, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8401.

Background And Summary

Since 1988, the NASD has, in coordination with all other equity and equity-related markets in the United States, adopted as part of its Market Closing Policy Statement that the NASD will, upon SEC request, halt all domestic trading in all securities quoted on Nasdaq and all equity and equity-related securities in the over-the-counter market during conditions of extraordinary market volatility, as demonstrated by the reaching of certain numerical point declines in the DJIA known as "circuit breakers." The NASD Board of Governors, continuing its policy of cooperation with the Commission, agreed to extend this policy on January 22, 1998.

On October 27, 1997, at 2:35 p.m., circuit breakers were activated for the first time ever when the DJIA fell 350 points, thereby initiating a 30-minute

trading halt. When trading resumed, the DJIA continued to fall, reaching the second circuit breaker level of 550 points at 3:30 p.m., which began a one-hour trading halt that, since it occurred with only 30 minutes left of trading, closed all U.S. markets for the remainder of the day.

In response to widespread concern regarding the negative market effects of the circuit breakers during October 27, 1997, the SEC recently held discussions with all equity, options and futures markets to explore potential modifications to the circuit breakers and other issues connected with

trading halts. These discussions continue with the active participation of senior management of both the NASD and Nasdaq.

As an interim measure, the NYSE recently filed with the SEC a rule proposal to temporarily modify its circuit breaker rules. The SEC granted accelerated approval of the temporary NYSE proposal on January 26, 1998. Therefore, effective February 1, 1998 through April 30, 1998, NYSE trading will halt under the circumstances outlined in the Executive Summary.

Members are encouraged to become familiar with these new temporary circuit breaker benchmarks and prepare themselves for halts in Nasdaq or over-the-counter trading should the NYSE initiate a trading halt pursuant to the standards outlined above.

Endnote

¹ SEC Release No. 34-39582 (January 26, 1998).

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DISCIPLINARY ACTIONS

Disciplinary Actions Reported For February

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (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 Tuesday, February 17, 1998. The information relating to matters contained in this *Notice* is current as of the end of January 23.

Firm Suspended, Individuals Sanctioned

Sound Advice Investments, (Danville, California), Gray Emerson Cardiff (Registered Representative, Moraga, California), and Harley Neal Hill (Registered Principal, Orinda, California) submitted an Offer of Settlement pursuant to which the respondents were fined \$10,000, jointly and severally. The firm and Cardiff were fined \$5,000, jointly and severally, and the firm was suspended from membership in the NASD for 15 business days. Cardiff was suspended from association with any NASD member in any capacity for 15 business days, and Hill was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hill and Cardiff, participated in the sales of a limited partnership offering and received customer funds without depositing the funds into an escrow account or otherwise treating them in accordance with Securities and Exchange Commission (SEC) Rule 15c2-4.

The findings also stated that the firm, acting through Hill and Cardiff in connection with the offering, failed to

return investor funds when terms of the contingency were not met and failed to provide investors with disclosure as to the financial ability of the issuer to purchase the remaining securities. In addition, the NASD found that the firm, acting through Cardiff, permitted an individual to act as a registered representative, and sell securities to public customers on behalf of the firm, without being registered with the NASD in any capacity.

Firms Fined, Individuals Sanctioned

Andover Securities, Inc. (Kansas City, Missouri), Kent Warren Miller (Registered Principal, Leavenworth, Kansas), and Tarlton Snead Gosney (Registered Principal, Ridgefield, Washington) submitted an Offer of Settlement pursuant to which the firm was fined \$20,000. Miller was fined \$5,000, suspended from association with any NASD member in any principal capacity for five business days, and Gosney was fined \$1,500 and suspended from association with any NASD member in any capacity for one business day. 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 placement offering, the firm, acting through Miller, failed to deposit investor funds in a separate bank account or an escrow account, and conducted a securities business while failing to maintain its minimum required net capital. In addition, the NASD found that the firm, acting through Miller and Gosney, defrauded investors by omitting to state material facts necessary to make the statements made in the offering not misleading.

The NASD also determined that Miller failed to supervise the firm's activities adequately and properly, and failed to take additional steps to ensure that a private placement

memorandum contained no misstatements or omissions of material fact. The findings also stated that the firm, acting through Miller, failed to establish and maintain adequate written supervisory procedures.

Investors Associates, Inc. (Hackensack, New Jersey) and George Bradley Taylor (Registered Principal, Wheaton, Illinois) submitted Offers of Settlement pursuant to which the firm was fined \$10,000 and Taylor was suspended from acting in a supervisory or managerial capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Taylor, failed to establish, maintain or enforce written supervisory procedures regarding unsuitable and excessive trading in a customer's account.

Schneider Securities, Inc. (Denver, Colorado), Thomas J. O'Rourke (Registered Principal, Denver, Colorado), S. Peter Duray-Bito (Registered Principal, Littleton, Colorado), Keith A. Koch (Registered Representative, Littleton, Colorado), and Scott B. Olson (Registered Representative, Aurora, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000 and ordered to disgorge \$9,145 in commissions, fined \$5,000, jointly and severally, with Duray-Bito, and fined \$10,000, jointly and severally, with O'Rourke and Duray-Bito. Furthermore, O'Rourke was suspended from association with any NASD member in any supervisory capacity for five business days and required to requalify by exam as a general securities principal, and Koch and Olson were fined \$10,000, jointly and severally, and ordered to disgorge \$3,996 in commissions, jointly and severally. Without admitting or denying the allegations, the respon-

dents consented to the described sanctions and to the entry of findings that the firm, acting through Koch and Olson, sold securities to public customers that were neither registered nor exempt from registration.

The findings also stated that the firm, acting through Duray-Bito, received checks from customers in payment for securities in a private placement offering and failed to forward such checks within the required time period to an established bank escrow account. Furthermore, the NASD found that the firm, acting through O'Rourke and Duray-Bito, failed to establish, maintain and/or enforce written supervisory procedures, and the firm, acting through O'Rourke, failed to supervise Koch and Olson properly in connection with the public offering.

Firm And Individual Fined American Investment Services (East Peoria, Illinois) and Lisa J. Strong (Registered Principal, Peoria, Illinois) submitted an Offer of Settlement pursuant to which they were fined \$24,000, jointly and severally. In addition, Strong must 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 Strong, failed to establish, maintain or enforce written supervisory procedures to prevent or detect a registered representative's use of unauthorized wire transfers from a customer's accounts. The findings also stated that the firm, acting through Strong, conducted a securities business while failing to maintain its minimum required net capital and prepared inaccurate net capital computations. Furthermore, the NASD found that the firm, acting through Strong, prepared and submitted inaccurate FOCUS IIA reports to the

NASD and failed to comply with the terms of its Restrictive Agreement. The NASD also determined that the firm failed to file promptly with the NASD information about the settlement of one customer complaint, and statistical and summary information regarding customer complaints against registered representatives of the firm.

Firms Fined

Barron Chase Securities, Inc. (Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000, ordered to pay restitution to customers, and required to retain an independent consultant to review the firm's policies, practices and procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to notify the NASD of secured demand note deficiencies, and failed to make accurate net capital calculations. The findings also stated that the firm effected principal sales of securities to public customers at prices that were not reasonably related to the prevailing market price and were unfair taking into consideration all relevant circumstances. Furthermore, the NASD determined that the firm failed to maintain and preserve the memoranda of principal purchases and sales of stock with retail customers and broker/dealers, and failed to maintain and preserve confirmation of customer transactions.

Mayer & Schweitzer, Inc. (Jersey City, New Jersey) submitted an Offer of Settlement pursuant to which the firm was fined \$29,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it entered or maintained quotations in The Nasdaq Stock MarketSM (Nasdaq[®]) during normal business hours that caused a locked market

condition to occur in 10 securities and a crossed market condition to occur in two securities.

Nash, Weiss & Company (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$16,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it reported 150 transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting and limited orders. The finding also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable rules.

Troster Singer Corporation (Jersey City, New Jersey) submitted an Offer of Settlement pursuant to which the firm was fined \$40,000 and required to pay \$158,361.85 plus interest in restitution. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to fulfill its obligation when executing customer limit orders into an automated execution system. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure that customer limit orders were accepted and executed in accordance with NASD rules.

Individuals Barred Or Suspended

Anthony Keith Adams (Registered Representative, San Diego, California) was fined \$58,375 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adams made misrepresenta-

tions to a public customer concerning the purchase and sale of stocks. Relying on the misrepresentations, the customer delivered funds to Adams, and in an attempt to conceal the fact that the purchase had been liquidated for non-payment, Adams recommended that the customer sell the stock and later misrepresented to the customer that he had sold the stock without the customer's consent because of falling prices. Adams then terminated his employment with his member firm, became employed with another member firm, instructed the customer to transfer the account to his new member firm, and misrepresented to the customer that the check should be made out in Adams' name. Adams received a \$5,000 check from the customer and misused the funds. Adams also failed to respond to NASD requests for information.

Carl C. Baggs (Registered Representative, Merion Station Pennsylvania) 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. The sanctions were based on finding that Baggs failed to respond to NASD requests for information.

David A. Blech (Registered Principal, New York, New York) 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 New York District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Blech failed to respond to NASD requests for information.

Peter A. Bocchino (Registered Representative, Kissimmee, Florida) was fined \$15,000 and barred from association with any NASD

member in any capacity. The sanctions were based on findings that Bocchino made misrepresentations to public customers regarding investments they had made at the recommendation of Bocchino.

John Lawrence Bridges, Jr. (Registered Representative, New York, New York) was fined \$1,012,000, barred from association with any NASD member in any capacity, and required to pay \$198,400 in restitution. The sanctions were based on findings that Bridges caused wire transfers totaling \$198,400 to be issued from the securities accounts of a public customer and directed to his personal bank account without the authorization, knowledge, or consent of the customer. Bridges also failed to respond to NASD requests for information.

Gregory S. Campbell (Registered Representative, Birmingham, Alabama) submitted an Offer of Settlement 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, Campbell consented to the described sanctions and to the entry of findings that he forged the signature of a public customer to a customer agreement with a member firm. The findings also stated that Campbell executed unauthorized transactions in the account of a public customer, and recommended and engaged in speculative, excessive purchase and sale transactions, on margin, that were unsuitable. Furthermore, the NASD found that Campbell caused his member firm's books and records to be inaccurate in that he marked "unsolicited" on order tickets and indicated on new account documentation for the public customer that the customer had 10 years of prior experience trading stocks and bonds when, in fact, the customer had only six months of experience.

Daniel Cevallos (Registered Representative, Brooklyn, New York) was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cevallos executed unauthorized securities transactions in the account of a public customer without the customer's knowledge or consent. Also, Cevallos falsified records to prevent detection and to camouflage his failure to execute a customer's order.

Steven R. Cloyes (Registered Representative, Glenville, Connecticut) 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, Cloyes consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. The findings also stated that Cloyes failed to pay a \$24,300 arbitration award.

Charles C. Cronin, Jr. (Registered Representative, Winston-Salem, North Carolina) was fined \$45,000, barred from association with any NASD member in any capacity, and required to pay \$5,618.08 plus interest in restitution to a member firm. The sanctions were based on findings that Cronin accepted a \$5,000 cashier's check from a public customer intended for the purchase of mutual fund shares and converted the funds to his own use and benefit. Cronin also failed to respond to NASD requests for information.

Christopher K. Cutchens (Registered Representative, Pace, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision.

The sanctions were based on findings that Cutchens failed to respond to NASD requests for information.

Alan S. Daniel (Registered Representative, Holland, Pennsylvania) 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, Daniel consented to the described sanctions and to the entry of findings that, while associated with member firms, he opened and maintained securities accounts with other member firms without obtaining pre-approval or disclosing the existence of those accounts. Furthermore, the NASD found that, in conjunction with the opening of accounts at various member firms, Daniel failed to disclose his status as an associated person and provided those member firms with incomplete and incorrect information. Moreover, the NASD determined that Daniel failed to advise the member firms that he was associated with that he was opening and/or maintaining accounts away from the member firm with which he was licensed.

Priyantha DeSilva (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 DeSilva submitted false insurance applications on behalf of public customers and submitted falsified applications to his member firm that caused the transfer of funds from the customers' bank accounts without authorization. In addition, DeSilva failed to deliver refund checks to public customers and instead, cashed the checks and converted the proceeds to his own use and benefit. DeSilva also failed to respond to NASD requests to appear at an on-the-record interview.

Tina R. Diaz (Registered Representative, Appleton, Wisconsin) submitted an Offer of Settlement pursuant to which she was fined \$5,000, barred from association with any NASD member in any capacity, and ordered to pay \$150 in restitution to her member firm. Without admitting or denying the allegations, Diaz consented to the described sanctions and to the entry of findings that she took \$100 to \$150 from self-service boxes her member firm maintained and used the funds for her own benefit without the knowledge or consent of the member firm.

Edward C. W. Donner, III (Registered Principal, Palm Beach, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Donner, acting on behalf of a member firm, filed erroneous trade reports on transactions in securities listed on Nasdaq. Donner also failed to respond to an NASD request for information.

James Michael Duncan (Registered Representative, Brunswick, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,500 and suspended from association with any NASD member in any capacity for one business day. Without admitting or denying the allegations, Duncan consented to the described sanctions and to the entry of findings that he engaged in an outside business activity without providing prior written notification to his member firm. Duncan also shared in a customer's securities account without obtaining prior written authorization from his member firm.

Herschel E. Dwellingham, II (Registered Representative, New York, New York) was fined \$35,000 and barred from association with any NASD member in any capacity. The

sanctions were based on findings that Dwellingham caused warrants to be purchased in the account of a public customer without the customer's knowledge, authorization or consent. Dwellingham also failed to respond to NASD requests for information.

Michael D. Farkas (Registered Representative, Miami Beach, Florida) submitted an Offer of Settlement pursuant to which he was fined \$4,000 and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Farkas consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the accounts of public customers.

Henry Raoul Fisher (Registered Representative, Coronado, California) was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fisher failed to pay two arbitration awards for \$850,500 and \$10,000. Fisher also failed to respond to NASD requests for information.

William H. Gerhauser (Registered Principal, Surrey, Great Britain) and **William C. Gerhauser (Registered Principal, Tampa, Florida)** were fined \$15,000, jointly and severally. In addition, W.H. Gerhauser was required to requalify by exam as a financial and operations principal and W.C. Gerhauser was required to requalify by exam as a general securities principal. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that the Gerhausers, acting on behalf of a member firm, conducted a securities business while failing to maintain adequate net capital. The firm, acting through W.H. Gerhauser, filed inaccurate FOCUS Part I and IIA reports,

failed to maintain accurate books and records, and failed to give telegraphic notice of a net capital deficiency.

W.H. Gerhauser and W. C. Gerhauser have appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

August Ghilarducci (Registered Representative, Bensenville, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$42,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ghilarducci consented to the described sanctions and to the entry of findings that he received funds totaling \$8,001.38 from public customers for the purchase of insurance policies and deposited the funds into his account, using only \$3,607.91 to purchase an insurance policy, and using the remaining funds for some purpose other than the benefit of the customers. Ghilarducci also failed to respond to NASD requests for information.

Mark A. Goldman (Registered Principal, Roslyn Heights, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Goldman failed to cooperate in an NASD investigation.

Ashton N. Gowadia (Registered Representative, Newport Beach, California) was fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify as a general securities representative. The NBCC affirmed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Gowadia failed to respond to NASD requests for information.

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

Harry Matthew Grey (Registered Representative, Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Grey consented to the described sanction and to the entry of findings that he recommended to public customers numerous purchases and sales of securities without having reasonable grounds for believing that such recommendations were suitable for the customers in view of the size and frequency of the transactions, and the nature of the accounts.

John W. Hardin (Registered Representative, Columbia, South Carolina) was fined \$15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hardin induced a public customer to purchase an insurance policy, falsified information on the application, and forged the customer's signature on the application form that he submitted to his member firm. Hardin also switched two insurance policies of public customers into another product and changed the customers' address on the policies to his personal address without the knowledge or authorization of the customers.

Ronald W. Howell (Registered Representative, Atlanta, Georgia) was fined \$35,000, barred from association with any NASD member in any capacity, and ordered to pay \$3,000 plus interest in restitution to a member firm. The sanctions were based on findings that Howell failed to respond to NASD requests for information. Howell also converted \$3,000 received from a public cus-

tomor for investment purposes to his own use and benefit.

Donald L. Huber (Registered Representative, Cherry Hill, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for 10 days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Huber consented to the described sanctions and to the entry of findings that he recommended and effected unsuitable transactions in the accounts of public customers. The NASD found that Huber failed to conduct a reasonable and adequate investigation into the investment to comprehend fully the nature of the units and the risks associated with the investment. Furthermore, the NASD determined that, in inducing and effecting the purchases of securities, Huber engaged in deceptive and/or fraudulent devices or practices and failed to disclose material facts regarding the securities.

David J. Karrass (Registered Representative, New York, New York) was fined \$26,096.85 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Karrass effected unauthorized transactions in the securities accounts of public customers. Karrass also failed to respond to NASD requests for information.

Robert Neal Kent, Jr. (Registered Representative, Stevens Point, Wisconsin) submitted an Offer of Settlement pursuant to which he was fined \$60,000, barred from association with any NASD member in any capacity, and required to pay \$8,000 in restitution to a member firm. Without admitting or denying the allegations, Kent consented to the described sanctions and to the entry

of findings that he obtained an \$8,000 check from a public customer with instructions to transfer a limited partnership interest to her, failed to follow these instructions, and used the proceeds for some purpose other than the benefit of the customer. Kent also failed to respond to NASD requests for information.

Mohammed L. Khan (Registered Representative, Apopka, Florida) was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by exam by taking and passing the Series 6 exam. The sanctions were based on findings that Khan participated in outside business activities without disclosing his participation in such activities to his member firm.

Larry Ira Klein (Registered Principal, Walnut Creek, California) submitted an Offer of Settlement pursuant to which he was fined \$160,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Klein consented to the described sanctions and to the entry of findings that he permitted an individual to act as a registered representative and sell securities when the individual was not registered with the NASD in any capacity. The findings also stated that Klein recommended to public customers the purchases of collateralized mortgage obligations (CMOs) without having reasonable grounds for believing the recommendations were suitable for the customers based upon the facts disclosed by the customers concerning their other security holdings and their financial situation and needs. Furthermore, the NASD found that, in connection with the sale of CMOs to public customers, Klein failed to disclose to the customers that the CMOs' market value and terms could vary significantly with fluctuations in interest rates.

Darren L. Klemp (Registered Representative, Clearwater, Florida) was fined \$25,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions after appeal of an Atlanta DBCC decision. The sanctions were based on findings that Klemp failed to notify his member firm of an outside business activity and failed to respond to NASD requests for information.

Ilana Abby Knapp (Registered Principal, Basking Ridge, New Jersey) was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Knapp failed to respond to NASD requests for information.

Robert J. Koester, Jr. (Associated Person, Clarks Summit, Pennsylvania) 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, Koester consented to the described sanctions and to the entry of findings that, after taking and failing the Series 63 exam, he subsequently created a document purporting to show a passing test grade that he presented to his member firm as being authentic.

Joseph James Labuz (Associated Person, Brooklyn, New York) was fined \$59,625.17 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Labuz received a \$10,925.15 check from a public customer and converted the funds for his own use and benefit without the customer's knowledge or consent. Labuz also failed to respond to NASD requests for information.

Terrence P. Larkin (Registered Representative, Blue Bell, Pennsylvania) submitted an Offer of Settlement 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, Larkin consented to the described sanctions and to the entry of findings that he came into possession of checks issued by a life insurance agency to policyholders or applicants for insurance totaling \$3,490.24 for the purpose of delivering the checks to the payees. The NASD found that Larkin failed to deliver such checks to the payees, affixed the purported endorsements of the payees to the checks without their authorization or consent, affixed his own second endorsement upon such checks, and deposited the checks into his own bank account.

Robert Dennis Larsen (Registered Representative, Linden, Wisconsin) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Larsen consented to the described sanctions and to the entry of findings that he created false and misleading suitability documents and altered tax return documents for public customers who purchased limited partnership units. Furthermore, the NASD found that Larsen recommended the purchase of limited partnership units to public customers when he did not have a reasonable basis for believing that such recommendations were suitable for the customers in light of their financial situation and needs.

Mark A. Lefkowitz (Registered Representative, Parlin, New Jersey) 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 weeks. Without admitting or denying the allegations, Lefkowitz consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the securities accounts of public customers.

Norman Martin Lescht (Registered Principal, East Brunswick, New Jersey) 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, Lescht consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Albert C. Levesque (Registered Representative, Assonet, Massachusetts) was fined \$950,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Levesque received \$230,586 intended to be invested in a mutual fund account and a bank account and he misappropriated \$190,478 of the funds to his own use and benefit.

Craig R. Lodge (Registered Representative, San Diego, California) was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay \$110,324.85 in restitution to public customers. The sanctions were based on findings that Lodge received \$110,324.85 from public customers for deposit in a pension plan account. Lodge failed to open the account for the customers and misused the funds. Lodge also failed to respond to NASD requests to appear for an on-the-record interview.

Michael Joseph Lomec (Registered Representative, Hazel Crest, Illinois) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lomec recommended and effected securities transactions for the account of a public customer and engaged in such activities without having a reasonable basis for believing that such recommendations were suitable for the customer. Lomec also failed to respond to NASD requests for information.

Anthony A. Luisi (Registered Representative, Marlboro, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for five days. At the conclusion of the suspension, for 35 days thereafter, Luisi must not engage in any activities for which registration with the NASD would be required and must not engage in the creation, review, approval or dissemination of advertisements or sales literature. Without admitting or denying the allegations, Luisi consented to the described sanctions and to the entry of findings that he accepted the title of compliance officer of his member firm, signed letters, and sent advertising and sales literature to the NASD at a time when he had no experience in compliance matters.

Joseph T. Lyons (Registered Representative, Oldsmar, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lyons failed to respond to NASD requests for information.

Brandon J. Mader (Registered Representative, Hauppauge, New York) was fined \$72,820 and barred from association with any NASD

member in any capacity. The sanctions were based on findings that Mader executed unauthorized trades in public customer accounts without the customers' prior knowledge or consent. Mader also failed to respond to NASD requests for information.

Lavonn M. Mahar (Registered Representative, Cassville, New York) submitted an Offer of Settlement pursuant to which she was fined \$287,000, barred from association with any NASD member in any capacity, and ordered to pay \$53,338.73 in restitution to customers. Without admitting or denying the allegations, Mahar consented to the described sanctions and to the entry of findings that she received \$53,338.73 from public customers for investment purposes and used the funds for her own use and benefit. Mahar also failed to respond to NASD requests for information.

Frank Anton Malinowski (Registered Principal, El Macero, California) was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Malinowski participated in private securities transactions without providing prior written notification to his member firm.

Michael T. Mancusi (Registered Principal, 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 Mancusi failed to respond to NASD requests for information.

Michael L. Maxwell (Registered Representative, New Martinsville, West Virginia) 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, Maxwell consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Brooks S. McClary (Registered Representative, Tujunga, California) was fined \$45,000, barred from association with any NASD member in any capacity, and ordered to reimburse a member firm \$990. The sanctions were based on findings that McClary purchased shares of stock for the account of a public customer without the customer's authorization or consent. McClary also failed to respond to NASD requests for information.

Richard C. McDavitt (Registered Representative, Nashville, Tennessee) was fined \$10,000, suspended from association with any NASD member in any capacity for six weeks, required to requalify by exam by taking and passing the Series 6 exam, and required to pay restitution to his member firm. The sanctions were based on findings that McDavitt received a \$5,000 check from a public customer intended for the purchase of stock. McDavitt failed to execute such purchase and, instead, deposited the check into his personal account.

David W. McKellin (Registered Representative, Minneapolis, Minnesota) 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 10 business days. Without admitting or denying the allegations, McKellin consented to the described sanctions and to the entry of findings that he recommended a series of securities transactions to a public customer that were unsuitable for the customer based upon the frequency of the transactions, and the customer's

age, investment experience, and financial resources.

James P. Minsky (Registered Representative, Aventura, Florida) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Minsky consented to the described sanctions and to the entry of findings that he effected trades in the public customers' accounts without the customers' knowledge or authorization. The findings also stated that Minsky failed to execute a customer's order to sell stock.

Leandro J. Obenauer (Registered Representative, Boynton Beach, Florida) was fined \$46,045, barred from association with any NASD member in any capacity, and ordered to pay \$5,209 in restitution to a public customer. The sanctions were based on findings that Obenauer recommended to a public customer that he wire the balance in a securities account maintained with a firm to a new member applicant firm, of which Obenauer was president, so that additional investments could be made on behalf of the customer. Instead, Obenauer failed to make the additional investments as represented and misused these funds without the customer's knowledge or consent. Obenauer also failed to respond to NASD requests for information.

Vincent A. Padulo, Jr. (Registered Representative, New York, 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 one week. Without admitting or denying the allegations, Padulo consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public cus-

tomers. The findings also stated that Padulo failed to follow a customer's instructions to sell stock.

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

Brian S. Psaila (Registered Representative, Kingston, Pennsylvania) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Psaila failed to respond to NASD requests for information. Psaila also received \$7,000 from a public customer in connection with an application for a variable annuity and failed to remit the funds and application to his member firm.

Onofre Edrozo Ranchez (Registered Representative, Aiea, Hawaii) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ranchez collected insurance premiums from insurance customers and did not promptly forward the premiums to his member firm. In addition, Ranchez signed customers' names to policy reinstatement applications and submitted them to his member firm. Ranchez also failed to respond to NASD requests for information.

Lawrence J. Rozanski (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity, with the right to reapply with the NASD after 10 years. Without admitting or denying the allegations, Rozanski consented to the described sanctions and to the entry

of findings that he engaged in a course of conduct intended to deceive a public customer about the status of the customer's account at his member firm and about the profitability, in aggregate, of the trading activity in the account. Rozanski also failed to respond to NASD requests for information.

Jeffrey Todd Sandifer (Registered Representative, Edwardsville, Illinois) 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, Sandifer consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Thomas Michael Savich (Registered Representative, North Hollywood, California) was fined \$64,812.35 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Savich arranged to have an impostor take the Series 7 exam on his behalf. Savich also failed to respond to NASD requests to give testimony during an on-the-record interview.

Gerald M. Shapiro (Registered Representative, Haverhill, Massachusetts) 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, Shapiro consented to the described sanctions and to the entry of findings that he converted \$1,500 and misused \$3,000 in a public customer's funds.

Brian L. Shegon (Registered Representative, Mohnton, Pennsylvania) was fined \$100,000 and barred from association with any NASD

member in any capacity. The NBCC affirmed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Shegon received checks from public customers and converted the funds to his own use and deposited the funds into his own account. Shegon also failed to respond to NASD requests for information.

Gary Sherman (Registered Principal, Scottsdale, Arizona) was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Sherman failed to supervise a registered representative in a manner reasonably designed to prevent suitability violations.

Jeffrey L. Streich (Registered Representative, New York, New York) was fined \$65,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Streich made fraudulent and material misrepresentations and material omissions to public customers in the recommendation of purchases in an offering.

Elliot B. Tabron (Registered Representative, Detroit, Michigan) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tabron failed to respond to NASD requests for information.

George Thompson (Registered Principal, Toms River, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$407,500.68 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thompson consented to the described sanctions and to the entry of findings that, in his capacity as his member firm's cashier,

Thompson prepared and issued 24 checks totaling \$68,000 that were drawn on his member firm's principal cash account and converted the funds for his own use and benefit without the permission or authority of his member firm. The findings also stated that Thompson filed a Form U-4 that failed to report his employment with a member firm. Furthermore, the NASD found that Thompson failed to respond to NASD requests to appear for an on-the-record interview.

Leonardo Edward Townsend (Registered Representative, Oak Park, Illinois) 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 one year. Without admitting or denying the allegations, Townsend consented to the described sanctions and to the entry of findings that he recommended and effected the purchase of stock for the account of a public customer without having a reasonable basis for believing that the recommendations were suitable for the customer based upon the facts known to him concerning the nature of the securities purchased for the account, and the customer's investment objectives, financial situation and needs.

Bill Warren Travis (Registered Representative, Burleson, Texas) submitted an Offer of Settlement pursuant to which he was fined \$5,000, jointly and severally with a member firm, and suspended from association with any NASD member in any capacity for three business days. In addition, Travis must requalify as a financial and operations principal as a prerequisite for future association with an NASD member firm in any capacity. Without admitting or denying the allegations, Travis consented to the described sanctions and to the entry of findings that a member firm, acting through Travis, failed to comply with Regulation T in that, with

respect to customer transactions, the firm failed to obtain full cash payment for customer purchases within one payment period of the date on which non-exempted securities were purchased, and failed to cancel or otherwise liquidate such transactions promptly. The findings also stated that the firm, acting through Travis, effected transactions in securities after it failed to make a required deposit to its reserve bank account and failed to deposit promptly monies received from offerings into a separate bank account.

Kenneth T. Tripoli (Registered Representative, Fort Lauderdale, Florida) 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, Tripoli consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request for information.

Fenton B. Turck, III (Registered Representative, Cliffside Park, New Jersey) was barred from association with any NASD member in any capacity and required to pay \$775,000 plus interest in restitution to customers. The sanctions were based on findings that Turck furnished a false and misleading offering memorandum to investors. Furthermore, Turck engaged in outside business activities and failed to provide prior written notice to, and obtain prior written approval from, either of his member firms. Turck also failed to respond to NASD requests for information.

Charles R. Weeks (Registered Representative, Dunwoody, Georgia) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Weeks participated in private securi-

ties transactions while failing to provide his member firm written notice of these transactions. Weeks also participated in business activities outside the scope of his employment with his member firm and failed to disclose such activities to his member firm.

Darnell Alexander Willis (Registered Representative, Chicago, Illinois) was fined \$25,000, barred from association with any NASD member in any capacity, and required to disgorge \$900 to public customers. The sanctions were based on findings that Willis engaged in unauthorized transactions in the accounts of public customers. Willis also failed to respond to NASD requests for information.

Individuals Fined

Russell M. Bartlett (Registered Principal, Lilburn, Georgia) submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Bartlett consented to the described sanction and to the entry of findings that, in connection with a promotion of mutual funds to the investing public, he failed to disclose adequately his association with his member firm in correspondence and other communications.

Steven Michael Gerstel (Registered Representative, Matawan, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$11,542.10. Without admitting or denying the allegations, Gerstel consented to the described sanction and to the entry of findings that he opened a securities account at a member firm, placed an order to purchase securities, and failed to provide written notification to the executing firm that he was associated with another firm. Furthermore, the NASD determined that Gerstel failed to provide written notification to his member firm of his intention to

open such account. The findings also stated that Gerstel purchased shares of stock that traded at a premium in the immediate aftermarket in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation.

Peter F. Scribner (Registered Representative, Melrose, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$12,000. Without admitting or denying the allegations, Scribner consented to the described sanction and to the entry of findings that he made an unsuitable securities recommendation to a public customer.

Decisions Issued

The following decisions have been issued by the DBCC and have been appealed to the NBCC as of January 31, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NBCC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Timothy C. Adams (Registered Representative, Cambridge, Massachusetts) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adams failed to respond to NASD requests for information.

Adams has appealed this action to the NBCC and the sanctions are not in effect pending consideration of the appeal.

Essodina Adolph Atchade (Registered Representative, Santa Clara, California) was fined \$200,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Atchade received \$28,000 from

a public customer for the purchase of securities and misappropriated the funds to his own use and benefit. Atchade also provided a customer with fictitious account statements that falsely reflected that the customer had securities accounts with Atchade as well as the value of the accounts.

Atchade has appealed this action to the NBCC and the sanctions are not in effect pending consideration of the appeal.

Joseph G. Chiulli (Registered Principal, Lynbrook, New York) was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chiulli failed to preserve his member firm's books and records and failed to respond to an NASD request for information.

Chiulli has appealed this action to the NBCC and the sanctions are not in effect pending consideration of the appeal.

Herbert L. Davis, Jr. (Associated Person, Milwaukee, Wisconsin) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Davis obtained a check payable to a public customer and without the customer's authorization, knowledge or consent, signed the customer's name to the check and used the proceeds for some purpose other than for the benefit of the customer. Davis also failed to respond to NASD requests for information.

Davis has appealed this action to the NBCC and the sanctions are not in effect pending consideration of the appeal.

Andrew Fensmark Harris (Registered Representative, Bronx, New York) was fined \$5,000, suspended from association with any NASD

member in any capacity for two months, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Harris failed to return one of five sheets of NASD scratch paper to the testing staff after completing the morning session of the Series 7 exam.

This action has been called for review by the NBCC and the sanctions are not in effect pending consideration of the review.

Daniel S. Hellen (Registered Representative, Selden, New York) was fined \$7,000, suspended from association with any NASD member in any capacity for 15 business days, ordered to requalify by exam in all capacities, and ordered to pay \$18,000 in restitution to customers. The sanctions were based on findings that Hellen effected transactions in customer accounts without obtaining the prior authorization of the customers.

Hellen has appealed this action to the NBCC and the sanctions are not in effect pending consideration of the appeal.

Steven A. Kirschbaum (Registered Representative, Coral Spring, Florida) was fined \$50,000 and barred from association with any NASD member in any capacity, with the right to reapply after three years. The sanctions were based on findings that Kirschbaum forged the signatures of customers on "Change of Dealer" or new account forms.

Kirschbaum has appealed this action to the NBCC and the sanctions are not in effect pending consideration of the appeal.

Gerald Cash McNeil (Registered Representative, North Bergen, New Jersey) was fined \$20,000, suspended from association with any

NASD member in any capacity for 20 days, and required to requalify by exam in all capacities. In addition, McNeil must pay \$3,712.50 plus interest in restitution to a public customer. The sanctions were based on findings that McNeil executed unauthorized trades in the accounts of public customers.

McNeil has appealed this action to the NBCC and the sanctions are not in effect pending consideration of the appeal.

Allen R. Prewitt (Registered Representative, Bradenton, Florida) was fined \$10,000, suspended from association with any NASD member in any capacity for three years, and required to requalify by exam by taking and passing the Series 7 exam. The sanctions were based on findings that Prewitt failed to complete his Form U-4 accurately.

This action has been called for review by the NBCC and the sanctions are not in effect pending consideration of the review.

Andrew D. Schiff (Registered Representative, New York, New York) was fined \$57,292.62 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Schiff executed transactions in customer accounts without the customers' knowledge, authorization or consent.

Schiff appealed this action to the NBCC and the sanctions are not in effect pending consideration of the appeal.

Cenk Levent Yurtzel (Registered Principal, Woodhaven, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Yurtzel failed

to respond to NASD requests for information.

Yurtzel has appealed this action to the NBCC and the sanctions are not in effect pending consideration of the appeal.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD 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 these complaints are adjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

James J. Farren, Jr. (Registered Representative, Kingston, Pennsylvania) was named as a respondent in a complaint alleging that he sent a customer information that contained intentional material misrepresentations and omissions about the account. The complaint alleged that this information purported to show that options trading in the account had generated a profit, but omitted reference to certain transactions that had generated losses, thus failing to disclose the significant overall losses in the options trading.

Robert E. Ligowski (Registered Representative, Matawan, New Jersey) and **Louis C. Marchione, Jr. (Registered Representative, N. Massapequa, New York)** were named as respondents in an NASD complaint alleging that, while acting as registered representatives at a member firm, they charged unfair prices to certain retail customers in connection with the sale of three securities. According to the complaint, Ligowski and Marchione were

on notice that the commissions charged to their customers could be excessive, and by proceeding without further inquiry, they bear responsibility for the resulting unfair prices.

Duane Lee McBride (Registered Principal, Escondido, California)

was named as a respondent in a complaint alleging that he converted funds from customers who intended to invest in two general partnerships formed for the purpose of investing in securities. The complaint alleges that, during the period from on or about January 5, 1993, through on or about November 14, 1995, McBride converted funds from public customers without their knowledge or consent.

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 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspension 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.

Maclaren Securities, Inc.,
Marblehead, Massachusetts
(November 25, 1997)

Suspension Lifted

The NASD has lifted the suspension from membership on the date shown for the following firm because it has complied with formal written requests to submit financial information.

First International Capital, Ltd.,
Hamilton, HM, Bermuda
(December 17, 1997)

NASD Regulation Charges Monroe Parker Securities, Inc., Principals With Manipulation, Fraud, And Excessive Markups

NASD Regulation announced that it issued a complaint on December 23, 1997, charging Monroe Parker Securities, Inc., its Vice President, Bryan Herman, and its Head Trader, Ralph Angeline, with price manipulation and excessive markups in the trading of Steven Madden, Ltd. Class A Warrants. The firm and Herman, together with Monroe Parker's President, Alan Lipsky, were also charged with fraud in connection with the sale of common stock of United Leisure Corporation.

The complaint alleges that, during late 1994 and early 1995, Monroe Parker, acting through Herman and Angeline, acquired approximately 94 percent of the Steven Madden warrants available for public trading. The significant majority of these warrants were acquired from Stratton Oakmont Securities, Inc.—Herman's and Lipsky's former employer. After acquiring this dominant position, Monroe Parker allegedly manipulated the warrants' price and, within six days, sold its entire inventory to its retail customers at fraudulently excessive markups.

More than \$3 million in profits were made from these fraudulent trades—more than \$2 million was made by the firm, while Herman and Lipsky personally profited by an additional \$1.1 million. Once these profits were made, Monroe Parker no longer had an interest in artificially supporting the price, and reduced its bid for the security. Within a week, the price of the warrants fell from \$3.625 to \$1.50 and the firm's customers lost millions of dollars.

The complaint also charges Monroe Parker, Herman, and Lipsky with fraud in the sale of a second security, United Leisure common stock. As

alleged in the complaint, customers who purchased United Leisure stock upon the firm's recommendation, were not told that the stock came from the personal accounts of Herman and Lipsky (who were previously given the stock at no cost by Monroe Parker). Herman and Lipsky personally profited by more than \$1.3 million.

In the complaint, NASD Regulation asks that the respondents give up the profits that were illegally obtained and make restitution to defrauded investors. Other potential sanctions include a fine, suspension, individual bar, or firm expulsion from the NASD. Under NASD Regulation rules, the individuals and the firms named in the complaint can file a response and request a hearing before an NASD Regulation disciplinary panel.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD 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 respondents before drawing any conclusion regarding the allegations in the complaint.

NASD Regulation Issues Complaint Against Monitor Investment Group, Inc., And 17 Principals, Brokers

NASD Regulation, Inc., issued a complaint against Monitor Investment Group, Inc., and 17 principals and brokers alleging fraud and other violations of NASD rules and federal securities laws in connection with the sale of common shares of Accessible Software (ASWI), an OTC Bulletin Board® security, and other activities. The complaint alleges that Monitor and others made more than

\$600,000 in illegal profits. Monitor, which was headquartered in New York City, withdrew its membership from the NASD in October 1996.

In addition to the firm, the complaint names Monitor's owner and Chief Executive Officer, William Palla; President, John Montelbano; and Compliance Director, Emanuel Genuso. Also named are Jeffrey Pokross and Salvatore Piazza who, according to the complaint, are believed to have secretly controlled Monitor by participating in the day-to-day operations of the firm, infusing capital into the firm, directing brokers' activities, and bringing investment banking transactions to the firm.

The complaint alleges that Monitor—acting through Palla, Piazza and Pokross—engaged in a scheme to manipulate the price of Accessible Software, Inc. The complaint also alleges that Monitor exploited its position as Accessible Software's only market maker to illegally raise the per share price from \$1 to \$6 3/4 over a two-hour period. As a result of its sales of previously acquired stock, Monitor, its principals, and others are alleged to have illegally profited by more than \$600,000 in two days.

The complaint further alleges that Monitor used concerted and high-pressure sales tactics to sell a large volume of Accessible Software's shares during the two-day period. Specifically, investors were subjected to false and deceptive sales pitches. In addition, Monitor and its employees ignored the suitability of this particular investment, a speculative and low-priced security with a history of operating losses, in sales presentations to prospective investors.

The complaint alleges that brokers at Monitor were told that they would receive compensation of up to 33 percent of the proceeds as compen-

sation for selling Accessible Software, which would not be disclosed to investors. Customers were charged undisclosed mark-ups of at least 14 to 33 percent on purchases of Accessible Software, according to the complaint. Generally, NASD Regulation considers mark-ups in excess of 10 percent to be fraudulent.

The complaint also alleges that Monitor permitted at least one unregis-

tered individual to act as a broker. The firm is charged with lying to regulators about the use of unregistered personnel and with creating false and fictitious records in an attempt to conceal its misconduct. NASD supervision rules were also allegedly violated by the failure to implement, maintain and enforce supervisory systems and adequate written supervisory procedures that would have detected and prevented the violations.

Accessible Software continues to be traded on the OTC Bulletin Board. In the complaint, NASD Regulation does not allege that Accessible Software knew that the price of its shares was being manipulated.

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FOR YOUR INFORMATION

Clarification Of Notice To Members 98-10

NASD Notice to Members 98-10 (January 1998) entitled "Transaction Reporting And Quotation Obligations Under the Fixed Income Pricing System (FIPS)" contained a question and answer concerning compliance officers and the need for firms to report all transactions under The Nasdaq Stock Market, Inc., Fixed Income Pricing SystemSM (FIPSSM), regardless of which desk trades the bonds. The original question and answer were published as:

Question: As a compliance officer, do I have a certain responsibility for all FIPS trades to be reported?

Answer: Yes, all compliance officers should be certain that every part of their firm is reporting FIPS trades. Many traders assume that, in a normal course of business, the high-yield trading desk is reporting all of the firm's FIPS transactions and the firm's obligations to the rules are being fulfilled. **This may not be completely accurate. For example, there are high grade desks that trade crossover bonds and utility desks that trade bonds that are rated BB+ or lower.** These desks may be located in different areas and/or different floors in a particular firm. The firm is obligated to report all of its FIPS transactions, regardless of the desk that trades the bonds.

It is important that all Compliance Officers and Head Traders are aware of this situation. We have found firms of all sizes who have made this error.

For clarification purposes, the following question should be substituted for the original question to more clearly reflect the information provided by the answer:

Question: As a compliance officer, am I required to monitor the reporting of all FIPS transactions—especially on those desks that, in the normal course of business, may not consistently trade high-yield bonds?

Questions regarding this clarification may be directed to Justin Tubiolo, Director, Fixed Income Department, The Nasdaq Stock Market, Inc., at (212) 858-4419.

SEC Requires Electronic Link For Nasdaq Issuers

Recently, the Securities and Exchange Commission approved a proposal concerning Nasdaq[®] issuers who offer their shareholders a direct registration program (*see* Exchange Act Release No. 39369). Nasdaq issuers that offer a direct registration program to shareholders must now participate in an electronic link, directly or through the issuer's transfer agent, with a securities depository registered under Section 17A of the Exchange Act. The rule change is effective April 1, 1998.

The rule change facilitates the clearance and settlement of securities held in book-entry form in direct registration programs while preserving shareholders' choice to hold their securities in certificate form or in "street" name. Establishing an electronic link will foster further cooperation and coordination with the clearing and settling of securities transactions and, in general, protect shareholders and the public interest. The rule change also ensures that there is a quick and efficient means for financial intermediaries, such as broker/dealers and banks, to transfer these interests on behalf of shareholders, thus providing for a more efficient, effective, and safe procedure for the clearance and settlement of securities transactions.

Questions concerning this rule change may be directed to Dorothy L. Kennedy, Assistant Director, Nasdaq Market Operations, at (203) 385-6243, or Andrew S. Margolin, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8869.

Year 2000 Member Advisory

The year 2000 will be upon us soon! 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 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 prepare and implement a comprehensive Year 2000 project plan as well. All member firms have a responsibility to analyze the readiness of their automated regulatory and compliance systems and make

the necessary changes for continued successful operation.

The Securities Industry Association (SIA) recently surveyed its membership regarding Year 2000 efforts and found that 77 percent of large firms (more than 6,000 employees) were in the "modifying/testing" stage, 62 percent of medium firms (500-6,000 employees) were in the "inventory and risk assessment" phase, and 44 percent of small firms (up to 499 employees) were in the "awareness" phase.

Please be aware that computer failures related to Year 2000 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. Therefore, it is of the utmost importance that members increase not only their awareness of this issue, but carry forward plans of action immediately.

To read more about the NASD's Year 2000 Program, visit the Year 2000 Web Pages at the NASD (www.nasd.com) and NASD Regulation (www.nasdr.com) Web Sites. Other Web Sites containing Year 2000 information include: the SIA (www.sia.com); a comprehensive Year 2000 Site, including links to other related information (www.year2000.com); and a Site from a noted economist focused on this issue (www.yardeni.com). The NASD has and will continue to provide members with information through its publications and Web Sites as we all move forward with this effort.

The securities industry still has a lot of work ahead to get ready for the year 2000. Remember, the deadline is December 31, 1999, and there are no extensions!

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Special NASD Notice to Members 98-27

Interim Forms U-4 And U-5 Go Into Effect; Interim Form BD Also Approved

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

This *Special Notice to Members* provides guidance to members in filling out the Interim Forms U-4 and U-5, which become effective on March 16, 1998, and in understanding what information NASD Regulation, Inc., will release as part of its Public Disclosure Program. This guidance will be updated and supplemented as necessary and can be found at the NASD RegulationSM Web Site at www.nasdr.com.

The recently approved Uniform Application for Broker-Dealer Registration (Form BD) will also become effective March 16, 1998. Copies of the three forms are included with this *Notice*.

Questions concerning this *Notice* may be addressed to any of the following individuals in NASD Regulation's CRD/Public Disclosure Department: Ann Bushey, at (301) 590-6389; John Vaughn, at (301) 590-6865; or Janis Paulikas, at (301) 590-6184.

Background

On January 20, 1998, the Securities and Exchange Commission (SEC) approved the rule changes filed on October 17, 1997, by the National Association of Securities Dealers, Inc. (NASD[®] or Association) which would amend the Interpretation on the Release of Disciplinary Information, IM-8310-2 of Rule 8310 of the Procedural Rules of the NASD, to modify the disclosure information currently released through the Program; and implement revisions to the disclosure questions on the Uniform Application for Securities Industry Registration or Transfer (Form U-4) and the Uniform Termination Notice for Securities Industry Registration (Form U-5) to facilitate the immediate release of the additional information through the PDP.¹ The SEC further approved an amendment to the proposed rule change, filed on November 12, 1997, in which the NASD

further proposed that the disclosure of the additional information and use of the Interim Forms would become effective on February 17, 1998. These Interim Forms had been distributed to members for use beginning on February 17, 1998. However, in response to a request from the Securities Industry Association, we are delaying implementation of the Interim Forms U-4 and U-5 until March 16, 1998, in order to allow firms to make necessary operational changes.

To accomplish the release of the modified information, the disclosure questions set forth on the Interim Forms U-4 and U-5 and the relevant Disclosure Reporting Pages (DRPs) have been reformatted in a manner that is compatible with the current Central Registration Depository (CRDSM)² system architecture. There are, however, several areas that the member must keep in mind on the Interim Forms. These are detailed below.

Changes To The Customer Complaint Questions

Significant changes have been made to the customer complaint questions. These questions have been revised so as to require disclosure of all pending arbitrations and civil proceedings that relate to securities or commodities transactions; pending written customer complaints alleging sales practice violations and compensatory damages of \$5,000 or more for 24 months from original posting if closed without a settlement by the firm; and settlements of \$10,000 or more of arbitrations, civil suits, and customer complaints involving securities or commodities transactions.

Changes To Other Questions

- Items 22A and 22B: Criminal charges and convictions under

Items 22A and 22B now include matters regarding criminal charges and convictions handled through military courts. For jurisdictions that do not differentiate between a felony and misdemeanor, the Explanation of Terms now defines equivalent offenses and includes courts martial.

- Item 22C: Civil/judicial matters under Item 22C now include a sub-question requiring disclosure of investment-related civil actions brought by a state or foreign financial regulatory authorities that are dismissed pursuant to a settlement agreement.
- Item 22E now clarifies that orders that deny, suspend, or revoke an individual's registration or license, or otherwise prevent the individual from associating with an investment-related business or restricts the individual's activities, must be reported. Stipulations and agreements not contained in an order are not reportable under this item.
- Pending matters under Item 22I must be the result of written notification. In addition, the Explanation of Terms defines investigations for the SEC and NASD Regulation as including the matters after the "Wells" notice has been given.
- Financial matters over 10 years old, including bankruptcies, compromises with creditors, or actions taken under the Securities Investor Protection Act are no longer reportable.
- Item 22N, which deals with terminations, has been clarified to include situations in which the individual voluntarily resigned after allegations were made against the individual.

Expanded Explanation Of Terms

The Interim Forms contain an expanded Explanation of Terms to define or clarify terms used throughout the Forms. The Explanation of Terms has been moved to the instruction pages of the Forms and has been made consistent across all Form types, to the extent possible.

Formatting Of Disclosure Questions On The Interim Forms

As stated above, the questions have been reformatted on the Interim Forms to accommodate current CRD system architecture. In order to avoid system reprogramming, additional questions had to be fitted within the existing numbering system. Any questions that now contain more than one part (subitem) are delineated on the Forms with the word "-OR-" separating the subitems. To further aid the member and individual in providing all pertinent data, the corresponding subitem numbers have been added to the boxes in Item 1 of the DRPs which require the member or individual to indicate the specific subitem to which the details relate. Members and individuals are cautioned to read the entire question and provide an affirmative response and corresponding details if any part of the question results in reportable information.

The expansion of the Public Disclosure Program and the implementation of the Interim Forms may result in the need to amend a previous form filing. It is possible that a firm or individual who supplied a "yes" answer in a previous filing will now be able to amend that answer to a "no" response. Conversely, a firm or individual who supplied a "no" answer in a previous filing may now be required to amend that answer to a "yes" response.

The Interim Forms are being implemented on a prospective basis. Therefore, an individual is not required to file an amendment to page 3 of the Interim Form U-4 by any particular date if an answer to a question changes from "No" to "Yes" solely because the scope of the question on the Interim Form has been revised. Rather, page 3 should be completely updated the next time any amendment to the Interim Form (i.e., any page of the Form or the DRP) is filed or when an Interim Form is filed to effect a transfer, whichever is earlier. As a result of changes to the scope of the questions, an individual also may be able to change a "Yes" answer to a "No" answer on page 3. CRD will accept such amendments at any time on or after March 16, 1998. Filing such an amendment, of course, triggers the obligation to completely update the Interim Form, i.e., to change a "No" to a "Yes" if required due to changes in the questions.

Questions Regarding The Interim Forms

Outlined below is a list of Frequently Asked Questions regarding a registered person's obligation to file a Form U-4.

Form U-4

Questions 22A and 22B

Question 1: Is a registered person required to report military charges?

Answer: Yes. If a registered person is charged with, pleads guilty or no contest to, or is convicted of a felony or certain enumerated misdemeanors in a military court, such event must be reported.

Question 2: If a registered person is convicted of a crime and later par-

done, must the conviction continue to be reported?

Answer: Yes. A pardon does not automatically result in an expungement of the criminal record.

Question 3: If a registered person is arrested but not charged with a crime, is the arrest required to be reported?

Answer: No. An arrest without a charge is not required to be reported.

Question 4: Is a misdemeanor charge of failure to file income tax required to be reported?

Answer: No.

Question 5: Is an offense that results in an individual being placed in a pre-trial diversion or intervention program required to be reported?

Answer: Each case must be reviewed individually to determine if formal charges were filed. If so, the matter must be reported. The registered person should attach the official court documents and a copy of the relevant statute to the Form to demonstrate that no formal charges were filed or charges otherwise are not required to be reported.

Question 6: Are misdemeanor gambling charges or convictions required to be reported?

Answer: No.

Question 22E

Question 1: If a regulatory agency enters an order against a registered person in connection with an investment-related activity, and later vacates the order, may the registered person answer "No" to Question 22E(4)?

Answer: No. The question asks whether a regulatory agency has ever entered an order. The vacated order represents the final disposition of the action; it does not alleviate the registered person from disclosing the original findings.

Question 22G

Question 1: Is a registered person required to report an oral complaint? What if it is subsequently settled for more than \$10,000?

Answer: Oral complaints are not required to be reported, even if they result in a settlement. However, if a customer lodges an oral complaint with a member, and the customer later submits the complaint in writing in the course of settlement negotiations, the oral complaint has become a written complaint, which must be reported.

Question 2: What constitutes a sales practice violation?

Answer: Sales practice violation is defined in the instructions to include any conduct directed at or involving a customer which would constitute a violation of any rules for which a person could be disciplined by any self-regulatory organization; any provision of the Securities Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale, or purchase of a security or in connection with the rendering of investment advice.

Question 3: If a registered person settles a written customer complaint that was reported under Question 22G, and the settlement is less than \$10,000, must he report the settlement under Question 22H(2)?

Answer: No. The registered person can answer "No" to Question 22H(2). However, the "Yes" response to Question 22G will remain on CRD for

two years after the "Yes" answer is entered on CRD.

Question 4: If a registered person reports a customer complaint under Question 22G, but after 24 months the complaint has neither been settled for \$10,000 or more, nor evolved into arbitration or civil litigation, should the registered person file an amended Interim Form U-4 changing the answer to Question 22G to "No"?

Answer: Yes, the registered person should do so.

Question 5: If a customer files a written complaint with a broker/dealer that must be reported under Question 22G and later files an arbitration regarding the same allegations, does the registered person have to answer "Yes" to both Questions 22G and 22H? What if a customer files a written complaint with the member and then subsequently files an arbitration claim that raises completely separate allegations, *e.g.*, the written complaint alleges a sales practice violation with respect to a mutual fund transaction, while the subsequent arbitration alleges a different sales practice violation with respect to a bond transaction?

Answer: When the written customer complaint is filed with the broker/dealer, the registered person must answer "Yes" to Question 22G. When the arbitration is filed over the same allegations, the registered person should amend his U-4 by changing the answer to Question 22G to "No" and answering Question 22H(1) "Yes". When a written customer complaint evolves into an arbitration, the answer to Question 22G is "No" because the event "has otherwise been reported" under Question 22H(1).

If the subsequent claim raises different allegations, then the registered person must answer "Yes" to both

Questions 22G and 22H(1) because the complaint and the arbitration concern different allegations and transactions, and therefore should be treated as separate events.

Question 6: How is the 24-month period calculated for purposes of reporting a complaint on the Interim Form U-4 and disclosing information through the Public Disclosure Program?

Answer: For purposes of a registered person's obligation to report a customer complaint, the 24 months is calculated from the date the complaint is filed with the firm. However, the complaint will be disclosed through the Public Disclosure Program for 24 months, beginning on the date that the U-4 filing on the complaint is entered on CRD.

For example, if a firm receives a reportable customer complaint about a broker on September 1, 1998, and the Interim Form U-4 reporting the complaint is entered on the CRD on September 15, 1998, then the broker is obligated to answer "Yes" to Question 22G until September 1, 2000. CRD will disclose the "Yes" answer until September 15, 2000. Thus, there may be a brief period during which the complaint is no longer reportable by the broker but is still subject to disclosure under the Public Disclosure Program. This policy, which was developed in consultation with NASAA, is designed to encourage prompt reporting of customer complaints.

The NASD considered, but rejected, a policy that would use the firm filing date both for determining the registered person's reporting obligation and the public disclosure period. That policy was rejected because it could encourage registered persons or firms to withhold reports of customer complaints and thereby shorten the disclosure period. For

example, if in the previous example the complaint was filed with the firm on September 1, 1998, but the U-4 was not filed until October 30, 1998, and the September 1 date was used for both reporting and disclosure, then the effective disclosure period would be only 22 months, *i.e.*, October 30, 1998 to September 1, 2000.

Question 22H

Question 1: What if a customer files an arbitration claim alleging sales practice violations against several respondents and then withdraws the claim as to a particular respondent prior to any settlement or award? Is the registered person obligated to report any subsequent settlement or award by the remaining respondents?

Answer: When the arbitration claim is filed, the registered person should answer "Yes" to Question 22H(1). When the claim is withdrawn, the registered person may file an amendment changing his answer to 22H(1) from "Yes" to "No".

If the arbitration was preceded by a written customer complaint regarding the same allegations, then the registered person should have: (1) answered "Yes" to Question 22G at the time the written customer complaint was filed with the broker/dealer; (2) filed an amendment answering "No" to Questions 22G and "Yes" to Question 22H(1) when the arbitration was filed; and, (3) filed a further amendment when the arbitration is withdrawn changing the answer to Question 22H(1) to "No". Question 22G remains "No" at the time the arbitration is withdrawn because the arbitration has been reported on a previous Form U-4, even though it is not currently required to be reported. See Q5 under Question 22G. If the arbitration was not preceded by a written customer complaint regarding the same

allegations, then the registered person continues to answer "No" to Question 22G. Essentially, the Form requires the registered person to report the most serious outcome related to a particular set of allegations.

A registered person against whom an arbitration is withdrawn is not required to report the subsequent settlement; as a practical matter, a person who no longer is a respondent may not have ready access to information about the subsequent disposition of the matter. The final disposition of the arbitration as to that registered person is the withdrawal, and he has no obligation to report any subsequent disposition.

Question 2: What if a customer withdraws an arbitration claim against a particular respondent as part of a settlement of \$10,000 or more?

Answer: The registered person should answer "Yes" to Question 22H(1). For item 8a on the DRP, the registered person can report that the matter was settled, and in item 8c can report that the claim was withdrawn as part of the settlement and that no contribution was made to the settlement.

Question 3: If a registered person has reported an arbitration under Question 22H(1)(a), and the arbitration is settled by other respondents for \$10,000 or more, but the registered person is not a party to the settlement and does not pay any part of it, should the registered person answer "Yes" to Question 22H(1)? What if the registered person is a party to the settlement, but still does not pay any part of the settlement?

Answer: In either case, the answer to Question 22H(1) is "Yes". If an arbitration is settled as to some respondents but not others, then the respondents who do not settle must

continue to report that the arbitration is pending under Question 22H(1)(a) until there is some other disposition, e.g., withdrawal or dismissal of the claim or a separate settlement. If the registered person is a party to the settlement under Question 22H(1)(c), he must report the settlement, even if he contributed nothing to the settlement. The registered person can state on the DRP that he contributed nothing to the settlement.

Question 4: If a registered person is not named as respondent in an arbitration, but the statement of claim alleges that such person engaged in a sales practice violation, must the matter be reported?

Answer: No. Only persons who are named as respondents are required to report.

Question 5: If an arbitration claim names several registered persons as respondents, and the statement of claim contains allegations of sales practice violations, but does not specifically allege that each respondent was involved in a violation, which respondents should answer "Yes" to Question 22H(1)? For example, if the statement of claim alleges that a broker engaged in churning and that his office manager should have been overseeing the broker's activities, and the persons named as respondents are the broker and his branch manager, as well as the compliance director and the president of the broker/dealer, who should report?

Answer: The broker and his branch manager should answer "Yes" to Question 22H(1), but the compliance director and the president may answer "No."

Under the NASD's interpretation of this question on the previous Form U-4, any person who was named in an arbitration that alleged compen-

satory damages of \$10,000 or more, fraud, or the wrongful taking of property was required to report the arbitration. The rewording of Question 22H(1) on the Interim U-4 requires that a registered person must report an arbitration if he is named as a respondent and the statement of claim alleges that he was involved in one or more sales practice violations. Because the statement of claim alleges no sales practice violation by the compliance director or the president, they are not required to report the arbitration, even though they are named as respondents.

The term "involved" continues to be defined on the Forms, and the term "sales practice violations" is defined for the first time to clarify reporting obligations. The term "involved" includes both doing an act and failing reasonably to supervise another in doing an act. The term "sales practice violations" includes any conduct directed at or involving a customer that would constitute a violation of an SRO rule for which a person could be disciplined; any provision of the Securities and Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale, or purchase of a security or in connection with the rendering of investment advice, and thus includes churning. Thus, the broker and the branch manager must report the arbitration.

It is not necessary that a statement of claim use precise legal terminology. The fact that the claim does not use the legal term "failing reasonably to supervise" does not alleviate the branch manager's obligation to report. The allegation that the manager should have been overseeing a broker's activities is sufficient to trigger reporting. Firms and registered persons should review each claim on a case-by-case basis and make a good faith determination as to whether reporting is required.

Question 6: If a customer complaint is settled for a total of \$10,000 or more, but the registered person's contribution is less than \$10,000, should the registered person answer "Yes" to Question 22H(1)?

Answer: Yes. The question refers to the total amount of the settlement. The fact that the registered person contributes less than the threshold amount does not change his obligation to report.

Question 7: What if an arbitration is dismissed by an arbitration panel or the panel decides in favor of the respondent?

Answer: The registered person can file an amended Interim Form U-4 changing the answer to Question 22H(1) from "Yes" to "No".

Question 22I

Question 1: When does a registered person have to report that he is the subject of an NASD investigation?

Answer: The Forms define the term "investigation". An investigation is defined to include an NASD Regulation investigation after the Wells notice has been given or after an associated person has been advised by the staff that it intends to recommend formal disciplinary action. An investigation does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations.

Question 2: If the NASD files a complaint against a registered person, but the complaint is dismissed and not appealed, what should the registered person report?

Answer: When the registered person receives written notice that he is the subject of an NASD investigation,

the registered person should answer "Yes" to Question 22I. When the complaint is dismissed, the answer can be amended to "No".

A set of the Interim Forms is included with this *Notice*. Additional copies of the forms may be obtained by contacting NASD MediaSourceSM at (301) 590-6142. There is no charge for ordering additional Forms. When placing your order, please allow two to three weeks for delivery. You may also photocopy the Interim Forms U-4 and U-5. The Interim Forms may also be obtained from the Internet at www.nasdr.com.

Members are required to use the Interim Forms as of March 16, 1998, and all other versions of the forms will then be considered obsolete. All forms received through March 13, 1998, will be processed. Subsequent to that date, the obsolete forms will be returned to the member.

In light of this delay in implementing the Interim Forms, we are implementing the following procedures to handle your form filings within the next 30 days:

- Between February 13 and March 13, 1998, we will accept for processing pages 1, 2, and 4 from both the Current and Interim Form U-4. (Note: Both the Interim Forms and the Current Forms U-4 and U-5 can be found on the NASD Regulation Web Site at www.nasdr.com.) This will permit firms which have completed the transition to the Interim Form to submit it and also permit firms which are still in transition to submit the current version of the Form.
- Since the disclosure questions have changed between the Current and Interim Forms, only page 3 and the Disclosure Reporting Page (DRP) of the Current Form U-4 can be accepted for processing during

the February 13 through March 13 period. Form filings containing a page 3 or a DRP from the Interim Form U-4, if required, will be returned to your firm.

- If an Interim page 3 or a DRP is returned to your firm, please mail or Federal Express the page 3 and related DRP from the Current Form U-4 to the following: CRD, P.O. Box 9401, Gaithersburg, MD 20898-9401, Attn: C. Horton. To further ensure quick processing, please indicate on your envelope or shipping label "Interim Replacement Form."
- **Between February 13th and March 13th, 1998, we will accept for processing the Current Form U-5 only. All Interim Forms U-5 received during this period will be returned, unprocessed to your firm. If a U-5 form filing is returned to your firm, please follow the procedures outlined above.**

Modification Of The Public Disclosure Program

In approving the rule changes filed by NASD on October 17, 1997, the SEC approved the modification of the disclosure information currently released through the Public Disclosure Program. The modified information now includes the following:

- All pending consumer-initiated arbitrations and civil proceedings that relate to securities or commodities transactions;
- Pending written customer complaints alleging sales practice violations and compensatory damages of \$5,000 or more for 24 months from original posting if closed without a settlement by the firm;
- Settlements of \$10,000 or more of arbitrations, civil suits, and cus-

tomers complaints involving securities or commodities transactions;

- Current investigations involving criminal or regulatory actions;
- Terminations of employment after allegations involving violations of investment-related statutes or rules, fraud, theft, or failure to supervise investment-related activities;
- Bankruptcies less than 10 years old and outstanding liens or judgments;
- Bonding company denials, payouts or revocations; and
- Any suspension or revocation to act as an attorney, accountant or federal contractor.

Please note, however, that the following types of events will be archived (*i.e.*, classified as non-reportable and maintained in a Z record³) because they are not reportable on the Interim Forms. Examples of these events include:

- misdemeanor gambling charges/convictions;
- bankruptcies and compromises with creditors that are more than 10 years old (*i.e.*, 10 years from the date filed);
- arbitration proceedings that were dismissed or were decided in favor of the respondent;
- arbitration proceedings that were settled for less than \$10,000; and
- written customer complaints that do not meet the 22G/22H2 reporting thresholds/criteria.

In cases where a previously reported event is no longer reportable under the Interim Form U-4, a page 3 amendment should be filed changing

the previous “yes” answer to “no.” A DRP should be included with the amendment providing details to support the change in answer. Upon receipt and review of the amendment filing, the event will be archived in CRD.

Endnotes

¹ Securities Act Rel. No. 39322 (November 13, 1997), 62 F.R. 62391; Securities Act Rel. No. 39562 (January 20, 1998), 63 F.R. 3942).

² The CRD is operated by NASD Regulation pursuant to an agreement between the

NASD and the North American Securities Administrators Association.

³ A Z record is a filing “tag” added to each event that has been deemed no longer reportable on the current Interim Forms.

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NASD Notice to Members 98-28

Industry/Regulatory Council On Continuing Education Issues Firm Element Advisory

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

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 Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA) have appointed liaisons to the Council.

The Council facilitates industry/regulatory coordination of the administration and future development of the Securities Industry Continuing Education Program. Council duties include recommending and helping to develop specific content and questions for the Regulatory Element programs, and minimum core curricula for the Firm Element. One function of the Council is to identify and recommend pertinent regulation and sales practice issues for inclusion in Firm Element training plans.

The attached Firm Element Advisory lists topics that the Council considers to be particularly relevant to the industry at this time. The list is drawn from a review of the performance of registered persons in the Regulatory Element computer-based training and regulatory advisories issued by industry SROs since the publication of the initial Firm Element Advisory in March 1997. Firms should review this list and decide whether the topics are relevant to the training needs identified in their Firm Element Needs Analysis. The Council is providing this advisory so that Firm Element continuing education may be as pertinent and enriching as possible to financial professionals in the securities industry.

Questions about this *Notice* may be directed to any of the following NASD Regulation, Inc., staff: John Linnehan, Director, Continuing Education, at (301) 208-2932; Frank J. McAuliffe, Vice President, Qualifications and Exams, at (301) 590-6694; or Daniel Sibears, Vice President, District Oversight, at (202) 728-6911.

Endnote

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.

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The Securities Industry Continuing Education Program

The Securities Industry Continuing Education Program Firm Element Advisory

One function of the Securities Industry/Regulatory Council on Continuing Education (Council) is to identify and recommend pertinent regulation and sales practice issues for inclusion in Firm Element training plans.

Attached are topics that the Council considers to be particularly relevant to the industry at this time. The list is based on a review of recent regulatory events as well as advisories issued by industry self-regulatory organizations (SROs) since the initial Firm Element Advisory of March 1997.

These issues are listed here to complement topics that firms have already determined to be appropriate to their specific Firm Element needs analysis and training plan. It is not mandatory for firms to address every topic listed here in their Firm Element training. However, each firm should review this list of topics *vis a vis* 1) the financial products and services it offers to investors, and 2) its overall performance in related topic areas of the Regulatory Element. While each firm has discretion in deciding the relevancy of these topics to its lines of business and training needs, each firm also has the obligation to include

topics not listed in the Advisory but otherwise identified by its Firm Element Needs Analysis.

The Council will periodically highlight additional relevant regulatory areas to assist the industry and it invites your assistance. Please direct your comments, suggestions, or questions about this and future Advisories to either Christian Billet, Continuing Education Coordinator, the New York Stock Exchange, at (212) 656-2156, or John Linnehan, Director, Continuing Education, NASD Regulation, Inc., at (301) 208-2932.

Training Topic	Relevant Training Point(s) and Reference(s)
Module 2 of the Regulatory Element computer-based training—Communications with the Public	<p>Electronic delivery of information to customers.</p> <p><i>See Securities Exchange Act Release 34-37182, May 19, 1996, NYSE Information Memo 97-32, June 13, 1997, and NASD Notice to Members 98-3, Electronic Delivery Of Information Between Members And Their Customers, January 1998.</i></p> <p><i>See Cold Calling Amendments to NYSE Rules 440A (Telephone Solicitation) and 472 (Communications With The Public), NYSE Information Memo 97-26, May 19, 1997.</i></p>
Module 4 of the Regulatory Element computer-based training—Handling Customer Accounts	<p>Transfer-On-Death Accounts. <i>See Uniform Transfer-On-Death Account Security Registration Act.</i> Also determine applicability in, and specific provisions of, various states where business is conducted.</p>
Module 6 of the Regulatory Element computer-based training—Customer Accounts, Trade and Settlement Practices	<p>Marking Sell Orders “Long” or “Short.” <i>See NYSE Information Memo 97-3, January 17, 1997.</i></p> <p>Trading Halts Due to Extraordinary Market Volatility (Circuit Breakers). NYSE Rule 80B. <i>See NYSE Information Memos 97-7, February 3, 1997, and 98-5, January 30, 1998.</i></p> <p>Change to Minimum Exchange Trading Variation. <i>See NYSE Rule 62; NYSE Information Memos 97-33, June 19, 1997; 97-35, June 23, 1997; and 97-37, July 11, 1997.</i></p> <p>Customer Account Statement Requirement Changes (NYSE Rule 409). <i>See NYSE Information Memo 97-56 and Interpretation Memo 97-7, both dated December 18, 1997.</i></p> <p>Amendments to Federal Reserve Board Regulation T (and G, U and X) regarding the arrangement and extension of securities credit. <i>See Federal Reserve System, April 1996 (Docket R-0923), November 1996 (Docket R-0944), and final rules resulting from these releases.</i></p>
Module 7 of the Regulatory Element computer-based training—New and Secondary Offerings	<p>Exchange Notification Requirements for Offerings and Distributions. <i>See NYSE Information Memos 97-12, February 28, 1997, and 97-41, July 30, 1997; and SEC Regulation M.</i></p>

Training Topic	Relevant Training Point(s) and Reference(s)
Distribution of Information Concerning NASD Regulation's Public Disclosure Program	<p>Certain NASD members must provide customers with the following information not less than once every calendar year:</p> <p>(1) the NASD Regulation, Inc., Public Disclosure Program hotline number; (2) the NASD Regulation Web Site address; and (3) a statement regarding the availability of an investor brochure that includes information describing the Public Disclosure Program.</p> <p><i>See NASD Notice to Members 97-78, November 1997.</i></p>
Syndicate Short Covering Requirements	<p>Members must maintain information on the amount of a syndicate short position in their files; members are required to request an Underwriting Activity Report (UAR) with respect to a security that is considered "actively-traded" under Rule 101 of SEC Regulation M (all exchange-listed securities excluded). Members are required to submit pricing information with respect to any security considered "actively-traded" under Rule 101, regardless of whether listed on a national securities exchange.</p> <p><i>See NASD Notice to Members 97-80, November 1997.</i></p>
Short Sales	<p>Legal Definition of Short Sale: an SEC-approved amendment to the NASD Short Sale Rule provides that a legal short sale can be effected at a price equal to or greater than the offer price when the inside spread is less than 1/16th. <i>See NASD Notice to Members 97-74, October 1997.</i></p> <p>Effecting an Exempt Short Sale: an SEC-approved amendment to ACT rules to require market makers to denote when they have effected an exempt short sale. <i>See NASD Notice to Members 97-15, March 1997.</i></p>
Mergers, Acquisitions and Exchange Offers	<p>Amendments to Conduct Rules 2710 and 2720 regarding mergers, acquisitions and exchange offers.</p> <p><i>See NASD Notice to Members 97-82, November 1997.</i></p>
Order Handling Rules, NASD Limit Order Protection Rules, and Member Best Execution Obligations and Responsibilities	<p>Interpretive advice regarding a member's best execution obligations when handling a customer order. <i>See NASD Notice to Members 97-57, September 1997.</i></p> <p>SEC Market 2000 Study. <i>NYSE Information Memo 97-8, February 5, 1997.</i></p>
Limit-On-Close (LOC) Orders	<p><i>NYSE Information Memo 97-25, May 13, 1997.</i></p>
Changes to Third Market Trading Rules	<p>A new SEC rule—11Ac1-4 (Limit Order Display Rule) and amendments to existing SEC Rule 11Ac1-1 (Quote Rule) effect changes to NASD rules governing trading in exchange-listed securities in the over-the-counter market (the Third Market.)</p> <p><i>See NASD Notice to Members 98-5, January 1998.</i></p>

Training Topic	Relevant Training Point(s) and Reference(s)
Changes to NASD Rules on Market Maker Withdrawals and Reinstatements	Amendments to NASD Rules 4619 (Withdrawal of Quotations and Passive Market Making), 4620 (Voluntary Termination of Registration), and 4730 (Participant Obligations in SOES). <i>See NASD Notice to Members 98-6</i> , January 1998.
Transaction Reporting and Quotation Obligations Under the Fixed Income Pricing System (FIPS)	<i>See NASD Notice to Members 98-10</i> , January 1998.
Market Making	NASD Rule 2460 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. <i>See NASD Notice to Members 97-46</i> , August 1997.
Release of Disciplinary Information	SEC-approved amendments to the Interpretation on the Release of Disciplinary Information (NASD IM-8310-2) 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. <i>See NASD Notice to Members 97-42</i> , July 1997.
Registered Persons Have a Continuing Obligation to Update NASD Records	Every person registered with a member of the NASD must notify the NASD of his or her current mailing address. This obligation exists while a registrant is associated with any NASD member firm, and continues for as long as the NASD retains jurisdiction to bring a disciplinary action against the registrant, which may be up to four years after the registrant's association ends. <i>See NASD Notice to Members 97-31</i> , May 1997.
Transactions for or by Associated Persons	The applicability of Paragraph (d) of Rule 3050 (Transactions for or by Associated Persons) to nonmember financial service entities. <i>See NASD Notice to Members 97-35</i> , May 1997.
Group Variable Contracts and Other Securities Exempted Under the Securities Exchange Act of 1934	NASD Conduct Rules apply to group variable contracts and other exempted securities. <i>See NASD Notices to Members 97-27</i> , May 1997, and <i>96-66</i> , October 1996.
Hiring Practices; Heightened Supervision of Registered Representatives with Disciplinary History	<i>See NASD Notice to Members 97-19</i> , April 1997, and <i>NYSE Information Memo 97-20</i> , April 5, 1997. <i>Joint Regulatory Sales Practice Sweep Report</i> .

Training Topic	Relevant Training Point(s) and Reference(s)
Supervision, Review and Record Retention of Correspondence	Appropriate supervision, review, and retention of communications with the public, including electronic delivery of information between members and their customers. <i>See NYSE Interpretation Memo 98-1, Revised Interpretation to Rule 342—Review of Incoming Mail, and NYSE Information Memo 98-3, New Rules—Supervision and Review of Communications with the Public, both dated January 14, 1998.</i>
Tracing Funds Through the Funds—Transmittal Process	For transmittals of funds of \$3,000 or more, broker/dealers are required to obtain and keep certain specified information concerning the transmitter and the recipient of those funds. In addition, broker/dealers must include this information on the actual transmittal order. <i>See NASD Notice to Members 97-13, March 1997.</i>
Market Activities of Persons with an Interest in the Outcome of an Offering of Securities	<i>See SEC Regulation M and NASD Notice to Members 97-10, March 1997.</i>
Members' Obligations to Comply with SEC Rule 15c2-4	SEC Rule 15c2-4 is applicable to public and private offerings of securities on a best-efforts basis. <i>See NASD Notice to Members 98-4, January 1998.</i>
Year 2000 Compliance	<i>See NYSE Information Memo 97-30, May 22, 1997, and NASD Notice to Members 98-22, Year 2000 Frequently Asked Questions, February 1998.</i>
Gifts and Entertainment	<i>NYSE Information Memo 97-53, November 21, 1997.</i>
Tax Law Changes	Federal tax law changes applicable to capital gains, tax benefits, etc. New IRA types for educational purposes. Short vs. The Box—tax changes.
Suitability Issues	MSRB Rule G-19: Suitability of Recommendations and Transactions; Discretionary Accounts. MSRB Manual, ¶3591.
Political Contributions	MSRB Rule G-37: Political Contributions and Prohibitions on Municipal Securities Business. MSRB Manual ¶3681.
Consultants	MSRB Rule G-38: Consultants. MSRB Manual ¶3686.

Training Topic	Relevant Training Point(s) and Reference(s)
Reporting Sales and Purchases of Municipal Securities	MSRB Rule G-14: Reports of Sales and Purchases, and MSRB Rule G-14: Transaction Reporting Procedures. MSRB Manual ¶3566.
Delivery of Official Statements	MSRB Rule G-32: Disclosures in Connection with New Issues. MSRB Manual ¶3656; and MSRB Rule G-36: Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or its Designee. MSRB Manual ¶3676.

Where To Obtain More Information

For more information about publications, contact the SROs at these addresses:

American Stock Exchange

American Stock Exchange
Publications Fulfillment
86 Trinity Place
New York, NY 10006
212-306-1886
www.amex.com

Chicago Board Options Exchange

Chicago Board Options Exchange
Investor Services
400 S. LaSalle Street
Chicago, IL 60605
800-OPTIONS
www.cboe.com

Municipal Securities Rulemaking Board

MSRB
Publications Department
1640 King Street
Suite 300
Alexandria, VA 22314
202-223-9503
www.msrb.org

National Association of Securities Dealers, Inc.

NASD MediaSource
P.O. Box 9403
Gaithersburg, MD 20898-9403
301-590-6142
www.nasd.com

New York Stock Exchange

New York Stock Exchange
Publications Department
11 Wall Street
18th Floor
New York, NY 10005
212-656-5273, or 212-656-2089
www.nyse.com

Philadelphia Stock Exchange

Philadelphia Stock Exchange
Marketing Department
1900 Market Street
Philadelphia, PA 19103
800-THE PHLX, or 215-496-5158
www.phlx.com
or info@phlx.com

NASD Notice to Members 98-29

SOES Tier-Size Levels
Set To Change April 1,
1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Effective April 1, 1998, tier sizes for 547 Nasdaq National Market[®] securities will be revised in accordance with National Association of Securities Dealers, Inc. (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 SystemSM (SOESSM) 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 IITM 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 is applied to those Nasdaq National Market securities that have an average daily non-block volume of 3,000 shares or more a day, a bid price that is less than or equal to \$100, and three or more market makers.
- A 500-share tier size is applied to those Nasdaq National Market securities that have an average daily non-block volume of 1,000 shares or more a day, a bid price that is less than or equal to \$150, and two or more market makers.
- A 200-share tier size is applied to those Nasdaq National Market securities that have an average daily non-block volume of less than

1,000 shares a day, a bid price that is less than or equal to \$250, and two or more 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 December 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 December 31, 1997, were not subjected to the SOES tier-size review.

Following is a listing of the 547 Nasdaq National Market issues that will require an SOES tier-level change on April 1, 1998.

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Nasdaq National Market SOES Tier-Size Changes
All Issues In Alphabetical Order By Security Name
(Effective April 1, 1998)

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
A				AVIIV	ANTIVIRALS INC WTS	500	1000
AANB	ABIGAIL ADAMS NATL	500	1000	AVTM	AVTEAM INC	200	500
ABSC	AURORA BIOSCIENCE	500	1000	AVTR	AVATAR HLDGS INC	500	1000
ACAS	AMER CAP STRATEGIES	200	500	AXHM	AXIOHM TRANS SOL	1000	500
ACMR	A C MOORE ARTS SA	200	500	B			
ACMTA	A C M A T CP CL A	500	200	BAYB	BAY BANCSHARES	200	500
ACRN	ACORN PRODUCTS INC	500	1000	BBIOY	BRITISH BIO-TECH ADR	500	1000
ACSC	ADVANCED COMM SYST	500	1000	BBQZY	BARBEQUES GAL ADS	200	500
ACYT	AUTOCYTE INC	200	500	BCICF	BELL CANADA INTL	200	500
ADVNZ	ADVANTA CP DEP SH	500	1000	BCII	BONE CARE INTL INC	500	1000
AEHCF	ASIA ELECTRONICS HLD	200	500	BDOG	BIG DOG HLDGS INC	200	500
AEHR	AEHR TEST SYSTEMS	500	1000	BEDS	BRIDGESTREET ACCOM	200	500
AHEPZ	AMER HEALTH DEP SHRS	500	1000	BEERF	BIG ROCK BREWERY LTD	500	1000
AIFC	AMER INDEMNITY FIN	500	1000	BEIQ	BEI TECHS INC	200	500
ALFC	ALLIED LIFE FINL C	1000	500	BERW	BERINGER WINE EST	200	500
ALLS	ALLSTAR SYSTEMS IN	500	1000	BEST	BEST SOFTWARE INC SE	200	500
ALRS	ALARIS MEDICAL INC	500	1000	BFEN	B F ENTERPRISES IN	200	500
ALSI	ADVANTAGE LEARNING	200	500	BFOH	BANCFIRST OHIO CP	500	1000
ALTIF	ALTAIR INTL INC	500	1000	BGLVW	BALLY'S GRAND WTS	500	200
AMBC	AMER BNCP OHIO	500	1000	BIGX	EXCELSIOR-HENDERSO	500	1000
AMIE	AMBASSADORS INTL I	1000	500	BKCT	BANCORP CONN INC	500	1000
ANAT	AMER NATL INS CO	500	1000	BKLYZ	W R BERKLEY DEP SH	1000	500
ANDR	ANDERSEN GROUP INC	500	1000	BKUNZ	BANKUNITED CAP II	500	1000
ANIK	ANIKA THERAPEUTICS	500	1000	BLPG	BORON LEPORE & ASSOC	200	500
AREA	AREA BANCSHARES CP	500	1000	BNBCP	B N B CAP TR PFD	500	200
ARIAW	ARIAD PHARM INC WT	500	1000	BNHN	BENIHANA INC	500	1000
ARONA	AARON RENTS INC CL	1000	500	BOOT	LACROSSE FOOTWEAR	1000	500
ARSC	ARIS CORPORATION	500	1000	BOTX	BONTEX INC	500	1000
ARTW	ART S WAY MFG CO I	1000	500	BPOPP	POPULAR INC PFD A	1000	500
ASAM	ASAHI/AMERICA INC	500	1000	BREL	BIORELIANCE CORP	500	1000
ASBI	AMERIANA BANCORP	1000	500	BRHZ	BRIGHT HORIZONS	200	500
ASBP	A S B FINANCIAL CP	1000	500	BRZS	BRAZOS SPORTSWEAR	200	500
ASCT	ASCENT PEDIATRCS	500	1000	BTBTY	B T SHIP SPONSOR ADR	200	500
ASFD	AUTHENTIC SPEC FOODS	200	500	BTRN	BIOTRANSPLANT INC	500	1000
ATEN	AT ENTERTAINMENT I	500	1000	BUCK	BUCKHEAD AMERICA C	1000	500
ATHM	AT HOME CORPORATIO	500	1000				
AVII	ANTIVIRALS INC	500	1000				

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
C				CRWN CROWN BOOKS CP 500 1000			
CABL	CABLE MICHIGAN INC	200	500	CRXA	CORIXA CORP SE	200	500
CAIR	CORSAIR COMMUNICAT	500	1000	CRZO	CARRIZO OIL & GAS	500	1000
CANX	CANNON EXPRESS INC	200	500	CSCQW	CORRECTIONAL SVCS	200	500
CAPS	CAPITAL SAV BNCP I	500	1000	CSPI	C S P INC	500	1000
CARY	CAREY INTL INC	500	1000	CSTR	COINSTAR INC	500	1000
CASA	CASA OLE' RESTRS I	500	1000	CTBC	CTB INTL CORP	200	500
CASH	FIRST MIDWST FIN I	1000	500	CTEN	CENTENNIAL HLTHCR	500	1000
CASL	CASTLE DENTAL CTRS	200	500	CTHR	C3 INC	200	500
CBBI	C B BANCSHARES	1000	500	CTRIS	CLEVETRUST RLTY SBI	1000	500
CBCI	CALUMET BANCORP IN	500	1000	CUIS	CUISINE SOL S2S3	500	1000
CBHI	C BREWER HOMES INC	500	1000	CVSN	CHROMAVISN MED SYST	500	1000
CBLI	CHESAPEAKE BIOLOGI	500	1000	CWCOF	CAYMAN WATER ORD SHS	1000	500
CBSAP	COASTAL BANC PFD A	200	500	CWST	CASELLA WAST SYS	200	500
CBTC	C B T CP	500	1000	CYFN	CENTURY FINANCIAL	500	1000
CCRD	CONCORD COMMUNIC SA	200	500	D			
CDIR	CONCEPTS DIRECT IN	500	1000	DCBI	DELPHOS CITIZENS B	1000	500
CDIS	CAL DIVE INTL INC	500	1000	DECC	D & E COMMUNICATIO	200	500
CFAM	CORPORATEFAMILY SOL	500	1000	DENHY	DENISON INTL ADR	500	1000
CFBC	COMMUNITY FIRST BN	500	1000	DENT	DENTAL CARE ALL INC	200	500
CFBXL	CFB CAPITAL I CUM	500	1000	DEVC	DEVCON INTL CP	500	1000
CFCI	C F C INTL INC	500	1000	DGAS	DELTA NATURAL GAS	500	1000
CFNC	CAROLINA FINCORP I	1000	500	DGIC	DONEGAL GROUP INC	500	200
CHERA	CHERRY CP CL A	1000	500	DISHP	ECHOSTAR CV PFD C	200	500
CHERB	CHERRY CP CL B	1000	500	DMARE	DATAMARINE INTL	500	1000
CHKRW	CHECKERS DRIVE-IN WT	500	1000	DNFCP	D & N CAP CORP PFD	500	1000
CHRW	C.H. ROBINSON WW SA	200	500	DRYR	DREYERS GRAND ICE	500	1000
CLBK	COMMERCIAL BANKSHR	500	1000	DSGIF	D S G INTL LTD ORD	500	1000
CLGY	CELLEGY PHARM INC	500	1000	DSIT	D S I TOYS INC	500	1000
CLGYW	CELLEGY PHARM INC WT	500	1000	E			
CLNPP	CALLON PETRO PFD A	200	500	ECGC	ESSEX COUNTY GAS C	500	1000
CMPX	C M P MEDIA CL A	500	1000	EDAPY	EDAP TMS SA ADR	500	1000
CMRN	CAMERON FINANCIAL	500	1000	EDUT	EDUTREK INTL INC	200	500
CNBC	CENTER BANCORP INC	500	200	EFBI	ENTERPRISE FED BNC	1000	500
CNBF	C N B FINANCIAL CP	500	200	EGEO	EAGLE GEOPHYSICAL	500	1000
CNBT	CITIZENS NATL TX SR	200	500	EGHT	8 X 8 INC	500	1000
CNCX	CONCENTRIC NETWORK	500	1000	EGLB	EAGLE BANGROUP IN	1000	500
CNDO	CRESCENDO PHARM CO	200	500	ELET	ELLETT BROTHERS IN	500	1000
CNET	C O M N E T CP	500	1000	ENGEF	ENGEL GNRL DEV SE	200	500
CNGL	CONTL NATURAL GAS	500	1000	EONE	ENVIRONMENT ONE CP	1000	500
CNTBY	CANTAB PHARM PLC ADR	500	200	EPIX	E P I X MEDICAL	500	1000
CNTL	CANTEL INDS INC	1000	500	EQUUS	EQUUS GAMING UTS A	500	1000
COBI	COBANCORP INC	500	1000	ESATY	ESAT TELCOM GR ADR	200	500
COGIF	C O G N I C A S E SA	200	500	ESCA	ESCALADE INC	500	1000
COPI	CRESCENT OPERATING	200	500	ESCP	ELECTROSCOPE INC	1000	500
CPBI	C P B INC	500	1000				
CPTI	COMPASS PLASTICS	200	500				
CRDM	CARDIMA INC	500	1000				
CRRC	COURIER CP	500	1000				

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
ESMCL	ESCALON MED CP WTS B	500	1000	G			
ESSI	ECO SOIL SYSTEMS I	500	1000	GALTF	GALILEO TECH LTD	500	1000
ETFS	EAST TEXAS FIN SVC	500	200	GBTVP	GRANITE BRDCT CP PFD	200	500
EXEC	EXECUSTAY CORP	200	500	GCABY	GEN CABLE PLC ADR	500	1000
EYES	VISION TWENTY-ONE	200	500	GCOM	GLOBECOMM SYS INC	500	1000
F				GCTI	GENESYS TELECOMM L	500	1000
FAIL	FAILURE GP INC (TH)	500	1000	GFCO	GLENWAY FIN CP	200	500
FAMCK	FEDERAL AGRIC MORT C	500	1000	GGEN	GALAGEN INC	1000	500
FAME	FLAMEMASTER CP THE	500	1000	GMCC	GEN MAGNAPLATE CP	200	500
FARO	FARO TECH INC	200	500	GNCNF	GORAN CAPITAL INC	1000	500
FBCI	FIDELITY BANCORP D	1000	500	GOSB	GSB FINANCIAL CORP	500	1000
FBER	1ST BERGEN BANCORP	1000	500	GPSI	GREAT PLAINS SFTWA	500	1000
FBNC	FIRST BANCP TROY N	500	200	GSOF	GROUP I SOFTWARE	200	500
FBNW	FIRSTBANK CORP	500	1000	GWALY	GREAT ADR NEW	200	500
FCFCP	FIRST CITY FINL PFD	1000	500	GZEA	G Z A GEOENVIRON	500	1000
FDJA	FAROUDJA INC	200	500	H			
FFED	FIDELITY FED BNCP	500	1000	HABK	HAMILTON BANCORP	500	1000
FFIN	FIRST FINL BKSHS I	1000	500	HACHA	HACH COMPANY CL A	200	500
FFKY	FIRST FED FIN KENT	200	500	HAHN	HAHN AUTOMOTIVE	500	200
FFLC	FFLC BNCP INC	500	1000	HAKI	HALL KINION ASSOC	500	1000
FFSW	FIRSTFEDERAL FINL	500	1000	HAMS	SMITHFIELD CO INC	200	500
FGII	FRIEDE GOLDMAN INT	500	1000	HBCI	HERITAGE BANCORP I	1000	500
FKFS	FIRST KEYSTONE FIN	1000	500	HBIX	HAGLER BAILLY INC	500	1000
FLAG	F L A G FINANCIAL	500	1000	HBNK	HIGHLAND FEDERAL B	500	200
FLCHF	FLETCHER'S FINE FOOD	200	500	HCRI	HEALTHCARE RECOV	500	1000
FLMLY	FLAMEL TECH SA ADR	500	1000	HDVS	H. D. VEST INC	1000	500
FLWR	CELEBRITY INC	500	1000	HELI	HELISYS INC	500	1000
FLYAF	C H C HELICO CL A	500	200	HFFB	HARRODSBURG FIRST	500	1000
FMST	FINISHMASTER INC	200	500	HFFC	H F FINANCIAL CP	1000	500
FNBF	FNB FINANCIAL SVC	500	200	HIFS	HINGHAM INSTI SAVI	500	200
FNCE	FIRST INTL BANCORP	200	500	HIHWF	HIGHWAY HLDGS WTS	500	1000
FOBC	FED ONE BANCORP IN	1000	500	HNBC	HARLEYSVILLE NATL	500	1000
FORR	FORRESTER RESRCH	500	1000	HPBC	HOME PORT BNCP INC	1000	500
FORTY	FORMULA SYS ADR	200	500	HRBF	HARBOR FED BNCP IN	500	1000
FREEY	FREEPAGES GR PLC ADR	500	200	HSKA	HESKA CORPORATION	500	1000
FRGB	FIRST REGIONAL BNC	1000	500	HTEI	H T E INC	500	1000
FRND	FRIENDLY ICE CRM	200	500	HYBR	HYBRID NETWORKS	200	500
FSBI	FIDELITY BANCORP I	500	200	HYDEA	HYDE ATHLETIC INDS A	500	1000
FSBT	FIRST STATE CP	200	500	HYSQ	HYSEQ INC	500	1000
FSFF	FIRST SECURITY FED	200	500	I			
FSLA	FIRST SAVINGS BK S	500	1000	IAIS	INTL AIRCRAFT INV	200	500
FSLB	FIRST STERLING BKS	200	500	ICMI	IMPERIAL CREDIT SA	200	500
FSPG	FIRST HOME BNCP IN	200	500	IDEA	INNOVASIVE DEVICES	500	1000
FSPT	FIRSTSPARTAN FIN C	500	1000	IGPFF	IMPERIAL GINSENG PRO	500	1000
FTFN	FIRST FIN CP (RI)	500	200	IINT	INDUS INTL INC	200	500
FTMTF	FANTOM TECHS INC	500	1000	IKOS	I K O S SYSTEMS	500	1000
FTNB	FULTON BANCORP INC	1000	500				
FUSNR	FUSION SYSTEMS CVR	200	500				

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
ILDCY	ISRAEL DEVEL LTD ADR	200	500	LIBHA	LIBERTY HOMES INC A	200	500
ILFO	IL FORNAIO (AMER) CP	200	500	LIHRY	LIHIR GOLD LTD ADR	500	1000
IMAA	INFORMATION MGMT	500	1000	LION	FIDELITY NATL CP	500	1000
IMGXW	NETWORK IMAGING WT	500	200	LITE	VARI-LITE INTL SA	200	500
IMSX	INTL MANUFACTURIN SA	200	500	LKFNP	LAKELAND FINL TR PFD	500	1000
INHO	INDEPENDENCE HLDG	1000	500	LKST	LEUKOSITE INC	500	1000
INSL	INSILCO CP	1000	500	LNCC	LINC CAPITAL	200	500
INTG	INTERGROUP CP THE	200	500	LOFSY	LONDON & OVERSEA ADR	500	200
INTT	INTEST CORPORATION	500	1000	LPWR	LASER POWER CORP	500	1000
INVA	INNOVA CORP	500	1000	LSBI	LSB FINANCIAL CP	500	200
IQST	INTELLIQUEST INFO	500	1000	LZRCF	TLC THE LASER CTR	500	1000
IRIDF	IRIDIUM WORLD COMM	500	1000				
ITCD	ITC DELTACOM INC	200	500				
ITGR	INTEGRITY INC	500	1000	M			
ITSW	INTL TOTAL SVCS	200	500	MAHI	MONARCH AVALON INC	500	1000
IVBK	INTERVISUAL BOOKS	500	1000	MANA	MANATRON INC	500	1000
IVTC	INNOVATIVE VALVE	200	500	MARSA	MARSH SUPERMARKETS A	500	1000
IWLC	IWL COMMUNICATIONS	500	1000	MASSY	MAS TECH LTD ADR	500	1000
				MBIA	MERCHANTS BNCP IL	500	1000
J				MBIO	MEGABIOS CORP	200	500
JDEC	J D EDWARDS & CO	200	500	MBRK	MEADOWBROOK REHAB	200	500
JEVC	JEVIC TRANS INC SA	200	500	MDDS	MONARCH DENTAL CP	500	1000
JLMI	J L M INDS INC	500	1000	MELI	MELITA INTL CORP	500	1000
JRJR	800-JR CIGAR INC	500	1000	METF	METROPOLITAN FIN C	500	1000
JTFX	JETFAX INC	500	1000	MFFC	MILTON FED FINL CP	500	1000
				MFNX	METROMEDIA FIBER	200	500
K				MHCO	MOORE HANDLEY INC	500	1000
KAYE	KAYE GROUP INC	500	1000	MICTF	MICROCELL TELECOM	200	500
KLLM	K L L M TRANSPORT	500	1000	MKFCF	MACKENZIE FIN CP	1000	500
KNDL	KENDLE INTL INC	200	500	MKTAY	MAKITA CP SPONS ADR	500	1000
KOFX	KOFAX IMAGE PRODS SA	200	500	MMAN	MINUTEMAN INTL INC	500	200
KOGCP	KELLEY OIL & GAS P	500	200	MMCN	M M C NETWORKS	200	500
KREG	KOLL REAL ESTATE GRP	500	1000	MORP	MOORE PRODUCTS CO	500	1000
KWIC	KENNEDY-WILSON INT	200	500	MOYC	MOYCO TECH INC	1000	500
				MRCM	MARCAM SOLUTIONS	500	1000
L				MSIX	MINING SVC INTL CP	500	1000
LABL	MULTI COLOR CP	1000	500	MTLG	METROLOGIC INSTR I	1000	500
LABN	LAKE ARIEL BNCP IN	500	1000	MTSLF	M E R TELEMGT SOL	500	1000
LARK	LANDMARK BSCHS INC	500	200	MUEL	MUELLER PAUL CO	200	500
LEIX	LOWRANCE ELECTRONI	500	1000	MWAV	M-WAVE INC	500	1000
LEXI	LEXINGTON HLTHCARE	500	1000	MWHX	MARKWEST HYDROCARB	1000	500
LEXIW	LEXINGTON HLTHCR W	500	1000				
LFBI	LITTLE FALLS BNCP	1000	500	N			
LFCO	LIFE FINANCIAL COR	500	1000	NCBH	NORTH COUNTY BANCO	500	1000
LGNDW	LIGAND PHARMA WTS	500	1000	NCEN	NEW CENTURY FINANC	500	1000
LGTY	LOGILITY INC SA	200	500	NCES	NOVACARE EMPL SVCS	200	500
				NEON	NEW ERA OF NTWKS I	500	1000
				NERAY	NERA AS ADR	1000	500

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
NERIF	NEWSTAR RESOURCES	500	1000	PACK	GIBRALTAR PKG GP I	500	1000
NERXW	NEORX CP WTS	200	500	PATH	AMERIPATH INC	200	500
NEWH	NEW HORIZONS WORLD	500	1000	PBKBP	PEOPLES CAP TR PFD	500	1000
NFLIW	NUTRITION FOR LFE WT	1000	500	PBTX	PRIME BANCSHRS INC	500	1000
NICH	NITCHES INC	500	1000	PCCIP	PCC CAPITAL I PFD	200	500
NMTXZ	NOVAMETRIX WTS B	500	1000	PEAKF	PEAK INTL LTD S3	500	1000
NOLD	NOLAND CO	200	500	PEGS	PEGASUS SYSTEMS INC	500	1000
NORPF	NORD PACIFIC LTD	500	1000	PFACP	PRO-FAC COOP PFD A	500	1000
NOVT	NOVOSTE CP	500	1000	PFCO	PAULA FINANCIAL	200	500
NRCI	NATIONAL RESEARCH SA	200	500	PFINA	P F INDS INC A	500	1000
NRTI	NOONEY REALTY TRUS	500	200	PFKY	PEOPLES FIRST CP	500	1000
NSAI	N S A INTL INC	1000	500	PFSBP	PENNFED CAP TR I	200	500
NSCF	NORTHSTAR COMPUTER	500	1000	PFSCF	POSITRON FIBER SYS	200	500
NSOL	NETWORK SOLUTIONS	200	500	PGEI	PETROGLYPH ENERGY SA	200	500
NSPK	NETSPEAK CORP	500	1000	PGEN	PROGENITOR INC	500	1000
NSPR	INSPIRE INSURANCE	200	500	PHCC	PRIORITY HLTHCARE	200	500
NSYS	NORTECH SYSTEMS IN	500	1000	PHOC	PHOTO CONTROL CP	200	500
NTKI	NZK INC	200	500	PHSB	PEOPLES HOME SVGS	500	1000
NTRL	NEUTRAL POSTURE SA	200	500	PHSYP	PACIFICARE CV PFD	200	500
NVLDL	NOVEL DENIM HLDGS	500	1000	PLCE	THE CHILDREN'S PLACE	200	500
NWCM	NEWCOM INC	200	500	PLEN	PLENUM PUBLISHING	1000	500
NWCMW	NEWCOM INC WTS	200	500	PLFC	PULASKI FURNITURE	500	1000
NWFI	NORTHWAY FINL INC SR	200	500	PMFG	PEERLESS MFG CO	1000	500
NXLK	NEXTLINK COMM CL A	200	500	PPCCP	PEOPLE'S PFD CAP C	200	500
				PPOD	PEAPOD INC	500	1000
				PRBZ	PROBUSINESS SVCS INC	200	500
O				PSEM	PERICOM SEMICONDC	200	500
OAOT	O A O TECH SOL	200	500	PSMT	PRICESMART INC	200	500
OCENY	OCE ADR	500	200	PSWT	PSW TECHNOLOGIES I	500	1000
OCLR	OCULAR SCIENCES IN	500	1000	PTUS	PERITUS SOFTWARE S	500	1000
ODFL	OLD DOMINION FREIG	1000	500	PVSW	PERVASIVE SOFTWARE	200	500
OHSI	OMEGA HEALTH SYS I	500	1000	PWCC	POINT WEST CAP CP	200	500
OLCWF	OLICOM A/S WTS	500	1000	PWER	POWER-ONE INC SR	200	500
OMGA	OMEGA RESEARCH SR	200	500	PZZI	PIZZA INN INC	500	1000
OMTL	OMTOOL LTD	500	1000				
OPTLF	OPTISYSTEMS SOLUTION	500	1000	Q			
OPTWF	OPTISYSTEMS SOL WTS	500	1000	QADI	Q A D INC	500	1000
ORAL	ORTHALLIANCE INC	200	500	QWST	QWEST COMMUN INTL	500	1000
ORFR	ORBIT/FR INC	500	1000				
OROA	OROAMERICA INC	500	1000	R			
OSIS	O S I SYSTEMS INC SA	200	500	RACN	RACING CHAMPIONS C	500	1000
OSIX	OUTSOURCE INTL	200	500	RANGY	RANDGOLD & EXPL ADR	500	1000
OSKY	MAHASKA INV CO	1000	500	RBCO	RYAN BECK CO INC	500	1000
OTFC	OREGON TRAIL FINL SR	200	500	RBOT	COMPUTER MOTION INC	500	1000
OZRK	BANK OF THE OZARKS	500	1000	RBPAA	ROYAL BSCHS OF PA A	500	1000
				RCNC	RCN CORPORATION	200	500
P				RDCMF	RADCOM LTD	200	500
PABN	PACIFIC CAP BNCP	200	500	RENX	RENEX CORPORATION	200	500
PACI	PRECISION AUTO	200	500				

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
RESM	RESMED INC	500	1000	STRX	STAR TELECOMM INC	500	1000
RESR	RESEARCH INC	500	1000	STRZ	STAR BUFFET INC	200	500
REXI	RESOURCE AMER CL A	500	1000	SUNH	SUNDANCE HOMES INC	500	1000
REXX	REXX ENVIRO CP	500	1000	SVIN	SCHEID VINEYARDS I	500	1000
RFMD	RF MICRO DEVICES	500	1000	SWBI	SOUTHWEST BANCSHAR	500	1000
RIDG	RIDGEVIEW INC	1000	500	SWSHW	SWISHER INTL WTS	500	1000
RIFL	ROYAL PRECISION INC	1000	500	SXNB	SUCCESS BANCSRS	200	500
RIMS	ROBOCOM SYSTEMS IN	500	1000	SXTN	SAXTON INCORPORATI	500	1000
RITTF	RIT TECHNOLOGIES LTD	500	1000	SYCM	SYSCOMM INTL CORP	500	1000
ROAC	ROCK OF AGES CORP	200	500	SYNT	SYNTEL INC	500	1000
ROSI	USA FLORAL PRODUCT	200	500				
RPCLF	REVENUE PROP LTD	500	200				
RSLCF	RSL COMMUNICATION SR	200	500	T			
RTRO	RETROSPETTIVA INC	200	500	TACX	THE A CONSULTING TM	500	1000
RTROW	RETROSPETTIVA WTS	200	500	TBCOL	TRIATHALON BD DEP SH	500	200
RTST	RIGHT START INC	500	1000	TCBK	TRICO BANCSHARES	1000	500
RUSAF	RUSSELL METALS CL A	200	500	TCICP	TCI COMMUN PFD A	500	1000
RVSB	RIVERVIEW SAV BK F	500	1000	TCIVA	TELE-COM TCI VENT A	200	500
RWDT	RWD TECHS INC	500	1000	TCIVB	TELE-COM TCI VENT B	200	500
RYAAY	RYANAIR HLDGS ADR	500	1000	TCMS	TRANS COASTAL MAR	200	500
				TCOMP	TELE COMMUN PFD B	500	200
S				TDFX	3DFX INTERACTIVE I	500	1000
SABB	SANTA BARBARA BCP	1000	500	TDHC	THERMADYNE HLDGS C	500	1000
SAVO	SCHULTZ SAV O STOR	1000	500	TENT	TOTAL ENTMT REST C	500	1000
SBGA	SUMMIT BANK CORP	500	1000	TERA	TERA COMPUTER CO	500	1000
SBGIP	SINCLAIR BRD PFD SE	200	500	TFCO	TUFCO TECHS INC	1000	500
SBHC	SECURITY BK HLDG C	1000	500	TGRP	TELEGROUP INC	500	1000
SCHI	SIMIONE CENTRAL HL	500	1000	TIMBZ	US TIMBERLAND UTS	200	500
SCHR	SCHERER HEALTHCARE	1000	500	TKGFA	TEKGRAF INC CL A	200	500
SCMM	S C M MICROSYS SA	200	500	TKGFW	TEKGRAF INC WTS	200	500
SEYE	SIGNATURE EYEWEAR	200	500	TKTL	TRACK 'N TRAIL SA	200	500
SFED	S F S BANCORP INC	1000	500	TMAX	TOYMAX INTL INC	200	500
SFXBW	SFX BROADCAST WTS	500	200	TMSTA	THOMASTON MILLS A	200	500
SGVB	S G V BANCORP INC	1000	500	TONSF	NOVA AMERICAN STEEL	200	500
SHBK	SHORE BANK	200	500	TPACP	TCI PAC COM PFD	500	200
SHSE	SUMMIT HOLDING SE	500	1000	TRBR	TRAILER BRIDGE INC	500	1000
SHUF	SCHUFF STEEL COMPA	500	1000	TRCW	TRANSCOR WASTE SER	500	1000
SIXR	SIX RIVERS NAT BK	200	500	TRMS	TRIMERIS INC SA	200	500
SLGN	SILGAN HOLDINGS	1000	500	TRNS	TRANSMATION INC	1000	500
SLHO	S L H CORPORATION	500	1000	TFSW	T S I INTL SOFTWARE	500	1000
SNBC	SUN BANCORP INC	500	1000	TSIC	TROPICAL SPORTWR	200	500
SOMN	SOMNUS MEDICAL	200	500	TSND	TRANSCEND THERAPEU	500	1000
SOMR	SOMERSET GP INC TH	200	500	TWFC	I & W FINANCIAL CP	200	500
SPLN	SPORTSLINE USA INC	200	500	TWRI	TRENDWEST RESORTS	500	1000
SPRI	SPR INC SR	200	500				
SPRX	SPECTRX INC	500	1000	U			
STER	STERIGENICS INTL	500	1000	UBIX	UBICS INC	200	500
STFF	STAFF LEASING INC	500	1000	UBSC	UNION BKSHS LTD	1000	500
STGC	STARTEC GLOBAL COM	200	500	UFAB	UNIFAB INTL INC	200	500

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
UFPT	U F P TECH INC	500	1000	WCOMP	WORLDCOM DEP SHS	200	500
UHCI	UNIVERSAL STANDARD	500	1000	WCRXY	WARNER CHILCOTT ADR	500	1000
UNDG	UNIDIGITAL INC	500	1000	WCSTF	WESCAST INDS INC A	500	200
UNIQ	UNIQUE CASUAL REST	500	1000	WEBC	WESTERN BANCORP	500	1000
UNTD	FIRST UNITED BCSHS	500	1000	WEYS	WEYCO GP INC	200	500
UPCPO	UNION PLANTERS PFD E	200	500	WHCP	WHITE CAP INDS	200	500
UTCIW	UNIROYAL TECH CP WTS	200	500	WLSN	WILSONS LEATHER	500	1000
				WOSI	WORLD OF SCIENCE I	500	1000
				WWIN	WASTE INDUSTRIES I	500	1000
V							
VAIB	VALLEY INDEPENDNT BK	200	500				
VDRY	VACU DRY CO	500	1000	X			
VESC	VESTCOM INTL INC	500	1000	XLSW	EXCEL SWITCHING CP	200	500
VIRGY	VIRGIN EXPRESS ADS	500	1000				
VISNZ	SIGHT RESOURCE CP WT	500	1000	Y			
VLGEA	VILLAGE SUPER MKT A	200	500	YDNT	YOUNG INNOVATIONS	200	500
VMRXW	VIMRX PHARM WTS IN	500	1000				
VMTI	VISTA MEDICAL TECH	500	1000				
VNGI	VALLEY NATL GASES	1000	500	Z			
VRBA	VRB BANCORP	200	500	ZMTX	ZYMETX INC	200	500
VTRAO	VBC CAPITAL I CAP	500	200				
W							
WABC	WESTAMERICA BNCP	1000	500				
WAND	MILESTONE SCIENTIF	500	1000				
WASH	WASHINGTON TRUST	500	1000				
WAVR	WAVERLY INC	500	1000				

NASD Notice to Members 98-30

NASD Office Of The Ombudsman Clarifies Its Role

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- 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[®]) Office of the Ombudsman staff has helped resolve many issues and concerns raised by members and their associated persons, issuers and their associated persons, and investors. With a staff of four full-time Ombudspersons, the Office has been able to better serve the steady growth in the number of concerns that are brought to its attention.

The NASD would like to remind members that the Ombudsman's role does not displace the NASD's existing procedures for handling customer complaints, members' disciplinary grievances, arbitration matters, or issuer concerns. The Ombudsman staff reviews concerns in an objective and confidential manner to resolve matters that fall outside established forums and to ensure that existing structural operations are functioning equitably.

Questions regarding this *Notice* should be directed to the Office of the Ombudsman, at (202) 728-8442, or toll free at (888) 700-0028.

Background

In mid-1996, the NASD created the Office of the Ombudsman (the Office) and appointed Bernard Thompson as Ombudsman for the NASD and its subsidiaries, NASD Regulation, Inc. (NASD RegulationSM) and The Nasdaq Stock Market, Inc. (Nasdaq[®]). Additional Ombudsman staff include Dave Bradford, Mariann Miller, and Jean Robinson.

The NASD created the Office in response to recommendations made by the NASD Select Committee on Structure and Governance (*see Notices to Members 95-84, 95-101, 95-102, and 96-35*) that an independent office be established to receive and address "concerns and com-

plaints, whether anonymous or not, from any source (within or outside of the NASD) concerning the operations, enforcement, or other activities of the NASD, NASD Regulation, or Nasdaq, or any staff members."

Description

When an established complaint or appellate process does not exist, Ombudsman staff can serve a dispute resolution function by suggesting actions or policies that are intended to be equitable to all parties. One of the major functions of the Office is to provide confidential assistance to parties inside and outside the NASD regarding a complaint or a concern. The Ombudsman staff will help all parties identify and evaluate options for positive actions and remain neutral in doing so. Where an established complaint or appellate process exists, the Ombudsman staff will identify the process, explain it in general terms, and direct the caller to the appropriate office.

In all situations, the Ombudsman's role is to remain neutral. It represents neither the party expressing a concern nor the part of the organization responsible for the process or procedure that causes concern.

Matters That May Be Reviewed Inconsistent Decisions By NASD Staff

Complaints regarding decisions made or actions taken by NASD staff that may be inconsistent, biased, or result in disparate treatment may be directed to the Office. These complaints may be based on discretionary acts by the NASD staff for which an established appellate channel does not exist. The Ombudsman staff will process each complaint received, review or conduct an informal investigation of the allegations,

and recommend appropriate action, if warranted.

For issues in which an established complaint or appellate process exists, at its conclusion, concerns about the process may be reviewed and, when necessary, informally investigated.

Weak Procedures

The Office will review complaints of weaknesses in NASD controls, practices, or procedures submitted by persons who, for whatever reason, do not want to, or believe they cannot, report such weaknesses to NASD management or who wish to remain anonymous. This could include, for example, continued failure of an NASD manager to respond to public customers, member firms, or issuers' needs or the failure of an NASD department to address matters for which it is responsible.

Matters That Will Not Be Reviewed

Complaints will be directed to the appropriate office in those cases where established procedures currently exist regarding application of rules, policies, procedures, or interpretations. These complaints may deal with various topics and allegations, (*i.e.*, Committee or Hearing Panel action, applicability of a rule or a procedure, how an interpretation is applied, etc.).

Complaints from member firms and/or their associated persons regarding disciplinary rulings, from issuers regarding listing proceedings, and from member firms regarding application of existing rules by market operations staff, prosecutorial bias, bias by a Hearing Panel, or a conflict of interest by a Hearing Panel member are subject to review by the existing NASD appellate procedures and processes.

Where a structured dispute resolution and/or appellate process currently exists, that process should continue to be used by parties seeking a redress. Accordingly, in such cases the Ombudsman's role will be limited to informing persons of the existence of the appropriate process for resolution and monitoring the outcome. However, in such cases Ombudsman staff is authorized to conduct independent reviews of complaints involving particular NASD staff, departments, processes, or procedures.

Arbitration And Mediation

Complaints from parties in arbitration or mediation dealing with arbitrators' rulings, conduct, or awards will not be the focus of the Office. The arbitration staff currently investigates and responds to complaints regarding the arbitration and mediation processes. The Ombudsman staff will only be available for reviewing complaints regarding allegations of NASD staff misconduct, separate from the merits of the arbitration claim. The Ombudsman staff does not have the authority to change an arbitration ruling.

Complaints Regarding Conduct Of Members Or Their Associated Persons

The Office will advise persons who claim to have suffered monetary injury as a result of the conduct of member firms or their associated persons to pursue the matter through arbitration. When a complaint alleges possible violations of rules that the NASD is responsible for enforcing, the Office will also recommend that the complaining party report the matter to the appropriate NASD Regulation District Office for investigation and possible disciplinary action.

Complaints that are within the jurisdiction of another department or organization will be referred by the

Office to those areas that have the jurisdiction and expertise to handle them. If the complainant is referred internally to another NASD department, Ombudsman staff will follow up to ensure the appropriate department responds in a timely manner.

Board Rulemaking And Policy Decisions

Because avenues exist for interested persons to express their views on proposed rules under consideration by the NASD Board of Governors or the Directors of NASD Regulation or Nasdaq, the Office does not handle concerns or complaints relating to this area. Persons who wish to participate in the policy formulation process are strongly encouraged to submit comments when proposed rules are published for comment by the NASD and/or the Securities and Exchange Commission.

How To Contact The Office

If members, associated persons, investors, issuers, or others have a complaint or comment regarding an action by the NASD as described in this *Notice*, they can contact the Office of the Ombudsman, at (202) 728-8442, or (888) 700-0028; e-mail: ombuds@nasd.com; or write to:

NASD
Office of the Ombudsman
1775 K Street, Suite 480
Washington, DC 20006

The inquiries may be anonymous and will be treated confidentially.

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NASD Notice to Members 98-31

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of February 23, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of February 23, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPSSM).

Symbol	Name	Coupon	Maturity
UH.GE	U.S. Home Corp New	7.750	01/15/05
DGAS.GC	Delta Natural Gas Inc	8.300	08/01/26
TCFD.GA	Trump's Castle Funding Inc	11.750	11/15/03
GTAR.GC	Globalstar L.P./Globalstar Cap Corp	10.750	11/01/04
DREA.GA	Duane Reade	12.000	09/15/02
DRHC.GA	Duane Rede Hldg Corp	0.000	09/15/04
HMHP.GA	HMH Properties Inc	9.500	05/15/05
NENA.GA	Neenah Corp	11.125	05/01/07
NWID.GA	Nationwide Credit Inc	10.250	01/15/08
MDC.GA	M.D.C. Hldgs Inc	8.375	02/01/08
LTV.GA	LTV Corp	8.200	09/15/07
WILX.GA	Willcox & Gibbs Inc New	12.250	12/15/03
AEXP.GA	Atlantic Express Transn Corp	10.750	02/01/04
ENGL.GB	Engle Homes Inc	9.250	02/01/05
PCTV.GA	People's Choice TV Corp	0.000	06/01/04
WBC.GA	Westbridge Cap Corp	11.000	03/01/02
UIS.GH	Unisys Corp	7.875	04/01/08
FNWH.GB	First Nationwide Hldgs Inc	12.250	05/15/01
FNWH.GC	First Nationwide Hldgs Inc	9.125	01/15/03
COE.GA	Cone Mills Corp	8.125	03/15/05
SFXE.GA	SFX Entertainment Inc	9.125	02/01/08
PWAV.GA	First Wave Marine Inc	10.000	02/01/08
UBK.GB	U.S. Banknote Corp	11.625	08/01/02
GLO.GA	Global Ocean Carriers	10.250	07/15/07
PGN.GA	Paragon Health Networks Inc	9.500	11/01/07
HLYT.GA	Hollywood Theaters Inc	10.625	08/01/07
HSMR.GA	Host Marriott Travel Plaza Inc	9.500	05/15/05
LTHR.GA	L-3 Communicqtions Corp	10.375	05/01/07
GTSG.GA	Global Telesystems Group Inc	9.875	02/15/05
CVC.GJ	Cablevision Systems Corp	7.875	02/15/18
TMAR.GA	Trico Marine Services Inc	8.500	08/01/05
MXG.GB	Maxim Group Inc	9.250	10/15/07
DRD.GA	Duane Reade Inc	9.250	02/15/08
CTYS.GA	Cityscape Financial Corp	12.750	06/01/04

As of February 23, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
COFD.GA	Coast Fed Bk F S B Los Angeles	13.000	12/31/02
GDFI.GA	Capital Gaming Intl Inc	11.500	02/01/01
CMNH.GA	Clark R & M Holdings Inc	0.000	02/15/00
BVID.GA	Blockbuster Entertainment Co	6.625	02/15/98
KDEI.GC	Kidde Inc	8.500	02/01/98
FA.GB	Fairchild Corp	12.000	10/15/01
FA.GC	Fairchild Corp	13.125	03/15/06
FA.GD	Fairchild Corp	13.000	03/01/07
RHLD.GA	RHI Hldgs Inc	11.875	03/01/99
VICN.GB	Viacom International Inc	9.125	08/15/99
CLUR.GA	Cellular Inc	8.500	08/01/05
CELS.GB	Commnet Cellular Inc	11.250	07/01/05
FLD.GA	Fieldcrest Cannon Inc	11.250	06/15/04
REX.GA	Rexnord Corp	10.750	07/01/02

As of February 23, 1998, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
GBPR.GA	GDP.GA	GB PPTY FDG Corp	10.875	01/15/04

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASD RegulationSM 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.

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NASD Notice to Members 98-32

Good Friday: Trade Date—Settlement Date Schedule

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Good Friday: Trade Date-Settlement Date Schedule

The Nasdaq Stock MarketSM and the securities exchanges will be closed on Good Friday, April 10, 1998. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
April 2	April 7	April 9
3	8	13
6	9	14
7	13	15
8	14	16
9	15	17
10	Markets Closed	—
13	16	20

*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within 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."

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NASD Rule Filing Status

Rule Filing Status As
Of February 24, 1998

NASD Rule Filing Status

The following is a list of rule filings by the National Association of Securities Dealers, Inc. (NASD[®] or Association) that are pending at the Securities and Exchange Commission (SEC) or recently have been approved. The information is current as of February 24, 1998.

Copies of rule filings (and any amendments thereto), the SEC release publishing the rule proposal for comment, and the SEC release approving the rule change are available from the SEC Public Reference Room at (202) 942-8090, or from Christopher Leigh, NASD Office of General Counsel, at (202) 728-8236 or via e-mail at *leighc@nasd.com* (in certain cases a fee may be required). NASD rule changes are not effective until approved by the SEC.

Rule Filings That Have Not Been Published For Comment By The SEC

98-18

Adopt a new membership Rule 1150 that would provide NASD members with qualified immunity in arbitration proceedings for statements made in good faith in certain disclosures filed with the NASD on Forms U-4 and U-5.

98-17

Amend Rules 4611, 4613, 4618, 4619, 4620, 4632, 4642, and proposed new Rule 4900 Series to establish an integrated order delivery and execution system. The new system would replace the existing Small Order Execution SystemSM (SOESSM) and SelectNetSM service, while retaining certain features of each in a combined infrastructure. It also will feature a voluntary limit order book. In addition, a component of the new system will permit institutions to obtain direct electronic access to The Nasdaq Stock MarketSM (Nasdaq[®]) through a sponsored arrangement with a Nasdaq market maker.

98-15

Amend Rule 2860(b) to establish that NASD member firms and their customers shall have the same position and exercise limits for FLEX Equity Options as the firms that are members of the exchange on which such FLEX Equity Options trade.

98-14

Amend Rules 2820 and 2830 to:

- 1) provide maximum aggregate sales charge limits for fund of funds arrangements;
- 2) permit mutual funds to charge installment loads;
- 3) prohibit loads on reinvested dividends;
- 4) impose redemption order requirements for shares subject to contingent deferred sales loads;
- and 5) eliminate duplicative prospectus disclosure.

98-12

Amend IM-2110-1 and Rules 2710 and 2720 to clarify the definition of a "Public Offering". Accelerated approval requested.

98-11

Adopt IM-2210-5, Presentation of Mutual Fund and Variable Contract-Related Performance Information, and amend Rule 2210 and IM-2210-2 to permit the presentation of related performance information (other than manager performance information) in mutual fund and variable product sales material, subject to certain conditions designed to make the presentation fair, balanced and not misleading.

98-08

Amend trade reporting Rules 4623, 4632, 4652, 6420, and 6620. The proposals would: 1) implement a new trade report modifier to identify trades effected at a prior reference price; 2) eliminate the 10,000-share limitation on individual trades that may be "bunched" for trade reporting purposes; 3) require electronic communications networks (ECNs) to be responsible for reporting all

trades executed within the ECN; and 4) address riskless principal trades involving exchange-listed securities traded in the Third Market.

98-04

To change the interpretation of the Code of Arbitration Procedure such that claims relating to transactions in exempted securities, including government and municipal securities, may be submitted to the Office of Dispute Resolution for arbitration under the NASD's Code of Arbitration Procedure without limitation. Amendment No. 1 filed with the SEC on February 6, 1998.

98-02

Amend Rule 2860(b)(3)(A)(vii)(c) to extend, until December 31, 1999, the Association's pilot program for exemptions from equity option position limits for certain hedged positions.

98-01

Proposed change to Rule 4623 that will require ECNs to: 1) display orders in Nasdaq for a minimum of 10 seconds; and 2) provide Association staff, upon request, with information necessary to permit the Association to carry out its duties as a self-regulatory organization and/or securities information processor. The proposal also clarifies the manner in which ECN orders that have a reserved size interact with SelectNet orders. Additionally, Nasdaq proposed to amend Rule 4613(e) to clarify that there is an obligation to avoid locking and crossing the market on the market's open.

97-96

Amend Rule 10333(d) to adjust the Hearing Process Fee Schedule so that the amounts in dispute of the lowest brackets in the Rule 10333(d) Hearing Process Fee Schedule are consistent with the

dollar amount at which the Prehearing Process Fee is imposed.

97-89

Adopt a new interpretation to Rule 2210 to permit the use by members and associated persons of bond mutual fund volatility ratings in supplemental sales literature on an interim 18-month pilot basis.

97-67

Amend Rule 2860 to align the NASD's position limit rules for conventional equity options with the position limit rules for "Flex" Equity Options.

97-61

Adopt new IM-2240-2: Application of the NASD Mark-Up Policy to Transactions in Government and Other Debt Securities.

Rule Filings That Have Been Published For Comment But Have Not Been Approved By The SEC

98-03

Amend Rule 1120 to allow for NASD Regulation, Inc. (NASD RegulationSM) to require new continuing education programs, as appropriate, with customized training for various registration categories, with the supervisor's program being the first initiative. Also, the amendment would require participation in the Regulatory Element computer-based training throughout a registered person's career, specifically, on the second registration anniversary and every three years thereafter, with no graduation from the program. Published for comment by the SEC in Release No. 34-39574 (January 23, 1998); 63 F.R. 4510 (January 29, 1998). Comment period expired February 19, 1998.

97-95

Amend IM-2110-1 and Rule 2720 to revise certain aspects of the Free-Riding and Withholding Interpreta-

tion. Among other things, the proposal clarifies the threshold limits for passive investment in a member firm and amends the Free-Riding and Withholding Rules to provide for appeals of exemption requests to the National Adjudicatory Council (NAC). Published for comment by the SEC in Release No. 34-39620 (February 4, 1998); 63 F.R. 7026 (February 11, 1998). Comment period expires on March 4, 1998.

97-92

Amend the NASD By-Laws to require each executive representative, beginning not later than January 1, 1999, to maintain an Internet electronic mail account for communication with the NASD and to update firm contact information via the NASD Regulation Web Site. Published for comment by the SEC in Release No. Rel. 34-39539 (January 14, 1998); 63 F.R. 2709 (January 16, 1998). Comment period expired February 6, 1998.

97-80

Amend Rule 2860(b) to exempt conventional equity option transactions that are intermediated by a member pursuant to Exchange Act Rule 15a-6(a)(3) from options position limits provided that the member reports such transactions to the Association in accordance with the options position reporting requirements. Published for comment by the SEC in Release No. 34-39417 (December 9, 1997); 62 F.R. 65838 (December 16, 1997). Comment period expired January 6, 1998.

97-79

Amend IM-10104, 10205 and 10332 of the Code of Arbitration Procedure to increase the arbitrator honoraria, arbitration filing fees, and hearing session deposits for intra-industry and public investor arbitrations. The proposed rule change will amend the fee schedules to graduate fees further according to the amount in dis-

pute to reflect more closely the costs associated with resolving controversies. Amendment No. 1 filed with the SEC on November 12, 1997. Published for comment by the SEC in Release No. 34-39346 (November 21, 1997); 62 F.R. 63580 (December 1, 1997). Comment period expired on December 22, 1997. Amendment No. 2 filed with the SEC on December 18, 1997.

97-77

Amend Rule 10201 to remove the requirement to arbitrate claims of statutory employment discrimination. Associated persons still will be required to arbitrate other employment-related claims, as well as any business-related claims involving investors or other persons. Amendment No. 1 filed with the SEC on November 20, 1997. Published for comment by the SEC in Release No. 34-39421 (December 10, 1997); 62 F.R. 66164 (December 17, 1997). Comment period expired January 7, 1998.

97-76

Amend Rule 3230 to: 1) establish standards for the disposition of written customer complaints about introducing member firms that are received by clearing firms; 2) govern how exception reports are made available to introducing firms and retained by clearing firms; and 3) permit introducing firms to write checks on their clearing firm's account. Amendment No. 1 filed with the SEC on November 19, 1997. Amendment No. 1 filed with the SEC on November 19, 1997. Published for comment in SEC Rel. 34-39349 (November 21, 1997); 62 F.R. 63589 (December 1, 1997). Comment period expired on December 22, 1997.

97-69

Amend Rules 3010 and 9610 to require tape recording of conversations. Amendment No. 1 filed with

the SEC on November 17, 1997. Published for comment by the SEC in Release No. 34-39361 (November 26, 1997); 62 F.R. 64422 (December 5, 1997). Comment period expired on December 29, 1997.

97-58

Amend Rule 3350 to implement Short Sale Rule on a permanent basis. Published for comment by the SEC in Release No. 34-38979 (August 26, 1997); 62 F.R. 46537 (September 3, 1997). Comment period expired September 24, 1997.

97-56

Adopt new Rules 6900 through 6970 relating to the Order Audit Trail System (OATS). Amendment No. 1 filed with the SEC on August 25, 1997. Published for comment by the SEC in Release No. 34-38990 (August 28, 1997); 62 F.R. 47096 (September 5, 1997). Comment period expired September 26, 1997. Amendment No. 2 filed with the SEC on October 7, 1997. Amendment No. 3 filed with the SEC on October 28, 1997. Amendment No. 4 filed with the SEC on February 3, 1998. Amendment No. 5 filed with the SEC on February 11, 1998.

97-47

Adopt new rule, 10336, to the Code of Arbitration Procedure to cap punitive damages at the lesser of twice compensatory damages or \$750,000. Amendment No. 1 filed with the SEC on October 17, 1997. Amendment No. 2 filed with the SEC on November 14, 1997. Published for comment by the SEC in Release No. 34-39371 (November 26, 1997); 62 F.R. 64428 (December 5, 1997). Comment period expired on December 29, 1997.

97-44

Amend Rule 10304 of the Code of Arbitration Procedure (Eligibility Rule) to retain current six-year eligibility rule, provide that all claims shall

be eligible for arbitration unless challenged, eliminate involuntary bifurcation of claims, and eliminate election of remedies. Amendment No. 1 filed with the SEC on July 14, 1997.

Amendment No. 2 filed with the SEC on July 18, 1997. Amendment No. 3 filed with the SEC on December 3, 1997. Amendment No. 4 filed with the SEC on December 18, 1997. Published for comment by the SEC in Release No. 34-39487 (December 23, 1997); 63 F.R. 588 (January 6, 1998). Comment period expired on January 27, 1998.

97-35

Amend Rules 2820 and 2830 relating to the regulation of non-cash compensation. Amendment No. 1 filed with the SEC on July 11, 1997. Amendment No. 2 filed with the SEC on July 22, 1997. Amendment No. 3 filed with the SEC on August 27, 1997. Published for comment by the SEC in Release No. 34-38993 (August 29, 1997); 62 F.R. 47080 (September 5, 1997). Comment period expired September 26, 1997. Amendment No. 4 filed with the SEC on December 1, 1997.

97-20

Amend Rule 6440 to eliminate restrictions on members to accept stop orders and certain stop limit orders in exchange-listed securities. Published for comment by the SEC in Release No. 34-38429 (March 21, 1997); 62 F.R. 14953 (March 28, 1997). Comment period expired April 18, 1997. Amendment No. 1 filed with the SEC on April 1, 1997.

97-12

Amend Rule 2340 relating to the disclosure of values for direct participation program and real estate investment trust securities on customer account statements. Published for comment by the SEC in Release No. 34-38451 (March 27, 1997); 62 F.R. 15945 (April 3, 1997). Comment period expired April 24,

1997. Amendment No. 1 filed with the SEC on June 26, 1997. Submission dated June 26, 1997, responds to comments. Amendment No. 2 filed with the SEC on July 7, 1997.

96-47

Amend Rule 10304, Code of Arbitration Procedure, to establish interim policy of referring eligibility determinations to the arbitrators and to eliminate eligibility determinations by the staff pending adoption of final eligibility rule. Published for comment by the SEC in Release No. 34-38060 (December 18, 1996); 61 F.R. 68081 (December 26, 1996). Comment period expired January 16, 1997.

96-43

Amend Rules 4613, 4623, 4710, 4730, 6330, and IM-4613 to modify SOES and SelectNet to implement the SEC's Order Handling Rules. Published for comment by the SEC in Release No. 34-38008 (December 2, 1996); 61 F.R. 64549 (December 5, 1996). Comment period expired December 26, 1996. Amendment No. 1 filed with SEC on January 9, 1997. Partial approval granted by the SEC in Release No. 34-38156 (January 10, 1997); 62 F.R. 2415 (January 16, 1997).

Rule Filings Recently Approved By The SEC

98-16

Amend Rule 4320 to make a technical correction clarifying the application of the peer review requirement to the auditors of foreign issuers and conforming the text of Rule 4320 to the text of Rule 4460. Approved by the SEC in Release No. 34-39688 (February 20, 1998). Effective February 23, 1998.

98-13

Amend Rules 9331 and 9120(v) to clarify that members of the NAC may serve as Panelists in the

appeal or review of disciplinary proceedings. Accelerated approval granted in SEC Release No. 34-39671 (February 17, 1998); 63 F.R. 9893 (February 26, 1998). Effective March 4, 1998.

98-10

Amend Rules 3010 and 3110 to postpone indefinitely the effective date of recently approved amendments to these rules. Effective upon filing. Approved by the SEC in Release No. 34-39665 (February 18, 1998); 63 F.R. 9032 (February 23, 1998). Comment period expires on March 16, 1998.

98-09

Proposed rule change to effect the removal of quotations from the OTC Bulletin Board[®] of certain American Depository Receipts representing underlying shares in Cifra, S.A. de D.V., a foreign private issuer organized under the laws of Mexico. Effective February 28, 1998. Approved by the SEC in Release No. 34-39632 (February 11, 1998); 63 F.R. 7846 (February 17, 1998). Comment period expires on March 10, 1998.

98-07

Amend Rule 10314 of the Code of Arbitration Procedure to extend the time to answer an arbitration claim from 20 business days to 45 calendar days and to eliminate extensions of time to answer except in extraordinary circumstances. Effective upon filing, becomes operational on March 16, 1998. Approved by the SEC in Release No. 34-39664 (February 18, 1998); 63 F.R. 8727 (February 20, 1998). Comment period expires on March 13, 1998.

98-06

Amend Rule 7010(l) to lower the fees charged for the execution of transactions in SelectNet. Under the proposed new SelectNet fee

structure, fees would be assessed in the following manner: 1) \$1 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; 2) no fee will be charged to a member who receives and executes a directed SelectNet order; 3) the existing \$2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and 4) a 25-cent fee will remain in effect for any member who cancels a SelectNet order. Approved by the SEC in Release No. 34-39641 (February 12, 1998); 63 F.R. 8241 (February 18, 1998). Comment period expires on March 11, 1998.

98-05

Amend Rule 4730 to address problems associated with the rejection of orders in SOES. Effective upon filing. Approved by the SEC in Release No. 34-39637 (February 12, 1998); 63 F.R. 8242 (February 18, 1998). Comment period expires on March 11, 1998.

97-98

Amend Rule 7010(l) to extend the temporary 50 percent fee reduction currently in place for the execution of a transaction in SelectNet. This extension would continue the present reduction of SelectNet fees from \$2.50 per side to \$1.25 per side that was previously approved by the Commission on October 14, 1997. Effective upon filing. Approved by the SEC in Release No. 34-39555 (January 21, 1998); 63 F.R. 3595 (January 23, 1998). Comment period expired on February 13, 1998.

97-97

Renumber Rules 9700-9790 to Rules 4800-4890 to conform the Delegation Plan provisions to the new Nasdaq By-Laws and make other conforming, technical

changes to these rules. Approved by the SEC in Release No. 34-39494 (December 29, 1997); 63 F.R. 586 (January 6, 1998). Comment period expired on January 27, 1998.

97-94

Amend Rule 3350 to extend until April 15, 1998: 1) the pilot program of the NASD's Short Sale Rule; and 2) the recently approved amendment to the definition of "legal" short sale. Accelerated approval by the SEC in Release No. 34-39551 (January 14, 1998); 63 F.R. 3370 (January 22, 1998). Comment period expired February 11, 1998.

97-91

Amend Rules 4310 and 4320 to permit issuers who file periodic reports thru the SEC's EDGAR (Electronic Data Gathering, Analysis, and Retrieval) system to stop submitting separate paper filings with Nasdaq. Effective upon filing. Approved by the SEC in Release No. 34-39594 (February 3, 1998); 63 F.R. 5985 (February 5, 1998). Comment period expired on February 26, 1998.

97-88

Amendment to Rule 10333 to add a process fee on members named in arbitration proceedings. Effective

upon filing. Approved by the SEC in Release No. 34-39451 (December 15, 1997); 62 F.R. 67104 (December 23, 1997). Comment period expired on January 13, 1998.

97-87

Extend Rule 10335 for six months (June 3, 1998). Rule 10335 provides a procedure for obtaining injunctive relief in arbitration and for expediting proceedings for injunctive relief in intra-industry disputes. Approved by the SEC in Release No. 34-39458 (December 17, 1997); 62 F.R. 67423 (December 24, 1997). Comment period expired January 14, 1998.

97-86

Reclassification of Nasdaq National Market[®] (NNM) securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's SOES. Specifically, under the proposal, 544 NNM securities will be reclassified into a different SOES tier size, effective January 1, 1998. Amendment No. 1 filed December 11, 1997. Effective upon filing. Approved by the SEC in Release No. 34-3982 (December 24, 1997); 62 F.R. 68330 (December 31, 1997). Comment period expired on January 21, 1998.

97-85

Adopt interpretation to Rule 2460 to clarify the position of NASD Regulation with respect to the application of the Rule to the participation by certain member broker/dealers that participate in a Freddie Mac Inter-dealer Cash Market Trading Initiative. Effective upon filing. Amendment No. 1 filed December 18, 1997. Approved by the SEC in Release No. 34-39478 (December 24, 1997); 62 F.R. 68331 (December 31, 1997). Comment period expired on January 21, 1998.

97-83

Amend Rule 4510. The proposed rule change will adjust both the Entry Fee and the Annual Fee for NNM issuers, effective January 1, 1998. Nasdaq has determined that an increase in the Entry Fee and the Annual Fee for issuers included on the NNM is necessary, as Nasdaq has not adjusted its rates since 1991 and has committed increased resources in efforts to strengthen market qualifications, to communicate with investors, and to prepare for closer integration of the world's equity markets. Approved by the SEC in Release No. 34-39613 (January 5, 1998); 63 F.R. 6789 (February 10, 1998).

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Disciplinary Actions

Disciplinary Actions Reported For March

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (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, March 16, 1998. The information relating to matters contained in this *Notice* is current as of the end of February 23.

Firm Expelled, Individual Sanctioned

Escalator Securities, Inc. (Palm Harbor, Florida) and Howard A. Scala (Registered Principal, Tarpon Springs, Florida) were censured and fined \$70,000, jointly and severally, and Scala was fined \$10,000, individually. In addition, the firm was expelled from NASD membership and ordered to pay \$40,695 plus interest in restitution, and Scala was barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of an Atlanta District Business Conduct Committee (DBCC) decision.

The sanctions were based on findings that an affiliate company received common stock from issuers, deposited the stock into its account with Escalator Securities, Inc., and then sold it to the firm. After receiving such stock from the affiliate, Scala solicited and recommended to public customers that they purchase the stock and failed to disclose to such customers that the source of the securities they purchased was the affiliate of the firm. In addition, Scala purchased stock for his son's account while in possession of material non-public information. The firm, acting through Scala, effected princi-

pal transactions with public customers at prices that were not reasonably related to the prevailing market price and were not fair taking into consideration all relevant circumstances, and knew that it was charging unfair and fraudulent markups.

Firm Suspended, Individual Sanctioned

L. H. Alton & Company (San Francisco, California) and Lewis Hunt Alton (Registered Principal, San Francisco, California) were censured and fined \$40,000, jointly and severally. In addition, the firm was suspended from participation in underwriting activities for 30 business days and ordered to comply with the independent consultant requirements. Alton was suspended from association with any NASD member in any principal capacity for 30 days, ordered to designate an independent consultant to prepare a report on the firm's supervisory and compliance procedures before acting in any capacity requiring registration as a principal, and ordered to comply with the consultant's recommendations. Alton must also requalify by exam before acting in any principal capacity. The NBCC imposed the sanctions following appeal of a San Francisco DBCC decision.

The sanctions were based on findings that the firm, acting through Alton, conducted a securities business while maintaining insufficient net capital, filed inaccurate FOCUS Parts I and II reports, and permitted an unregistered person to act as a representative and principal of the firm. Furthermore, the respondents participated in the underwriting of several "hot issues" without obtaining required information from the purchasers of the hot issues, and failed to complete a training needs analysis and to develop written training plans concerning the Firm Element of the Continuing Education Requirements.

In addition, the firm, acting through Alton, failed to maintain written supervisory procedures relating to the customer complaint reporting requirement.

L.H. Alton & Company and Alton have appealed this action to the Securities and Exchange Commission (SEC) and the sanctions are not in effect pending consideration of the appeal.

Firms And Individuals Fined

Excel Financial, Inc. (Salt Lake City, Utah), Gary R. Beynon (Registered Representative, Salt Lake City, Utah) and Robert L. Sperry (Registered Representative, Salt Lake City, Utah) were censured and fined \$10,000, jointly and severally, and ordered to disgorge \$9,348, jointly and severally. In addition, the firm was ordered to pre-file its advertising and sales literature and obtain a "no objection" response prior to use for 270 days. The SEC affirmed the sanctions following appeal of a July 1996 NBCC decision. The sanctions were based on findings that the firm, acting through Sperry and Beynon, sold securities that were not registered under Section 5 of the Securities Act of 1933 and did not qualify for an exemption. The firm, acting through Beynon and Sperry, distributed literature to public customers that failed to disclose material risks, omitted material facts, and contained exaggerated and misleading statements.

Rance King Securities Corp. (Long Beach, California) and William Rance King, Jr. (Registered Principal, Long Beach, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$12,500, 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 King, participated in contingency offerings of limited partnership interests, but failed to promptly transmit funds received in connection with the offerings to properly established bank escrow accounts. According to the findings, the respondents deposited the funds into a bank account controlled by the issuer, or into the bank account of a private escrow company, and commingled the funds with other funds of the escrow company until the contingencies were met.

Firms Fined

C.P. Baker & Company, Ltd. (Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm exceeded the applicable options position contracts limit. The findings also stated that the firm failed to establish, maintain and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations concerning the NASD's option position limit rules.

Ernst & Company (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to designate as late transactions in Nasdaq National Market[®] securities and Nasdaq SmallCap securities to the Automated Confirmation Transaction ServiceSM (ACTSM). The findings also stated that the firm failed to accurately report eligible securities to ACT, improperly aggregated individual executions of

orders in an OTC equity security, and failed to preserve broker order memoranda properly. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, limit orders, and record keeping.

M H. Meyerson & Company, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$24,000, and ordered to pay \$350 plus interest in restitution to a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to identify two aggregated transaction reports in Nasdaq National Market securities in a manner directed by the NASD. The findings also stated that the firm reported to ACT the incorrect transaction price in an OTC Equity security, reported to ACT the incorrect symbol in a Nasdaq SmallCap security, failed to designate as late to ACT a Nasdaq security and Nasdaq SmallCap securities, and to correctly designate securities to ACT.

Furthermore, the NASD found that the firm failed to contemporaneously execute customer limit orders, failed to show the time of entry on memoranda of broker orders, and failed to use reasonable diligence to ascertain the best inter-dealer market for a stock. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, record keeping, and the limited order protection interpretation.

Raymond James and Associates, Inc. (St. Petersburg, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to designate as late to ACT transactions in Nasdaq National Market and SmallCap securities. 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, regulations, and rules regarding trade reporting and record keeping.

Wien Securities Corp. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$22,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to designate as late to ACT transactions in Nasdaq National Market, Nasdaq SmallCap, and OTC equity securities. The findings also stated that the firm failed to preserve properly a memorandum of each brokerage order, and any other instruction for the purchase or sale of securities, and a memorandum of each purchase and sale for the firm's account. In addition, the NASD determined 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, record keeping, the limited order protection interpretation, and customer confirmations.

Individuals Fined

Alon Randall Winton (Registered Principal, Chatsworth, California) submitted an Offer of Settlement pursuant to which he was censured and fined \$18,000. Without admitting or denying the allegations, Randall consented to the described sanctions and to the entry of findings that he purchased shares of a hot issue that traded at a premium in the immediate aftermarket in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation. The findings also stated that Winton failed to provide written notification to his member firm that he was opening an account with another firm, and failed to provide written notification to the executing firm of his association with the member firm prior to opening an account.

Individuals Barred Or Suspended

Joseph S. Baba (Registered Representative, Kirkland, Washington) and **Richard M. Eisenmenger (Registered Principal, Schaumburg, Illinois)** submitted an Offer of Settlement pursuant to which Baba was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 30 business days. Eisenmenger was censured, fined \$7,500, jointly and severally with a member firm, and suspended from acting in any supervisory or management capacity with any NASD member for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Baba recommended and effected purchases of securities for the account of a public customer that were unsuitable for the customer. The findings also stated that Eisenmenger failed to establish, maintain or enforce written supervisory procedures and otherwise failed to supervise Baba to prevent the occurrence of such violations.

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

The appeal to the NBCC by Bafo was dismissed as abandoned, therefore, the DBCC decision constitutes final action.

William Alexander Bass (Registered Representative, Manhattan, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$105,000, barred from association with any NASD member in any capacity, and required to pay \$763 in restitution to a member firm. Without admitting or denying the allegations, Bass consented to the described sanctions and to the entry of findings that he submitted to his member firm disbursement request forms causing loans to be made against variable life insurance policies owned by public customers. The NASD found that, based on the submission of the forms, the member firm issued checks totaling \$20,463.24 and, without the customers' knowledge or consent, Bass deposited one check for \$763 into a bank account in which he had an interest and used the remaining funds as payment of other insurance policies owned by the customers.

Gary Berger (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity, with the right to reapply for association after 18 months. In addition, Berger must requalify by exam prior to acting in any capacity requiring qualification. Without admitting or

denying the allegations, Berger consented to the described sanctions and to the entry of findings that he disseminated to public customers letterhead and business cards identifying a firm as an investment banker when the firm was not a registered broker/dealer or an investment advisor. The findings also stated that the letterhead failed to disclose the names and addresses of the member firms with which he was associated or the fact that the securities were offered through those member firms. Furthermore, the NASD determined that Berger purchased shares of stock in the accounts of public customers without the customers' knowledge or consent. Berger also failed to respond to NASD requests for information.

Daniel C. Boss (Registered Representative, Mendon, New York) was censured, fined \$215,000, barred from association with any NASD capacity, and required to pay \$39,100 in restitution to a customer. The sanctions were based on findings that Boss received \$40,000 from a public customer for investment purposes recommended by Boss, and without the customer's knowledge or consent, used the funds for some purpose other than for the benefit of the customer. Boss also failed to respond to NASD requests for information.

The appeal to the NBCC by Boss was dismissed as abandoned, therefore, the DBCC decision constitutes final action.

Arthur W. Chick (Registered Representative, Medford, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, ordered to pay restitution to a public customer, suspended from association with any NASD member in any capacity for 10 business days, and suspended from association with any NASD member

as a general securities principal for five years. In addition, Chick must requalify by exam as a general securities representative. Without admitting or denying the allegations, Chick consented to the described sanctions and to the entry of findings that he recommended and effected in the accounts of public customers the purchases of securities without having reasonable grounds for believing that such recommendations were suitable for the customers.

Furthermore, the NASD found that in inducing and effecting the purchases, Chick failed to disclose that the respective securities were speculative investments and entailed substantial risks, and failed to disclose material facts to the customers regarding the securities. The NASD also found that Chick effected unauthorized transactions in a customer's account, failed to execute a customer's sell order, and made price predictions to a customer about a stock.

Anthony Victor Cincotta, Jr. (Registered Representative, Fort Lauderdale, Florida) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cincotta failed to respond to NASD requests for information.

Glenn M. Cordick (Registered Representative, Drexel Hill, Pennsylvania) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cordick failed to respond to NASD requests for information.

Robert Lloyd DenHerder (Registered Representative, Helena, Montana) was censured, fined \$27,549.41, suspended from association with any NASD member in any capacity for 30 business days, and

required to requalify by exam. The SEC affirmed the sanctions following appeal of a January 1997 NBCC decision. The sanctions were based on findings that DenHerder recommended and executed on behalf of a public customer the purchase and sale of securities in the customer's account without having reasonable grounds for believing such transactions were suitable for the customer. DenHerder recommended to, and purchased on behalf of, a public customer shares of a fund without affording the customer the benefit of letter of intent and breakpoint and inter-family discounts. Furthermore, DenHerder guaranteed the customer against loss by providing the customer with a \$39,059 promissory note as reimbursement for losses incurred by the customer in connection with his investments.

William C. Dolfi (Registered Representative, Pittsburgh, Pennsylvania) was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dolfi participated in private securities transactions without providing prior written notice to his firm. Dolfi also failed to respond to NASD requests for information.

Laurette Fraser (Registered Representative, Teaneck, New Jersey) was censured and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fraser was in possession of unauthorized materials during a qualification exam.

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

Gary D. Gipson (Registered Representative, Jonesboro, Arkansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam as an investment company and variable contracts products representative. Without admitting or denying the allegations, Gipson consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase transactions on behalf of public customers and did not have reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. The findings also stated that Gipson engaged in private securities transactions without prior written notice to, and approval from, his member firm.

Cyriaque A. Gonda (Registered Representative, Bridgeport, Connecticut) was censured, fined \$95,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gonda misappropriated for his own use and benefit customer funds totaling \$15,200 intended for investment. Gonda also failed to respond to NASD requests for information.

Ian Nigel Hosang (Registered Representative, Brooklyn, New York) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hosang arranged to have an impostor take the Series 7 exam on his behalf. Hosang also failed to respond to NASD requests to appear for an on-the-record interview.

Frank R. Hudson (Registered Principal, Atlanta, Georgia) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000 and suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. Without admitting or denying the allegations, Hudson consented to the described sanctions and to the entry of findings that he failed to supervise reasonably the handling of a public customer's account by a registered representative in order to prevent and/or detect suitability violations.

Jeffrey Paul Huxtable (Registered Principal, Palatine, Illinois), Gregory Alan Casady (Registered Principal, Kansas City, Missouri), and John Francis Haggerty (Registered Representative, Overland Park, Kansas). Huxtable submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 14 days. In separate decisions, Casady was censured, fined \$40,000, and suspended from association with any NASD member in any capacity for two years, and Haggerty was censured, fined \$80,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Huxtable consented to the described sanctions and to the entry of findings. The findings stated that Huxtable, Casady and Haggerty recommended to public customers the purchase of securities and made untrue statements of material facts and/or omitted to state material facts necessary to make the statements not misleading, and failed to have a reasonable basis for their recommendations. Furthermore, Haggerty made baseless price predictions and/or predictions of future returns to public customers in connection with the recommended

securities. Haggerty also failed to respond to NASD requests for information.

Ronald B. Klimkowski (Registered Representative, Syosset, New York) was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Klimkowski failed to honor an \$11,500 arbitration award. Klimkowski also failed to respond to NASD requests for information.

Lori Sue Koppel-Heath (Registered Representative, Altadena, California) was censured, fined \$59,021.31, suspended from association with any NASD member as a general securities representative for 30 days, and required to requalify by exam as a general securities representative. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Koppel-Heath recommended purchases, sales, and redemptions of securities in public customer accounts without having reasonable grounds for believing they were suitable in view of the size, frequency, and nature of the recommended transactions, and the facts disclosed by those customers as to their other securities holdings, financial situation, circumstances, and needs.

Koppel-Heath has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

Richard Kulaszewski (Registered Representative, West Belmar, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,939.50, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Kulaszewski consented to the

described sanctions and to the entry of findings that he effected unauthorized transactions in the account of a public customer.

Geoffrey A. Newman (Registered Representative, Ft. Lauderdale, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$100,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Newman consented to the described sanctions and to the entry of findings that he deposited \$64,950 of his personal funds into customers' securities accounts, thereby sharing in losses disproportional with his interest in the accounts.

Jesus Peraza, Jr. (Registered Representative, Miami, Florida) was censured, fined \$260,000, barred from association with any NASD member in any capacity, and ordered to pay \$48,000 plus interest in restitution. The sanctions were based on findings that Peraza failed to respond to NASD requests for information. Peraza also converted \$48,000 to his own use and benefit, without the knowledge or authorization of the rightful owner or with the legal authority to do so.

Quisha S. Rose (Associated Person, Philadelphia, Pennsylvania) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rose failed to respond to NASD requests for information.

Scott Allen Rude (Registered Representative, Plymouth, Minnesota) was censured, fined \$380,280, barred from association with any NASD member in any capacity, and ordered to pay \$72,056 in restitution. The sanctions were based on findings that, without the knowledge or consent of the customer, Rude

obtained possession of a coin collection from the estate of a public customer, sold the collection for \$72,056, and converted the funds to his own use and benefit. Rude also failed to respond to NASD requests for information.

Kenneth Schlenker (Registered Representative, Billings, Montana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schlenker consented to the described sanctions and to the entry of findings that he engaged in securities transactions for his own account and, in connection with this activity, paid for the transactions with checks drawn on a personal bank account he knew to have insufficient funds in contravention of the payment requirements of Regulation T of the Federal Reserve Board.

Sean P. Sheehan (Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Sheehan consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the accounts of public customers.

William E. Stead (Registered Representative, Castleton, New York) was censured, fined \$350,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stead failed to respond to NASD requests for information. Furthermore, Stead obtained funds totaling \$68,725 from public customers, represented to the customers that the funds were to be invested for the

customers, and instead, converted the funds to his own use and benefit.

Jaime Luis Torres-Paulino (Registered Representative, Levittown, Puerto Rico) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and permanently barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Torres-Paulino consented to the described sanctions and to the entry of findings that he forged a registered representative's signature as the agent-of-record on life insurance applications submitted by public customers and forged the representative's endorsement on a \$596.10 commission check. The findings also stated that Torres-Paulino failed to respond to NASD requests for information.

Brian J. Walsh (Registered Principal, Medford, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$60,000, suspended from association with any NASD member in any capacity for 10 business days, and suspended from association with any NASD member as a general securities principal for five years. In addition, Walsh must requalify by exam as a general securities representative. Without admitting or denying the allegations, Walsh consented to the described sanctions and to the entry of findings that he recommended to public customers the purchase of securities without having reasonable grounds to believe the securities were suitable for the customers. The findings also stated that, in inducing and effecting the purchases, Walsh failed to disclose material facts to the customers, including that the securities were speculative investments, the risks associated with speculative securities generally, or the specific risk associated with the respective securities.

Michael Barrington Walters (Registered Representative, Roosevelt, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for three years, and ordered to requalify by exam before acting in any capacity. Without admitting or denying the allegations, Walters consented to the described sanctions and to the entry of findings that he purchased shares of stock for a customer without the customer's knowledge, authorization or consent. The findings also stated that Walters engaged in inappropriate sales tactics by misleading a public customer into believing that a confirmation slip sent to the customer was for information purposes only and never informing the customer that it was actually an agreement to a purchase transaction. Walters also failed to respond to NASD requests for information.

Michael A. Woloshin (Registered Representative, Medford, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Woloshin consented to the described sanctions and to the entry of findings that he recommended to a public customer a series of purchases and sales of securities while lacking a reasonable basis to believe them suitable for the customer in that such transactions entailed transactional costs which were excessive in comparison to the account's resources and the customer's financial situation and needs.

Decisions Issued

The following decisions have been issued by the DBCC and have been appealed or called for review as of February 28, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the National Adjudicatory Council (NAC). Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

John M. Columbia (Registered Representative, Staten Island, New York) was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and ordered to requalify by exam. The sanctions were based on findings that Columbia executed the purchases of stock in the account of a public customer without the customer's prior knowledge, authorization or consent.

Columbia has appealed the action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Donald R. Gates (Registered Representative, Cabot, Arkansas) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for three months, and required to requalify by taking and passing the Series 7 exam. The DBCC imposed the sanctions following a remand by the NBCC. The sanctions were based on findings that Gates accepted payments based on commissions earned from transactions in a public customer's account when he knew or should have known that, at the time the transactions occurred, he was not properly registered with the NASD or approved as an agent in the appropriate state.

This action has been appealed to the NAC and the sanctions are not in

effect pending consideration of the appeal.

Richard Timothy Greene (Registered Representative, Pittsboro, North Carolina) was censured, fined \$10,000, suspended from association with any NASD member in any capacity for three years, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Greene forged a public customer's signature on four documents.

This action has been called for review by the NBCC and the sanctions are not in effect pending consideration of the review.

Pamela Michelle Powell (Registered Representative, Union, New Jersey) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Powell failed to respond to NASD requests for information.

Powell has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Glen McKinley Richards, III (Registered Representative, Delray Beach, Florida) was censured, fined \$1,500, and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that Richards failed to pay a \$5,500 arbitration award.

This action has been called for review by the NBCC and the sanctions are not in effect pending consideration of the review.

Daniel Wright Sisson (Registered Principal, Menlo Park, California) was censured, fined \$15,000, suspended from association with any

NASD member in any capacity for 10 business days, and required to requalify by exam as a general securities representative following the suspension. The sanctions were based on findings that Sisson recommended to public customers purchases and sales of securities that were unsuitable in view of the size and frequency of the transactions and in view of the customers' other security holdings, financial situation, and needs.

This action has been called for review by the NBCC and the sanctions are not in effect pending consideration of the appeal.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD 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 these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

James J. Farren, Jr. (Registered Representative, Rjetwikerstraat, The Netherlands) was named as a respondent in a complaint alleging that he sent spreadsheets that purportedly reflected the extent of options trading he had conducted in an account to an individual who had trading authorization for the account. According to the complaint, the spreadsheets contained material misrepresentations and omissions in that the spreadsheets showed that the options trading had generated a profit of about \$15,203, but omitted certain transactions, including two sales which had generated losses of about \$113,874.

Akiko L. Hasegawa (Registered Representative, Los Angeles, California) was named a respondent in a complaint alleging conversion of customer funds in the amount of \$16,500. Specifically, the complaint alleged that four public customers each gave Hasegawa a personal check in varying amounts for the purpose of making an investment in a mutual fund. Instead of making the investment, Hasegawa deposited the checks in a bank account she controlled and used the funds for personal expenses.

Frank Henry, Jr. (Registered Representative, San Diego, California) was named as a respondent in a complaint alleging that he converted funds from a customer who intended to invest in a mutual fund. The complaint alleges that on or about March 12, 1996, Henry converted \$6,000 from a public customer without the customer's knowledge or consent.

Arleigh C. Merrill (Registered Representative, Jacksonville, Florida) was named as a respondent in an NASD complaint alleging he participated in a private securities transaction with a public customer without providing written notice to his member firm. The complaint also alleges that Merrill provided a check from his insurance agency bank account to the same public customer to replace an interest check the customer was expecting to receive.

Barrington Lloyd Nugent (Registered Representative, Houston, Texas) was named as a respondent in a complaint alleging that he made improper use of customer funds while working as a stockbroker. Specifically, the complaint charges that Nugent received \$4,310 from a public customer, but failed to invest those monies on behalf of the customer or otherwise apply those monies towards the benefit of the customer. The complaint also alleges

that Nugent failed to respond to NASD requests for information.

Dennis Paul Rueb, Jr. (Registered Representative, Copaque, New York) was named as a respondent in an NASD complaint alleging that he failed to prepare and maintain accurate and complete customer account information, that he exercised discretionary power over a customer's account without authorization, that he failed to follow customer instructions, and that he effected a transaction in a customer account without prior authorization. In addition, the complaint alleges that he made material misrepresentations and omissions to a customer in connection with the recommendation to purchase securities and projected false price predictions. Rueb is also alleged to have failed to respond to NASD requests to appear for an on-the-record interview and to promptly update his Form U-4 to disclose material changes in his registration application.

Steven Edward Smith (Registered Representative, Bakersfield, California) was named as a respondent in a complaint alleging that he made misrepresentations of material facts to public customers in order to induce them to purchase securities in a company. Specifically, Smith participated in the sale of securities totaling \$45,000 to public customers by falsely representing to the customers that he, himself, had invested in the offering. The complaint also alleges that Smith participated in the sale of these securities, which were not securities offered by his member firm, without providing prior written notice to his member firm of his participation in the offering.

Rooney Thomas (Registered Representative, Fishers, Indiana) was named as a respondent in a complaint alleging he failed to enter sell orders per the customers' instruc-

tions for certain option transactions that resulted in losses, and reimbursed the customers for losses they sustained in their accounts. The complaint also alleges that Thomas accepted a \$21,000 check from a public customer intended for investment purposes, failed to make the investment, and instead, deposited the funds into his personal bank account. Furthermore, the complaint alleges that Thomas failed to respond to NASD requests for information.

Firms Expelled For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations
Aspen Capital Group, Inc., Denver, Colorado

Charlotte S. Cohen & Company, Inc., St. Louis, Missouri

Neo-Strategies Marketing Alliances, Inc., New York, New York

Firms Suspended Pursuant To NASD Rule 9622 For Failure To Pay Arbitration Award
Jason MacKenzie Securities, Inc., Atlanta, Georgia

Gilbert Marshall & Co., Inc., Greeley, Colorado

J.A. Overton & Co., Inc., San Diego, California

State Street Capital Market Corp., New York, New York

Whitehall Securities, Inc., 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
Scott I. Brown, Hallandale, Florida

Stephen B. Carlson, Denver, Colorado

Michael R. Euripides, Virginia Beach, Virginia

Michael E. Goldstein, Los Angeles, California

Jeffrey B. Goodman, Calabasas, California

Joseph Graf, Milwaukee, Wisconsin

Alan J. LaCava, Philadelphia, Pennsylvania

Scott W. Lindquist, Vista, California

Frank A. McCanham, Columbus, Georgia

Anthony C. Nuzzo, Venice, California

Jan Sanders, Lake Forest, California

Donald A. Tilt, Lake Hughes, California

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

Jeffrey Ihm, Dix Hills, New York

Tanwir Khan, Brooklyn, New York

Peter Macor, Manhasset, New York

Thomas P. Meehan, Thornton, Colorado

Douglas Osborne, Venice, California

Suspensions Lifted

The NASD has lifted the suspension from membership on the date shown for the following firm because it has paid the arbitration award.

Network Capital Corp., Salt Lake City, Utah
(February 4, 1998)

NASD Regulation Fines A.S. Goldmen & Co. \$200,000 And Orders \$1 Million-Plus In Restitution To Customers; President, Vice President, And Trader Also Sanctioned

NASD Regulation ordered A.S. Goldmen & Co., Inc., to pay a \$200,000 fine and more than \$1 million in restitution and interest to more than 500 customers in at least 35 states.

Three of A.S. Goldmen's officials were also sanctioned. President and owner Anthony J. Marchiano was suspended from the brokerage industry in all capacities for six months, fined \$50,000, and censured; Vice President Stuart E. Winkler was suspended for two years, fined \$50,000, and censured; and trader Stacy Meyers was suspended for 90 days, fined \$5,000, and censured. All three must retake their exams to re-enter the brokerage industry.

After an eight-day hearing, NASD Regulation's District 10 Business Conduct Committee (DBCC) found that the Iselin, N.J.-based A.S. Goldmen manipulated the price of warrants in Innovative Tech Systems Inc., received excessive underwriting compensation, charged its customers excessive mark-ups in connection with the initial aftermarket trading of the warrants, and did not adequately supervise its staff to prevent these violations. The manipulation and the overcharging, which occurred over a four-day period from July 26 through July 29, 1994, result-

ed in more than \$1 million in illicit profits.

NASD Regulation found no evidence that Innovative Tech Systems, which was (and still is) listed on Nasdaq's Small Cap Market at the time, knew that the price of its shares was being manipulated.

The abuses at A.S. Goldmen were uncovered by a lengthy NASD Regulation investigation by the Market Regulation and Enforcement Department, and the District Offices in New York and Denver.

NASD Regulation found that A.S. Goldmen controlled the supply of Innovative Tech's warrants, through its own accounts and its customers' accounts, immediately following the company's Initial Public Offering (IPO) on July 26, 1994.

Prior to the IPO, Innovative Tech provided 1.3 million warrants to 21 bridge financiers. Within the first two hours of trading on July 26th, A.S. Goldmen purchased most of the 1.3 million warrants held by the bridge financiers below quoted prices. By adding these warrants to the almost 1.8 million remaining warrants held by the firm in its customers' accounts, A.S. Goldmen dominated and controlled the market for Innovative Tech's warrants.

A.S. Goldmen artificially increased the warrant's price to almost \$2 per share, more than a 700 percent increase over the offering price. As a result, customers were charged mark-ups of 5 to 140 percent. NASD Regulation considers mark-ups in excess of 10 percent to be fraudulent.

NASD Regulation found that even though A.S. Goldmen was only one of 12 market makers in Innovative Tech, sales between the firm and its customers accounted for approxi-

mately 97 percent of all the warrants traded.

A.S. Goldmen was also found to have violated NASD rules and federal securities laws that prohibit any firm from simultaneously bidding for and purchasing a security while distributing it.

In addition, A.S. Goldmen received more than \$750,000 in excessive underwriting compensation. NASD rules set strict limits on the permissible level of underwriters' compensation.

NASD Regulation found the following violations:

- Anthony J. Marchiano—failed to supervise.
- Stuart E. Winkler—engaged in manipulative trading while the firm was distributing the warrants, charged fraudulently excessive mark-ups, charged excessive underwriting compensation, and failed to supervise.
- Stacy Meyers—charged excessive mark-ups.

Initial actions, such as this, by an NASD Regulation DBCC are final after 45 days, unless they are appealed to NASD Regulation's National Adjudicatory Council (NAC), or called for review by the NAC. The sanctions are not effective during this period. If the decision in this case is appealed or called for review, the findings may be increased, decreased, modified, or reversed.

In this case, the more than 500 investors will receive restitution payments from A.S. Goldmen within 120 days of the final decision.

NASD Regulation Fines Morgan Stanley \$35,000 And Orders \$80,000 In Restitution For Failure To Give Best Execution

NASD Regulation announced that Morgan Stanley & Co., Inc., has been fined \$35,000 and will pay more than \$80,000 in restitution after settling charges that the firm failed to provide three customers the best execution possible in the sale of common stock. The firm was also censured.

Morgan Stanley, which neither admitted nor denied NASD Regulation's findings, will promptly repay the three investors restitution and interest. In its settlement with NASD Regulation, Morgan Stanley was also cited for violating the rules and regulations relating to trade reporting and record keeping in connection with these transactions.

NASD Regulation began its investigation following the receipt of a customer complaint. The complaint, which was received shortly after the customer sold 14,000 shares of stock to Morgan Stanley on February 8, 1996, alleged that the firm failed to provide the customer with the best price possible for the stock. After further investigation, NASD Regulation discovered two additional investors who had sold a total of 15,600 shares to Morgan Stanley on the same day and failed to receive the best price possible.

According to NASD Regulation's findings, all three customers placed their orders with Morgan Stanley prior to the market's opening on February 8, 1996. Had the three orders been executed promptly, the customers could have received a higher price for their shares than they did.

Furthermore, Morgan Stanley failed to notify NASD Regulation's Auto-

mated Confirmation Transaction within 90 seconds following the execution of the trades; failed to designate those trades as late once they were reported; and failed to include the time at which the executions occurred. In addition, NASD Regulation found that Morgan Stanley failed to properly maintain the order tickets for these three orders.

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For Your Information

Closing Of Washington District Office

A decision was made in June of last year to close the Washington, D.C. NASD RegulationSM District Office. That District Office officially closed its doors on January 31, 1998.

This notification is to advise readers that the functions of the former D.C. District Office have been divided between the Philadelphia and Atlanta NASD Regulation District Offices. Therefore, the Philadelphia Office (District 9) has now taken responsibility for member firms located in Maryland and the District of Columbia, while member firms located in Virginia have been reassigned to the Atlanta Office (District 7). Please be sure to direct any communications and mail to the appropriate NASD Regulation District Office. The addresses and numbers for both District Offices are displayed below:

NASD Regulation Atlanta
District 7 Office
3490 Piedmont Road, NE
Atlanta, GA 30305
(404) 239-6100
Fax: (404) 237-9290

NASD Regulation Philadelphia
District 9 Office
11 Penn Center
1835 Market Street, 19th Floor
Philadelphia, PA 19103
(215) 665-1180
Fax: (215) 496-0434

Treasury Amends Certain Time Frame Restrictions For Auction Bidders

On January 28, 1998, the Department of the Treasury (Treasury) issued a final amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds). The final amendment incorporates a change in the time frame

for certain restrictions pertaining to bidders that bid noncompetitively in Treasury auctions. The amendment states that, between the date of the offering announcement and the time of the official announcement by Treasury of the auction results, a non-competitive bidder may not hold, at any time, a position for its own account in when-issued trading or in futures or forward contracts in the security being auctioned, or enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction.

The final amendment can be found on page 4185 of the *Federal Register* published on January 28, 1998. The final amendment, and other recent proposed and final amendments to 31 CFR Part 356 and interpretations of the regulations, are available at the Bureau of the Public Debt's Internet site at the following address: www.publicdebt.treas.gov.

For further information or questions, contact Treasury's Government Securities Regulations Staff, at (202) 219-3632.

Year 2000 Update

According to recent industry research about the Year 2000 challenge, securities firm management should be fundamentally aware of this issue at this time. Industry experts have stated that by mid-1998, a typical securities firm should have a Year 2000 plan with these activities completed: review of all business aspects to determine where Year 2000 failures may occur; completion of an inventory of any replacement or renovations required; identification of costs and resources; and notification of suppliers and partners to assess and certify their Year 2000 readiness. The plan should also define how the firm will test or validate its Year 2000 readiness, including

options for participating in industry-wide testing, and contain contingency planning approaches.

NASD Regulation urges NASD® member firms to develop and implement action plans to achieve Year 2000 compliance. All member firms have a responsibility to analyze the readiness of their automated regulatory and compliance systems and make the changes needed for continued successful operation. The scope of Year 2000 plans should extend to all information technology systems (internal and external) used to conduct a securities business and other business support systems (*e.g.*, telephone, power, elevators, etc.).

Be aware that computer failures related to Year 2000 problems generally will not be considered a defense to violations of firms' regulatory or compliance responsibilities, nor a mitigation of sanctions for such violations.

Year 2000 To Be Featured At NASD Regulation Conference

In response to members' requests for more Year 2000 information, discussion of Year 2000 issues will be a

prominent feature of this year's Spring Securities Conference, May 20-22, in Washington, D.C. On Wednesday, May 20, NASD Regulation will hold a pre-conference session devoted to the Year 2000 challenge and address such topics as best practices, legal issues, and industry testing. Additionally, a Year 2000 general session will be held on the last day of the Securities Conference—Friday, May 22—where participants from the NASD, Securities and Exchange Commission, and the securities industry will discuss regulatory and compliance issues of interest to NASD members.

Members will receive a conference brochure and registration materials through the mail later this month. Also, check the "Conferences and Events" section of the NASD Regulation Web Site (www.nasdr.com) for conference updates.

For More Year 2000 Information

Within the next few weeks, NASD Regulation will publish a *Notice to Members* outlining results of the Year 2000 survey sent to members at the end of last year. For further information about the Year 2000 challenge in

general and/or NASD's Year 2000 Program, see *NASD Notice to Members 98-22—Year 2000 Frequently Asked Questions*; visit our Year 2000 Web Pages on both the NASD Regulation Web Site (www.nasdr.com) and the NASD Web Site (www.nasd.com); or contact Lyn Kelly at the NASD Year 2000 Program Office, at (301) 590-6342, or via e-mail at y2k@nasd.com.

The time to act is now! The deadline for Year 2000 compliance is December 31, 1999, and there are no extensions!

Disciplinary Actions Correction

The February 1998 issue of *Notices to Members* erroneously stated information relating to the sanction of Alan S. Daniel (Registered Representative, Holland, Pennsylvania). Daniel submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity.

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Special NASD Notice to Members 98-33

SEC Approves New Order Audit Trail System (OATS)

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On March 6, 1998, the Securities and Exchange Commission (SEC) approved new National Association of Securities Dealers, Inc. (NASD[®] or Association) Rules 6950 through 6957 (Rules), which establish an Order Audit Trail SystemSM (OATSSM).¹ The new Rules will be effective according to an implementation schedule that is described below. The text of the new Rules and a matrix that will assist members in understanding the phasing-in of the OATS requirements are attached. The *Notice* also generally discusses the OATS Reporting Technical Specifications and when they will be available and the forums that NASD Regulation, Inc. (NASD RegulationSM) will be conducting to inform firms about the new OATS Rules.

The OATS Support Center is the primary source of OATS information for NASD member firms. The Center is open Monday through Friday from 8:00 a.m. until 6:00 p.m., ET. The telephone numbers are 1-888-700-OATS and (301) 590-6503. The Center's e-mail address is oatssc@nasd.com. General information will be maintained on the OATS Web page located at the NASD Regulation Web Site (www.nasdr.com).

Background

NASD Regulation has received SEC approval to establish and operate a new Order Audit Trail System. OATS will impose obligations on member firms to record in electronic form and to report to NASD Regulation certain items of information with respect to orders they receive to effect transactions in equity securities traded in The Nasdaq Stock MarketSM (Nasdaq[®] or Nasdaq Market). NASD Regulation will combine this order information with transaction data currently reported by members through the Automated Confirmation Trans-

action ServiceSM (ACTSM) and quotation information disseminated by members through Nasdaq to construct an integrated audit trail of quotation, transaction, and order data, thus greatly enhancing NASD Regulation's surveillance and examination capabilities. In addition, member firms will be required to synchronize their business clocks to a source designated by the NASD.

The OATS Rules require that each member receiving an order relating to equity securities traded in the Nasdaq Market must electronically capture specified information related to the order, record this information to the hour, minute, and second, and electronically transmit this information to OATS. These requirements apply both to orders originated by customers and to proprietary orders originated by a department of a member firm and sent to its trading desk or to another member for execution. Further, for both a customer order and an order originated by a department within the same member firm, the requirement to capture and transmit information would apply whenever the order is transmitted to another department of the same firm, other than to the trading department.

Order information must be submitted to OATS in one or more electronic file transmissions on the same day that the order, or the specific information pertaining to the order, was received, originated, transmitted, modified, canceled, or executed. Where information containing a particular order is not complete or changes, because, for example, the order is only partially executed on the day that it is received, but the order remains outstanding, or if the order is canceled, the additional information must be transmitted on the day that the information first becomes available.

The Rules allow a firm to enter into an arrangement with a third party pursuant to which the third party agrees to report order information on its behalf, in the same way that firms now contract with others to report transaction data to ACT. In each case, however, the member that actually receives or originates the order would remain primarily responsible for fulfilling each of its obligations under the OATS Rules.

In addition to the recording and data transmission requirements, the Rules require members to synchronize their business clocks used for purposes of recording order data with reference to a source designated by the NASD for this purpose, and to adopt such procedures as may be necessary to maintain such synchronization during each trading day. This provision is designed to ensure that the times of various events that are reported pursuant to the OATS Rules are recorded in conjunction with a single and verifiable reference point.

The implementation schedule for the OATS Rules has been revised in response to comment letters received by the SEC when it published notice of the proposed OATS Rules in the *Federal Register*.² The SEC received 18 comment letters on the proposed rule change. The majority of the commenters supported the regulatory objectives of the proposal. However, many of them raised a number of concerns, primarily addressed to the timing of the implementation schedule, which was revised in response to the comments. The implementation schedule is described in detail below. Also, attached to this *Notice* is a matrix showing the implementation schedule in table form.

The text of the new Rules is set forth below. For a complete description of the new Rules, members should review in detail the

SEC's approval order, which is available on NASD Regulation's Web Site (www.nasdr.com).

Implementation Schedule: Recording And Reporting Requirements Phase One—March 1, 1999

The OATS reporting requirements initially will be limited to electronic orders received by Electronic Communications Networks (ECNs) and electronic orders received at the trading departments of members that are market makers in the securities that are the subject of the orders. These requirements will be effective on March 1, 1999. Market makers initially will be required to record and report only certain information items to OATS. These information items in general correspond to those items that are expected to be readily available at the trading desk at the time that orders are received. Members operating ECNs will be required to record and report to OATS only the information items that are available to the ECN with respect to the order.

The items that must be recorded and reported in Phase One when an electronic order is originated or received by a market maker include: the order identifier assigned to the order by the receiving Reporting Member;³ the identification symbol assigned by the Association to the security; the market participant symbol assigned by the Association to the transmitting and receiving Reporting Members; the identification of any department or the identification number of any terminal where an order is received directly from a customer; where applicable, the identification of the Reporting Member's Reporting Agent; the number of shares to which the order applies; the designation of the order as a buy or sell order; the designation of the order as a short sale order; the des-

ignation of the order as a market order, limit order, stop order, or stop limit order; any limit or stop price prescribed by the order; the date on which the order expires, and, if the time in force is less than one day, the time when the order expires; the time limit during which the order is in force; any request by a customer that an order not be displayed, or that a block size order be displayed, pursuant to Securities Exchange Act of 1934 (Exchange Act) Rule 11Ac1-4(c); special handling requests specified by the Association; the date and time the order is originated or received; and an identification of the order as related to a Program Trade or an Index Arbitrage Trade. Although firms will not be required to report the type of account for which the order is submitted, this information must be reported to the extent it is available. Other relevant information must be recorded and reported when the order is modified, canceled, or executed.

The items that must be recorded and reported in Phase One when an order is received by a member operating an ECN include only the items that are available to the ECN with respect to the order. The items that must be recorded and reported include: the fact that the order was received by an ECN; the order identifier assigned to the order by the member operating the ECN; the identification symbol assigned by the Association to the security; the market participant symbol assigned by the Association to the transmitting Reporting Member and to the ECN; where applicable, the identification of the Reporting Member's Reporting Agent; the number of shares to which the order applies; the designation of the order as a buy or sell order; the designation of the order as a market order, limit order, stop order, or stop limit order; any limit or stop price prescribed by the order; the date on which the order expires,

and, if the time in force is less than one day, the time when the order expires; the time limit during which the order is in force; special handling requests specified by the Association; and the date and time the order is received. Other relevant information must be recorded and reported when the order is modified, canceled, or executed.

Starting in August 1998, NASD Regulation will begin testing the capabilities of its systems. NASD Regulation also will identify, test, and certify the firms that will be required to record and report information to OATS in March 1999 (market makers and ECNs). As a result, all testing will be completed and NASD Regulation and the firms will be ready to implement Phase One on the effective date of March 1, 1999.

Phase Two—August 1, 1999

The OATS recording and reporting requirements will be effective for all electronic orders on August 1, 1999. At this time, all firms, with the exception of firms operating ECNs, must record and report all information items specified in Rules 6954(b), (c), and (d) with respect to all electronic orders. As in Phase One, ECNs will be required to record and report only the information items with respect to electronic orders that are available to the ECN with respect to the order. Similar to the testing and certification that will occur prior to the implementation of Phase One, starting in March 1999, NASD Regulation will test its own systems and test and certify the firms that will be required to record and report information in Phase Two. As a result, all testing will be completed, and NASD Regulation and the firms will be ready to implement Phase Two on the effective date of August 1, 1999.

Phase Three—July 31, 2000

The OATS recording and reporting requirements will be effective for all manual orders on July 31, 2000. Firms will be required to record and report to OATS only certain information items. For market makers and other non-ECNs, these information items in general correspond to those items that are expected to be readily available at the trading desk, or at other desks that receive or handle orders manually, at the time that orders are received. ECNs will be required to record and report only those information items that are available to the ECN with respect to the order. No further requirements will be applicable to manual orders.

The items that must be recorded and reported in Phase Three when an order is originated or received by a market maker or other non-ECN include: the fact that the order was received manually; the order identifier assigned to the order by the receiving Reporting Member; the identification symbol assigned by the Association to the security; the market participant symbol assigned by the Association to the transmitting and receiving Reporting Members; where applicable, the identification of the Reporting Members' Reporting Agent; the number of shares to which the order applies; the designation of the order as a buy or sell order; the designation of the order as a short sale order; the designation of the order as a market order, limit order, stop order, or stop limit order; any limit or stop price prescribed by the order; the date on which the order expires, and, if the time in force is less than one day, the time when the order expires; the time limit during which the order is in force; any request by a customer that an order not be displayed, or that a block size order be displayed, pursuant to Exchange Act Rule 11Ac1-4(c); special handling requests specified by

the Association; the date and time the order is originated or received; and an identification of the order as related to a Program Trade or an Index Arbitrage Trade. Although firms will not be required to report the type of account for which the order is submitted, this information must be reported to the extent it is available. Other relevant information must be recorded and reported when the order is manually transmitted to another member or when the order is modified, canceled, or executed. As in Phases One and Two, the items that must be recorded and reported in Phase Three by a member operating an ECN are those items that are available to the ECN with respect to the order, as described above.

Similar to the testing and certification that will occur prior to the implementation of Phases One and Two, starting in August 1999, NASD Regulation will test its own systems and test and certify the firms that will be required to record and report information in Phase Three. As a result, all testing will be completed, and NASD Regulation and the firms will be ready to implement Phase Three on the effective date of July 31, 2000.

Implementation Schedule: Clock Synchronization

Members will be required to synchronize business clocks according to the following schedule: computer system clocks must be synchronized on August 7, 1998, and mechanical clocks must be synchronized by July 1, 1999. NASD Regulation will provide further information in *Notices to Members* and in the OATS Reporting Technical Specifications described below as to the precise parameters that will apply to synchronization.

Forums

In order to inform member firms about their responsibility to comply

with the OATS Rules, NASD Regulation is presenting a series of industry forums about OATS in cities across the country. Dates, time, and locations are currently being finalized; however, forums are being planned in the following cities: Atlanta, Boston, Chicago, Dallas, Denver, Detroit, Fort Lauderdale, Los Angeles, Minneapolis, New Orleans, New York, Philadelphia, Richmond, St. Louis, San Francisco, and Washington, D.C. When the forum dates are finalized, announcements and registration forms will be sent to all firms that have indicated to NASD Regulation a responsibility to report to OATS. Member firms also will be able to register via the OATS Web page located on the NASD Regulation Web Site (www.nasdr.com), by calling the OATS Support Center at 1-888-700-OATS and (301) 590-6503, or via the OATS e-mail address at oatssc@nasd.com.

Information presented will include interpretation of the OATS Rules and details about implementation, registration, certification, testing, piloting, and support. Along with the formal presentation, there will be time set aside to address individual questions. All NASD member firms that deal in Nasdaq equity securities are invited to attend the OATS forums. Compliance, technology, and operations staff members are especially encouraged to attend.

OATS Reporting Technical Specifications

The document containing the OATS Reporting Technical Specifications was published on March 9, 1998. It will provide member firms with the operational and technical requirements for submitting order reports to OATS. The document covers the requirements and procedures for clock synchronization; system access requirements for supplying OATS files to the NASD; order

reporting scenarios that describe, from a business perspective, responsibilities for reporting to OATS; details regarding the required layout of OATS files; and procedures for providing corrections to OATS data and receiving feedback from NASD Regulation. The document also contains a data dictionary that describes all of the data elements in OATS files; a list of report formats, including field names, data types, and lists of permissible values; and examples of order reports.

The Technical Specifications were mailed to the OATS primary and technical contacts at all NASD member firms that are registered as market makers in Nasdaq securities on March 11, 1998. In addition, the Technical Specifications will be mailed to all firms that have indicated to NASD Regulation that they have a responsibility to report order information under the Rules. Other firms can obtain a copy of the Technical Specifications by calling the OATS Support Center or sending a request by e-mail to oatssc@nasd.com. Members also will be able to download the Technical Specifications from the OATS Web page located on the NASD Regulation Web Site (www.nasdr.com).

Text Of New Rules

(Note: all language is new.)

3110. Books and Records

(c) Each member that is a Reporting Member as that term is defined in Rule 6951(n) shall record and maintain, with respect to each order for such security that is received or executed at its trading department: (1) an identification of each registered person who receives the order directly from a customer; (2) an identification of each registered person who executes the order; and (3) where an order is originated by the member

and transmitted manually to another department, an identification of the department that originated the order.

6950. Order Audit Trail System

6951. Definitions

For purposes of Rules 6950 through 6957:

(a) Terms shall have the same meaning as those defined in the By-Laws and other rules of the Association, unless otherwise specified.

(b) "Association" shall mean the National Association of Securities Dealers, Inc. and its two subsidiaries, NASD Regulation, Inc. and The Nasdaq Stock Market, Inc.

(c) "Bunched Order" shall mean two or more orders that are aggregated prior to execution.

(d) "Customer" shall mean a person other than a broker or dealer.

(e) "ACT" shall mean the Automated Confirmation Transaction Service operated by The Nasdaq Stock Market, Inc.

(f) "Electronic Communication Network" shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in Securities Exchange Act Rule 11Ac1-1(a)(8).

(g) "Electronic Order" shall mean an order captured by a member in an electronic order-routing or execution system.

(h) "Index Arbitrage Trade" shall mean an arbitrage trading strategy involving the purchase or sale of a "basket" or group of securities in con-

junction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts in an attempt to profit by the price difference, as further defined in New York Stock Exchange Rule 80A.

(i) "Manual Order" shall mean an order that is captured by a member other than in an electronic order-routing or execution system.

(j) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in a Nasdaq Stock Market equity security that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities.

(k) "Order Audit Trail System" shall mean the automated system owned and operated by the Association that is designed to capture order information reported by members for integration with trade information reported to ACT and quotation information disseminated by members in order to provide the Association with an accurate time sequenced record of orders and transactions.

(l) "Program Trade" shall mean a trading strategy involving the related purchase or sale of a group of 15 or more securities having a total market value of \$1 million or more, as further defined in New York Stock Exchange Rule 80A.

(m) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such member's obligations under Rule 6955.

(n) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 6954 and 6955.

6952. Applicability

(a) Unless otherwise indicated, the requirements of Rules 6953 through 6957 are in addition to the requirements contained in the By-Laws and other rules of the Association.

(b) Unless otherwise indicated, the requirements of Rules 6953 through 6957 shall apply to all brokers and dealers admitted to membership in the Association and to their associated persons.

(c) Unless otherwise indicated, the requirements of Rules 6953 through 6957 shall apply to all executed or unexecuted orders for equity securities traded in The Nasdaq Stock Market.

6953. Synchronization of Member Business Clocks

Each member shall synchronize its business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the By-Laws or other rules of the Association, with reference to a time source as designated by the Association, and shall maintain the synchronization of such business clocks in conformity with such procedures as are prescribed by the Association.

6954. Recording of Order Information

(a) Procedures

(1) Subject to the terms and conditions contained in Rules 6952 through 6957, each Reporting Member shall:

(A) immediately following receipt or origination of an order, record each item of information described in paragraph (b) of this Rule that applies to such order, and record any additional information described in paragraph (b) of this Rule that applies to such order immediately after such information is received or becomes available; and

(B) immediately following the transmission of an order to another member, or from one department to another within the same member, record each item of information described in paragraph (c) of this Rule that applies with respect to such transmission; and

(C) immediately following the modification, cancellation, or execution of an order, record each item of information described in paragraph (d) of this Rule that applies with respect to such modification, cancellation, or execution.

(2) Each required record of the time of an event shall be expressed in terms of hours, minutes, and seconds.

(3) Each Reporting Member shall, by the end of each business day, record each item of information required to be recorded under this Rule in such electronic form as is prescribed by the Association from time to time.

(4) Each Reporting Member shall retain records of the information required to be recorded under this Rule in accordance with Rule 3110.

(b) Order Origination and Receipt

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated.

(1) an order identifier meeting such parameters as may be prescribed by

the Association assigned to the order by the Reporting Member that uniquely identifies the order for the date it was received;

(2) the identification symbol assigned by the Association to the security to which the order applies;

(3) the market participant symbol assigned by the Association to the Reporting Member;

(4) the identification of any department or the identification number of any terminal where an order is received directly from a customer;

(5) where the order is originated by a Reporting Member, the identification of the department of the member that originates the order;

(6) where the Reporting Member is a party to an agreement described in Rule 6955(c), the identification of the Reporting Agent;

(7) the number of shares to which the order applies;

(8) the designation of the order as a buy or sell order;

(9) the designation of the order as a short sale order;

(10) the designation of the order as a market order, limit order, stop order or stop limit order;

(11) any limit or stop price prescribed in the order;

(12) the date on which the order expires, and, if the time in force is less than one day, the time when the order expires;

(13) the time limit during which the order is in force;

(14) any request by a customer that an order not be displayed, or that a

block size order be displayed, pursuant to Rule 11Ac1-4(c) under the Securities Exchange Act of 1934;

(15) special handling requests, specified by the Association for purposes of this Rule;

(16) the date and time the order is originated or received by a Reporting Member;

(17) an identification of the order as related to a Program Trade or an Index Arbitrage Trade; and

(18) the type of account, *i.e.*, retail, wholesale, employee, proprietary, or any other type of account designated by the Association, for which the order is submitted.

(c) Order Transmittal

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) When a Reporting Member transmits an order to another department within the member, other than to the trading department, the Reporting Member shall record: (A) the order identifier assigned to the order by the Reporting Member, (B) the market participant symbol assigned by the Association to the Reporting Member, (C) the date the order was first originated or received by the Reporting Member, (D) an identification of the department to which the order was transmitted, and (E) the date and time the order was received by that department;

(2) When a member electronically transmits an order to another member, other than an order transmitted electronically for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member shall record: (i) the order identifier

assigned to the order by the Reporting Member, (ii) the market participant member identification symbol assigned by the Association to the Reporting Member, (iii) the market participant member identification symbol assigned by the Association to the member to which the order is transmitted, (iv) the date the order was first originated or received by the Reporting Member, (v) the date and time the order is transmitted, and (vi) the number of shares to which the transmission applies; and

(B) the receiving Reporting Member shall record, in addition to all other information items in Rule 6954(b) that apply with respect to such order: (i) the order identifier assigned to the order by the member that transmits the order and (ii) the market participant symbol assigned by the Association to the member that transmits the order.

(3) When a member electronically transmits an order for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member shall record: (i) the fact that the order was transmitted to an Electronic Communications Network, (ii) the order identifier assigned to the order by the Reporting Member, (iii) the market participant symbol assigned by the Association to the Reporting Member, (iv) the market participant symbol assigned by the Association to the member to which the order is transmitted, (v) the date the order was first originated or received by the Reporting Member, (vi) the date and time the order is transmitted, and (vii) the number of shares to which the transmission applies; and

(B) the receiving Reporting Member operating the Electronic Communications Network shall record: (i) the fact that the order was received by an Electronic Communications Network,

(ii) the market participant symbol assigned by the Association to the transmitting Reporting Member, and (iii) other information items in Rule 6954(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(4) When a member manually transmits an order to another member, other than to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record: (i) the fact that the order was transmitted manually, (ii) the order identifier assigned to the order by the Reporting Member, (iii) the market participant symbol assigned by the Association to the Reporting Member, (iv) the market participant symbol assigned by the Association to the member to which the order is transmitted, (v) the date the order was first originated or received by the Reporting Member, (vi) the date and time the order is transmitted, (vii) the number of shares to which the transmission applies, and (viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member; and

(B) the receiving Reporting Member shall record, in addition to all other information items in Rule 6954(b) that apply with respect to such order: (i) the fact that the order was received manually and (ii) the market participant symbol assigned by the Association to the member that transmits the order.

(5) When a member manually transmits an order to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record: (i) the fact that the order was transmitted manually, (ii) the order identifier assigned to the

order by the Reporting Member, (iii) the market participant symbol assigned by the Association to the Reporting Member, (iv) the market participant symbol assigned by the Association to the member to which the order is transmitted, (v) the date the order was first originated or received by the Reporting Member, (vi) the date and time the order is transmitted, (vii) the number of shares to which the transmission applies, and (viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member; and

(B) the receiving Reporting Member shall record: (i) the fact that the order was received manually, (ii) the market participant symbol assigned by the Association to the transmitting Reporting Member, and (iii) other information items in Rule 6954(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(d) Order Modifications, Cancellations, and Executions

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

(1) When a Reporting Member modifies or receives a modification to the terms of the order, the Reporting Member shall record, in addition to all other applicable information items (including a new order identifier) that would apply as if the modified order were originated or received at the time of the modification: (A) the order identifier assigned to the order by the Reporting Member prior to the modification, (B) the date and time the modification was originated or received, and (C) the date the order was first originated or received by the Reporting Member.

(2) When the Reporting Member cancels or receives a cancellation of an order, in whole or part, the Reporting Member shall record: (A) the order identifier assigned to the order by the Reporting Member, (B) the market participant symbol assigned by the Association to the Reporting member, (C) the date the order was first originated or received by the Reporting Member, (D) the date and time the cancellation was originated or received, (E) if the open balance of an order is canceled after a partial execution, the number of shares canceled, and (F) whether the order was canceled on the instruction of a customer or the Reporting Member.

(3) When a Reporting Member executes an order, in whole or in part, the Reporting Member shall record: (A) the order identifier assigned to the order by the Reporting Member, (B) the market participant symbol assigned by the Association to the Reporting Member, (C) the date the order was first originated or received by the Reporting Member, (D) the Reporting Member's number assigned for purposes of identifying transaction data in ACT, (E) the designation of the order as fully or partially executed, (F) the number of shares to which a partial execution applies and the number of unexecuted shares remaining, (G) the identification number of the terminal where the order was executed; and (H) the date and time of execution.

6955. Order Data Transmission Requirements

(a) General Requirement

All applicable order information required to be recorded under Rule 6954 shall be transmitted to the Order Audit Trail System by each Reporting Member or by a Reporting Agent pursuant to an agreement

described by paragraph (c) of this Rule.

(b) Method of Transmitting Data

(1) Order information shall be transmitted in electronic form, as may be prescribed by the Association from time to time, to a receiving location designated by the Association.

(2) Each Reporting Member shall transmit to the Order Audit Trail System a report containing each applicable item of order information identified in Rule 6954(b), (c), and (d) whenever an order is originated, received, transmitted to another department within the member or to another member, modified, canceled, or executed. Each report shall be transmitted on the day such event occurred, or with respect to any such information that is not available on such day, on the day that such information first becomes available. Order information reports may be aggregated into one or more transmissions, during such business hours as may be prescribed by the Association.

(c) Reporting Agent Agreements

(1) Any Reporting Member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such Reporting Member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

(2) All written documents evidencing an agreement described in paragraph (1) shall be maintained by each party to the agreement.

(3) Each Reporting Member remains primarily responsible for compliance with the requirements of this rule, notwithstanding the existence of an agreement described in this paragraph.

6956. Violation of Order Audit Trail System Rules

Failure of a member or person associated with a member to comply with any of the rules or requirements of Rule 6951 through Rule 6957 may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

6957. Effective Date

The requirements of the Order Audit Trail System shall be effective in accordance with the following schedule:

(a) Clocks

The requirements of Rule 6953 shall be effective on August 7, 1998, for all computer system clocks and on July 1, 1999, for all mechanical clocks.

(b) Electronic Orders

With respect to electronic orders, the requirements of the Order Audit Trail System shall be effective on:

(1) March 1, 1999, for electronic orders received by Electronic Communications Networks and electronic orders received at the trading department of a member that is a market maker in the securities that are the subject of the orders, provided that market makers shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to the market maker and shall **not** be required to record and report information item (5) specified in Rule 6954(b) and

information items (2)(A), (2)(B)(i), (3)(A), (4)(A), and (5)(A) specified in Rule 6954(c) with respect to such orders; and

(2) August 1, 1999, for all electronic orders, at which time all information items specified in Rules 6954(b), (c), and (d) shall be required to be recorded and reported with respect to such orders.

(c) Manual Orders

The requirements of the Order Audit Trail System shall be effective on July 31, 2000, for all manual orders, provided that firms shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to them and shall **not** be required to record and report information items (4) and (5) specified in Rule 6954(b) and information item (1) specified in Rule 6954(c).

(d) Rule 3110

The requirements of Rule 3110(c)(1) and Rule 3110(c)(2) shall be effective on March 1, 1999, and the requirements of Rule 3110(c)(3) shall be effective on July 31, 2000.

Endnotes

¹ See Release No. 34-39729 (March 6, 1998). A copy of the SEC's approval order has been placed on the NASD Regulation, Inc. Web Site (*see www.nasdr.com*).

² See Release No. 34-38990 (August 28, 1997), 62 FR 47096 (September 5, 1997).

³ As originally proposed, firms would have been required to pass a unique order identifier each time an order is transmitted to another firm. This information would have included a 12-character order identifier and the date on which the order was received or originated. Several commenters addressed the difficulties presented by this requirement. In response, NASD Regulation changed the

REQUIREMENTS OF NASD RULES 6950 THROUGH 6957		Electronic Orderst		Manual Orderst
RuleRef	Item or Data Element	Phase 1 (3/1/99)	Phase 2 (8/1/99)	Phase 3 (7/31/00)
6954b1	Order Identifier (Order ID)	✓	✓	✓
b2	Security Symbol	✓	✓	✓
b3	Reporting Member Market Participant Identifier	✓	✓	✓
b4	Order Receiving Department or Order Receiving Terminal ID	✓	✓	
b5	Originating Department		✓	
b6	Reporting Agent	✓	✓	✓
b7	Shares Quantity	✓	✓	✓
b8	Buy/Sell Code	✓	✓	✓
b9	Short Sale Indicator	✓	✓	✓
b10	Order Type (Market, Limit, Stop, Stop Limit)	✓	✓	✓
b11	Limit or Stop Price	✓	✓	✓
b12	Expiration Date and Time	✓	✓	✓
b13	Time In Force	✓	✓	✓
b14	Limit Order Display Indicator	✓	✓	✓
b15	Special Handling Codes	✓	✓	✓
b16	Order Received Date/Time	✓	✓	✓
b17	Program/Index Arbitrage Trade	✓	✓	✓
b18	Account Type	✓*	✓	✓*
c1	Department Routing Information (A) Order ID (B) Market Participant Identifier (MP ID) (C) Order Origination Date (D) Receiving Department ID (E) Department Received Date/Time		✓	
c2A	Electronic Routing To Non-ECN (i) Order ID (ii) MP ID (iii) MP ID of Firm Transmitted To (iv) Order Origination Date (v) Order Transmission Date/Time (vi) Number of Shares Routed		✓	
c2B	Electronic Receipt By Non-ECN (i) Order ID of Transmitting Member (ii) MP ID of Transmitting Member All Other Applicable Elements	✓ excluding (i)	✓	

REQUIREMENTS OF NASD RULES 6950 THROUGH 6957		Electronic Orderst		Manual Orderst
RuleRef	Item or Data Element	Phase 1 (3/1/99)	Phase 2 (8/1/99)	Phase 3 (7/31/00)
c3A	Electronic Routing To ECN (i) Fact That Order Transmitted To ECN (ii) Order ID (iii) MP ID (iv) MP ID of ECN Transmitted To (v) Order Origination Date (vi) Order Transmission Date/Time (vii) Order Transmission Date/Time (viii) Number of Shares Routed		✓	
c3B	Electronic Receipt By ECN (i) Fact Order Received By ECN (ii) MP ID of Transmitting Member All Other Applicable Elements	✓	✓	
c4A	Manual Route to Non-ECN (i) Fact That Order Transmitted Manually (ii) Order ID (iii) MP ID (iv) MP ID Of Firm Transmitted To (v) Order Origination Date (vi) Order Transmission Date/Time (vii) Number Of Shares Routed (viii) Bunched Order Indicator		✓	✓
c4B	Manual Receipt by Non-ECN (i) Fact That Order Received Manually (ii) MP ID Of Transmitting Firm All Other Applicable Elements			✓
c5A	Manual Route to ECN (i) Fact That Order Transmitted Manually (ii) Order ID (iii) MP ID (iv) MP ID of ECN Transmitted To (v) Order Origination Date (vi) Order Transmission Date/Time (vii) Number of Shares Routed (viii) Bunched Order Indicator		✓	✓
c5B	Manual Receipt by ECN (i) Fact That Order Received Manually (ii) MP ID of Transmitting Firm All Other Applicable Elements			✓

REQUIREMENTS OF NASD RULES 6950 THROUGH 6957		Electronic Orders†		Manual Orders†
RuleRef	Item or Data Element	Phase 1 (3/1/99)	Phase 2 (8/1/99)	Phase 3 (7/31/00)
d1	Modification Information (A) Order ID of New Order (B) Modification Date/Time (C) Order Origination Date All Other Applicable Elements	✓	✓	✓
d2	Cancellation Information (A) Order ID (B) MP ID (C) Order Origination Date (D) Cancellation Date/Time (E) Number of Shares Canceled (F) Canceled By Firm/Customer	✓	✓	✓
d3	Execution Information (A) Order ID (B) MP ID (C) Order Origination Date (D) ACT Branch/Sequence Number (E) Designation As Fully/Partially Executed (F) Number of Shares Executed And Unexecuted Shares Remaining (G) Execution Terminal ID (H) Execution Date/Time	✓	✓	✓ excluding (G)

**Account type is reportable by 3/1/1999 for electronic orders and by 7/31/2000 for manual orders only to the extent such item is available. It is fully reportable for electronic orders by 8/1/1999.*

†Elements reported by ECNs upon receipt of an order must include b1, 2, 3, 6, 7, 8, 10, 11, 12, 13, 15, and 16.

length of the order identifier from 12 to eight characters. Also, for orders transmitted electronically other than to ECNs, NASD Regulation deleted the requirement to pass the order origination date, while for orders transmitted manually and orders transmitted to ECNs, neither the order identifier nor the order origination date must be passed.

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Special NASD Notice to Members 98-34

SEC Requests Comment On Amendments To Rule 17a-5 Requiring Reports On Year 2000 Preparedness

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The Securities and Exchange Commission (SEC) is soliciting comment on temporary rule amendments to SEC Rule 17a-5 that would require broker/dealers to file two reports regarding their Year 2000 readiness. There is a short time frame for submitting comments to the SEC. *Comments must be submitted on or before April 13, 1998.*

Pertinent details of the proposed amendments are outlined below. Members are urged to read SEC Release No. 34-39724 in its entirety. The release was published in the *Federal Register*, a copy of which follows the text of this *Notice*. See 63 FR 12056 (March 12, 1998).

Questions regarding this *Notice* or Year 2000 issues should be directed to Lyn Kelly, National Association of Securities Dealers, Inc. (NASD[®]) Year 2000 Program Director, at (301) 590-6342, or send an e-mail to y2k@nasd.com. For further information about the NASD Year 2000 Program, visit the Year 2000 Web Pages on the NASD (www.nasd.com) and NASD RegulationSM (www.nasdr.com) Web Sites. All comments concerning the rule proposal described in this *Notice* should be addressed to the SEC, rather than to the NASD.

Summary Details Submission Of Comments

Comments must be submitted on or before **April 13, 1998**. The SEC is soliciting comments on any aspect of the proposed temporary amendments. (See attached *Federal Register* for specifics.) Some of these items include comment on:

- Whether \$100,000 minimum net capital is an appropriate threshold for the reporting requirement in order to meet the SEC's objectives

in collecting information about Year 2000 readiness.

- The type of content that will be addressed in the two reports. For example, should the reports include any additional material information specific to an individual broker/dealer's management of Year 2000 problems? Should broker/dealers report whether their Year 2000 plans are on schedule and, if not, the reasons for the delay? With regard to broker/dealers having to report the number and the nature of the exceptions resulting from internal and integrated or industry-wide testing, should the SEC establish a materiality threshold for determining whether an exception needs to be reported?
- Whether the SEC's desire to receive an independent public accountant's attestation of a broker/dealer's preparation for possible Year 2000 problems can be combined with, or would already be part of, independent public accountants' responsibilities, in accordance with Generally Accepted Accounting Principles.
- Whether certain sections of these reports, or the entire reports, should be publicly available. As proposed, both reports would be publicly available. Should broker/dealers be required to file an additional report in 1999 regarding the results of integrated or industry-wide testing?
- The SEC also requests anyone commenting to provide analyses and data relating to costs and benefits associated with the proposal in order to help the SEC evaluate the costs and benefits that may result from the proposed temporary rule amendment.

Summary Of Proposed Rule Amendments

As drafted, the proposed rule amendments would require broker/dealers that had a minimum net capital requirement of \$100,000 or more on December 31, 1997, to file two reports regarding their Year 2000 compliance.

First Report

Every broker/dealer with a minimum net capital requirement of \$100,000 or more as of December 31, 1997, must file the first report that describes its preparation for the Year 2000 and the steps it is taking to avoid Year 2000 problems. This report must be filed with the SEC and the broker/dealer's designated examining authority (DEA) no later than 45 days after the rule amendments are adopted by the SEC.

Second Report

A second report must be filed by every broker/dealer with a minimum net capital requirement of \$100,000 or more as of its fiscal year-end 1998 and by every broker/dealer that was required to file the first report. The second report must be filed with the SEC and the broker/dealer's DEA within 90 days after the date of the broker/dealer's 1998 fiscal year-end financial statements.

Contents Of First And Second Reports

At a minimum, the broker/dealer must discuss the following information in both its first and second reports:

1. Whether its board of directors (or similar body) has approved and funded plans for preparing and testing its computer systems for potential Year 2000 problems.
2. Whether its plans exist in writing and address all of its major computer systems throughout the world.
3. Whether it has assigned existing employees, hired new employees, or engaged third parties to provide help in avoiding Year 2000 problems and, if so, what work these individuals have done as of the date of the reports.
4. What its current progress is with respect to the following matters:
 - Awareness of potential Year 2000 problems.
 - Assessment of steps necessary to avoid Year 2000 problems.
 - Implementation of necessary steps to avoid Year 2000 problems.
 - Internal testing of software, including the number and nature of the exceptions resulting from testing.
 - Integrated or industry-wide testing with other broker/dealers, other financial institutions, customers, and vendors, including the number and nature of the exceptions resulting from testing.
 - Implementation of tested software that avoids Year 2000 problems.
5. Whether it has written contingency plans for problems occurring after December 31, 1999.
6. What levels of its management are responsible for addressing potential Year 2000 problems, including a description of each individual's Year 2000 responsibilities and a percentage estimate of the time spent by each individual on Year 2000 issues during the preceding 12-month period.
7. Identification of its contact person for Year 2000 matters.

Additional Requirement For Second Report

A broker/dealer will be required to file with its second report an attestation from an independent public accountant in which the accountant gives an opinion regarding whether there is a reasonable basis for the assertions made by the broker/dealer in its second report. See attached *Federal Register* for specific requirements.

Books And Records Advisory

In its release, the SEC also advises that a broker/dealer with computer problems caused by the Year 2000 may be deemed in violation of Rule 17a-3's requirement to have accurate books and records. Moreover, any broker/dealer that fails to make and keep current books and records would be required to notify the SEC under Rule 17a-11.

Comment letters should refer to File No. S7-7-98 and be submitted in triplicate to:

**Jonathan G. Katz, Secretary
Securities and Exchange
Commission
450 Fifth Street, N.W.
Washington, DC 20549**

Comments also may be submitted electronically to the following e-mail address: rulecomments@sec.gov. File No. S7-7-98 should be included on the subject line if e-mail is used.

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time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Watford City, ND, and to modify Class E airspace at Williston, ND, to accommodate aircraft executing the proposed GPS Rwy 30 SIAP, at Watford City Municipal Airport by creating controlled airspace at the airport and modifying controlled airspace nearby the airport. Controlled airspace extending upward from 700 to 1200 feet AGL, and controlled airspace extending upward from 1200 feet AGL, is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. Therefore this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Watford City, ND [New]

Watford City Airport, ND
(Lat. 47° 47' 45" N., long. 103° 15' 13" W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Watford City Airport.

* * * * *

AGL ND E5 Williston, ND [Revised]

Williston, Sloulin Field International Airport, ND
(Lat 48° 10' 41" N., long. 103° 38' 33" W.)
Williston VORTAC
(Lat. 48° 15' 12" N., long. 103° 45' 02" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Sloulin Field International

Airport, and within 4.0 miles each side of the Williston VORTAC 317° radial, extending from the 6.6-mile radius to 12.7 miles northwest of the airport, and within 4.0 miles each side of the 124° bearing from the airport, extending from the 6.6-mile radius to 13.4 miles southeast of the airport, and within 3.8 miles each side of the Williston VORTAC 135° radial extending from the 6.6-mile radius to 12.3 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within a 21.8-mile radius of the Williston VORTAC extending from the Williston VORTAC 172° radial clockwise to V-430, and within 39.2 miles of the Williston VORTAC extending from V-430 clockwise to V-71, and within a 60.0-mile radius of the Williston VORTAC extending from V-71 clockwise to the 172° radial of the Williston VORTAC, excluding those portions within Federal Airways.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98-6398 Filed 3-11-98; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-39724; IC-23059; IA-1704; File No. S7-7-98]

RIN 3235-AH36

Reports To Be Made by Certain Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is soliciting comment on temporary rule amendments to Rule 17a-5 under the Securities Exchange Act of 1934 ("Exchange Act") that would require certain broker-dealers to file with the Commission and their designated examining authority two reports regarding Year 2000 compliance. The reports would enable the Commission staff to report to Congress in 1998 and 1999 regarding the industry's preparedness; supplement the Commission's examination module for Year 2000 issues; help the Commission coordinate self-regulatory organizations on industry-wide testing, implementation, and contingency planning; and help increase broker-dealer awareness that they should be taking specific steps now to prepare for the Year 2000. Additionally, the Commission is issuing an advisory notice on its books and records rules relating to the Year 2000.

DATES: The comment period will expire on April 13, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rulecomments@sec.gov. Comment letters should refer to File No. S7-7-98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942-0132; Peter R. Geraghty, Assistant Director, 202/942-0177; Lester Shapiro, Senior Accountant, 202/942-0757; or Christopher M. Salter, Staff Attorney, 202/942-0148, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 2-2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

At midnight on December 31, 1999, unless the proper modifications have been made, the program logic in the vast majority of the world's computer systems will start to produce erroneous results because, among other things, the systems will incorrectly read the date "01/01/00" as being the year 1900 or another incorrect date. In addition, systems may fail to detect that the Year 2000 is a leap year. Problems can also arise earlier than January 1, 2000 as dates in the next millennium are entered into non-Year 2000 compliant programs. For example, broker-dealers operating in the U.S. securities industry could experience, among other things: (1) Computer programs not accepting settlement dates in the year 2000; (2) various computational models, such as those used for risk analysis, hedging, and derivatives pricing and trading, being inaccurate or unworkable; and (3) difficulty calculating interest payments and maturity dates for debt instruments that mature after the Year 2000. Problems also may occur due to certain software programs recognizing dates in the Year 1999 or thereafter as something other than the correct date. These problems and other software problems directly or indirectly related to the next millennium are referred to in this

release as Year 2000 Problems. Year 2000 Problems could have negative repercussions throughout the world's financial systems because of the extensive interrelationship and information sharing between U.S. broker-dealers and foreign financial firms and markets.¹ Because accurate output from computer programs is vital to a broker-dealer's recordkeeping and operations, broker-dealers currently should be taking steps to avoid Year 2000 Problems.

Accordingly, the Commission is evaluating the ability of participants in the U.S. securities industry to manage and prevent Year 2000 Problems. The Commission has identified six stages involved in the preparation for Year 2000: (1) Awareness of potential Year 2000 Problems; (2) assessment of what steps the broker-dealer must take to avoid Year 2000 Problems; (3) implementation of the steps needed to avoid Year 2000 Problems; (4) internal testing of software designed to avoid Year 2000 Problems; (5) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, and customers); and (6) implementation of tested software that will avoid Year 2000 Problems. The internal and integrated testing phases are the most difficult phases and ordinarily will require the most resources. At the time of the Commission staff's June 1997 "Year 2000 Report" to Congress, most members of the securities industry were engaged in the assessment and remediation phases of the Year 2000 effort.² Additionally, beginning in the third quarter of 1996, the Commission's Office of Compliance Inspections and Examinations has included a Year 2000 examination module in its examinations

¹ International Organization of Securities Commissions, *Statement of the IOSCO Technical Committee on Year 2000* (1997), available at <http://www.iosco.org>.

² At the request of Congressman Dingell, in June 1997, the Commission staff prepared a comprehensive report describing, in part, the extent to which the securities industry is preparing to avoid Year 2000 Problems. The Commission staff will prepare similar reports in 1998 and 1999. See Report to the Congress on the Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000 (June 1997), available at <http://www.sec.gov/news/studies/yr2000.htm>. See also Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning the Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000 Before the Subcomm. on Financial Services and Technology of the Senate Comm. on Banking, Housing, and Urban Affairs (July 30, 1997).

of broker-dealers that hold or receive customer funds or securities.

II. Proposed Changes

Rule 17a-5 under the Exchange Act, among other things, sets forth the reports that a registered broker-dealer is required to prepare and file with the Commission.³ To monitor the steps broker-dealers are taking to manage and avoid Year 2000 Problems, the Commission is proposing temporary amendments to Rule 17a-5. The amendments would require certain registered broker-dealers to file with the Commission and their designated examining authority ("DEA") two reports regarding the broker-dealer's readiness for the Year 2000. The reports will also (1) enable the Commission staff to report to Congress in 1998 and 1999 regarding the industry's preparedness, (2) supplement the Commission's examination module for Year 2000 issues, (3) help the Commission coordinate self-regulatory organizations on industry-wide testing, implementation, and contingency planning, and (4) help increase broker-dealer awareness that they should be taking specific steps now to prepare for the Year 2000.

A. Broker-Dealer's First Report

A temporary paragraph (5) would be added to subparagraph (e) of Rule 17a-5 that would require each registered broker-dealer with a minimum net capital requirement of \$100,000 or more⁴ as of December 31, 1997 to file with the Commission and its DEA a report describing the broker-dealer's preparation for the Year 2000 and the steps the broker-dealer is taking to avoid Year 2000 Problems ("First Report"). This report would evaluate the broker-dealer's actions regarding the Year 2000 as of December 31, 1997. The Commission is establishing a \$100,000 minimum net capital threshold because broker-dealers subject to this minimum net capital level likely have substantial financial exposure to the market and to customers. The \$100,000 minimum net capital threshold will require all market makers, dealers, and clearing firms to file a First Report. The Commission also is establishing a \$100,000 minimum net capital threshold because broker-dealers below this level likely rely on broker-dealers with minimum capital levels above \$100,000 to facilitate their

³ 17 CFR 240.17a-5.

⁴ The Commission estimates that approximately 2,200 of the approximately 7,800 registered broker-dealers would be required to file First and Second Reports because their net capital requirement is \$100,000 or greater.

business operations (*i.e.*, clearing functions).

The First Report would be required to be filed no later than 45 days after the Commission adopts the rule amendment. This report would review the broker-dealer's plans and preparations for the Year 2000, including, but not limited to, the areas discussed in paragraph II.C. below.

B. Broker-Dealer's Second Report

Temporary paragraph (e)(5) of Rule 17a-5 also would require each registered broker-dealer with a minimum net capital requirement of \$100,000 or more as of its fiscal year-end 1998 to file with the Commission and its DEA a report, as of the date of the broker-dealer's 1998 fiscal year-end financial statements, describing the broker-dealer's progress in addressing Year 2000 Problems ("Second Report"). In addition, each broker-dealer required to file the First Report would be required to file the Second Report regardless of its minimum net capital requirement as of its 1998 fiscal year-end. This is to ensure that the Commission can continue to monitor the progress of broker-dealers who filed the First Report but whose minimum capital requirement may have changed since December 31, 1997. As previously mentioned, the Commission is establishing a \$100,000 minimum net capital threshold because broker-dealers subject to this minimum net capital level likely have substantial financial exposure to the market and to customers. The \$100,000 minimum net capital threshold will require all market makers, dealers, and clearing firms to file a Second Report.

A broker-dealer would file the Second Report with the Commission and its DEA within 90 days after the date of the broker-dealer's 1998 fiscal year-end financial statements. The Second Report would include, but not be limited to, the areas discussed in paragraph II.C. below.

C. Areas Addressed in First and Second Reports

The First and Second Reports would be required to discuss the following areas:

(1) Whether the board of directors (or similar body) of the broker-dealer has approved and funded plans for preparing and testing the broker-dealer's computer systems for potential computer problems caused by Year 2000 Problems;

(2) Whether the broker-dealer's plans exist in writing and address all of a broker-dealer's major computer systems wherever located throughout the world;

(3) Whether the broker-dealer has assigned existing employees, hired new employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, the work that these individuals have performed as of the date of each report;

(4) What is the broker-dealer's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are: (i) awareness of potential Year 2000 Problems; (ii) assessment of what steps the broker-dealer must take to avoid Year 2000 Problems;⁵ (iii) implementation of the steps needed to avoid Year 2000 Problems;⁶ (iv) internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing; (v) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, customers, and vendors), including the number and the nature of the exceptions resulting from such testing; and (vi) implementation of tested software that will avoid Year 2000 Problems;

(5) Whether the broker-dealer has written contingency plans in the event that, after December 31, 1999, it has computer problems caused by Year 2000 Problems;⁷ and

(6) Identify what levels of the broker-dealer's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a description of these individuals' responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the broker-dealer shall identify a contact person regarding Year 2000 matters.

⁵ In addition to assessing what steps it should take to make its computer systems Year 2000 compliant, the broker-dealer must communicate with its vendors and significant customers about their Year 2000 readiness.

⁶ Broker-dealers should have plans to have all their hardware and software changes in place by December 1998 so that they can conduct testing, including industry-wide testing, during 1999.

⁷ Contingency planning should provide for adequate protections to ensure the success of critical systems if interfaces fail or unexpected problems are experienced with operating systems and infrastructure software. In addition, the broker-dealer's contingency plan should provide for the failure of external systems that interact with the broker-dealer's computer systems. For example, the broker-dealer's plan should anticipate the failure of a vendor that services mission critical applications and should provide for the potential that a significant customer experiences difficulty due to Year 2000.

The list above is the minimum criteria that should be addressed in the First Report. The Second Report should address the above criteria as well as make certain specific assertions described in paragraph II.D. below. A broker-dealer should include any additional material information concerning its management of Year 2000 Problems that will help the Commission and DEAs assess the broker-dealer's readiness for the Year 2000.

D. Independent Public Accountant's Attestation To Be Attached to the Second Report

Broker-dealers would have to file with the Second Report an attestation from an independent public accountant ("Attestation"). The Attestation would take the form of a letter that would give the independent public accountant's opinion whether there is a reasonable basis for the broker-dealer's assertions in the Second Report regarding the areas specified in proposed Rule 17a-5(e)(5)(v)(A) through (G). Specifically, the Second Report would have to include assertions by the broker-dealer responding to the following and the independent public accountant would have to attest to the following:⁸

(1) Whether the broker-dealer has developed written plans for preparing and testing the broker-dealer's computer systems for potential Year 2000 Problems;

(2) Whether the board of directors (or similar body) of the broker-dealer has approved the plans described in (1) above;

(3) Whether a member of the broker-dealer's board of directors (or similar body) is responsible for the execution of the plans described in (1) above;

(4) Whether the broker-dealer's plans described in (1) above address the broker-dealer's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions. (These provisions do not apply to subsidiaries, affiliates, and divisions of the broker-dealer that are regulated by U.S. or foreign regulators other than the Commission);

(5) Whether the broker-dealer has assigned existing employees, hired new

⁸ The Commission notes that some of the areas that the broker-dealer would be required to respond to in subsection (v) of the proposed rule overlap with the areas set forth in subsection (iv). The areas addressed in subsection (iv) ask for additional information from the broker-dealer for which the Commission is not seeking an independent public accountant's attestation. The overlap exists because the Commission wants to narrowly tailor the specific assertions on which the independent public accountant must report in the attestation attached to the Second Report.

employees, or engaged third parties to implement the broker-dealer's plans described in (1) above;

(6) Whether the broker-dealer or third party has conducted internal testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the broker-dealer has determined as a result of the internal testing that the firm has modified its software to correct Year 2000 Problems; and

(7) Whether the broker-dealer has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the broker-dealer has determined as a result of the external or industry-wide testing that the firm has modified its software to correct Year 2000 Problems.

The Attestation only pertains to the areas discussed above. The Commission does not expect the Attestation to address assertions in the First and Second Report that are not pertinent to proposed Rule 17a-5(e)(5)(v)(A) through (G). The Attestation would be required to be filed with the Second Report.

III. Notice Regarding Current Books and Records Requirements

Rule 17a-3 under the Exchange Act, among other things, requires registered broker-dealers to make and keep current certain books and records relating to the broker-dealer's business.⁹ Current books and records are an integral part of the Commission's regulatory program. Among other things, these records help the Commission to assess the financial stability of a broker-dealer and to protect investors. Any broker-dealer whose computer systems have not been modified to address Year 2000 Problems may have records that are inaccurate or not current.

Consequently, the Commission advises broker-dealers that a broker-dealer with computer systems that have Year 2000 Problems may be deemed not to have accurate and current records and be in violation of Rule 17a-3. Accurate and current books and records are essential for a broker-dealer to operate in a safe manner. The Commission also reminds broker-dealers that Rule 17a-11 under the Exchange Act requires every broker-dealer to promptly notify the Commission of its failure to make and keep current books and records.¹⁰

IV. Request for Comments

The Commission solicits commenters' views on any aspect of the proposed temporary amendments to Rule 17a-5. Initially, the Commission seeks comment on whether the term "Year 2000 Problems" should be modified to account for any other specific potential computer problems that may occur directly or indirectly due to the Year 2000. The Commission also seeks comment on the \$100,000 net capital threshold, and whether that amount is the appropriate threshold to meet the Commission's objectives as stated in this release. The Commission also seeks comments on the areas that will be addressed in the two reports. For example, should the reports include any additional material information specific to an individual broker-dealer's management of Year 2000 Problems? What additional material information could be included? For example, should broker-dealers report whether their Year 2000 plans are on schedule and, if not, the reasons for the delay? With regard to broker-dealers having to report the number and the nature of the exceptions resulting from internal and integrated or industry-wide testing, should the Commission establish a materiality threshold for determining whether an exception needs to be reported? If so, how should the Commission determine such a threshold? Regarding management responsibility for Year 2000 plans, should a particular officer of the broker-dealer be required to sign the reports?

The Commission believes that the Attestation could be rendered in accordance with the accounting profession's Statements on Standards for Attestation Engagements.¹¹ The Commission seeks commenters' views on that issue, and on any alternative means that would provide the Commission with an independent assessment of the status and adequacy of a broker-dealer's preparation for possible Year 2000 Problems. Specifically, the Commission seeks commenters' views on whether the Commission's desire to receive an independent public accountant's attestation of a broker-dealer's preparation for possible Year 2000 Problems can be combined with, or would already be part of, independent public accountants' responsibilities, in accordance with Generally Accepted Accounting Principles, to opine on whether a broker-dealer can continue as a going concern.

The Commission also seeks comment on whether the Attestation should be prepared by the same independent public accountant who prepares the annual audit of the broker-dealer's 1998 fiscal year-end financial statements. As proposed, the First and Second Reports would be publicly available. The Commission seeks comment on whether certain sections of these reports, or the entire reports, should not be publicly available. Further, the Commission is seeking comment as to whether broker-dealers should be required to file an additional report in 1999 regarding the results of its participation in integrated or industry-wide testing for Year 2000 Problems. Finally, do the concerns discussed in this release apply to other financial institutions over which the Commission has regulatory responsibilities? Should the Commission, for example, require registered investment advisers and investment companies to file reports to the Commission regarding Year 2000 compliance?

V. Costs and Benefits of the Proposed Amendment and Its Effect on Competition

The Commission requests that commenters provide analyses and data relating to costs and benefits associated with the proposal herein. This information will assist the Commission in its evaluation of the costs and benefits that may result from the proposed temporary rule amendment. The Commission understands that the two reports regarding the broker-dealer's readiness for the Year 2000 would impose some costs on broker-dealers.¹² The Commission, however, believes that these costs are necessary and justified in light of the Commission's responsibilities under the federal securities laws. Year 2000 Problems could harm investors. The required reports will inform the Commission of the preparations broker-dealers subject to the temporary rule are taking to avoid Year 2000 Problems. The reporting requirements also may help broker-dealers understand that they should be taking steps now to avoid Year 2000 Problems.

In addition, Section 23(a)(2) of the Exchange Act requires the Commission, in amending rules under the Exchange Act, to consider the anti-competitive effects of such amendments, if any.¹³ The Commission has considered the proposed temporary amendment in light

¹² See *infra* Section VII for the Commission's estimate of the costs that the proposed temporary amendment to Rule 17a-5 will impose on affected broker-dealers.

¹³ See 15 U.S.C. 78w(a)(2).

⁹ 17 CFR 240.17a-3.

¹⁰ 17 CFR 240.17a-11(d).

¹¹ AICPA Professional Standards, Vol. 1, 2491-2800.

of the standards cited in Section 23(a)(2), and believes preliminarily that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Indeed, the Commission believes that the proposed temporary rule amendment is necessary to enable the Commission to monitor the steps broker-dealers are taking to manage and avoid Year 2000 Problems. The Commission solicits commenters' views regarding the effects of the proposed temporary rule amendment on competition, efficiency, and capital formation. The Commission also seeks comments on the proposed temporary rule amendment's impact on the economy on an annual basis, including any empirical data.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), in accordance with the provisions of the Regulatory Flexibility Act,¹⁴ regarding the rules contained in the proposed temporary amendment to Rule 17a-5 under the Exchange Act. As discussed more fully in the analysis, some of the broker-dealers that the proposed temporary amendment would affect are small entities, as defined by the Commission's rules. The IRFA states that the purpose of the proposed temporary rule is for the Commission to ascertain what steps broker-dealers are taking to avoid Year 2000 Problems.

The IRFA sets forth the statutory authority for the proposed temporary rule. The IRFA also discusses the effect of the proposed rule on broker-dealers that are small entities pursuant to Rule 240.0-10 under the Exchange Act. For purposes of the proposed temporary rule, a small entity is a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to section 240.17a-5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.¹⁵ Based on FOCUS reports filed for the fourth quarter of 1996, there are approximately 7,800 registered

broker-dealers, of which approximately 5,300 are small entities. Based on FOCUS data for the fourth quarter of 1996, only about 600 broker-dealers that are small entities would be required to file the two reports on Year 2000 compliance. Thus, by limiting the coverage of the temporary rule amendment to firms with minimum net capital requirements of \$100,000 or more, the Commission is exempting over 88% of small entities potentially subject to the temporary rule amendment.

The IRFA states that the proposed temporary rule would impose new reporting requirements because certain broker-dealers would have to file with the Commission and their DEA two reports regarding the broker-dealer's readiness for the Year 2000. The Commission estimates that, on average, a respondent would devote approximately 50 employee hours of preparation time to each report and 20 employee hours of discussion time with the independent public accountant who prepares the Attestation. Additionally, the Commission estimates that, on average, a respondent would pay approximately \$25,000 to the independent public accountant for the preparation of the Attestation. The IRFA also states that the proposed temporary rule would not impose any other reporting, recordkeeping, or compliance requirements, and that the Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed temporary rule.

The analysis discusses the various alternatives considered by the Commission in connection with the proposed temporary rule that might minimize the effect on small entities, including: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed temporary rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule or any part thereof, for small entities. As noted above, the Commission proposes to exempt over 88% of small entities subject to the temporary rule amendment. The Commission has determined that it is not feasible to further clarify, consolidate, or simplify the proposed temporary rule for small entities. The Commission also believes that it would be inconsistent with the purpose of the rule proposal to exempt additional small entities from the proposed temporary rule or to use

performance standards to specify different requirements for small entities. As discussed in the IRFA, small broker-dealers with a minimum net capital requirement of \$100,000 or more would be required to file the two reports because they likely are market makers, dealers, or clearing firms with substantial financial exposure to the market and customers.

In the IRFA, the Commission encourages the submission of written comments with respect to any aspect of the IRFA. In particular, the Commission is interested in comments that specify costs of compliance with the proposed temporary rule, and suggest alternatives that would accomplish the objective of proposed temporary rule. A copy of the IRFA may be obtained by contacting Christopher M. Salter, The Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5-1, Washington, D.C. 20549, (202) 942-0772.

VII. Paperwork Reduction Act

The proposed temporary amendment to Rule 17a-5 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,¹⁶ and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: "Proposed Temporary Amendment to Rule 17a-5."

The proposed temporary amendment would require information collection because certain broker-dealers would have to file two reports with the Commission and their DEA. The first report would need to be filed no later than 45 days after the Commission adopts the rule amendments and the second report would need to be filed within 90 days after the date of the broker-dealer's 1998 fiscal year-end financial statements. These reports are necessary for the Commission to monitor the steps broker-dealers are taking to manage and avoid Year 2000 Problems. Based on FOCUS reports filed for the fourth quarter of 1996, there are approximately 7,800 registered broker-dealers, of which approximately 2,200 would be subject to the proposed temporary amendment. The Commission believes that for business reasons prudent broker-dealers should already have developed plans for potential computer problems caused by Year 2000 Problems. Therefore, the Commission believes that broker-dealers subject to the proposed temporary

¹⁴ 5 U.S.C. 603.

¹⁵ 17 CFR 240.0-10(c)(1-2).

¹⁶ 44 U.S.C. 3501 *et seq.*

amendment would incur only those costs necessary to prepare the two reports required by the temporary amendment. While the amount of time needed to comply with the temporary rule amendment would vary from a minimum of 8 hours to a maximum of 100 hours, the Commission estimates that, on average, a respondent would devote approximately 50 employee hours of preparation time to each report and 20 employee hours of discussion time with the independent public accountant who prepares the Attestation. Additionally, a broker-dealer would have to pay additional fees, above the fees it will have to pay for its annual audit, to an independent public accountant for preparation of the Attestation. While the Commission estimates that the amount of additional accounting fees to comply with the temporary rule amendment would vary from a minimum of \$5,000 to a maximum of \$200,000, the Commission estimates that, on average, a respondent would spend approximately \$25,000 for the preparation of the Attestation. It is important to note that these costs would only be incurred once. The temporary rule amendment would not impose a continuing requirement.

A broker-dealer with a minimum net capital requirement of \$100,000 or greater as of December 31, 1997 and the date of its 1998 fiscal year-end financial statements would be required to file the reports described in the proposed temporary amendment.¹⁷ As proposed, all reports received by the Commission pursuant to the proposed temporary amendment would not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- (ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and

¹⁷ Due to a change in its business, it is possible that a broker-dealer would only have to file one of the reports required by the temporary rule amendment. For example, a firm that has a minimum net capital requirement of \$5,000 as of December 31, 1997 and \$100,000 as of the date of its 1998 fiscal year financial statements would not have to file the First Report, but it would have to file the Second Report.

(iv) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms for information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the following persons: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and refer to File No. S7-7-98. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

VIII. Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 17(a) and 23(a) thereof, 15 U.S.C. 78o(c)(3) and 78w, the Commission proposes to amend § 240.17a-5 of Title 17 of the Code of Federal Regulation in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

Text of Proposed Rule Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for Part 240 is revised to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. By amending § 240.17a-5 by adding paragraph (e)(5) to read as follows:

§ 240.17a-5 Reports to be made by certain brokers and dealers.

* * * * *

(e) *Nature and form of reports.* * * *

(5)(i) For purposes of this section, the term *Year 2000 Problem* shall include any erroneous result caused by:

(A) Computer software incorrectly reading the date "01/01/00" as being the year 1900 or another incorrect year;

(B) Computer software incorrectly identifying a date in the Year 1999 or any year thereafter;

(C) Computer software failing to detect that the Year 2000 is a leap year; or

(D) Any other computer software error that is directly or indirectly caused by paragraph (e)(5)(i)(A), (B), or (C) of this section.

(ii) A broker or dealer with a minimum net capital requirement of \$100,000 or greater as of December 31, 1997 shall file a report on the broker-dealer's preparation for Year 2000 Problems. The report shall address each topic in paragraph (e)(5)(iv) of this section. The report shall be filed no later than 45 days after the Commission adopts the rule amendments.

(iii) A broker or dealer with a minimum net capital requirement of \$100,000 or greater as of the date of its 1998 fiscal year-end financial statements shall file a report on the broker-dealer's preparation for Year 2000 Problems. In addition, each broker or dealer subject to paragraph (e)(5)(ii) of this section shall file a report pursuant to this paragraph (iii) regardless of its minimum net capital requirement as of the date of its 1998 fiscal year-end financial statements. The report shall address each topic in paragraphs (e)(5)(iv) and (v) of this section. The report shall be filed within 90 days after the date of the broker or dealer's 1998 fiscal year-end financial statements.

(iv) The reports prepared pursuant to paragraphs (e)(5)(ii) and (iii) of this section shall include a discussion of the following: A broker-dealer should include any additional material information in both reports concerning its management of Year 2000 Problems that will help the Commission and the designated examining authorities assess the broker-dealer's readiness for the Year 2000:

(A) Whether the board of directors (or similar body) of the broker-dealer has approved and funded plans for preparing and testing the broker-dealer's computer systems for potential computer problems caused by Year 2000 Problems;

(B) Whether the broker-dealer's plans exist in writing and address all of a broker-dealer's major computer systems wherever located throughout the world;

(C) Whether the broker-dealer has assigned existing employees, hired new

employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, describe the work that these individuals have performed as of the date of each report;

(D) What is the broker-dealer's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are:

(1) Awareness of potential Year 2000 Problems;

(2) Assessment of what steps the broker-dealer must take to avoid Year 2000 Problems;

(3) Implementation of the steps needed to avoid Year 2000 Problems;

(4) Internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing;

(5) Integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, and customers), including the number and the nature of the exceptions resulting from such testing; and

(6) Implementation of tested software that will avoid Year 2000 Problems;

(E) Whether the broker-dealer has written contingency plans in the event, that after December 31, 1999, it has computer problems caused by Year 2000 Problems; and

(F) Identify what levels of the broker-dealer's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a description of these individual's responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the broker-dealer shall identify a contact person regarding Year 2000 matters.

(v) The report prepared pursuant to paragraph (e)(5)(iii) of this section shall also include assertions in response to the following and an opinion by an independent public accountant attesting to whether there is a reasonable basis for the broker or dealer's assertions in response to the following:

(A) Whether the broker-dealer has developed written plans for preparing and testing the broker-dealer's computer systems for potential Year 2000 Problems;

(B) Whether the board of directors (or similar body) of the broker-dealer has approved the plans described in paragraph (e)(5)(v)(A) of this section;

(C) Whether a member of the broker-dealer's board of directors (or similar body) is responsible for the execution of

the plans described in paragraph (e)(5)(v)(A) of this section;

(D) Whether the broker-dealer's plans described in paragraph (e)(5)(v)(A) of this section address the broker-dealer's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions. (Subsidiaries, affiliates, and divisions that are regulated by U.S. or foreign regulators other than the Commission are exempted from these provisions;)

(E) Whether the broker-dealer has assigned existing employees, hired new employees, or engaged third parties to implement the broker-dealer's plans described in paragraph (e)(5)(v)(A) of this section;

(F) Whether the broker-dealer or third party has conducted internal testing, whether such testing is on schedule in accordance with the broker-dealers' plan described in paragraph (e)(5)(v)(A) of this section, and whether the broker-dealer has determined as a result of the internal testing that the firm has modified its software to correct Year 2000 Problems; and

(G) Whether the broker-dealer has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the broker-dealers' plan described in paragraph (e)(5)(v)(A) of this section, and whether the broker-dealer has determined as a result of the external or industry-wide testing that the firm has modified its software to correct Year 2000 Problems.

(vi) The broker or dealer shall file two copies of each report prepared pursuant to paragraphs (e)(5)(ii) and (e)(5)(iii) of this section with the Commission's principal office in Washington, D.C. and one copy of each report with the broker-dealer's designated examining authority. The reports required by paragraphs (e)(5)(ii) and (e)(5)(iii) of this section will be publicly available.

Dated: March 5, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98-6342 Filed 3-12-98; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-39726; File No. S7-8-98]

RIN 3235-AH42

Year 2000 Readiness Reports To Be Made by Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is soliciting comment on proposed temporary Rule 17Ad-18 under the Securities Exchange Act of 1934 ("Exchange Act"). The proposed temporary rule would require all non-bank registered transfer agents to file with the Commission at least one report regarding its Year 2000 readiness. The initial report would be due no later than 45 days after the Commission adopts this rule. The follow-up reports would be due on August 31, 1998, and on August 31, 1999. The follow-up reports would include an attestation by an independent public accountant that would give the Independent Public Accountant's opinion whether there is a reasonable basis for the transfer agent's assertions in the reports. Additionally, the Commission is issuing an advisory notice on its transfer agent record retention and recordkeeping requirements relating to the Year 2000.

DATES: The comment period will expire on April 13, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rulecomments@sec.gov. Comment letters should refer to File No. S7-8-98 this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, 202/942-4187; Thomas C. Etter, Jr., Special Counsel, 202/942-0178; or Jeffrey S. Mooney, Special Counsel, 202/942-4174, Division of Market Regulation, Securities and Exchange Commission,

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NASD Notice to Members 98-35

SEC Approves Changes To Continuing Education Rules

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On March 3, 1998, the Securities and Exchange Commission (SEC) approved changes to the Continuing Education rules of the National Association of Securities Dealers, Inc. (NASD[®]) and other self-regulatory organizations (SROs) (see SEC Release No. 34-39712; File No. SR-NASD-98-03; and 63 FR 11939, March 11, 1998). The approved rule change as it appears in the *Federal Register* is attached to this *Notice*. The changes will be effective July 1, 1998, resulting in the following:

- Development of a new Regulatory Element computer-based training module related to the specific needs of registered principals. The new training scenarios will be made more realistic through the use of audio and video techniques.
- Registered persons will no longer graduate from the program after their 10th anniversaries in the business. Registered persons will be required to participate in the appropriate Regulatory Element on the second anniversary of their initial securities registration and every three years thereafter throughout their careers.
- There will be a one-time grandfather provision from the Regulatory Element for those persons registered for 10 years or more in their respective registration as of July 1, 1998.
- Member firms are required to specifically focus on supervisory needs in conducting their annual analysis of training needs, and if it is determined that there is a specific need for supervisory training for registered principals, it must be addressed in the Firm Element training plan.

Questions regarding these changes may be directed to John Linnehan, Director, Continuing Education, NASD Regulation, Inc., at (301) 208-2932 or Daniel M. Sibears, Vice President, Member Regulation, NASD RegulationSM, at (202) 728-6911.

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STORAGE:

This section is revised to read as follows: Appropriate accounting data is stored in electronic media and paper form (e.g., purchase orders, memoranda, subsidiary ledgers, invoices, and other miscellaneous records).

RETRIEVABILITY:

This section is revised to read as follows: These records are retrieved by the individual's name or social security number.

RETENTION AND DISPOSAL:

This section is revised to read as follows: The records are maintained and disposed of in accordance with the General Services Administration, *General Records Schedule 6*, 7, 9, and 20.

RECORD SOURCE CATEGORIES:

This section is revised to read as follows: The sources for the records are purchase orders, vouchers, invoices, contracts, and electronic records (e.g., Travel Manager, Frequent Travel Solutions, Inc.) or other paper records submitted by employees, vendors, and other sources, including claims filed by witnesses in SEC actions.

SEC-29 is amended as follows:

SEC-29**RETENTION AND DISPOSAL:**

Subsystem A: This section is revised to read: Paper records are retained in-house for two (2) years from the office's date of receipt of the complaint/inquiry then transferred to the Federal Records Center for storage. Records sent to the Federal Records Center that *do not* relate to law enforcement matters are maintained for two (2) additional years (for a total of four (4) years from the office's date of receipt). Paper records that *do* relate to an enforcement matter are maintained for an additional four (4) years at the Federal Records Center for a total of six (6) years from the office's date of receipt.

Subsystem B: This section is revised to read: Paper records are maintained in-house upon expiration of the Chairman's tenure in office. In accordance with 17 CFR 200.80f, certain files are forwarded to the Federal Records Center or transferred to the National Archives and Records Administration.

Subsystem C: This section is revised to read: Paper records are maintained in-house for six months from the office's date of receipt and destroyed periodically thereafter.

Subsystem D: This section is revised to read: A computerized record of searches and transactions is maintained

in an on-line database and on data cartridges. Electronic records are maintained indefinitely. Database files are saved on the cartridges, which are sent to the Commission's off-site storage vendor.

Dated: March 5, 1998.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-6175 Filed 3-10-98; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39712; File Nos. SR-CBOE-97-68; SR-MSRB-98-02; SR-NASD-98-03; and SR-NYSE-97-33]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the Chicago Board Options Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers, Inc., and New York Stock Exchange, Inc. Relating to Continuing Education Requirements

March 3, 1998.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² on December 30, 1997, January 21, 1998, January 22, 1998, and December 8, 1997, the Chicago Board Options Exchange ("CBOE"), Municipal Securities Rulemaking Board ("MSRB"), National Association of Securities Dealers, Inc. ("NASD"), and New York Stock Exchange, Inc. ("NYSE"), respectively, submitted to the Securities and Exchange Commission ("Commission") proposed rule changes modifying the continuing education requirements of registered persons.³ The proposed rule changes were published for comment in the **Federal Register** on January 29, 1998.⁴ The Commission received five

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ The NYSE, CBOE, and MSRB submitted technical amendments to the proposed rule language. See letter from James E. Buck, Senior Vice President, NYSE, to Gail Marshall, Special Counsel, Division of Market Regulation, SEC, dated February 10, 1998; letter from Lawrence J. Bresnahan, Assistant Vice President, Department of Financial and Sales Practice Compliance, CBOE, to Gail Marshall, SEC, dated January 23, 1998; and letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Katherine A. England, Assistant Director, SEC, dated January 21, 1998. The CBOE and MSRB proposed rule language, as amended, is virtually identical to that of the NYSE, which was published in Securities Exchange Act Release No. 39577 (January 23, 1998), 63 FR 4513 (January 29, 1998).

⁴ See Securities Exchange Act Release Nos. 39574 (January 23, 1998), 63 FR 4510 (January 29, 1998)

comment letters regarding expanding the continuing education program. For the reasons discussed below, the Commission is approving the proposed rule changes.

II. Background

The Securities Industry/Regulatory Council on Continuing Education ("CE Council") was created in November 1993 and is comprised of six self-regulatory organizations ("SROs") and thirteen broker-dealers to represent the interests and needs of a wide cross-section of the industry. The SROs include the American Stock Exchange,⁵ CBOE; MSRB; NASD; NYSE; and the Philadelphia Stock Exchange.⁶ The CE Council facilitates the industry/regulatory coordination of the administration and future development of the Continuing Education ("CE") Program. The Council, on October 17, 1997, announced that it was recommending changes to the CE Program to strengthen the requirements for registered persons⁷ and implement a new program specifically for industry managers and supervisors.

The CE Program, which is uniform within the industry, consists of two parts, a Regulatory Element and a Firm Element.

A. The Regulatory Element

The Regulatory Element requires registered persons to participate in interactive computer-based training at specified intervals and encompasses regulatory and compliance issues, sales practice concerns, and business ethics. The Regulatory Element program

(SR-NASD-98-03); 39575 (January 23, 1998), 63 FR 4507 (January 29, 1998) (SR-CBOE-97-68); 39576 (January 23, 1998), 63 FR 4509 (January 29, 1998) (SR-MSRB-98-02); and 39577 (January 23, 1998), 63 FR 4513 (January 29, 1998) (SR-NYSE-97-33).

⁵ The American Stock Exchange, Inc. ("Amex") has also filed with the Commission a proposed rule change to modify its rules regarding the continuing education of registered persons. That rule proposal is duplicative of the rule proposals being approved today. Accordingly, the Commission, in a separate order, is approving, on an accelerated basis, the Amex's proposed rule change. See Securities Exchange Act Release No. 39711 (March 3, 1998).

⁶ In addition, the Commission and the North American Securities Administrators Association each have liaisons assigned to the Council.

⁷ For purposes of the proposed rules, the term "registered person" means any person required to be registered under the rules of the applicable SRO, including members and registered representatives, but does not include any person whose activities are limited solely to the transaction of business on the floor of a national securities exchange with members or registered broker-dealers. When used with reference to the MSRB, however, the term "registered person" means any person registered with the appropriate enforcement authority as a municipal securities representative, municipal securities principal, municipal securities sales principal, or financial and operation principal pursuant to MSRB Rule G-3.

applies generally to all registered persons and currently does not distinguish among registration types or categories. The existing program contains content common to registered representatives, supervisors, and other registration categories. The CBOE, MSRB, NASD, and NYSE have proposed rule changes for the development of a new program component specifically for supervisors. In addition, it is contemplated that in the future, specific programs may be implemented for other registration categories (e.g., Series 6; investment company products/variable contracts limited representative). The proposed rule changes allow the SROs to require new programs as appropriate with customized training for various registration categories, with the supervisor's program being the first initiative.

The proposed amendments also address the time frames at which registered persons must participate in the Regulatory Element computer-based training. Currently, the SROs' rules require registered persons to complete the training on three occasions, *i.e.*, their second, fifth and tenth registration anniversaries. After a person is registered for more than ten years, he or she graduates from the program and is not required to participate further in the Regulatory Element. However, if at any time a registered person is subject to certain disciplinary actions, then the registered person is required to re-enter the Regulatory Element program. The SROs have proposed to require ongoing participation in the Regulatory Element throughout a registered person's career, specifically, on the second registration anniversary and every three years thereafter, with no graduation from the program.

The SROs, however, have proposed a one-time exemption for persons currently graduated from the program by providing that those persons who have been registered for more than ten years as of the effective date of the proposed rule, and who have not been the subject of a disciplinary action during the past ten years, would continue to be excluded from the required ongoing participation in the Regulatory Element. Persons registered in a supervisory capacity would have to have been registered in a supervisory capacity for more than 10 years in order to be covered by this one-time provision for graduation from participation in the program. Therefore, those supervisors who have graduated from the program requirements based on their initial registration date but who have not completed 10 years as a supervisor

would be required to re-enter the program.

B. The Firm Element

The Firm Element requires that each member conduct annually an analysis of their training needs and administer such training, as is appropriate, to their registered persons who have direct contact with customers and the immediate supervisors of such registered persons, on an ongoing basis. Topics must be specifically related to their business, such as new products, sales practices, risk disclosure, and new regulatory requirements and concerns. The proposed rule changes require members to also focus specifically on supervisory training needs in conducting their analysis of training needs, and if it is determined that there is a specific need for supervisory training, it must be addressed in the Firm Element training plan.

III. Comments Received

The Commission received five comment letters on the proposal to expand the CE Program.⁸ Three of the five commenters were concerned that the CE Program has not been in existence long enough to determine that it should be expanded upon.⁹ Since its inception on July 1, 1995, more than 225,000 registered persons have participated in the Regulatory Element. The NASD provides the CE Council with statistical performance reports on how these registered persons do on the training.¹⁰ These reports provide the CE Council with data on how different registrations (*i.e.* Series 7, Series 6, Principal, and other) perform on each of the training subject areas (*i.e.*,

⁸ Although the rule proposals were virtually identical for each SRO, the comment letters referred particularly to File No. SR-NASD-98-03. See letter from Deborah A. Barragan, Compliance Officer, Chase Securities Inc., to Margaret H. McFarland, Deputy Secretary, SEC dated February 18, 1998 ("Chase Letter"); letter from Lisa Clifford, Compliance Officer, Training & Education, Jefferson Pilot Financial, to Secretary, SEC, dated February 19, 1998 ("Jefferson Pilot Letter"); letter from Kevin Devereaux, Vice President, Deputy Director Compliance, BancBoston Securities Inc., to Office of the Secretary, SEC, dated February 12, 1998 ("BancBoston Letter"); letter from Erwin J. Dugasz, Jr., Compliance Manager, Nationwide Investment Services Corporation, to Secretary, SEC, dated February 13, 1998 ("Nationwide Letter"); and letter from Chuck Thompson, Summit Financial Concepts, Inc., to Gail Marshall, SEC, dated February 26, 1998 ("Summit Letter").

⁹ See Chase Letter; Jefferson Pilot Letter; and BancBoston Letter.

¹⁰ The NASD also sends a performance report to each firm showing the firm the industry average and the firm score, which is how well the different types of registered employees of the firm performed on the training. The rules of the SROs require the firms to review this feedback in the ongoing analysis of their training needs for the Firm Element.

communications with the public, suitability, handling customer accounts, and business conduct). The Commission believes that three years of statistical information provides the CE Council and the SROs sufficient information to make a determination that changes to the Program would be beneficial to the industry. Moreover, the Commission believes the SROs have an obligation to apply the information from these performance reports in their oversight of the CE Program. The Commission, therefore, believes it is appropriate for the SROs to determine that the "one size fits all approach" is not the most effective training method and to begin establishing specialized training based upon a person's registration (e.g., Series 7, Series 6, or Principal).¹¹

The Regulatory Element computer-based training is administered by the Sylvan Learning Systems ("Sylvan"). Two commenters expressed concern that the Regulatory Element program was being expanded without regard for the existing problems with Sylvan regarding scheduling and accessing the training sessions. The NASD acknowledged that in September of 1997 there were problems in downloading the training sessions to Sylvan.¹² The NASD has since implemented improvements to its systems to eliminate large-scale download problems and will continue to isolate and correct any random download problems.¹³ Moreover, Sylvan has implemented software and procedural changes to the appointment scheduling process to make it more efficient.¹⁴

One commenter was concerned that the lack of an ongoing graduation provision would significantly increase the costs associated with training a registered employee.¹⁵ While the Commission is sympathetic to the additional costs of the continued training of registered employees, the Commission, however, believes the additional costs is worth both the

¹¹ One commenter noted that their registered employees found the Regulatory Element too oriented to the Series 7 representatives. See Chase Letter. The Commission believes that this specialized program for Principals is the first step in establishing a Regulatory Element training program that is more specialized and therefore more effective.

¹² See letter from Mary L. Schapiro, President, NASD Regulation, to Member Firms, dated October 3, 1997.

¹³ See letter from Mary L. Schapiro, President, NASD Regulation, to Member Firms, dated January 20, 1998.

¹⁴ *Id.*

¹⁵ See Nationwide Letter. Nationwide estimated that it would cost \$525.00 to send an employee to the Regulatory Element training over a period of 20 years.

benefit to investors and to the industry of having registered persons regularly trained in regulatory and ethical standards.

One commenter questioned whether the new CE training for Principals would be appropriate for a registered Principal that had no supervisory duties.¹⁶ The SROs have indicated that the new CE training for Principals is not being designed to address only personnel issues or office supervision. The training will also cover such topics as communications with the public and client accounts.

IV. Discussion

The Commission believes that the SRO's proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, national securities associations, and the MSRB, and, in particular, the respective requirements of Section 6(b)(5), 15A(b)(6), and 15B(b)(2)(C) of the Act.¹⁷ Sections 6(b)(5), 15A(b)(6), and 15B(b)(2)(C) require, among other things, that the rules of an exchange, association, or the MSRB, respectively, be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Commission further believes that the proposed rule changes also are consistent with the respective provisions of Sections 6(c)(3)(B), 15A(g)(3)(A), and 15B(b)(2)(A) of the Act,¹⁸ each of which makes it the responsibility of an exchange, association, or the MSRB to prescribe standards of training, experience, and competence for persons associated with SRO members.

The Commission also believes that the proposed rule change is consistent with the purposes underlying Section 15(b)(7) of the Act, which generally prohibits a registered person from effecting any transaction in, or inducing the purchase or sale of, any security unless such registered person meets the standards of training, competence and other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

The Commission believes that the SRO's proposed rule changes are an appropriate means of maintaining and

reinforcing the initial qualification standards required of a registered person and will significantly enhance the continuing education program by requiring all registered persons to participate in the Regulatory Element throughout their securities industry careers.

IV. Effective Date

The SRO's proposed rule changes (File Nos. SR-CBOE-97-68; SR-MSRB-98-02; SR-NASD-98-03; and SR-NYSE-97-33) will become effective July 1, 1998.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to national securities exchanges, national securities associations, and the MSRB.¹⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule changes (File Nos. SR-CBOE-97-68; SR-MSRB-98-02; SR-NASD-98-03; and SR-NYSE-97-33) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

[FR Doc. 98-6176 Filed 3-10-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39721; File No. SR-CHX-98-04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Examination Requirements for Securities Traders

March 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 18, 1998, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission "SEC" or "Commission" the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX.² The

¹⁹In addition, in approving these rule proposals, the Commission notes that it has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f)

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.3-30(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² On March 3, 1998, the CHX amended its proposal to correct a legal reference in the CHX's

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend Rule 3, "Training and Examination of Registrants," or Article VI, "Restrictions and Requirements," of the CHX's rules by adopting Interpretation and Policy .02, "Persons off the floor," which will establish examination requirements for certain associated persons of CHX members for which the CHX is the Designated Examining Authority ("DEA")³ Specifically, proposed Interpretation and Policy .02 will require associated persons at applicable firms who execute, make trading decisions with respect to, or otherwise engage in proprietary or agency trading of equities, preferred securities, or convertible debt securities to successfully complete the Uniform Registered Representative Exam, Series 7. Proposed Interpretation and Policy .02 will not apply to any associated person who is subject to the examination requirements of Interpretation and Policy .01, "Floor Member Organizations," of CHX Article VI, Rule 3.⁴ To accommodate the proposed change, the CHX also will revise the text of CHX Article VI, Rule 3, to provide that the CHX may require that associated persons of members must successfully complete a training course or examination, or both, in connection with registration.

Copies of the proposed rule change are available at the CHX and at the Commission.

discussion of the statutory basis for the proposed rule change. See Letter from Joseph M. Klauke, Foley & Lardner, to Yvonne Fraticelli, Division of Market Regulation, Commission, dated March 3, 1998 ("Amendment No. 1"). Specifically, Amendment No. 1 replaces a reference to Section 6(c)(3)(8) under the Act with a reference to Section 6(c)(3)(B) under the Act.

³ The proposal is limited to associated persons of members for which CHX is the DEA because associated persons of members with a DEA other than the CHX already are subject to the examination requirements of the self-regulatory organization which is the DEA for the member firm. According to the CHX, the proposal is designed to close a loophole in examination requirements that exists currently for off-floor associated persons of CHX members for which the CHX is the DEA. Telephone conversation between Patricia Levy, General Counsel, CHX, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on February 25, 1998.

⁴ Interpretation and Policy .01 establishes examination requirements for persons on the CHX floor, including floor brokers, market makers, and co-specialists.

¹⁶ See Summit Letter.

¹⁷ 15 U.S.C. §§ 78f(b)(5), 78o-3(b)(6), and 78o-4(b)(2)(C).

¹⁸ 15 U.S.C. §§ 78f(c)(3)(B), 78o-3(g)(3)(A) and 78o-3(g)(3)(A), and 78o-4(b)(2)(A).

NASD Notice to Members 98-36

As of March 25, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPSSM).

Symbol	Name	Coupon	Maturity
AMSD.GG	American Standard Inc	7.125	02/15/03
AMSD.GH	American Standard Inc	7.625	02/15/10
KVCO.GA	Kevco Inc	10.375	12/01/07
AMMB.GC	Amresco Inc	9.875	03/15/05
GNT.GA	Green Tree Financial Corp	10.250	06/01/02
FCY.GA	Furon Co	8.125	03/01/08
XQ.GA	Quality Foods Centers Inc	8.700	03/15/07
ICIX.GB	InterMedia Communications Inc	11.250	07/15/07
JJSA.GB	Jitney-Jungle Stores	10.375	09/15/07
CVC.GK	Cablevision Systems Corp	8.125	08/15/09
SBGI.GC	Sinclair Broadcasting Grp	8.750	12/15/07
DINE.GA	Advantica Restaurants Grp Inc	11.250	01/15/08
CALL.GD	Nextel Communications Inc	10.650	09/15/07
CALL.GE	Nextel Communications Inc	9.750	10/31/07
IRDM.GA	Iridium LLC	13.000	07/15/05
GCR.GC	Gaylord Container Corp	9.750	06/15/07
HMHP.GB	HMH Properties Inc	8.875	07/15/07
RVW.GH	Riverwood Intl Corp	10.625	08/01/07
RADL.GA	Randall's Food Mkts	9.375	07/01/07
SPRT.GA	Sprint Spectrum L.P.	12.500	08/15/06
VALJ.GA	ValuJet Inc.	10.250	04/15/01
WCIS.GB	WCI Steel Inc.	10.000	12/01/04
ACF.GA	AmeriCredit Corp	9.250	02/01/04
CKRM.GA	Clark R & M Inc	8.375	11/15/07
KOPI.GB	Koppers Industry Inc	9.875	12/01/07
UC.GB	United Cos Finl Corp	9.350	11/01/99
UC.GC	United Cos Finl Corp	7.000	07/15/98
OSIA.GB	Outdoor Systems Inc	8.875	06/15/07
NEGX.GC	National Energy Group	10.750	11/01/06
STLL.GA	Stellex Industries Inc	9.500	11/01/07
PCKB.GA	Packard BioScience Inc	9.375	03/01/07
MGCN.GA	MGC Communications Inc	13.000	10/01/04
QSTC.GA	Quest Communication Int'l Inc	0.000	10/15/07
FMY.GA	Fred Meyer Inc	7.375	03/01/05
FMY.GB	Fred Meyer Inc	7.450	03/01/08
FMY.GC	Fred Meyer Inc	7.150	03/01/03
MDM.GA	MedPartners Inc	7.375	10/01/06
MDM.GB	MedPartners Inc	6.875	09/01/00

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of March 25, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of March 25, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
ALBR.GA	AllBritton Communications Co	11.500	08/15/04
RHR.GA	Rohr Inds Inc	9.250	03/01/17
NAV.GD	Navistar Intl Transn Corp	6.250	03/01/98
WS.GB	Weiron Stell Corp	11.500	03/01/98
WMAS.GA	Western Mass Electric Co	6.750	03/01/98
NMK.GL	Niagara Mohawk Power Corp	6.875	04/01/03
NMK.GP	Niagara Mohawk Power Corp	6.875	03/01/01
OEC.GA	Ohio Edison	7.500	08/01/02
OEC.GB	Ohio Edison	8.750	02/15/98
OEC.GC	Ohio Edison	8.625	09/15/03
OEC.GF	Ohio Edison	6.875	09/15/99
OEC.GG	Ohio Edison	7.375	09/15/02
OEC.GH	Ohio Edison	6.375	04/01/00
TEXN.GA	Texas New Mexico Pwr Co	8.700	09/01/06
TEXN.GB	Texas New Mexico Pwr Co	9.625	07/01/14
TEXN.GC	Texas New Mexico Pwr Co	10.000	07/01/17
ASD.GD	American Standard Building System Inc	11.375	05/15/04
EX.GA	Exide Corp	10.750	12/15/02
UIS.GD	Unisys Corp	9.500	07/15/98
RVWD.GA	Revlon Worldwide Corp	0.000	03/15/98
WOL.GB	Wainoco & Oil Corp	12.000	08/01/08
GH.GB	General Host Corp	11.500	02/15/02
CHK.GG	Chesapeake Energy Corp	8.500	03/15/12
CHK.GF	Chesapeake Energy Corp	7.875	03/15/04
OEC.GD	Ohio Edison	8.250	04/01/02
OEC.GE	Ohio Edison	8.750	06/15/22
OEC.GI	Ohio Edison	6.875	04/01/05
OEC.GJ	Ohio Edison	7.875	04/01/23
TEXN.GD	Texas New Mexico Power Co	9.250	09/15/00
CTP.GB	Central Maine Power Co	8.500	09/15/01
NMK.GI	Niagara Mohawk Power Corp	8.000	06/01/04
NMK.GJ	Niagara Mohawk Power Corp	8.500	07/01/23
NMK.GK	Niagara Mohawk Power Corp	7.375	08/01/03
NMK.GM	Niagara Mohawk Power Corp	6.625	07/01/05
NMK.GN	Niagara Mohawk Power Corp	7.875	04/01/24
NMK.GO	Niagara Mohawk Power Corp	5.875	09/01/02
NMK.GQ	Niagara Mohawk Power Corp	7.750	05/15/06
CTP.GE	Central Maine Power Company	7.875	06/01/23

As of March 25, 1998, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
ACFI.GA	ACF.GA	ACF Industries	11.600	05/15/00
CDIG.GE	CVC.GB	CSC Holdings Inc	9.875	02/15/13
CDIG.GH	CVC.GC	CSC Holdings Inc	9.875	04/01/23
CDIG.GA	CVC.GE	CSC Holdings Inc	9.250	11/01/05
CDIG.GF	CVC.GF	CSC Holdings Inc	10.500	05/15/16
CDIG.GB	CVC.GG	CSC Holdings Inc	9.875	05/15/06
CDIG.GC	CVC.GI	CSC Holdings Inc	7.875	12/15/07
CDIG.GG	CVC.GJ	CSC Holdings Inc	7.875	02/15/18
CDIG.GD	CVC.GK	CSC Holdings Inc	8.125	08/15/09

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASD RegulationSM 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.

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NASD Notice to Members 98-37

Memorial Day: Trade Date–Settlement Date Schedule

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Memorial Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock MarketSM and the securities exchanges will be closed on Monday, May 25, 1998, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
May 18	May 21	May 26
19	22	27
20	26	28
21	27	29
22	28	June 1
25	Markets Closed	—
26	29	2

*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."

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Disciplinary Actions

Disciplinary Actions Reported For April

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (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, April 20, 1998. The information relating to matters contained in this *Notice* is current as of the end of March 25.

Firm Expelled, Individual Sanctioned

Feltman & Co. (Atlanta, Georgia) and **Jack E. DeLong, Jr. (Registered Principal, Dunwoody, Georgia)**. The firm was censured, fined \$100,000, and expelled from NASD membership. DeLong was censured, fined \$30,000, and barred from association with any NASD member as a financial and operations principal. The sanctions were based on findings that the firm permitted six individuals to conduct a securities business without being registered with the NASD and failed to update its Form BD in a timely manner to reflect that it had replaced its financial and operations principal. In addition, the firm, acting through DeLong, failed to maintain complete, current, and accurate books and records, conducted a securities business while failing to maintain its minimum required net capital, and filed FOCUS reports Part I and II that materially overstated its net capital.

DeLong has appealed this action to the National Adjudicatory Council (NAC) and the sanctions imposed against him are not in effect. The findings and sanctions imposed in the decision as to DeLong may be increased, decreased, modified, or reversed by the NAC.

Firm Suspended, Individual Fined

Ko Securities, Inc. (Seattle, Washington) and **Terrance Y. Yoshikawa (Registered Principal, Seattle, Washington)** were fined \$10,000, jointly and severally. In addition, the firm was suspended from proprietary trading and market making for five business days and Yoshikawa must attend a compliance conference with NASD Market Regulation staff. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a January 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm and Yoshikawa concealed the true ownership of a common stock on five occasions to prevent the firm from falling below its minimum required net capital. Furthermore, in an attempt to reduce the risk of, or to prevent the firm from experiencing net capital difficulties, the firm and Yoshikawa sold the stock from the firm's inventory account to two accounts at the firm owned by Yoshikawa, and shortly thereafter repurchased the stock into the firm's inventory account at an agreed upon time and at essentially the same terms.

Ko Securities, Inc., has appealed this action to the U.S. Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

Firms Fined, Individuals Sanctioned

Global Equities Group, Inc. (New York, New York) and **Michael Henry Christ (Registered Principal, Lynbrook, New York)** submitted an Offer of Settlement pursuant to which they were censured and fined \$40,000, jointly and severally, and the firm was fined an additional \$10,000. Christ was suspended from association with any NASD member in any capacity for 10 business days

and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to report or to report accurately transactions to the Automated Confirmation Transactions SystemSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting.

In addition, the NASD found that the firm, acting through Christ, failed to report to the NASD statistical and summary information relating to written customer complaints received by the firm, permitted an individual to perform duties as a registered person while the individual's registration status was deemed to be inactive, failed to maintain books and records to demonstrate compliance with the NASD Continuing Education rules, and failed to implement, maintain, and enforce a supervisory system that was reasonably designed to achieve compliance with the NASD's rules to detect and prevent the above violations.

Greater Metropolitan Investment Services, Inc. (Mendham, New Jersey) and **James T. Patten (Registered Principal, Bernardsville, New Jersey)** were fined \$55,000, jointly and severally. Patten was censured and fined \$175,000 individually, suspended from association with any NASD member as a registered representative for one year, and suspended in a principal capacity for two years. In addition, Patten must not associate with any NASD member in any capacity until he requalifies by exam. The NAC affirmed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Patten intentionally reported fictitious and substantive transactions to The Nasdaq Stock MarketSM (Nasdaq[®]) at or near the close of the

market in order to affect the closing price of the securities. In addition, Patten effected transactions between accounts that he owned and controlled which involved no change in beneficial ownership, and published and circulated reports of purchase and sale transactions which he knew or should have known were non-bona fide. Furthermore, the firm and Patten violated the firm's restriction agreement with the NASD by effecting more than an occasional transaction per month in the firm's investment account without obtaining prior approval to modify the agreement and failed to enforce supervisory procedures to detect and deter marking the close activity.

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

Firm And Individual Fined ProEquities, Inc. (Birmingham, Alabama) and **Nancy C. Alcorn (Registered Principal, Birmingham, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Alcorn, failed to enforce and maintain adequate supervisory procedures to ensure compliance with the NASD's Continuing Education requirements, and allowed three individuals to maintain their representative registrations with the firm although the individuals were not actively engaged in the securities business of the firm. The findings also stated that the firm, acting through Alcorn, allowed an individual to effect transactions in customers' accounts when he was not properly registered with the NASD.

Firms Fined

Deutsche Morgan Grenfell/C.J. Lawrence, Inc. (New York, New York) submitted an Offer of Settlement pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely and accurately report to ACT Nasdaq and Over-The-Counter securities. The findings also stated that the firm failed to establish, maintain and enforce adequate written supervisory procedures with respect to its trade reporting.

East Shore Partners, Inc. (Melville, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which it was censured, fined \$12,500, and required to immediately revise 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 received and executed short sale orders without making an affirmative determination and executed an order for shares of stock incorrectly marked as a long sale order instead of a short sale order. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures.

H. J. Meyers & Company, Inc. (Rochester, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$16,000. 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 in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures designed to

achieve compliance with the applicable securities laws and regulations regarding the limit order protection interpretation and trade reporting.

Morgan Stanley & Company, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$26,000. 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 in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures.

Piper Jaffray, Inc. (Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$13,300, required to remit \$7,597 in profits, and required to undertake to immediately revise its written supervisory procedures relating to the short sale and Small Order Execution SystemSM (SOESSM) rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report short sale transactions to ACT and executed short sale transactions at or below the inside bid in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures.

Sutro & Company, Inc. (San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$17,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of finding

that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain and enforce adequate written supervisory procedures.

Individuals Barred Or Suspended

Jerard Basmagy (Registered Principal, Middletown, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in all principal capacities for six months, and ordered to requalify by exam as a general securities principal. Without admitting or denying the allegations, Basmagy consented to the described sanctions and to the entry of findings that, in connection with his member firm's participation in public offerings, distributions of common stock, and financial and underwriting activities, Basmagy failed to establish, implement, maintain, and enforce adequate supervisory procedures.

Howard Berger (Registered Principal, Roslyn Heights, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Berger consented to the described sanctions and to the entry of findings that he, acting on behalf of a member firm, permitted a registered person to perform duties while his registration status was inactive due to his failure to timely complete an NASD Continuing Education requirement. The findings also stated that Berger, acting on behalf of a member firm, failed to report to the NASD statistical and summary information relating to customer com-

plaints received by the firm, and failed to adopt, maintain, and enforce adequate written supervisory procedures and systems.

Otto M. Bruun (Registered Representative, Marysville, Washington) was censured and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Seattle District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Bruun submitted a false reimbursement claim to his member firm, received a check for \$6,095, and retained the funds.

George C. Bryant, II (Registered Representative, Bridgeport, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$1,000,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bryant consented to the described sanctions and to the entry of findings that he misappropriated \$259,800 in funds from the account of a public customer. According to the findings, checks were drawn on the customer's account. Bryant requested that he be allowed to hand-deliver these checks to the customer. Instead, they were deposited into Bryant's personal checking account.

Martin J. Cunnane, Jr. (Registered Representative, Woodside, New York) was censured, fined \$40,000, and suspended from association with any NASD member in any capacity for three years. The SEC affirmed the sanctions following appeal of a March 1997 NBCC decision. The sanctions were based on findings that Cunnane opened accounts for public customers without authorization and effected unauthorized trades in each account.

David Alan Dunn (Registered Principal, Bellevue, Nebraska) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for three years. Without admitting or denying the allegations, Dunn consented to the described sanctions and to the entry of findings that he recommended and executed securities transactions for a public customer without a reasonable basis for believing the transactions were suitable for the customer in view of the nature and size of the investments and the customer's financial situation and needs. The findings also stated that Dunn participated in private securities transactions without obtaining written approval from his member firm.

Richard J. Eaton (Registered Representative, West Chester, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eaton consented to the described sanctions and to the entry of findings that he effected the sale of stock from the accounts of public customers and caused his member firm to issue drafts totaling \$20,028.72 against the accounts without the prior request or authorization of the customers. The findings also stated that Eaton failed to deliver the drafts to the customers, endorsed the drafts over to himself, and deposited the drafts into his bank account without the prior authorization or consent of the customers.

Ludwig Jay Eisenkramer (Registered Representative, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member

in any capacity for 15 business days. Without admitting or denying the allegations, Eisenkramer consented to the described sanctions and to the entry of findings that he exercised discretionary power and effected transactions in the account of a public customer without obtaining prior written authorization from the customer and acceptance of the discretionary account from his member firm.

James D. Forrest (Registered Representative, Colleyville, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Forrest consented to the described sanctions and to the entry of findings that he withdrew \$34,260.73 from a public customer's mutual fund and converted the funds to his own use and benefit without the customer's knowledge or consent. The findings also stated that Forrest induced a customer to purchase a variable life insurance policy by using the cash value of an existing policy and providing the customer with an insurance update form that contained omissions and misrepresentations regarding the anticipated yield and value of the policies.

Furthermore, the NASD found that Forrest induced a customer to withdraw \$38,000 from an existing variable annuity and to invest those funds in a single premium fixed annuity, and failed to disclose that there was a surrender charge associated with the withdrawal from the annuity. The NASD also determined that Forrest induced a customer to purchase shares of a trust fund by misrepresenting that the dividends from the fund would be adequate to pay the premiums for an existing life insurance policy.

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

Mark Michael Furman (Registered Representative, Pompano Beach, Florida) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Furman participated in private securities transactions and failed to notify his member firm of such transactions. Furman also failed to respond to NASD requests for information.

Stephen J. Gluckman (Registered Representative, Los Angeles, California) was censured, fined \$55,000, and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Gluckman participated in private securities transactions without providing written notice to his member firm prior to participating in such transactions.

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

Howard Gostfrand (Registered Principal, Aventura, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Gostfrand consented to the described sanctions and to the entry of findings that he made misrepresentations to a public customer to discourage the customer

from selling shares of stock from the account over which he had trading authority.

Stephen R. Hardage (Registered Representative, Costa Mesa, California) was censured, fined \$41,000, suspended from association with any NASD member in any capacity for 30 days, ordered to pay \$152,000 in restitution to a public customer, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Hardage recommended to a public customer purchases of highly speculative oil and gas limited partnerships without having reasonable grounds for believing that they were suitable for the customer in view of her investment objectives, financial situation, circumstances, and needs.

Hardage's suspension began November 17, 1997, and concluded December 16, 1997.

Charles M. Hollis (Registered Representative, Spartanburg, South Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$90,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hollis consented to the described sanctions and to the entry of findings that he changed the address of record of an insurance policy he sold to a public customer, secured a \$18,000 loan against the policy without the customer's knowledge or authorization, and converted the proceeds of the loan to his own use and benefit.

Dell R. Hughes (Registered Representative, Broken Arrow, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for one week, and

required to requalify by exam as an investment company and variable contracts products representative. Without admitting or denying the allegations, Hughes consented to the described sanctions and to the entry of findings that, in connection with a public customer's purchase of a variable annuity product, he provided a document that contained misleading information. According to the findings, the document stated that the customer's initial deposit of \$83,229.61 in the variable annuity would grow to approximately \$166,000.00 by the end of five years.

John Richard Huntebrinker (Registered Principal, Wildwood, Missouri), Patrick Michael Kelly (Registered Representative, Highlands Ranch, Colorado), and David Keith VanHouten (Registered Principal, Denver, Colorado) submitted Offers of Settlement pursuant to which Huntebrinker was censured, fined \$12,000, and suspended from association with any NASD member in any principal capacity for one year. Kelly was censured, fined \$1,000, and suspended from association with any NASD member in any capacity for five days. VanHouten was censured, suspended from association with any NASD member in any capacity for 90 days, and barred from association with any NASD member in any principal capacity. In addition, VanHouten must pay \$75,000 in restitution to public customers and submit to additional supervision by his member firm for six months following the suspension. Thereafter, VanHouten and his member firm must submit a report to the NASD detailing the additional supervision over VanHouten's activities.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Huntebrinker, Kelly, and VanHouten, in connection with the purchase of recommended

securities by public customers, employed devices to defraud customers by recommending and urging customers to buy speculative securities by making baseless price predictions and predictions of returns. The findings also stated that the respondents engaged in improper conduct inconsistent with just and equitable principles of trade, intentionally employed devices to defraud customers by making untrue statements of material facts, and recommended that customers purchase and hold securities without a reasonable basis.

VanHouten's suspension will begin May 18, 1998, and will conclude August 14, 1998.

Frank J. Kelly (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$257,165.80, barred from association with any NASD member in any capacity, and required to pay \$37,841.45 in restitution to a member firm. Without admitting or denying the allegations, Kelly consented to the described sanctions and to the entry of findings that he falsified insurance applications on behalf of individuals and submitted the forms to his member firms for the purpose of obtaining commission payments. Furthermore, in the course of the scheme to defraud, the NASD found that Kelly forged an individual's signature without the person's knowledge, consent, or authorization. The findings also stated that Kelly failed to respond to NASD requests for information.

Michael S. Kerr (Registered Representative, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Kerr consented to the described sanctions and to the entry of findings

that he misrepresented to a public customer the amount of loss incurred on the sale of a municipal security. The findings also stated that Kerr made misrepresentations to a customer regarding sales charges on the redemption and purchase of mutual funds.

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

Donald James Kuehne (Registered Representative, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kuehne consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Kuehne failed to fully respond to NASD requests for information.

Tammy S. Kwikkel-Elliott (Registered Representative, Jackson, Missouri) was censured, fined \$5,000, and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Kansas City DBCC decision. The sanctions were based on findings that Kwikkel-Elliott submitted a promotional materials reimbursement request form under false pretenses to her member firm and received reimbursement funds of \$879.60.

Dan Lee Lawrence (Registered Representative, San Marcos, California) submitted an Offer of Settlement pursuant to which he was

censured and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Lawrence consented to the described sanctions and to the entry of findings that he failed to provide written notification to his member firms that he was opening an account with another firm, and failed to notify the executing firm of his association with the member firms.

Gregory Scott LeSavoy (Registered Representative, Concord, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, LeSavoy consented to the described sanctions and to the entry of findings that he recommended and effected for the account of a public customer purchases and sales of securities without reasonable basis for believing that the transactions were suitable for the customer and without the prior knowledge or consent of the customer.

Stephen Frederick Lim (Registered Representative, Danville, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$8,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Lim consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Christopher Mormando (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any capacity, required to disgorge \$286 in commissions, and required to pay \$30,904 in restitution to public customers. Without admitting or denying the allegations, Mormando consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without the prior knowledge, authorization, or consent of the customers.

James Pellizzi (Registered Representative, Melville, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$667,637.82, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pellizzi consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf. The findings also stated that Pellizzi failed to respond to NASD requests for information and to appear for an on-the-record interview.

Jose Santos Perez (Associated Person, Baltimore, Maryland) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Perez consented to the described sanctions and to the entry of findings that he provided his member firm with a false social security number so that his employment records were incorrect.

John L. Prokell (Registered Representative, Laguna Niguel, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$26,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Prokell consented to the described sanctions and to the entry of findings that he made untrue statements and omissions of material facts in connection with the purchase of securities. The findings also stated that Prokell recommended to a public customer the purchase of securities without having reasonable grounds for believing that they were suitable for the customer. Prokell also failed to respond to NASD requests for information.

Matthew Brian Proman (Registered Representative, Oceanside, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Proman consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf. The findings also stated that Proman failed to respond to NASD requests to appear for an on-the-record interview or to respond to NASD requests for information.

James C. Rich (Registered Representative, Battle Creek, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$500,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rich consented to the described sanctions and to the entry of findings that he forged variable annuity redemption request forms of a public customer and converted \$112,000 to his own use and benefit.

Donna R. Roach (Registered Principal, Murrieta, California) was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 business days. The NBCC affirmed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Roach took possession and control of public customer checks totaling \$160,000 in connection with the sale of limited partnership interests and deposited the checks into a bank account that she controlled, thereby placing those funds at risk.

Arthur Lee Ruby (Registered Principal, Overland Park, Kansas) and **Robert Cavin McAlexander (Registered Principal, Ballwin, Missouri)** submitted Offers of Settlement pursuant to which Ruby was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for two years. McAlexander was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ruby employed devices to defraud public customers by recommending and urging customers to buy speculative securities through baseless price predictions and predictions of returns.

The NASD also determined that Ruby, in recommending and urging customers to purchase securities, engaged in improper conduct inconsistent with just and equitable principles of trade with respect to the transactions. The findings also stated that Ruby and McAlexander omitted or misstated material information in sales of securities to customers and failed to have a reasonable basis for their recommendations of these securities.

Kevin Michael Ruby (Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for three years. Without admitting or denying the allegations, Ruby consented to the described sanctions and to the entry of findings that, in connection with purchases of recommended securities by public customers, Ruby made baseless price predictions and predictions of returns, and made untrue statements and omissions of material facts. The findings also stated that Ruby recommended that customers purchase securities without having a reasonable basis.

Robert L. Shatles (Registered Principal, Northport, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, jointly and severally with a member firm, and suspended from association with any NASD member in any principal capacity for 10 days. Without admitting or denying the allegations, Shatles consented to the described sanctions and to the entry of findings that Shatles, acting on behalf of a member firm, failed to establish, maintain, and enforce proper supervisory procedures governing the review and monitoring of customer complaints and incoming correspondence. The findings also stated that Shatles, acting on behalf of a member firm, failed to exercise reasonable and proper supervision over an individual.

Floyd Lee Shilanski (Registered Representative, Anchorage, Alaska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for five months, and required to requalify by exam for any capacity in which he has registered.

Without admitting or denying the allegations, Shilanski consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm.

Valery Shtraykher (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,500, suspended from association with any NASD member in any capacity for three years, and subjected to special supervision for two years should he decide to associate with a member firm. Without admitting or denying the allegations, Shtraykher consented to the described sanctions and to the entry of findings that he made material misrepresentations and omissions to public customers regarding a stock. The findings also stated that Shtraykher failed to execute sell orders for customers, thereby imposing upon them unauthorized positions and failed to respond completely to an NASD request for information.

Paul A. Signorelli, Sr. (Registered Representative, Wall, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$250,000, barred from association with any NASD member in any capacity, and required to pay \$127,060 in restitution to a customer. Without admitting or denying the allegations, Signorelli consented to the described sanctions and to the entry of findings that he withdrew \$58,000 from the accounts of public customers, deposited the funds into the bank account of a business entity he established and controlled, and used the funds for his own use and benefit. The findings also stated that Signorelli received \$50,000 from a public customer for a trust fund and instead used the funds for his own use and benefit without the prior

knowledge, authorization, or consent of the customer.

Furthermore, the NASD determined that Signorelli failed to notify his member firm that he was engaging in the private practice of law, received \$16,560 from a public customer with the understanding that he would invest the funds in a company that Signorelli had dealt with on prior occasions, and instead deposited the funds into his personal checking account and used the funds for his own benefit. The NASD also found that Signorelli signed authorizations and notarized the signatures even though the signatures were not genuine and he was not qualified to act as a notary public. Signorelli also failed to update his Form U-4 to reflect criminal charges and submitted a Form U-4 that contained false and misleading information regarding the aforementioned arrest.

John C. Simonetti (Registered Principal, Ronkonkoma, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$7,500, suspended from association with any NASD member in any principal capacity for six months, and ordered to requalify by exam as a general securities principal. Without admitting or denying the allegations, Simonetti consented to the described sanctions and to the entry of findings that, in connection with his member firm's participation in public offerings, distributions of common stock, and financial and underwriting activities, Simonetti failed to establish, implement, maintain, and enforce adequate supervisory procedures.

Mark Slakter (Registered Representative, Upper Saddle River, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member

in any capacity for 11 months. Without admitting or denying the allegations, Slakter consented to the described sanctions and to the entry of findings that he prepared sales scripts that contained only positive information regarding the issuers and securities to which they related and failed to disclose any adverse news or description of risk factors. Furthermore, the scripts contained materially false and misleading information, improper price predictions, and inappropriate comparisons to other securities. The findings also stated that Slakter executed a Form U-4 that was false, failed to disclose his employment with two member firms, and misrepresented his position with a non-securities related business.

Slakter's suspension began March 30, 1998, and will conclude June 29, 1999.

Marc Gruntwagin Swensen (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a trader. Without admitting or denying the allegations, Swensen consented to the described sanctions and to the entry of findings that Swensen, acting through member firms, effected transactions in securities at prices that were unfair and unreasonable.

Swensen's suspension began March 16, 1998, and concluded April 14, 1998.

Charles W. Tanner, Jr. (Registered Representative, Butler, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam for any

capacity in which he is to be registered upon the conclusion of the suspension. Without admitting or denying the allegations, Tanner consented to the described sanctions and to the entry of findings that he affixed signatures purporting to be that of the customers to receipts and insurance applications without their prior authorization or consent. The findings also stated that Tanner sent to a public customer a letter inaccurately describing her variable insurance policy as being a savings account and life insurance contract and made specific projections of future value without having a reasonable basis for such projections. Furthermore, the NASD determined that Tanner removed a page from an insurance policy issued to a customer and failed to deliver the remainder of the policy.

Aaron Joseph Tapia (Registered Representative, Staten Island, New York) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tapia arranged to have an impostor take the Series 7 exam on his behalf. Tapia also failed to respond to NASD requests to appear for an on-the-record interview.

Giuseppe Temperino (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to disgorge \$259,117.23 in commissions. Without admitting or denying the allegations, Temperino consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf. The findings also stated that Temperino failed to appear for an on-the-record interview.

Michael Trocchio (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any capacity, required to disgorge \$250 in commissions, and required to pay \$26,305.50 in restitution to customers. Without admitting or denying the allegations, Trocchio consented to the described sanctions and to the entry of findings that he executed securities transactions in the accounts of public customers without the prior knowledge, authorization, or consent of the customers. The findings also stated that Trocchio failed to follow customers' instructions to sell securities.

Robert L. Wallace (Registered Principal, Naples, Florida) was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 60 days. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Wallace caused an advertisement that contained misleading, unwarranted, and exaggerated statements to be published in a newspaper.

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

Bruce David Warshaw (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$810,000 in restitution. Without admitting or denying the allegations, Warshaw consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide prior written notice to, or receive the

approval of, his member firm to engage in these transactions. The findings also stated that Warshaw failed to exercise due diligence in connection with the offer of sales of securities to ascertain the financial status of the stock, including, but not limited to, its assets, liabilities, and net worth. Furthermore, the NASD determined that Warshaw recommended and effected the purchase of securities for public customers without having a reasonable basis for making the recommendations based upon their other security holdings, financial situation, and needs.

Keith Youngswick (a/k/a Keith Young) (Registered Representative, Great Neck, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$56,900, barred from association with any NASD member in any capacity, and ordered to pay \$34,500 in restitution to customers. Without admitting or denying the allegations, Youngswick consented to the described sanctions and to the entry of findings that he made fraudulent and material misrepresentations and material omissions to public customers in order to induce the customers to purchase stock in a private placement offering. The findings also stated that Youngswick solicited customers to purchase securities when the customers did not qualify in the placement offering under state securities laws and were in violation of the Blue Sky laws.

Individual Fined

Harris Felsen (Registered Representative, Coral Springs, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$13,000. Without admitting or denying the allegations, Felsen consented to the described sanctions and to the entry of findings that he purchased shares of stock that traded at a pre-

mium in the immediate aftermarket, in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation. The findings also stated that Felsen failed to provide written notification to his member firms that he was opening an account with another firm and failed to provide written notification to the executing firms of this association with the member firms prior to opening the account.

Decisions Issued

The following decisions have been issued by the DBCC and have been appealed to the NAC as of February 27, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Harry Gliksman (Registered Principal, Beverly Hills, California) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Gliksman recommended to a public customer the purchase of securities without having reasonable grounds for believing that the recommendations were suitable for the customer.

Gliksman has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Keith L. Mohn (Registered Representative, West Bloomfield, Michigan) was censured, fined \$52,222, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mohn participated in private securities transactions while failing to

give written notice to his member firm of his intention to engage in such activities.

Mohn has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Jere Thomas Wickert (Registered Principal, Chicago, Illinois) was censured, fined \$9,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Wickert recommended and effected index options transactions in customers' accounts in the absence of a reasonable basis for believing that the recommendations were suitable for the customers in light of their investment objectives, experience, financial situations, or needs.

Wickert has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Louis A. Williams (Registered Representative, Tucson, Arizona) was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Williams executed transactions in the accounts of public customers pursuant to implied oral discretionary authority without obtaining written discretionary authority from the customers or written acceptance of the accounts as discretionary by his member firm. In addition, Williams failed to submit correspondence to his member firm for review, preventing the firm from fulfilling its regulatory obligation. Furthermore, Williams prepared order tickets for transactions in customer accounts that contained information he knew to be false.

Williams has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD 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 these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

James M. Dean (Registered Representative, Atlanta, Georgia) was named as a respondent in a complaint alleging that he forged a public customer's signature on a letter purporting to direct the firm to: withdraw \$15,000 from the customer's investment in a private placement, deposit those funds in a securities account that Dean controlled at another broker/dealer, and pay a portion of the money to Dean as "a non-interest bearing loan." Subsequently, Dean withdrew additional amounts from that account and converted the money to his own use and benefit.

The complaint also alleges that Dean deposited into his own securities account \$25,000 from a customer that was intended to be invested in a private placement. Subsequently, Dean converted a portion of those funds to his own use and benefit. In addition, Dean failed to advise his member firm that he opened an account with another firm, and failed to provide written notification to the executing firm of his association with the member firm. Furthermore, the complaint alleges that Dean failed to respond to NASD requests for information.

Fiero Brothers, Inc. (New York, New York), Falcon Trading Group, Inc. (Boca Raton, Florida), Sovereign Equity Management Corp. (Boca Raton, Florida), John Fiero (Registered Principal, Jersey City, New Jersey), Steven Carlson (Registered Principal, Denver, Colorado), and Glen Vittor (Registered Principal, Boca Raton, Florida) have been charged with manipulation, violation of rules relating to short sales, and violating standards of commercial honor and just and equitable principles of trade. The complaint alleges that, during January and February 1995, they engaged in a manipulative "bear raid" to drive down the price of 10 Nasdaq securities. The complaint also alleges that the respondents engaged in short selling in proprietary accounts without making the requisite affirmative determination that the stock could be borrowed.

Darren Ginas (Registered Representative, East Islip, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted to disclose material information about securities in which he was soliciting transactions and that he made predictions concerning the future price of securities without having a reasonable basis in connection with securities transactions.

Emmanuel Alexander Lagpacan (Registered Representative, Walnut Creek, California) was named as a respondent in an NASD complaint alleging that he sold mutual funds, government securities, and annuities to customers, then used the proceeds to purchase real estate in the name of, and to pay the expenses of, a corporation which Lagpacan controlled. In addition, the complaint alleges that Lagpacan sold fictitious certificates of deposit to a customer and misappropriated the proceeds from those sales to other

uses. Finally, the complaint alleges that Lagpacan failed to respond to NASD requests for information.

Mario Maurice Shane (Registered Representative, Mountain View, California) was named as a respondent in an NASD complaint alleging that he effected securities transactions in the account of a public customer without the customer's knowledge and consent.

Michael D. Shaw (Registered Principal, Tampa, Florida) was named as a respondent in a complaint alleging he executed, or caused to be executed, the purchase of 1,000 units of stock in the account of a public customer without the prior knowledge, authorization, or consent of the customer.

Firm Expelled For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations Atlanta One n/k/a Michael & Co., Irvine, California

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.

Bondnet Brokerage, Inc., Greenwich, Connecticut (March 3, 1998)

Chinese & American Investments, Inc., New York, New York (March 3, 1998)

Emerald Securities, L.L.C., Houston, Texas (March 3, 1998)

Lacroix Alexander Financial Corporation, Newport Beach, California (March 3, 1998)

NHP Real Estate Securities, Inc., Washington, DC (March 16, 1998)

Westhagen & Westhagen, Inc., Ripon, Wisconsin (March 3, 1998)

WR Lazard, Laidlow, Inc., New York, New York (March 3, 1998)

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

Brian Altongy, Leominster, Massachusetts

John S. Claudino, Brooklyn, New York

Richard E. Epstein, Boca Raton, Florida

Marian S. Gargano, Atlantic City, New Jersey

Steven W. Martin, Whitehouse, Texas

Kevin M. McCarthy, Irvine, California

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

Michael Lipkin, New York, New York

Joseph Anthony Monaco, Brooklyn, New York

NASD Regulation Levies Largest Advertising Fine Ever; Fundamental Service Corp. And Two Senior Executives Sanctioned

NASD Regulation announced that it has fined Fundamental Service Corporation, Inc., and two senior executives a total of \$125,000 for distributing more than one million copies of false and misleading advertising materials to investors nationwide in connection with the sale of one of its proprietary no-load mutual funds. This is the largest fine ever assessed by NASD Regulation in a case where the violations stem primarily from advertising and sales materials.

Fundamental, which neither admitted nor denied NASD Regulation's findings, was also sanctioned for making misrepresentations to NASD Regulation's Advertising/Investment Companies Regulation Department. As part of the settlement, Fundamental must pre-file all of its advertising and sales literature with NASD Regulation for three years. The firm must retain, at its own expense, an outside consultant to review its procedures for two years.

The firm's Vice President, Vincent J. Malanga, was fined \$100,000 jointly with Fundamental; suspended for 30 days in all capacities; and required to re-take certain qualification examinations. He has also agreed not to apply for registration as a general securities principal for three years. Fundamental's head of marketing, David P. Wieder, was fined \$25,000 and suspended for 30 days in all capacities. He has also agreed not to apply for registration as a general securities principal as long as he remains associated with Fundamental. Wieder was also sanctioned for making misrepresentations to NASD Regulation's Advertising/Investment Companies Regulation Department. In their settlements, Malanga and

Wieder neither admitted nor denied NASD Regulation's findings.

NASD Regulation found that from October 1992 through December 1994, the firm, along with Malanga and Wieder, marketed Fundamental's U.S. Government Strategic Income Fund to hundreds of thousands of investors through direct mail advertising that dramatically overstated the fund's safety and stability; omitted important risk disclosure and information on potential volatility; and materially misrepresented the nature of the portfolio.

Marketing materials emphasized the fund's ability to offer high yields with maximum safety. In fact, the portfolio was comprised of risky and potentially volatile interest rate-sensitive securities, including mortgage-backed derivatives such as inverse floaters. The fund also used financial techniques, such as borrowing against its own assets and hedging strategies, that added to the overall risk of the portfolio. By the end of 1994, the fund lost more than 25 percent of its net asset value as a result of rising interest rates and the fund's own volatile portfolio and aggressive investment strategies.

The advertising and sales materials included misleading statements such as: "So, for once you don't have to sacrifice high yields for peace of mind" and "playing it safe was never so rewarding."

NASD Regulation also found that in certain cases, Fundamental, Malanga, and Wieder failed to file required advertising and sales materials with NASD Regulation. They also failed to establish, maintain, and enforce adequate supervisory procedures.

"With more new investors in the securities markets today than ever before, it's especially important that advertising and sales materials be

accurate and complete. Fully 88 percent of all investors now own shares in one or more mutual funds, up from 60 percent in 1990. As a result, it's essential to the integrity of the marketplace that the information investors receive be accurate and complete," said Mary L. Schapiro, NASD Regulation President.

All NASD-registered brokerage firms must comply with NASD rules that require brokerage firm-distributed advertising and sales materials to be accurate and not misleading. NASD Regulation also reviews—either before or immediately after its first use— mutual fund advertising and sales materials produced by brokerage firms.

Fundamental, based in New York City, distributes fixed income mutual funds. The firm markets its products primarily through advertising and sales materials.

NASD Regulation Issues Complaint Against VTR Capital Inc. And Three Individuals; Market Manipulation And Illegal Profits Of \$400,000 Alleged

NASD Regulation announced it has issued a complaint against VTR Capital, Inc., and three individuals alleging fraud in connection with the unregistered distribution and fraudulent manipulation of Interiors, Inc., common stock, resulting in more than \$400,000 in illegal profits.

The complaint names VTR's President and sole owner at the time of the allegations, Edward J. McCune; a trader at IAR Securities Corp. (formerly known as I. A. Rabinowitz & Co.), Howard R. Perles; and a trader at Wien Securities Corp., Laurence M. Geller. NASD Regulation does not allege that Interiors (which was not named in the complaint) knew that the price of its shares was being manipulated.

The complaint alleges that in April 1995, VTR and McCune agreed to serve as financial consultants for Interiors to assist the company in selling 300,000 shares, or 28 percent of the company's outstanding common stock. On April 18, 1995, five short-term investors, including VTR's outside counsel, agreed to purchase all 300,000 shares at \$.93 per share. The five investors did not immediately sell their holdings to VTR.

The complaint then alleges that in manipulative trading from April 19 through April 21, VTR artificially raised Interiors' price per share by more than 100 percent to above \$2 per share. During this period, VTR sold to about 100 investors, shares of Interiors that it did not have in its inventory. VTR planned to cover this short position by purchasing the shares in a pre-arranged transaction with the five investors at \$.95 to \$.98 per share. NASD Regulation also alleges that VTR used high-pressure sales tactics, including cold calling, to sell the stock to investors once it reached the \$2 level.

Federal securities laws require brokerage firms to register with the SEC whenever they distribute a large number of shares to the general public. In this case, NASD Regulation alleges that VTR made its distribution illegally because it did not register those shares with the SEC.

Furthermore, the complaint alleges that VTR and McCune artificially inflated Interiors' reported trading volume by 42 percent through fraudulent circular trading. In a circular trading scheme, sell orders are entered by a broker who knows that offsetting buy orders for the same number of shares at the same time and for the same price either have been or will be entered. These trades do not represent a real change in the beneficial ownership of the security.

According to the complaint, Perles and Geller made it possible for the circular trading to occur by exchanging Interiors' shares with VTR and McCune. NASD Regulation also alleges that VTR and McCune made more than \$400,000 in illegal profits as part of this scheme.

At the time of the alleged violations, VTR (which is based in New York City) employed about 70 brokers. The firm is a full-service broker/dealer.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD 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 respondents before drawing any conclusion regarding the allegations in the complaint.

Under NASD Regulation rules, the individuals and the firms named in the complaint can file a response and request a hearing before an NASD Regulation disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from the NASD.

Daiwa Securities America To Pay Fine And Restitution

NASD Regulation announced that Daiwa Securities America Inc., has been fined \$100,000 and has paid at least \$590,000 in restitution and interest to two American institutional customers who were overcharged on the purchase and sale of Japanese securities traded on the Tokyo and Osaka Stock Exchanges. The firm was also censured.

Former Daiwa Vice President Kenji Sasaki—the broker for the two customers—was suspended from the brokerage industry for two years,

fined \$35,000, and censured. Daiwa Securities America, a U.S. broker/dealer regulated by the NASD, is a wholly-owned subsidiary of Daiwa Securities Co., Ltd., based in Tokyo.

Daiwa, which neither admitted nor denied NASD Regulation's findings, was sanctioned for violating anti-fraud and compensation disclosure rules. Sasaki, who also neither admitted nor denied the allegations, was sanctioned for violating the antifraud rules, as well as aiding and abetting Daiwa's violations. Sasaki settled with NASD Regulation following the filing of an October 1997 complaint.

NASD Regulation began its investigation of Daiwa and Sasaki in July 1996, shortly after receiving an internal Daiwa memorandum, which Sasaki wrote, outlining the overcharging scheme. NASD Regulation found that, from July 1987 to December 1991, Daiwa's Los Angeles branch office told these customers that their buy orders had been executed at a price higher than the actual purchase price, and their sell orders had been executed at a price lower than the actual sale price. The firm kept the undisclosed difference as "secret profits." These profits were in addition to the disclosed commissions that Daiwa had agreed to charge for the purchase and sale of the securities on the Tokyo and Osaka Stock Exchanges.

Specifically, NASD Regulation found that the Los Angeles branch office—which closed in August 1995—reported either higher or lower executions in approximately 265 out of 570 transactions, resulting in \$306,000 in illicit profits. Sasaki was found to have personally handled 244 of the 265 transactions.

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For Your Information

Important Year 2000 Information

Based on milestones published by the Securities Industry Association (SIA), securities firms at this time should have a comprehensive Year 2000 program plan in place and be actively certifying third-party products and service providers for Year 2000 readiness. Firms also need to begin completing the repairs to any of their internal applications and testing these systems. It is vital that each National Association of Securities Dealers, Inc. (NASD[®]) member firm that intends to continue its operations into the Year 2000 have a comprehensive Year 2000 plan in place that addresses both internal and external systems and products. These activities are essential in order to ensure continued successful operation in the markets, and compliance with rules and regulations.

Furthermore, any NASD member firm that completed neither the NASD Regulation, Inc. "Year 2000 Compliance Survey" (distributed in the December 1997 *NASD Special Notice to Members 97-96*) due in January of this year, nor the New York Stock Exchange Year 2000 survey, should do so immediately. NASD RegulationSM will soon be notifying members that have failed to supply this critical information through its compliance survey that if they continue to be delinquent, they are subject to disciplinary action for violation of NASD Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books).

Via *NASD Notices to Members*, the NASD will continue to provide monthly updates about the Year 2000 challenge and issues of importance to members. For further information, visit the Year 2000 Web pages on both the NASD Regulation Web Site (www.nasdr.com) and the NASD Web Site (www.nasd.com); or contact

Lyn Kelly at the NASD Year 2000 Program Office, at (301) 590-6342, or via e-mail at y2k@nasd.com.

Also, don't forget to join NASD Regulation May 20-22 at its Spring Securities Conference in Washington, D.C., where Year 2000 issues will be prominently featured. Also in May, NASD Regulation will be conducting Year 2000 Roadshows for NASD member firms. These sessions, to be held throughout the NASD Districts, will be educational forums to discuss members' Year 2000 concerns.

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NASD Notice to Members 98-38

NASD Reminds Members Of Supervisory And Inspection Obligations

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

National Association of Securities Dealers, Inc., (NASD[®]) rules require that members supervise each of their associated persons, regardless of their location, compensation arrangement, or registration status. This *Notice* addresses firm obligations to supervise associated persons located in Offices of Supervisory Jurisdiction (OSJs), branch offices, and all other offices (referred to in this *Notice* as “unregistered offices”) and to inspect these offices. This *Notice* supersedes the guidance on inspections set forth in *Notice to Members 86-65*.

Due to the significance of the issues discussed in this *Notice*, the NASD strongly urges each member to duplicate this *Notice* and distribute it individually to all associated persons working in unregistered offices and to all persons with supervisory responsibility for unregistered offices, no matter where such persons may be located. In addition, the NASD recommends that members that have unregistered offices include this *Notice* in their compliance manual and discuss the *Notice* at their annual compliance meetings with registered representatives under NASD Rule 3010(a)(7).

Questions concerning this *Notice* may be directed to the following individuals in NASD Regulation, Inc. (NASD RegulationSM): Daniel M. Sibears, Department of Member Regulation, at (202) 728-6911; Lawrence N. Kosciulek, Department of Advertising/Regulation, at (202) 278-8329; or Mary Dunbar, Office of General Counsel, at (202) 728-8252.

Background And Discussion

Some NASD members employ associated persons at offices that are not designated OSJs or registered as branch offices.¹ For purposes of this *Notice*, such offices are referred to

as “unregistered offices,” and include any location at which a member is conducting a securities business that does not fall within the definition of OSJ or branch office.² Some associated persons working in these unregistered offices are involved in other business enterprises, such as insurance, real estate sales, accounting, tax planning, or investment advisory services, and consequently may be classified for compensation purposes as part-time employees or independent contractors.³ Some unregistered offices also operate as separate business entities under names other than those of the members. While the NASD does not encourage or discourage such arrangements, a large number of geographically diverse offices presents the potential that sales practice problems will not be as quickly identified as would be the case for larger, centralized branch offices. Such potential needs to be taken into account in drafting supervisory procedures.

The purpose of this *Notice* is to remind members of their supervisory and inspection obligations for all of their associated persons and offices. Member firms must supervise all of their associated persons—regardless of location, compensation or employment arrangement, or registration status—in accordance with the NASD By-Laws and Rules.⁴ The fact that an associated person conducts business at an unregistered office or is compensated as an independent contractor does not alter the obligations of the individual and the firm to comply fully with all applicable securities regulatory requirements.

NASD Rule 3010(a) sets forth the basic duty of a member firm to establish and maintain a system to supervise properly the activities of each registered representative and associated person.⁵ Although the rule does not prescribe specific supervisory

procedures to be followed by all firms, it sets forth minimum requirements for a supervisory system and mandates that the supervisory system adopted enable a firm to supervise properly the activities of each associated person to assure compliance with applicable securities laws, rules, regulations, and statements of policy and with NASD rules. Thus, the adequacy of a firm's supervisory system is evaluated based on its structure and activities.

Firms employing associated persons in unregistered offices are responsible for establishing and carrying out procedures that will subject persons working at these locations to effective supervision. To be effective, the supervision must be designed to monitor securities-related activities and to detect and prevent regulatory and compliance problems of associated persons working at unregistered offices. A member's supervisory responsibility includes:

1. maintaining a record of the locations of all unregistered offices, which must be made available to regulators upon request;
2. educating associated persons working from an unregistered office as to their obligations to the firm and to the public, including prohibited sales practices;
3. maintaining regular and frequent professional contact with such individuals; and
4. implementing appropriate supervisory practices, such as records inspections and compliance audits at the associated persons' places of employment, to ensure that their methods of business and day-to-day operations comply with applicable rules and requirements.

To fulfill these obligations, a firm should consider whether the number

and location of its registered principals provides the capability to supervise its unregistered office personnel effectively.⁶

Rule 3010(c) imposes upon a member the obligation to review the activities of each office, which includes the periodic examination of customer accounts to detect and prevent irregularities and abuses. The rule requires an inspection at least annually of each OSJ and cycle examinations of branch offices. Although the rule does not specify the frequency of inspections for unregistered offices, in order to fulfill the general obligation to supervise, such inspections should be conducted according to a regular schedule. The frequency and scope of inspections should be determined based on factors such as the nature and volume of business conducted at the office and the nature and extent of contact with customers, for example. Any member that currently does not have a regular schedule for inspecting unregistered offices should adopt one no later than September 1, 1998.

As noted above, under Rule 3010(g)(1), an office that is responsible for supervising one or more branch offices must be designated as an OSJ, and each OSJ is subject to an annual inspection under Rule 3010(c). The rule does not address the frequency of inspections of a non-OSJ office that supervises one or more unregistered offices. A non-OSJ office that supervises one or more unregistered offices also should be inspected at least annually.

Inspections of unregistered offices should include, among other things, a review of any on-site customer account documentation and other books and records, meetings with individual registered representatives to discuss the products they are selling and their sales methods, and an examination of correspondence and

sales literature. Unannounced visits may be appropriate, particularly where there are indicators of misconduct or potential misconduct, or "red flags," such as receipt of significant customer complaints; personnel with disciplinary records; or excessive trade corrections, extensions, liquidations, or variable contract replacements.⁷ Each firm should determine which other red flags would trigger an unannounced inspection based on the type of business and personnel located at its unregistered offices. Members should note that, in the Securities and Exchange Commission's (SEC or Commission) decision *In re Royal Alliance Associates, Inc.*, Release No. 34-38174 (January 15, 1997), which is quoted more extensively below, the SEC stated that it harbored grave doubts that a practice of conducting a pre-announced compliance examination only once a year would necessarily discharge the supervisory obligations of any firm that incorporates a structure in which smaller offices are operated by only one or two representatives.

Royal Alliance emphasized the need for close attention to supervision of small, dispersed offices. In that decision, which members are encouraged to read in its entirety, the SEC stated that:

The securities industry should be on notice . . . that where a firm employs branch offices made up of only one or two registered representatives and those individuals engage in misconduct, the Commission will, as it does for all firms, closely examine the responsibility of individuals charged with the duty to design and implement an adequate system of supervision.

Many failure-to-supervise cases involve indicators of misconduct, or "red flags," that should immediately alert management to potential wrongdoing. In circumstances

where a firm's compliance and supervision system is inadequate to discover the indications of problematic conduct, the personal responsibility for supervision cannot be fulfilled by a supervisor who is simply unaware of the indicators.

As discussed above, Royal Alliance operates 1,500 offices with 2,700 registered representatives. Some 49 of these are one-person Offices. Here, Royal Alliance's failure to scrutinize adequately the securities-related businesses of its registered representatives, which were conducted beyond the direct aegis of the firm, was a certain recipe for trouble. Further, Royal Alliance's practice of conducting a pre-announced compliance examination only once a year was inadequate to satisfy its supervisory obligations. . . .

We do not here suggest that firms which employ offices consisting of one or two registered representatives cannot devise an adequate system of supervision, nor do we discourage such offices. We recognize that many smaller communities are well served by such arrangements and generally cannot support a large office. Nevertheless, such arrangements necessarily entail greater supervisory challenges and the Commission requires firms organized in such a fashion, and individual supervisors at those firms, to meet the same high standards of supervision as at more traditionally organized firms.

The reference to branch offices in the above quote is generic and is not limited to NASD-registered branch offices. Thus, the SEC's guidance is equally applicable to NASD branch offices and unregistered offices.

Endnotes

¹ The terms "OSJ" and "branch office" are defined in Rule 3010(g). Under Rule 3010(g)(1), "Office of Supervisory Jurisdiction" means any office of a member at which any one or more of the following functions take place: order execution or market making; structuring of public offerings or private placements; maintaining custody of customers' funds or securities; final acceptance (approval) of new accounts on behalf of the member; review and endorsement of customer orders pursuant to Rule 3010(d); final approval of advertising or sales literature for use by persons associated with the member pursuant to Rule 2210(b)(1); or responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

Under Rule 3010(g)(2), "branch office" means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:

(A) any location identified in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised;

(B) any location referred to in a member advertisement, as this term is defined in Rule 2210, by its local telephone number and/or local post office box provided that such reference may not contain the address of the non-branch location and, further, that such reference also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch location are directly supervised;

(C) any location identified by address in a member's sales literature, as this term is defined in Rule 2210, provided that the sales literature also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s)

conducting business at the non-branch locations are directly supervised; or

(D) any location where a person conducts business on behalf of the member occasionally and exclusively by appointment for the convenience of customers, so long as each customer is provided with the address and telephone number of the branch office or OSJ of the firm from which the person conducting business at the non-branch location is directly supervised.

² The term "unregistered office" is not defined in the NASD By-Laws or Rules.

³ Independent contractors under the control of a broker or dealer are considered associated persons for purposes of the NASD By-Laws and Rules. See letter from Douglas Scarff, Director, Division of Market Regulation, Securities and Exchange Commission, to Gordon S. Macklin, President, National Association of Securities Dealers, June 18, 1992, forwarded to all NASD members on August 25, 1982.

⁴ This obligation derives from Section 15(b)(4)(E) of the Securities Exchange Act of 1934.

⁵ Article I of the NASD By-Laws defines the term "person associated with a member" or "associated person of a member" to mean: (1) a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under the NASD By-Laws or the Rules of the Association.

⁶ If a member wishes to establish new or additional branch offices or unregistered offices, and the number of such offices is restricted under an agreement with the NASD, NASD staff will analyze the member's ability to effectively manage and super-

vise such offices under the standards contained in Rule 1014(a).

⁷ Firms also are reminded that certain red flags may trigger heightened supervisory obligations for registered representatives. See *Notice to Members 97-19*.

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NASD Notice to Members 98-39

NASD Revises *Sanction Guidelines*

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- 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[®]) has revised the *NASD Sanction Guidelines* (Guidelines), which are used by the various bodies that adjudicate disciplinary matters (Adjudicators) to determine appropriate remedial sanctions. The National Business Conduct Committee (NBCC)¹ originally published the Guidelines in 1993 and periodically revised them to promote consistency and uniformity in the imposition of sanctions in disciplinary matters. The Guidelines contain an introductory section that explains the purpose of NASD disciplinary sanctions and sets forth certain generally applicable principles and considerations for determining appropriately remedial sanctions. The Guidelines also specify the range of monetary (e.g., fines and restitution orders) and non-monetary (e.g., bars, suspensions, and expulsions) sanctions generally applicable for violations at issue. The recommended ranges are not absolute. In applying the Guidelines, Adjudicators must exercise judgment and discretion in determining remedial sanctions and may impose sanctions that fall outside of the recommended ranges, or impose no sanction at all, depending on the unique facts of each case.

Questions concerning the Guidelines may be directed to Carla J. Carloni, Assistant General Counsel, NASD Regulation, Inc., at (202) 728-8019.

In addition to the copy of the Guidelines mailed with the print version of this *Notice*, copies of the Guidelines are available for purchase at \$35 each (\$10 each for employees of NASD member firms) by contacting NASD MediaSourceSM at (301) 590-6142. The Guidelines also are available on NASD Regulation's Web Site at www.nasdr.com.

Background

In 1997 the NBCC appointed a Sanction Guidelines Subcommittee (Subcommittee) to review and revise the Guidelines. The Subcommittee included representative District Business Conduct and Market Regulation Committee members, staff members from every NASD District, Market Regulation, Enforcement, and other departments of NASD RegulationSM, and current and former NBCC, National Adjudicatory Council (NAC), and NASD Board of Governors members. The Subcommittee recommended, and the NBCC approved, the attached Guidelines for publication.

The overall approach of the Guidelines is to set forth principal considerations in determining sanctions and ranges of monetary and non-monetary sanctions generally applicable to specific violations while leaving Adjudicators free to impose sanctions outside the recommended ranges in appropriate circumstances. The Guidelines include a revised introductory section, several new guidelines, and revisions to all existing guidelines.

The NASD believes that the Guidelines will enhance NASD Regulation's regulatory function by providing Adjudicators with guidance for determining appropriate remedial sanctions in disciplinary matters.

The Guidelines supersede guidelines previously published by the NASD and referenced in prior *NASD Notices to Members*. The Guidelines are effective as of May 15, 1998, and apply to all actions as of that date, including pending disciplinary cases.

Changes In Presentation

The presentation of the Guidelines has been revised with a view toward making the Guidelines more "user friendly." The Guidelines are

arranged according to the following 11 subject matter groupings:

- Activity Away From Associated Person's Member Firm
- Arbitration
- Distributions of Securities
- Financial and Operational Practices
- Impeding Regulatory Investigations
- Improper Use of Funds/Forgery
- Qualification and Membership
- Quality of Markets
- Reporting/Provision of Information
- Sales Practices
- Supervision

The Guidelines also include an alphabetical index that will allow users to locate any individual guideline by name.

Introductory Section

The introductory section, which now includes general principles applicable to every case and a list of principal considerations, provides users of the Guidelines with a comprehensive overview of appropriate methods for implementing the Guidelines. The revised introductory section also explains NASD Regulation's regulatory mission and the NASD's purpose in adopting the Guidelines. The NASD believes that the revised introductory section is a necessary component of the revised Guidelines and that it will prove useful to all Guidelines users.

The more important revisions and additions in the introductory section include:

- Discussion of remedial nature of disciplinary sanctions and concept of progressive discipline designed to deter future misconduct. The revised introductory section explains the intended purpose of NASD disciplinary sanctions and defines relevant disciplinary history as it applies to determining sanctions.
- Discussion of tailoring sanctions to address the specific misconduct at issue. The revised introductory section provides an illustrative list of sanctions that may be appropriate in certain instances to address specific types of misconduct and indicates that Adjudicators may find it necessary, in any given case, to impose sanctions outside the ranges recommended in the Guidelines or to impose no sanctions at all.
- Discussion of the concept of aggregation of violations. The revised introductory section delineates the factors that should be considered in determining whether to aggregate violations for purposes of instituting formal actions.
- Discussion of orders of restitution, orders of rescission, and fining away ill-gotten gains. The revised introductory section recommends that, when an identifiable customer has suffered a quantifiable loss, Adjudicators should consider ordering restitution. The introductory section also suggests that Adjudicators order that amounts not paid in restitution (because, after reasonable efforts, a customer cannot be located) be paid into the appropriate state escheat fund. The introductory section also suggests that, where appropriate, Adjudicators consider requiring orders of rescission and/or including as part of a disciplinary fine the amount of the respondent's ill-gotten gains.

- Discussion of orders of requalification. The revised introductory section now recommends that, where appropriate, Adjudicators require respondents to requalify in any or all capacities.

New Guidelines

The Guidelines include new guidelines specifically designed to address violations in the following areas:

- Confidentiality Agreements (settling with customers in exchange for customer agreements not to cooperate with regulatory authorities);
- Forms U-4 and U-5 (late filing, failing to file, filing false, misleading, or inaccurate forms or amendments);
- MSRB Rule G-36 (late filing or failing to file offering documents with the Municipal Securities Rulemaking Board);
- Regulation M Reports (late filing, failing to file, filing false or misleading reports);
- Reportable Events Under NASD Rule 3070 (late reporting, failing to report, filing false, inaccurate or misleading reports);
- Supervisory Procedures (deficient written supervisory procedures);
- Telemarketing Violations; and
- Trading Ahead of Research Reports.

Revisions To Individual Guidelines

The NBCC reviewed the Guidelines by subject matter classification in order to ensure uniformity among guidelines that address similar types of violations. This review allowed for important adjustments in recommended fine levels in the guidelines

for cheating, churning, conversion, forgery, guaranteeing a customer against loss, unauthorized trading, and others. It also allowed for adjustments in suspension recommendations for guidelines that address financial and operational violations and violations related to impeding regulatory investigations. Where appropriate, the guidelines that deal with reporting violations were expanded to address not only failures to report, but also late reporting and reporting inaccurate and/or misleading information.

Major specific changes to individual guidelines include:

- Increasing the high end of fine ranges for the guidelines on forgery, conversion, and cheating to \$100,000;

- Increasing the high end of fine ranges for the guidelines on unauthorized trading and churning to \$75,000;
- Introducing the concept of a daily escalator into the recommended fine amount for egregious cases of failing to honor arbitration awards;
- Expanding recommended suspensions for egregious cases of backing away from suspensions as market makers only to suspensions in any or all capacities;
- Increasing the high end of fine ranges for the guidelines on net capital violations and violations involving outside business activities to \$50,000; and

- Increasing the high end of the fine range for the guideline on pricing violations to \$100,000 (plus the gross amount of the excessive markups, markdowns, or excessive commissions if restitution is not ordered), and adding a recommendation to consider a suspension of up to 30 business days in non-egregious cases.

Endnote

¹ The NAC became the successor to the NBCC in January 1998. See Exchange Act Release No. 39470, December 19, 1997, 62 FR 67927 (December 30, 1997).

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NASD Notice to Members 98-40

Nasdaq To Incorporate Trade Acceptance And Reconciliation Service Into Automated Confirmation Transaction Service

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

In the third quarter of 1998, The Nasdaq Stock MarketSM (Nasdaq[®]) will discontinue the Trade Acceptance and Reconciliation ServiceSM (TARSSM) and will incorporate its functionality into the Automated Confirmation Transaction ServiceSM (ACTSM). ACT will be significantly enhanced as part of this ACT/TARS migration project. The key features are as follows:

- ACT will electronically capture all As-Of paper Form T entries for a period of up to one year.
- ACT will provide a new Step-Out transaction indicator to allow members to flag Step-Out clearing entries that are submitted into ACT for comparison, clearance, and settlement through the National Securities Clearing Corporation (NSCC).
- ACT will allow for a new Give-Up Lock-In feature to reduce the number of entries required to automatically compare trades between executing and/or introducing brokers and their Give-Up correspondents.

Questions regarding this *Notice* should be directed to Benjamin Sang, Assistant Director, Nasdaq Product Development, at (212) 858-4313, or Peter Forte, Manager, Nasdaq ACT Operations, at (203) 385-6244.

Background

TARS began in June 1989 as a system for all reconciliation activity involving the OTC equity comparison process. In the current TARS system, each participant can view all NSCC trade contracts through TARS. Participants can submit As-Of trades for settlement or can withhold settlement on existing trades for a period of up to three years. If a participant submits a transaction on a demand basis, the contra must

respond with a confirmation; otherwise, the transaction will be automatically locked-in by NSCC. However, since there had been comparatively low reconciliation activity in TARS, Nasdaq worked in conjunction with NSCC to optimize the trade comparison and reconciliation process. As a result, certain outdated functionality was eliminated, and by rolling the other functionality into ACT, Nasdaq is able to reduce the cost associated with supporting TARS as a separate and distinct system.

TARS Replacement

As part of Nasdaq's cost-savings effort, TARS will be discontinued as an independent service, and will be incorporated as a part of ACT. All of the functionality of TARS will be present in the revised ACT service, with these alterations:

- Participants will be able to enter As-Of Trades and As-Of Trade Reversals (T-1 to T-N) for a period of up to one year.
- NSCC will be the sole source of contract sheet information since this TARS functionality will not be available in ACT.
- In order for clearing firms to reconcile trades on behalf of their correspondents, they must execute an Attachment II (Give-Up) for each executing correspondent.

ACT As-Of Trades

The As-Of trade entry function will allow the subscriber to enter the trade date for an As-Of trade for a period of up to one calendar year. All As-Of trades that are entered for clearing are subject to matching/comparison with the contra. These trades will be eligible for nightly M2 matching via the ACT batch cycle.

The ACTII entry time window will be extended from 1:30 p.m. to 5:15 p.m. ACT will no longer perform an on-line M2 match in the afternoon of the second day; instead, the M2 match will only be performed at the end of the entry day. All As-Of trades that remain open on the afternoon (2:30 p.m.) of the second day after the trade was entered will be automatically locked-in by ACT. As-Of trades that are submitted against non-ACT participants will be submitted to NSCC as one-sided entries at the end of the entry day.

As-Of trades will be included in ACT's risk management calculations and will be subject to Blockbuster and Sizable Trade processing.

New System Feature: ACT As-Of Trade Reversals

The revised ACT will introduce a new reversal function to allow participants to cancel the effects of a prior trade submission to NSCC. This function will replace the current TARS "withhold" and "demand withhold" functions.

The As-Of trade reversal will be subject to the same rules as the previously described As-Of trade-entry function. The participant will need to reverse the side of the trade when submitting an As-Of trade reversal into ACT. For example, if the subscriber wishes to cancel a previously submitted sell trade, the subscriber must submit an As-Of reversal trade as a buy.

The subscriber will also have the ability to enter an As-Of Reversal function on a net position basis. If, for example, a subscriber entered a sell trade for 1,000 shares, but the trade should have been for 800 shares, the subscriber may enter an As-Of trade reversal for 200 shares as a buy to net the position to the correct amount. Users may find this

easier than entering an As-Of trade reversal buy for 1,000 shares and an As-Of trade sell for 800 shares.

Form T Trade Reporting

Both the As-Of trade-entry and trade-reversal functions described above can be used to satisfy Nasdaq's "paper" reporting requirements—that is, on Form T. Subscribers that have failed to report a trade into ACT by the end of the day after the trade (T+1) will now be able to electronically submit these trades later, using the expanded As-Of trade-entry function (T+2 to T+N). In addition, the As-Of trade-reversal function can be used to cancel and/or correct trades on an As-Of basis.

ACT Step-Outs

The revised ACT service will also provide a new Step-Out transaction indicator to allow members to uniquely identify Step-Out "clearing-only" entries submitted to ACT for comparison, clearance, and settlement through NSCC. ACT will provide a separate Step-Out selection option on the ACT Trade Scan Window that will allow firms to view all their Step-Out entries at one time. These entries will not be reported to the tape nor disseminated to the media.

A Step-Out allows the executing broker (Broker A) to "step-out," or allocate, all or part of the trade(s) to another broker(s) (Broker B). In other words, a Step-Out functions as a position transfer, rather than a trade. Broker A will submit an ACT market-maker entry that is flagged as a Step-Out against Broker B. Broker B will be required to acknowledge the entry by either accepting it or submitting a matching order-entry firm entry that is also flagged as a Step-Out. Since the Step-Out flag will be a part of the matching criteria, an omission of the flag by either side

will cause the entries not to match. Once matched, it will be submitted to NSCC for clearance and settlement and will include the Step-Out flag for identification purposes.

ACT Give-Up Automatic Lock-In

The ACT Give-Up Automatic Lock-in function allows an introducing broker to enter and lock-in a trade when it is responsible for both sides of the trade. This occurs when two of its "Give-Ups" trade with each other or the introducing broker trades with one of its own Give-Up firms. In the current ACT system, the introducing broker may submit a market-maker entry for one side and either accept the trade or submit an order-entry firm entry to match the trade. In the new system, by specifying the new Give-Up Lock-In feature, the introducing broker avoids the need to accept the trade or submit the order-entry side. In other words, this new lock-in feature will allow the introducing broker to submit just one entry, not two. ACT will submit this trade to NSCC as an M1 Matched Locked-In trade.

No/Was Trades

While in the current ACT system, a trade that is entered incorrectly, or for some other reason is declined by the contra, must be deleted and re-entered by the market-maker side, the enhanced ACT will allow the market-maker side to modify, or No/Was, a trade that was declined by the contra.

".S" Trader Modifier

Currently the ".S" trade modifier cannot be used to indicate a two-day settlement period; the system only recognizes the modifier as indicating four or more days. However, in the new ACT, the allowable entries for the ".S" modifier will be either two

days, or anywhere from four through 60 days.

ACT Second Generation CTCI Specifications

During the ACT/TARS migration, Nasdaq developed ACT Second Generation Computer-to-Computer Interface (CTCI) specifications that are Year 2000 compliant. Although the use of these new specifications is not required to perform the existing ACT functionality, Nasdaq advises members that, in order to participate in the enhancements (*i.e.*, Reversal,

Step-Out, Auto Lock-In Give-Up, and T-2 to T-N As-Of entries), they must implement the ACT Second Generation specifications. Nasdaq expects all ACT CTCI users to migrate to the new specifications by the year 2000.

To obtain a copy of the ACT Second Generation CTCI specifications, please contact Subscriber Services at (800) 777-5606. Questions regarding the specifications should be directed to the CTCI Help Desk at (203) 385-6332.

Equipment Requirements

To use the new ACT/TARS service, firms will need a Nasdaq Workstation II™ (NWII). If you do not currently have NWII service, please contact Subscriber Services at (800) 777-5606.

More information regarding the ACT/TARS Migration will be provided for market participants before implementation in the third quarter of 1998.

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NASD Notice to Members 98-41

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of April 24, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of April 24, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPSSM).

Symbol	Name	Coupon	Maturity
PRVC.GA	President Riverboat Casinos Inc	13.000	09/15/01
TCFD.GB	Trump's Castle Funding Inc	13.875	11/15/05
FLM.GC	Fleming Companies Inc	9.500	04/01/16
LTCH.GD	Litchfield Fin'l Corp	8.450	11/01/02
MSI.GB	Movie Star Inc	8.000	09/09/01
OEI.GB	Ocean Energy Inc	10.375	10/15/05
BFSR.GA	Saul B F Real Estate Invt Tr	9.750	04/01/08
SXFG.GA	Six Flags Entertainment Corp	8.875	04/01/06
APFC.GA	American Pacific Corp	9.250	03/01/05
TEX.GA	Terex Corp	8.875	04/01/08
PUNA.GA	Purina Mills Inc	9.000	03/15/10
ADLA.GG	Adelphia Communications Corp	9.875	03/01/07
AMSD.GI	American Standard Inc	7.375	04/15/05
IFSI.GB	Interface Inc	7.300	04/01/08
MSTR.GA	Majestic Star Casino LLC	12.750	05/15/03
RYL.GD	Ryland Group Inc	8.250	04/01/08
NWAC.GC	Northwest Airlines Inc	7.625	03/15/05
NWAC.GD	Northwest Airlines Inc	7.875	03/15/08
CFN.GB	Contifinancial Corp	8.125	04/01/08
LD.GB	Louis Dreyfus Natural Gas	6.875	12/01/07
DENY.GA	Denbury Management Inc	9.000	03/01/08
SVR.GA	Silverleaf Resorts Inc	10.500	04/01/08
NVR.GB	NVR Inc	8.000	06/01/05
CIR.GA	Circus Circus Enterprises Inc	6.750	07/15/03
CIR.GB	Circus Circus Enterprises Inc	7.625	07/15/13
CFN.GC	ContiFinancial Corp	7.500	03/15/02
UCAR.GA	UCA Global Enterprise Inc	12.000	01/15/05
RYDR.GA	Ryder TRS Inc	10.000	12/01/06
CREW.GA	J. Crew Operating Corp	10.375	10/15/07
STCS.GA	Stc Broadcasting Inc	11.000	03/15/07
LRHI.GB	LaRoche Inds Inc	9.500	09/15/07
SCFA.GA	Scovill Fasteners Inc	11.250	11/30/07
CRWG.GA	J. Crew Group Inc	13.125	10/15/08

As of April 24, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
CTP.GE	Central Maine Power Company	7.875	06/01/23
CVN.GB	Computervision Corp	11.375	08/15/99
BHW.GA	Bell & Howell Co	9.250	07/15/00
GGE.GA	Griffin Gaming & Entertainment Inc	0.000	06/30/00
REVL.GD	Revlon Consumer Products Corp	10.500	02/15/03
FORT.GE	Fort Howard Corp	10.000	03/15/03
METO.GA	Mettler-Toledo Inc	9.750	10/01/06
SLCM.GD	Southland Corp	12.000	06/15/09
MCCC.GB	McCrary Corp	7.500	05/15/94
MCCC.GC	McCrary Corp	7.625	12/15/97
UROH.GA	Urohealth Systems	12.500	04/01/04
RATN.GA	Kay Jewelers Inc	12.875	08/01/99

As of April 24, 1998, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
OCN.GA	OCWN.GA	Ocwen Financial Corp	11.875	10/01/03
PKS.GA	PARK.GA	Premier Parks	9.750	01/15/07
HSE.GB	HSRS.GB	HS Resources Inc	9.875	12/01/03
PKS.GB	PARK.GB	Premier Parks Inc	9.250	04/01/06
PKS.GC	PARK.GC	Premier Parks Inc	10.000	04/01/08
ESPI.GA	ACNS.GA	American Communications Service Inc	12.750	04/01/06
AMSD.GB	ASD.GA	American Standard Inc	9.250	12/01/16
AMSD.GC	ASD.GC	American Standard Inc	10.875	05/15/99

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASD RegulationSM 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.

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Disciplinary Actions

Disciplinary Actions Reported For May

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (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, May 18, 1998. The information relating to matters contained in this *Notice* is current as of the end of April 24.

Firms Fined, Individuals Sanctioned

Castle Securities Corporation (Freeport, New York) and Michael T. Studer (Registered Principal, Rockville Centre, New York) were fined \$25,000, jointly and severally, and required to pay \$19,373.56 plus interest in restitution to customers. In addition, Studer was suspended from association with any NASD member in any capacity for 30 days and required to requalify by exam as a general securities principal. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of an October 1996 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm manipulated the price of a common stock in that it used its dominant and controlling position in the market to establish and maintain an artificial and inflated price of the stock, and arbitrarily increased that price when it was known there was little or no investor or dealer interest in the stock and no favorable news or developments concerning the stock. Furthermore, the firm charged its retail customers unfair and fraudulently excessive mark-ups ranging from 16 to 66 percent over the prevailing market price for the common stock. The firm, acting through Studer, also failed to establish, implement, and

enforce reasonable supervisory procedures designed to prevent the firm's customers from being charged manipulated prices and unfair and fraudulently excessive markups in a common stock.

The firm and Studer have appealed this action to the United States Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

Escalator Securities, Inc. (Tarpon Springs, Florida) and Howard A. Scala (Registered Principal, Tarpon Springs, Florida) were fined \$50,000, jointly and severally. The firm was also ordered to pay \$106,359.16 plus interest in restitution and barred from executing principal transactions in equity securities with retail customers except for unsolicited liquidating transactions. Scala was barred from association with any NASD member in any principal, proprietary, or supervisory capacity. The NBCC imposed the sanctions following a remand as to sanctions from the SEC. The sanctions were based on findings that the firm and Scala charged excessive prices to public customers in the sale of equity securities and debentures. The prices charged included markups ranging from five to 350 percent above the prevailing market price. In addition, the firm, acting through Scala, charged fraudulently excessive markups in excess of 10 percent above the prevailing market price.

Hattier, Sanford & Reynoir (New Orleans, Louisiana), Gus A. Reynoir (Registered Principal, New Orleans, Louisiana) and Vance G. Reynoir (Registered Principal, New Orleans, Louisiana) were censured and fined \$60,000, jointly and severally. In addition, the firm was required to engage an independent auditor within 90 days to review its books and records and supervisory procedures and to imple-

ment the auditor's recommendations in a manner satisfactory to the NASD. G. Reynoir and V. Reynoir were suspended from association with any NASD member in any capacity for 30 days, suspensions not to run concurrently. G. Reynoir and V. Reynoir were required to requalify as a general securities principal and as a municipal securities principal, respectively, within 180 days or be suspended until they requalify. The SEC affirmed the sanctions following appeal of an October 1996 NBCC decision. The sanctions were based on findings that the firm, acting through G. Reynoir and V. Reynoir, issued 453 confirmations that misrepresented the capacity in which trades were executed.

This action has been appealed to the United States Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

LaJolla Capital Corp. (San Diego, California) and Harold Bailey Gallison, Jr. (Registered Principal, Cardiff, California). The firm was censured, fined \$100,000, and required to retain an independent consultant to audit and monitor its compliance program for two years. Gallison was censured, fined \$100,000, barred from association with any NASD member in a principal or supervisory capacity, and required to requalify by exam in any other capacity. The NBCC imposed the sanctions following appeal of a Market Surveillance Committee decision. The sanctions were based on findings that the firm and Gallison failed to establish, maintain, or enforce a supervisory system reasonably designed to achieve compliance with the federal securities laws and regulations. In addition, Gallison failed to supervise properly in order to detect and deter alleged violations by the firm's registered representatives.

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

Landmark International Equities, Inc. (Westbury, New York) and Scott Eliasoph (Registered Representative, Westbury, New York). The firm was censured and fined \$22,872.51. Eliasoph submitted an Offer of Settlement pursuant to which he was censured, fined \$16,808.76, and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that the firm permitted Eliasoph to perform duties as a registered person while his registration status with the NASD was inactive. In addition, the firm failed to report to the NASD statistical and summary information relating to customer complaints received by the firm and failed to adopt, maintain, and enforce adequate written supervisory procedures and systems. Without admitting or denying the allegations, Eliasoph consented to the described sanctions and to the entry of findings that he performed duties as a registered person while his registration status was inactive due to his failure to timely complete the Regulatory Element of the NASD's Continuing Education rules.

The House of Securities Company, Inc. (Frederick, Maryland), William Floria (Registered Principal, Jefferson, Maryland), and Christopher A. Weir (Registered Principal, Frederick, Maryland) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the respondents were censured and fined \$10,000, jointly and severally. Weir was suspended from association with any NASD member in any capacity for 15 days. In addition, Floria and Weir must each 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 Floria and Weir, failed to maintain accurate and complete books and records. The findings also stated that the firm, acting through Floria, conducted a securities business when the firm did not have the minimum required net capital. Furthermore, the firm, acting through Floria and Weir, failed to give timely notification of the firm's net capital deficiencies and filed inaccurate FOCUS I and II reports.

Firms And Individuals Fined Pacific Genesis Group, Inc. (San Francisco, California), Arch Vincent Zellick (Registered Principal, Alameda, California), Gerald Belton Porter, Jr. (Registered Principal, San Rafael, California), and Daniel Clive Young (Registered Principal, Payson, Arizona) submitted an Offer of Settlement pursuant to which they were censured. The firm was fined \$15,000, jointly and severally, with Zellick, and fined \$20,000, jointly and severally, with Zellick, Porter, and Young. In addition, the firm must pay \$33,642.50 plus interest in restitution to public customers and Porter must not participate in determining markups or markdowns on municipal securities in connection with transactions in the secondary market for such securities 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 Zellick, permitted individuals to conduct a securities business without being registered in any capacity or when they were in an inactive status for failing to satisfy the Regulatory Element of the Continuing Education Program. The findings also stated that the firm, acting through Zellick, Young, and Porter, effected sales of municipal securities to customers at

prices that were unfair and unreasonable.

VTR Capital, Inc. (New York, New York) and Edward Joseph McCune (Registered Principal, Juno Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured, fined \$12,000, jointly and severally, and required to update and revise the firm's written supervisory procedures and compliance manual. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through McCune, failed to disclose adequate information on order tickets and customer confirmations, and failed to maintain an internal record of persons designated as supervisory personnel and their responsibilities. The findings also stated that the firm, acting through McCune, failed to establish and enforce written supervisory procedures.

W.B. McKee Securities, Inc. (Scottsdale, Arizona) and William B. McKee (Registered Principal, Scottsdale, Arizona) submitted Offers of Settlement pursuant to which the firm was censured, fined \$22,500, and required to retain an independent consultant to review the firm's written supervisory and compliance procedures and its policies and practices with respect to corporate finance. McKee was censured, fined \$14,000, and required to requalify by exam as a general securities 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 McKee, compensated a non-member firm in connection with a private placement of securities. The findings also stated that the firm, acting through McKee, participated in a contingency offering and permitted the distribution of funds from the escrow account when

terms of the contingency were not met, and sold securities in a fixed price offering at a discount to entities that were not registered broker/dealers.

Furthermore, the NASD determined that the firm conducted a securities business while failing to maintain the required minimum net capital and failed to maintain written supervisory procedures reasonably designed to achieve compliance with all applicable rules. Moreover, the firm, acting through McKee, failed to establish written supervisory procedures to include a provision for the principal review of subscription-way transactions and the firm did not evidence the principal review of subscription-way transactions in a private placement. The firm also sold securities to customers in a public offering and assessed a miscellaneous charge in addition to the public offering price of the securities.

Firms Fined

ABN AMRO Chicago Corporation (Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to maintain adequate written supervisory procedures relating to trade reporting and the Limit Order Protection Interpretation.

Emmett A. Larkin Company, Inc. (San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined

\$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file reports with the NASD with respect to customer accounts that had established an aggregate position of 200 or more option contracts. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures designed to achieve compliance with the applicable NASD rules relating to reporting options positions.

Everen Securities, Inc. (Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$18,500. 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 in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, record keeping, registration, and limit orders.

Rodman & Renshaw, Incorporated (Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$22,500. 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 in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures designed to achieve compliance with the applicable securities

laws and regulations regarding trade reporting and limit orders.

Tucker Anthony, Incorporated (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$22,000. 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 in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures designed to achieve compliance with the applicable securities laws and regulations.

Wm. V. Frankel & Company, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$18,000. 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 in violation of applicable securities laws and regulations regarding trade reporting and limit orders. The firm executed short sale transactions at or below the inside bid when the inside bid was below the preceding inside bid. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, limit orders, market-making functions, and short sales.

Individuals Barred Or Suspended

Christopher Accardi (Registered Representative, Huntington Station, New York) submitted an Offer of Settlement pursuant to which he

was censured, fined \$7,500, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam as an investment company and variable contracts representative. Without admitting or denying the allegations, Accardi consented to the described sanctions and to the entry of findings that he misrepresented to public customers the nature of documents they had signed at the time of their purchase of life insurance policies. According to the findings, the documents the customers signed at the time of the purchase were not for the cancellation and transfer of funds from their fixed rate policies to their new policies. Rather, the documents caused loans to be taken out on the customers' fixed rate policies, which was never the customers' intention. The findings also stated that Accardi made several alterations to the paperwork the customers had signed in connection with the purchase of life insurance policies and forged the customers' initials on various components of their policies without the customers' prior knowledge or consent.

Timothy C. Adams (Registered Representative, Cambridge, Massachusetts) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adams failed to respond to NASD requests for information.

The appeal to the National Adjudicatory Council (NAC) was dismissed as abandoned; therefore, this District Business Conduct Committee (DBCC) decision constitutes final action.

Robert J. Amico (Registered Principal, Webster, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, suspended from

association with any NASD member in any capacity for 30 days, and required to requalify by exam in any capacity. Without admitting or denying the allegations, Amico consented to the described sanctions and to the entry of findings that he sold a promissory note to a public customer and guaranteed the customer that he would pay him any unpaid sums due on the promissory note.

Essodina Adolph Atchade (Registered Representative, Santa Clara, California) was censured, fined \$200,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Atchade misappropriated a customer's funds totaling \$28,000 for his own use and benefit. Furthermore, Atchade provided the customer with fictitious account statements.

The appeal to the NAC was dismissed as abandoned; therefore, this DBCC decision constitutes final action.

Vijay Basani (Registered Representative, Mamaroneck, New York) was censured, fined \$20,000, and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Basani failed to respond timely to NASD requests for information.

Robert E. Bauman (Registered Representative, Keizer, Oregon) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$7,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bauman consented to the described sanctions and to the entry of findings that he failed to forward funds in the amount of \$503.72 received from customers that were intended as insurance poli-

cy premium payments to his member firm.

Chad Beanland (Registered Representative, N. Babylon, New York), Andrew Friedman (Registered Principal, New York, New York), Howard S. Gelfand (Registered Principal, Roslyn, New York), Bonnie C. Vandenberg (Registered Representative, New York, New York), and David S. Heredia (Registered Representative, Long Beach, New York) submitted Offers of Settlement pursuant to which Beanland was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Friedman was censured, fined \$50,000, and barred from association with any NASD member in any capacity, and Gelfand was censured, fined \$20,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam prior to acting in a supervisory capacity with any member firm. Vandenberg was censured, fined \$10,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by exam prior to becoming associated with any member firm. Heredia was censured, fined \$100,000, 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 Beanland, Friedman, Vandenberg, and Heredia engaged in baseless and improper price predictions, and Beanland, Friedman, and Heredia made false promises to limit losses in customer accounts. The findings also stated that Friedman made improper guarantees against losses to customers; Friedman, Vandenberg, and Heredia engaged in unauthorized trading in customer accounts; Friedman and

Heredia made improper promises to customers to make up losses in their accounts; Friedman failed to testify before the NASD in an investigation; Beanland made false statements as to the minimum amount of securities customers had to buy and provided false testimony in connection with an NASD investigation; Vandenberg and Heredia made misrepresentations as to specific issuers and the risk of an investment; and Heredia made improper and baseless comparisons between unrelated securities and made a false claim of access to inside information.

Furthermore, the findings stated that Heredia refused to execute sell orders; Vandenberg and Heredia aggressively discouraged customers from selling securities; and Gelfand failed to exercise adequately his supervisory duties by allowing registered representatives under his supervision to use sales scripts that were materially false and misleading in connection with the sale of speculative securities.

Douglas R. Bevers (Registered Principal, Devon, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any supervisory capacity and from performing any supervisory functions for 90 days, and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, Bevers consented to the described sanctions and to the entry of findings that, acting on behalf of a member firm, he failed to enforce various supervisory procedures and failed to supervise an individual reasonably and properly.

Bevers' suspension began February 16, 1998, and will conclude May 15, 1998.

Edward Galbreath Blackman, IV (Registered Principal, Highlands Ranch, Colorado) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for 60 days, and barred from association with any NASD member in any principal capacity. In addition, Blackman must pay \$75,000 in restitution to public customers following the suspension period and submit to additional supervision by his member firm for six months following the suspension. Without admitting or denying the allegations, Blackman consented to the described sanctions and to the entry of findings that he employed devices to defraud customers by recommending and urging customers to buy speculative and unseasoned securities, and by making baseless price predictions and predictions of returns.

The findings also stated that Blackman made untrue statements and omissions of material facts and recommended that customers purchase or hold specified securities without a reasonable basis for such recommendations. Furthermore, the NASD found that Blackman failed to supervise registered representatives properly and adequately, and encouraged them and others to participate in high-pressure, boiler room tactics to market speculative and unseasoned companies to customers without concern as to whether these recommendations were suitable for the customers. Blackman also recommended and placed orders for the purchase and sale of securities in a customer's account without a reasonable basis for believing the transactions were suitable for the customer's investment objectives and financial situation.

Danford Mark Byrens (Registered Representative, Olivet, Michigan) submitted a Letter of Acceptance,

Waiver and Consent pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Byrens consented to the described sanctions and to the entry of findings that he failed to remit \$225.55 in customer funds to his member firm's insurance affiliate.

Richard M. Cannon, Jr. (Registered Representative, Tucson, Arizona) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cannon failed to respond to NASD requests for information.

Charles Cochran (Registered Representative, Wichita, Kansas) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Cochran consented to the described sanctions and to the entry of findings that he failed to provide his member firm with prior written notice of his participation in private securities transactions in the form of a compensation agreement with another member firm.

Juan Manuel Correa (Registered Principal, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$4,000, suspended from association with any NASD member in any principal capacity for two years, and ordered to requalify by exam in any capacity. Without admitting or denying the allegations, Correa consented to the described sanctions and to the entry of findings that, acting through a member firm, Correa effected securities transactions while failing to maintain sufficient net capital. The findings

also stated that Correa failed to provide notification of the firm's net capital deficiency to the SEC and failed to supervise an individual properly to prevent unauthorized trading.

Paul A. Daniels (Registered Representative, Las Cruces, New Mexico) was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Daniels participated in private securities transactions for compensation without obtaining written approval from his member firm.

Stanley Theodore Deck (Registered Principal, Pleasant Hill, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Deck consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview.

Frank J. DeCola (Registered Representative, Brooklyn, New York) was censured, fined \$5,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam. The sanctions were based on findings that DeCola telephoned public customers to solicit interest in opening securities accounts and purchasing stock. During the course of the conversations, DeCola made several material misrepresentations regarding himself and the stock.

Holger Claus Dietze (Registered Representative, Chantilly, Virginia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$7,500, suspended from association

with any NASD member in any capacity for 30 business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Dietze consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and outside business activities without notifying his member firm of such transactions and activities.

Robert B. DiMarco, Jr. (Registered Principal, Boca Raton, Florida) and **Brian E. Baginski (Registered Principal, Boca Raton, Florida)** submitted an Offer of Settlement pursuant to which DiMarco was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Baginski was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to respond fully to NASD requests for information.

Gary J. Dorsi (Registered Principal, Marlboro, New Jersey) was censured, fined \$50,000, suspended from association with any NASD member in any capacity for 60 days, barred in any principal capacity, and required to requalify by examination in all capacities prior to reassociating with a member firm. The sanctions were based on findings that Dorsi, as a branch office manager, engaged in, and substantially assisted others in engaging in, high-pressure sales practices. The findings also stated that Dorsi failed to exercise effective oversight of the sales activities in his branch office to detect and prevent improper sales practices.

John J. Fiero (Registered Principal, Jersey City, New Jersey) was

censured, fined \$20,000, and suspended from association with any NASD member in any capacity for six months. The SEC affirmed the sanctions following appeal of a March 1997 NBCC decision. The sanctions were based on findings that Fiero failed to provide on-the-record testimony to the NASD.

Fiero has appealed this action to the United States Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

Paul T. Fiorini (Registered Principal, Los Angeles, California) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fiorini failed to respond to NASD requests for information.

Maureen Louise Flaherty (Associated Person, Portland, Oregon) submitted an Offer of Settlement pursuant to which she was censured, fined \$1,000, and suspended for two years from attempting to take any licensing qualification exam. Without admitting or denying the allegations, Flaherty consented to the described sanctions and to the entry of findings that she had unauthorized material in her possession while taking the Series 7 exam.

Sean T. Flanagan (Registered Representative, Bellaire, Ohio) submitted an Offer of Settlement pursuant to which he was censured, fined \$1,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Flanagan consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Nicholas Freund (Registered Representative, Great Neck, New York) submitted a Letter of Accep-

tion, Waiver and Consent pursuant to which he was censured, fined \$21,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Freund 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 after-market in violation of the NASD Board of Governors' Free-Riding and Withholding Interpretation. The findings also stated that Freund failed to provide written notification to his member firms that he was opening accounts with other firms, and failed to provide written notification to the executing firms of his association with member firms prior to opening the accounts.

Rodney Gocool (Registered Representative, Bronx, New York) was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$404.60 in restitution. The sanctions were based on findings that Gocool received funds in the amount of \$404.60 from public customers as insurance premium payments. Gocool failed to follow the customers' instructions and misappropriated their funds for his personal use. Gocool also failed to respond to NASD requests for information.

Aaron Eugene Granath (Registered Principal, Los Angeles, California) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Granath executed unauthorized transactions in the accounts of public customers.

Ronald Clifford Gross (Registered Representative, North Bend, Washington) submitted an Offer of Settlement pursuant to which he was

censured, suspended from association with any NASD member in any capacity for 120 days, and ordered to requalify by exam for registration in any capacity. Without admitting or denying the allegations, Gross consented to the described sanctions and to the entry of findings that he recommended purchases and sales of securities for the account of a public customer utilizing margin without having reasonable grounds for believing such recommendations were suitable for the customer.

Stephen C. Hadaway (Registered Representative, South Lake Tahoe, California) was censured, fined \$10,550, and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Hadaway effected unauthorized transactions in the accounts of public customers.

Barbara Diane Halpern (Registered Principal, Weston, Connecticut) submitted an Offer of Settlement pursuant to which she was censured, fined \$20,000, suspended from association with any NASD member as a financial and operations principal (FINOP) for 90 days, and required to requalify by exam as a FINOP. Without admitting or denying the allegations, Halpern consented to the described sanctions and to the entry of findings that a member firm, acting through Halpern, conducted a securities business while failing to maintain the minimum required net capital.

James L. Handlos (Registered Representative, East Tempe, Arizona) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Handlos consented to the described sanctions and to the entry of findings that he recom-

mended and effected transactions in a customer account that were excessive in number and contrary to the customer's financial circumstances and needs. The findings also stated that Handlos made unsuitable recommendations and transactions in a customer's accounts.

Patrick Allen Hannahs (Registered Representative, New Concord, Ohio) was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hannahs received \$5,000 from a public customer to purchase a certificate of deposit for the customer's account. Without the customer's knowledge or consent, Hannahs misused the funds by improperly holding those funds for approximately four months. Hannahs also failed to respond to NASD requests for information.

Patrick G. Hayes (Registered Principal, Valley Stream, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any principal or supervisory capacity for six months, and required to requalify by taking the Series 24 exam before acting in that capacity. Without admitting or denying the allegations, Hayes consented to the described sanctions and to the entry of findings that he failed to satisfy his supervisory obligations by approving fraudulent sales scripts.

Dena C. Hennessy (Registered Representative, Phoenix, Arizona) was censured, fined \$42,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hennessy obtained checks in the amount of \$4,500 drawn on the accounts of public customers, altered the checks, and misappropriated the

funds for her personal benefit. Hennessy also failed to respond to NASD requests for information.

Timothy R. Hutchinson, Jr. (Registered Representative, Bay Village, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$217,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hutchinson consented to the described sanctions and to the entry of findings that he converted customer funds in the amount of \$43,500 to his own use and benefit.

Frank J. Ingersoll (Registered Representative, San Antonio, Texas) was censured, fined \$388,535, barred from association with any NASD member in any capacity, and ordered to pay \$301,088 in restitution to customers. The sanctions were based on findings that Ingersoll distributed misleading and fraudulent sales literature to the public. In addition, Ingersoll failed to disclose to customers material adverse information in connection with the sale of stock taken from accounts he owned or controlled, and failed to disclose to customers and his member firm the total remuneration he received in connection with sales of securities.

Brian Clarence Jorgensen (Registered Representative, Cedar Falls, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000,000, and permanently barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jorgensen consented to the described sanctions and to the entry of findings that he converted customer funds in the amount of \$1,274,253 to his own use and benefit without the customers' knowledge

or consent. According to the findings, Jorgensen failed to invest their funds into the insurance or securities products they selected, and made unauthorized withdrawals, loans, or redemptions from the customers' existing insurance products or securities accounts.

Robert Craig Kaapke (Registered Principal, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was censured, fined \$17,828.14, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Kaapke consented to the described sanctions and to the entry of findings that a member firm, acting through Kaapke, failed to make a bona fide distribution of public offerings by effecting sales of units to restricted persons.

Nelson C. Krum (Registered Representative, Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Krum consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm.

Michael V. Lipkin (Registered Principal, New York, New York) was censured, fined \$75,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lipkin arranged to have an impostor take the Series 7, 24, and 63 exams on his behalf. Lipkin also failed to respond to NASD requests to appear for an on-the-record interview.

John Graeme MacHorton (Registered Representative, Sterling, Virginia) submitted an Offer of Settlement pursuant to which he was censured, fined \$3,500, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, MacHorton consented to the described sanctions and to the entry of findings that he sent correspondence to a public customer asking for a donation for securities-related work without obtaining prior approval from his member firm. The findings also stated that MacHorton used insinuating and inappropriate language in a telephone message to the customer.

Douglas Magnuson (Registered Representative, Lindenhurst, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for six months, required to requalify as a general securities representative, and required to pay \$750 in restitution to a public customer. Without admitting or denying the allegations, Magnuson consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted material information, and made fraudulent price predictions in the offer and sale of securities. The findings also stated that Magnuson engaged in unauthorized trading and failed to follow customer instructions to sell securities.

Juan Carlos Martinez (Registered Representative, Houston, Texas) was censured, fined \$1,245,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Martinez made improper use of customer funds and caused his member firm to effect options transactions by means of manipulative,

deceptive, or other fraudulent devices or contrivances. The findings also stated that Martinez caused false, fictitious, and misleading account statements to be issued, and thereby failed to observe high standards of commercial honor and just and equitable principles of trade. Martinez also failed to respond to NASD requests for information.

William G. McNamara (Registered Principal, Tampa, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for two years. In addition, McNamara is required to disgorge \$13,020 in commissions. Without admitting or denying the allegations, McNamara 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.

Loren Lynn Obley (Registered Representative, San Francisco, California) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Obley received \$30,000 from public customers in exchange for a personal promissory note issued by Obley to the customers. In connection with that transaction, Obley represented to the customers that he would invest the money in a company with overly optimistic prospects, when in fact, he used the funds for his personal use. Obley also participated in private securities transactions without providing prior written notice to his member firm.

Thomas P. O'Hanlon (Registered Representative, Sherman Oaks, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured

and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, O'Hanlon consented to the described sanctions and to the entry of findings that he failed to disclose a personal bankruptcy on his Form U-4.

Edward O'Reilly (Registered Representative, Mount Kisco, New York) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that O'Reilly failed to respond to NASD requests to appear for an on-the-record interview.

Lambert L. Owens (Registered Representative, West Deptford, New Jersey) was censured, suspended from association with any NASD member in any capacity for six months, required to requalify by exam, and ordered to pay \$3,013 plus interest in restitution to a member firm. The sanctions were based on findings that Owens caused his member firm to issue two policy loan checks totaling \$5,013 against his brother's insurance policies. Owens endorsed and negotiated the checks and retained the proceeds without the prior authorization of his brother.

Thomas P. Read (Registered Representative, Scottsdale, Arizona) was censured, fined \$80,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Read engaged in conduct that he knew would constitute a deception of his member firm and affiliated companies with respect to the sale of a life insurance policy on behalf of a public customer. Moreover, Read obtained approximately \$10,000 to which he was not entitled through a series of illegal deposits and withdrawals. Read also failed to respond to an NASD request for information.

Dominic M. Romano, Jr. (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for five business days, and required to comply with all aspects of his member firm's individual supervisory plan. Without admitting or denying the allegations, Romano consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in customer accounts and failed to follow customer instructions to sell securities. The findings also stated that Romano made misstatements to customers regarding sales charges, the size of positions in the account, and the timing of the issuance of a customer's proceeds check. Romano also provided inaccurate information to the NASD during its investigation of customer complaints.

Dennis Paul Rueb, Jr. (Registered Representative, Copaugue, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$40,000, barred from association with any NASD member in any capacity, and required to pay \$16,200 in restitution to customers. Without admitting or denying the allegations, Rueb consented to the described sanctions and to the entry of findings that he failed to prepare and maintain accurate and complete customer account information. The findings also stated that Rueb exercised discretion in a customer's account without obtaining prior written authorization and failed to follow customer instructions to sell securities. In addition, the NASD found that Rueb effected unauthorized transactions in a customer's account and made material misrepresentations and omissions in connection with the recommendation of a security to a public customer. Furthermore, the findings stated that Rueb made

fraudulent price predictions to a customer and failed to respond to NASD requests to appear for an on-the-record interview. The NASD also determined that Rueb failed to update his Form U-4 to disclose material changes in his registration status.

Keith Ruffler (Registered Representative, Spotswood, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for one week. In addition, Ruffler must remove certain restrictive language in a confidentiality clause of a settlement agreement with a public customer. Without admitting or denying the allegations, Ruffler consented to the described sanctions and to the entry of findings that he failed to forward to a public customer proceeds in the amount of \$26,855 from the sale of a common stock. Instead, the NASD found that Ruffler misused the funds and executed an unauthorized purchase of warrants in the customer's account totaling \$25,520. The findings also stated that Ruffler entered into a settlement agreement with a public customer that contained improper language prohibiting the customer from cooperating with an investigation by any regulatory agency, including the NASD.

Michael Sabato (Registered Principal, Lindenhurst, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$35,000, suspended from association with any NASD member in any capacity for 24 months, and required to pay \$118,370 in restitution to customers. Without admitting or denying the allegations, Sabato consented to the described sanctions and to the entry of findings that he made material misrepresentations and omissions and made fraudulent price predictions in the offer and sale

of securities. The findings also stated that Sabato failed to follow customer instructions to sell securities.

Charles Shulkin (Registered Representative, Arlington Heights, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$64,773, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shulkin consented to the described sanctions and to the entry of findings that he received \$12,954.62 from public customers with instructions to deposit or use the proceeds on behalf of the customers. The NASD found that Shulkin deposited the checks into an account he controlled without the customers' knowledge or consent and used the proceeds for purposes other than for the benefit of the customers.

Kenneth W. Skousen (Registered Representative, Mesa, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Skousen consented to the described sanctions and to the entry of findings that he made improper use of customer funds and securities by commingling the funds of one of his customers into a brokerage account over which he exercised ownership and control. The findings also stated that Skousen engaged in outside business activities and failed to provide prompt written notice of these activities to his member firm. Skousen also failed to respond fully to NASD requests for information.

Eric Slane (Registered Representative, Seattle, Washington) was censured, fined \$10,000, and barred from association with any NASD

member in any capacity. The sanctions were based on findings that Slane filed an inaccurate Form U-4 and submitted the form to his member firm to be forwarded to the NASD.

The appeal to the NAC was dismissed as abandoned; therefore, this DBCC decision constitutes final action.

Lee B. Spahn (Registered Representative, Baltimore, Maryland) submitted an Offer of Settlement pursuant to which he was censured, fined \$8,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Spahn consented to the described sanctions and to the entry of findings that he made unsuitable recommendations to a public customer in light of the customer's other security holdings, financial situation, or needs.

Jeffery Steven Stone (Registered Representative, Dallas, Texas) was censured, fined \$10,000, suspended from association with any NASD member until he satisfies an arbitration award, and suspended for an additional 30 days in all capacities. The sanctions were based on findings that Stone failed to adhere to the terms of a \$158,680.76 arbitration award to his former member firm.

Steven Ray Sumner (Registered Representative, Fort Collins, Colorado) was censured, fined \$15,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sumner recommended that a public customer liquidate an investment in a mutual fund in order to loan the proceeds to a business enterprise, of which Sumner was a principal, when such recommendation was unsuitable for the customer. In addition, Sumner obtained a loan from a public customer while failing

to disclose material information relating to the transaction when he knew that he would be unable to repay the loan. Further, Sumner failed to disclose a tax lien levied against him with respect to his business.

Michael J. Tierney (Registered Representative, Eagan, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$710,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tierney consented to the described sanctions and to the entry of findings that he received checks in the amount of \$142,000 intended for investment purposes from a public customer and, without the customer's knowledge or consent, deposited the checks into his bank account, misused \$122,622.36, and converted \$19,377.64 to his own use and benefit.

Anna Lynn Vernon (Registered Representative, Richmond, Virginia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Vernon consented to the described sanctions and to the entry of findings that she completed life insurance applications for individuals and signed agent reports that contained misrepresentations regarding her relationship with the individuals.

Samuel R. Weber (Registered Representative, Dix Hills, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Weber consented to the described sanctions and to the entry of findings

that he failed to follow customer orders to sell securities and provided false information to the NASD during its investigation of the matter. The findings also stated that Weber made unfair comparisons between securities, made baseless price predictions, and sold highly speculative securities to customers, contrary to the customers' requests. Furthermore, the NASD found that Weber executed an unauthorized transaction in a public customer's account and allowed customers to buy units in an initial public offering only if they first purchased shares of common stock offered by the issuer. Weber also misled customers into making risky investments, made material misrepresentations to a customer regarding a security, and falsified customer account information.

John R. Whitlow (Registered Representative, Normal, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$225,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Whitlow consented to the described sanctions and to the entry of findings that he wrote checks totaling \$45,000 from a public customer's money market mutual fund account, failed to use the funds for any investment purposes, and used the funds for his own purposes and for salaries and expenses of a corporation of which he was a majority shareholder.

Michael C. Young (Registered Representative, Los Angeles, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$45,500, barred from association with any NASD member in any capacity, and ordered to pay \$9,100 in restitution to a financial institution. Without admitting or denying the allegations, Young consented to the described sanctions and to the

entry of findings that he received \$9,100 from the savings account of a public customer without the customer's knowledge or consent. According to the findings, Young forged the customer's signature on withdrawal slips and converted the funds obtained to his own use and benefit.

Individual Fined

Thomas Joseph Perkins (Registered Representative, Union City, California) was censured and fined \$22,826.25. The sanctions were based on findings that Perkins sold securities on behalf of his member firm prior to becoming registered with the NASD.

Individuals Censured

Jairo A. Baquero, Jr. (Registered Representative, Staten Island, New York) and **Edward Machado (Registered Representative, Parlin, New Jersey)** submitted Offers of Settlement pursuant to which Baquero was censured and required to pay \$10,405.20 in restitution to public customers. Machado was censured and required to pay \$11,583.75 in restitution to customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Baquero and Machado received commissions on sales of securities that were excessive and unfair.

Decisions Issued

The following decisions have been issued by the DBCC and have been appealed to or called for review by the NAC as of March 26, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired

will be reported in the next *Notice to Members*.

Norman M. Merz (Registered Principal, Clinton Township, Michigan)

was censured, fined \$110,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Merz participated in private securities transactions and accepted compensation as a result of an outside business activity. Merz also failed to give his member firm written notice of his intention to engage in such activities.

This action was called for review by the NAC and the sanctions are not in effect pending consideration of the review.

Wayne B. Vaughan (Registered Representative, Atlanta, Georgia), William A. Lobb (Registered Principal, Atlanta, Georgia) and Paul L. Vogel (Registered Principal, Suwanee, Georgia)

Vaughan was censured, suspended from association with any NASD member in any capacity for 20 business days, and thereafter in any registered capacity until he has requalified by taking and passing the appropriate qualification exam. Lobb was censured and fined \$10,000. Vogel was censured, fined \$10,000, suspended from association with any NASD member in any principal or supervisory capacity for 30 days, and suspended thereafter in any principal or supervisory capacity until he has requalified by taking and passing the appropriate qualification exam. The sanctions were based on findings that Vaughan recommended and effected a course of trading activity in a public customer's account without having reasonable grounds for believing that such trading activity was suitable for the customer in view of the customer's other securities holdings, financial situa-

tion, and needs. In addition, the findings stated that Lobb and Vogel failed to reasonably supervise the handling of the account by Vaughan in order to prevent and detect the suitability violations.

This action was called for review as to respondents Vaughan and Lobb and the sanctions as to these respondents are not in effect pending consideration of the review.

Michael L. Yancey (Registered Representative, Lake Park, Georgia)

was censured, fined \$2,500, suspended from association with any NASD member in any capacity for six months, and further suspended until he requalifies as an investment company and variable contracts products representative by taking and passing the Series 6 exam. The sanctions were based on findings that Yancey obtained \$100 from a public customer intended for the repayment of an insurance policy loan and for payment of an insurance policy premium, and misappropriated the funds for his own use and benefit without the customer's knowledge or authorization.

Yancey has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD 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 these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Shaun Attwood (Registered Representative, Phoenix, Arizona) and **Dominic Davis (Registered Representative, Phoenix, Arizona)** were named as respondents in an NASD complaint alleging that they engaged in trading in a customer's account that was excessive in light of the nature and resources of the account and the investment objectives of the customer. The complaint also alleges that Attwood failed to respond to NASD requests for information.

Glenn A. Davis (Registered Representative, West Palm Beach, Florida) was named as a respondent in a complaint alleging he executed or caused to be executed securities transactions in the account of a public customer without the prior knowledge, authorization, or consent of the customer.

Leslie Saul Feldman (Registered Representative, Evergreen, Colorado) was named as a respondent in an NASD complaint alleging that he misappropriated funds from his member firm.

John D. Morgan (Registered Representative, Dunedin, Florida) was named as a respondent in a complaint alleging he exercised discretion in a customer's account without having a signed discretionary agreement giving him such authorization and effected unauthorized transactions in the customer's account. The complaint also alleges that, in the exercise of his discretion, and in reliance on certain representations allegedly made to him by a stock promoter, Morgan purchased shares of stock for the customer. When the price of the stock dropped dramatically after the purchase, Morgan purchased additional shares of stock for the customer free of charge and subsequently sold all shares of the stock, resulting in an overall profit for the customer even though the share price was actually much lower than

when he had initially purchased it.

Mike D. Nolan (Registered Representative, Denham Springs, Louisiana) was named as a respondent in an NASD complaint alleging that he converted funds from public customers in the amount of \$116,500 to his own use and benefit without their knowledge or consent. The complaint also alleged that Nolan failed to respond to NASD requests for information.

Michael T. Pinto (Registered Representative, Windham, New York) was named as a respondent in a complaint alleging that he executed or caused to be executed securities transactions in the account of a public customer without the prior knowledge, authorization, or consent of the customer. The complaint also alleges that Pinto settled a customer complaint without the knowledge or authorization of his member firm.

Nelson Eric Roseland (Registered Representative, Oakland, California) was named as a respondent in an NASD complaint alleging that he effected unauthorized trades in customer accounts. The complaint also alleges that Roseland made unsuitable recommendations to a customer and exercised discretion in a customer's account without obtaining written discretionary authority from the customer as well as acceptance of the account by his member firm. Roseland also failed to respond to NASD requests for information.

Wayne E. Warren-Young (Registered Representative, Atlanta, Georgia) was named a respondent in a complaint alleging he accepted a \$50,000 check from a public customer for investment in mutual funds. The complaint further alleges that, contrary to the customer's instruction and without his member firm's knowledge, Warren-Young deposited the check in a bank account of a private

company and failed to comply with the customer's demand to return the money. The complaint also alleges that Warren-Young failed to respond to NASD requests for information.

Firm Expelled For Failure To Pay Fines, Costs And/Or Provide Proof Of Restitution In Connection With Violations **Dickinson & Co., Des Moines, Iowa**

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.

Alden Capital Markets, Inc.,
New York, New York (April 3, 1998 to April 13, 1998)

Avex Investments, Inc.,
Dallas, Texas (April 3, 1998)

Bondnet Brokerage, Incorporated,
Greenwich, Connecticut
(April 7, 1998)

Burlington Securities Corp.,
Chatham, Massachusetts
(April 3, 1998 to April 9, 1998)

C.A. Atlantic Securities, Inc.,
Boston, Massachusetts
(April 3, 1998)

Carlisle Investment Group, Ltd.,
Chicago, Illinois (April 3, 1998)

Carolina Securities, Inc.,
Raleigh, North Carolina
(April 3, 1998 to April 13, 1998)

Chase Global Securities, Inc.,
Cleveland, Ohio (March 31, 1998)

Chinese & American Investments, Inc., New York, New York
(April 7, 1998)

Clark Melvin Securities,
Hato Rey, Puerto Rico (April 3, 1998)

Clemente Fund Management Inc.,
New York, New York (April 3, 1998)

Corporate Funding Ltd.,
Minot, North Dakota (April 3, 1998)

Cypress Securities Group, Inc.,
New Orleans, Louisiana
(April 3, 1998)

Emerald Securities, L.L.C.,
Houston, Texas (April 7, 1998)

Euromax Financial Services, Inc.,
Daly City, California (April 3, 1998)

First Commonwealth Securities,
New Orleans, Louisiana
(April 3, 1998)

Great American Securities,
Phoenix, Arizona (April 3, 1998)

Investment Services Capital Corp.,
Monroe, New York (April 3, 1998 to
April 9, 1998)

Kopfer Financial Services, Inc.,
Easton, Pennsylvania (April 3, 1998)

Lacroix Alexander Financial Corporation, Newport Beach,
California (April 7, 1998)

Marsh, Block & Co., Inc.,
New York, New York (April 3, 1998)

Meyers Pollock Robbins, Inc.,
New York, New York (April 3, 1998)

Pegasus Capital Investments, LC,
Greensboro, North Carolina
(April 3, 1998 to April 13, 1998)

Plumwood Securities,
Libertyville, Illinois (April 3, 1998)

Sanford Roberts, Inc.,
Miami, Florida (April 3, 1998)

Sierra Pacific Capital,
Olympic Valley, California
(April 3, 1998)

Team Securities Corporation,
Canoga Park, California
(April 3, 1998 to April 20, 1998)

TSG B/D, Inc.,
New York, New York (April 3, 1998)

Unified Investments, Inc.,
Jackson, Mississippi (April 3, 1998)

U.S.A. Investments,
Morristown, New Jersey
(April 3, 1998)

Wall Street Markets Group, Inc.,
New York, New York (April 3, 1998)

William & Co. Capital Markets Ltd.,
New York, New York (April 3, 1998)

Winston Rodgers & Otalvaro, Inc.,
New York, New York (April 3, 1998)

Suspensions Lifted

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

Westhagen & Westhagen, Inc.,
Ripon, Wisconsin (April 8, 1998)

WR Lizard Laidlaw, Inc.,
New York, New York
(March 9, 1998)

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

Berkovich, Jimmy (a/k/a Jimmy Berk), Brooklyn, New York

Cherepakhov, Alexander,
Hopatcong, New Jersey

Cruz, Miguel A., Shelby Township,
Michigan

Cunnane, Jr., Martin J., Elmhurst,
New York

DenHerder, Robert L., Helena,
Montana

Frith, Jr., James R., Highland Park,
Illinois

Hardage, Steven R., Costa Mesa,
California

Jurdine, Wilber G., Tampa, Florida

O'Toole, Brian D., Littleton,
Colorado

Padulo, Jr., Vincent A.,
Manalapan, New Jersey

Quiel, Robert A., Bermuda Dunes,
California

Schur, Peter A., San Diego,
California

Sebbert, Gary A., Muscatine, Illinois

Silverman-Cherepakhov, Donna,
Hopatcong, New Jersey

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

Investors Associates, Inc.,
Hackensack, New Jersey
(April 15, 1998)

Individuals Whose Registrations Were Suspended Pursuant To NASD Rule 9622 For Failure To Pay Arbitration Award

Brecker, Kerry Scott, Roslyn, New York

Gelfand, Howard Scott, Roslyn, New York

Hill, Jr., Robert Cecil, Dobbs Ferry, New York

Montano, Daniel Carmichael, Orange, California

Montano, Victoria Genine, Orange, California

Puglisi, John, New York, New York

Terzo, Frank, Floral Park, New York

NASD Regulation Sanctions Morgan Stanley And Seven Traders

NASD Regulation issued a decision by its Market Regulation Committee that fined Morgan Stanley & Co., Inc., \$1 million for manipulating the price of 10 securities that underlie the Nasdaq 100 Index[®] (NDX) on two separate “expiration Fridays” in 1995. The NDX options expire on the third Friday of every month.

Seven Morgan Stanley traders, including the firm’s then-OTC Desk Head Trader, were sanctioned. David Slaine, the former head of OTC trading at Morgan Stanley, was suspended from the brokerage industry for 90 days and fined \$100,000. The six other traders—Thomas Anthony Crocarno, Carl DeFelice, Joseph Louis Ferrarese, Peter William Ferriso, Jr., Robert Scott Ranzman, and Charles McMichael Simonds—were each suspended for 30 days and fined \$25,000. Morgan Stanley is jointly and severally liable for the traders’ fines.

After a five-day hearing before a panel of industry members, the Market Regulation Committee (the Committee) found that Morgan Stanley, in order to ensure that the firm’s Program Trading Desk did not suffer a loss when its NDX options expired, had an arrangement with the firm’s OTC Desk to sell to the Program Trading Desk the exact amount of each security necessary to close out pre-existing stock positions. As part of this agreement, the Morgan Stanley OTC Desk would sell the securities to the firm’s Program Trading Desk at the opening print price—the first reported trade in each of the securities.

The initial complaint against Morgan Stanley and the seven individuals in this case was issued by NASD Regulation on October 25, 1996. This case, which began with complaints about locked and crossed markets from other market makers, was uncovered after a lengthy investigation by the Market Regulation Department. A locked market occurs when the bid price equals the sell price in the same security, and a crossed market occurs when the bid price is greater than the sell price of a security.

The Committee found that, in connection with this arrangement, on March 17, 1995 and October 20, 1995, Morgan Stanley’s OTC Desk improperly and fraudulently raised the price at which it would buy the securities in the open market, moving the market for each security—and the opening print price in that security—higher. The firm raised its bid without purchasing any stock in an effort to make Friday’s opening print price equal or exceed Thursday’s closing sell price. The Committee found that Morgan Stanley’s OTC Desk assumed the risk for more than \$300 million of the firm’s capital as a result of the intra-firm transaction, thereby enabling the

Program Trading Desk to cover its short position at a price (in this case, the opening print price) that would prevent substantial losses, and enable the OTC Desk later to cover the short position at a profit, or at least to break even.

Morgan Stanley was able to manipulate the price of the NDX because, as a capitalization-weighted index, the cash settlement value of the NDX options was, at the time, determined by the opening print price for each of the 100 stocks. Since April 1996, the cash settlement value of NDX options has been based on a volume-weighted average of the prices in each of the component securities, as reported during the first five minutes of trading.

The Committee found that the prices of five securities were manipulated on March 17, 1995, and the prices of a separate set of five securities were manipulated on October 20, 1995.

Morgan Stanley aggressively raised its bid for the 10 securities, before the market opened, creating the last new inside bid price prior to the opening. Generally, raising the bid price prior to the opening on expiration Friday does not attract many sellers because market makers are reluctant to trade prior to the opening. Morgan Stanley was the first market maker to decrease its bid for every one of the 10 securities within minutes after the market opened, and in some instances without buying any stock at all.

Locked and crossed markets resulted from this manipulative bidding activity. NASD rules require firms to make reasonable attempts to trade prior to locking or crossing the market during normal business hours, and there was no evidence that the traders attempted to contact and transact with other market makers whose quotes they locked or crossed.

On March 17, the markets for three of the five securities opened locked, and one opened crossed; and on October 20 the markets in all five opened locked. The Committee found this activity to be an element of the manipulative scheme as well as violative of the NASD rule governing locked and crossed markets, but did not conclude that Morgan Stanley's written supervisory procedures were inadequate to deter locked and crossed market activity.

The Committee also noted that Morgan Stanley engaged in a similar pattern of pre-opening quoting activity in 67 other Nasdaq National Market[®]

securities underlying the NDX on those two expiration Fridays. In these examples, the firm increased its bids in pre-opening trading, did not purchase any stock prior to the opening, and decreased the price within minutes after the shares were transferred to the Program Trading Desk.

NASD Regulation found no evidence that any of the companies whose securities were involved in this case were aware of what was happening.

Initial actions, such as this, by NASD Regulation disciplinary committees are final after 45 days, unless they

are appealed to NASD Regulation's National Adjudicatory Council (NAC), or called for review by the NAC. The sanctions are not effective during this period. If the decision in this case is appealed or called for review, the findings may be increased, decreased, modified, or reversed.

NASD Regulation's Market Regulation Committee is currently comprised of 13 members, six from the securities industry and seven who are non-industry members. All members serve three-year terms.

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For Your Information

Use Of Alias Prohibited During Cold Calling

It has come to the attention of NASD Regulation, Inc., that some registered representatives may be using aliases when making cold calls. Such activity violates National Association of Securities Dealers, Inc. (NASD[®]) Rule 2211 and the Federal Communications Commission's telephone solicitation rules, 47 C.F.R. 64.1200(e)(iv) (1997)¹, which require anyone calling a residence for the purpose of solicitation to identify themselves; NASD Rule 2210, which requires members to observe high standards of commercial honor and just and equitable principles of trade; and NASD Interpretive Material 2310-2, which requires that sales efforts be undertaken only on a basis that can be judged as being within the ethical standards of the NASD's Rules, with particular emphasis on the requirement to deal fairly with the public. Any representative who is using an alias for cold calling purposes should discontinue the practice immediately.

If a representative has used an alias or other name for any reason, such name must be disclosed in item 15 on page 2 of the Form U-4. A representative who fails to provide complete and accurate disclosure on the Form U-4 may be subject to disciplinary action.

Any questions regarding this *Notice* may be directed to Mary Dunbar, Office of General Counsel, NASD RegulationSM, at (202) 728-8252.

Endnote

¹ See *Notice to Members 95-54*, which informed members of their obligations under the Federal Communications Commission's telephone solicitation rules adopted pursuant to the Telephone Consumer Protection Act of 1991.

Rule Changes Regarding Correspondence Take Effect

NASD Regulation has implemented rule changes relating to supervision and record retention requirements applicable to correspondence, including electronic mail, which were approved by the Securities and Exchange Commission (SEC) in December 1997. The rule changes, as described in *Notice to Members 98-11*, became effective April 7, 1998, with the exception of the provision in the *Notice* stating that members must review "all incoming correspondence received in non-electronic format directed to registered representatives and related to a member's investment banking or securities business." The effective date of the provision relating to the review of incoming, non-electronic correspondence has been delayed until July 7, 1998, to allow NASD Regulation further opportunity to consider comments on this issue. See File No. SR-NASD-98-31, filed April 7, 1998, and 63 FR 19778 (April 21, 1998). The rule filing may be accessed through the NASD Regulation Web Site at www.nasdr.com.

Year 2000 Update Member Firm Reminder

As we move closer to the year 2000, member firms are reminded that their individual Year 2000 programs need to include processes and procedures for developing an inventory and assessment of all facilities, communications systems, and business support services. These areas could be overlooked within the larger scheme of Year 2000 program plans, but are the practical, everyday items, that no business can do without. The following list details these items:

- telephones;
- office equipment (fax machines, financial calculators, postage machines, etc.);

- elevators;
- power and other utilities (water/gas);
- security systems;
- PCs* and PC service contracts;
- Internet Web Sites;
- software applications (including those on desktops); and
- payment systems (wire transfer systems, check clearing providers, credit card merchant and issuing systems, electronic benefits transfer automated applications).

**Older PCs are prone to a "Real Time Clock" problem where the PC reads the date as 1980 when the year 2000 arrives. Businesses are encouraged to test individual PCs and servers in anticipation of this potential problem.*

For further information on how to test a PC and the "Real Time Clock" problem related to the Year 2000 challenge, see "Y2K Snag Hides in PC Hardware" in the April 13, 1998 issue of *Computerworld* (www.computerworld.com).

SEC Rule Proposal

In March, the SEC requested comments regarding a temporary rule amendment to SEC Rule 17a-5 that would require broker/dealers to file two reports regarding their Year 2000 compliance. The NASD submitted comments to the SEC in April indicating that the proposed amendments are a positive addition to the regulatory and industry-wide Year 2000 initiatives currently underway. The NASD also indicated that the SEC's amendment should extend to all broker/dealers, rather than the SEC's proposed \$100,000 net capital reporting threshold, but that smaller firms should not be subject to an outside attestation requirement. Furthermore, the NASD commented that the results of these reports should be made available to the public and should be collected and published under a standard reporting format.

Year 2000 Conferences And Events

The NASD Year 2000 Program Office has been hosting a series of free educational seminars this month at NASD Regulation District Offices and other locations. These sessions—targeted for NASD member firms—are providing an opportunity for attendees to exchange ideas and share information about Year 2000 "best practices," review a typical Year 2000 plan, and hear about industry-wide testing efforts. In order

to underscore the importance of member firms' Year 2000 readiness and compliance, NASD Regulation President Mary L. Schapiro will attend one of these sessions. In addition, this month NASD Regulation is hosting its annual Spring Securities Conference, May 20-22, in Washington, D.C., where Year 2000 issues will be featured.

Year 2000 Testing Update

NASD member firms are reminded of the vital importance of their organization participating in external Year 2000 testing. Unit testing is already being scheduled for Securities Industry Association (SIA) Beta Test participants. There is no charge for this testing and it is strongly recommended for all market making and clearing firms. Call (800) 288-3783 to schedule your firm's Year 2000 testing today.

Contact Information

For more information, continue to read *Notices to Members'* monthly "For Your Information" section. Also, visit the Year 2000 Web Pages on both the NASD Regulation Web Site (www.nasdr.com) and the NASD Web Site (www.nasd.com). To contact the NASD Year 2000 Program Office directly, call (888) 227-1330, or send an e-mail to y2k@nasd.com.

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NASD Notice to Members 98-42

NASD Regulation
Requests Comment
On Proposed Rules
Regarding Cease-And-
Desist Proceedings;
**Comment Period
Expires July 31, 1998**

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) requests comment on a series of National Association of Securities Dealers, Inc. (NASD[®]) rules that would authorize NASD Regulation Department of Enforcement staff, after obtaining approval of the President or Chief Operating Officer of NASD Regulation, to initiate temporary cease-and-desist proceedings with respect to the rule violations that pose the most serious and immediate investor protection concerns. The proceeding would allow the Department of Enforcement, after notice and opportunity for a hearing, to order a member or individual to stop engaging in activity that violates certain securities laws or rules. The order could remain in place until a regular disciplinary proceeding is completed. It is expected that temporary cease-and-desist proceedings would be used only in egregious cases. Further, the rules would permit an accelerated proceeding to impose sanctions for violations of temporary or permanent cease-and-desist orders.

Questions concerning this *Request For Comment* should be directed to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, at (202) 728-8332, or Peter R. Geraghty, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8227.

Request For Comment

The NASD encourages all interested parties to comment on the proposed rules. 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 July 31, 1998**. 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 Securities and Exchange Commission (SEC).

NASD Regulation Request For Comment 98-42

Executive Summary

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Background And Discussion

The proposed microcap rules, which will be filed with the SEC shortly, would regulate broker/dealer and individual salesperson conduct in connection with the sale of smaller capitalization securities, which often have proved to be the source of significant fraudulent activity.¹ To fully address serious broker/dealer and salesperson misconduct, NASD Regulation staff believes it needs to introduce a quicker process by which

it can sanction such misconduct. The proposed Temporary Cease and Desist Order (TCDO) rule and the related proposed TCDO enforcement proceeding are designed to fulfill this need.

Specifically, the proposed rule would allow staff in an expedited proceeding to obtain an order prohibiting the continuing violation of specified rules where staff satisfies the required standard for issuance of the TCDO. Before a TCDO can be issued, the staff must show that the alleged rule violations are likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to completion of the regular disciplinary proceeding. To ensure that the rule is limited to the most serious offenses, such orders could only be sought for alleged violations of the following specified investor protection provisions or rules: (1) Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, SEC Rule 10b-5, and NASD Rule 2120 (the SEC's and NASD's basic anti-fraud and manipulation rules); (2) SEC Rules 15g-1 to 15g-9 (the SEC's penny stock rules); and (3) NASD Rules 2110 and 2330, where the alleged violations include unauthorized trading, misuse or conversion of customer assets, or excessive markups.

If the firm or individual subject to a TCDO (or a permanent cease-and-desist order)² violates the order by continuing to violate the rules specified in the order, the proposed rule would permit an accelerated proceeding to impose sanctions for violations of the order. The President or Chief Operating Officer of NASD Regulation could authorize the initiation of an expedited disciplinary proceeding under Rule 9513, which could result in sanctions up to and including bars and expulsions for violations of the order, after the Respon-

dent was afforded a hearing. Because the proceeding would occur under Rule 9513, the Respondent would be afforded all the procedural protections of this rule. For example, the Respondent must be served with written notice initiating the proceeding; the Respondent would have 15 days to request a hearing; the hearing panel would be composed of a Director of NASD Regulation and a current or former Director of NASD Regulation, Governor of NASD, or member of the National Adjudicatory Council (NAC); the hearing panel's decision would have to address, among other things, the grounds for initiating the proceeding, findings of fact, a statement supporting the disposition of the main issue, and if a sanction is imposed, its effective date, time, and terms; and the hearing panel's decision would be subject to a call for review by the NASD Board of Governors.

In order to ensure that this authority is applied appropriately, a TCDO proceeding, as well as any proceeding to impose sanctions for violating the TCDO (or a permanent cease-and-desist order), could be initiated only with the written authorization of the President or Chief Operating Officer of NASD Regulation. This ensures that the prosecutorial judgment for such extraordinary proceedings is made at the highest staff levels. If the rule is approved, the staff will monitor its effectiveness and report to the Board of Directors of NASD Regulation, within two years after the effective date of the rule, on NASD Regulation's experience with the rule and obtain the Board's authorization to continue to exercise authority under the rule.

The initiation of the TCDO proceeding and any resulting order could be publicized under Interpretive Material 8310-2.

The proposed rule is modeled on a rule providing similar authority to the SEC, although unlike the SEC rule, the NASD rule does not include a provision for orders issued without the Respondent having any opportunity to be heard (so-called "ex parte" orders). Also, unlike the SEC rule, the proposed NASD rule is limited in the types of violations that the TCDO proceeding may be used to address.

The NASD Board of Directors and the National Adjudicatory Council approved the issuance of a *Notice to Members*. The Small Firm Advisory Board was supportive of the issuance of a *Notice*, but took no formal position. A subcommittee of the Legal Advisory Board reviewed and unanimously supported the issuance of a *Notice to Members*.

Request For Comment

The NASD encourages all interested parties to comment on the proposed rules. 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 July 31, 1998**. 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: All language is new.)

9800. Temporary Cease-And-Desist Orders

9810. Initiation of Proceeding

(a) Department of Enforcement

With the prior written authorization of the President or Chief Operating Officer of NASD Regulation, Inc., the Department of Enforcement ("Department") may initiate a temporary cease-and-desist proceeding with respect to alleged violations of Section 17(a) of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 thereunder; SEC Rule 15g-1 through 15g-9; or NASD Rule 2110 (if the alleged violation includes unauthorized trading, misuse or conversion of customer assets, or excessive markups), 2120, or 2330 (if the alleged violation includes misuse or conversion of customer assets). The Department shall initiate the proceeding by serving a notice on a member or associated person (hereinafter "Respondent") and filing a copy thereof with the Office of Hearing Officers. The Department shall serve the notice by personal service, overnight commercial courier, or facsimile.

(b) Contents of Notice

The notice shall set forth the rule or statutory provision that the Respondent is alleged to have violated and the temporary relief sought against the Respondent, including whether the Department is requesting that the Respondent be required to take action to prevent the dissipation or conversion of assets. The notice shall be accompanied by: (1) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts or omissions that constitute the

alleged violation; and (2) a proposed order that specifically describes the temporary relief sought, including any act or acts that the Respondent would be required to take or refrain from taking.

(c) Filing of Underlying Complaint

If the Department has not issued a complaint under Rule 9211 against the Respondent relating to the subject matter of the temporary cease-and-desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in paragraph (b), the Department shall serve such a complaint with the notice.

9820. Appointment of Hearing Officer and Hearing Panel

As soon as practicable after the Department files a copy of the notice of the initiation of a temporary cease-and-desist proceeding with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the temporary cease-and-desist proceeding. The Chief Hearing Officer shall appoint two Panelists to serve on a Hearing Panel with the Hearing Officer. The Panelists shall be current or former Governors, Directors, or National Adjudicatory Council members, and at least one Panelist shall be an associated person.

9830. Hearing

(a) When Held

The hearing shall be held not later than 15 days after service of the notice of the initiation of the temporary cease-and-desist proceeding.

(b) Service of Notice of Hearing

The Hearing Officer shall serve a notice of date, time, and place of the hearing on the Department and the

Respondent not later than three days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service, overnight commercial courier, or facsimile.

(c) Authority of Hearing Officer

The Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.

(d) Witnesses

A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(e) Additional Information

At any time during its consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties before the Hearing Panel renders its decision.

(f) Transcript

The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to the participants in the hearing, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(g) Record and Evidence Not Admitted

The record shall consist of the notice of the initiation of the proceeding, the declaration, and the proposed order described in Rule 9810(b); the transcript of the hearing; and all evidence considered by the Hearing Panel. The Office of Hearing Officers shall be the custodian of the record. Prof-fered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(h) Failure to Appear at Hearing

If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration shall be deemed admitted, and the Hearing Panel may issue a temporary cease-and-desist order without further proceedings.

9840. Issuance of Temporary Cease-and-Desist Order by Hearing Panel

(a) Basis for Issuance

The Hearing Panel shall issue a written decision stating whether a temporary cease-and-desist order shall be imposed. A temporary cease-and-desist order may be imposed if the Hearing Panel finds that the alleged violation or threatened violation specified in the notice, or the continuation thereof, is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of the disciplinary proceeding under the Rule 9200 and 9300 Series. The Hearing Panel shall issue the decision not later than seven days after the conclusion of the hearing.

(b) Content, Scope, and Form of Order

A temporary cease-and-desist order shall:

(1) describe the basis for its issuance, including the alleged or threatened violations and the significant dissipation or conversion of assets or other significant harm to investors that is likely to result without the issuance of an order;

(2) describe in reasonable detail the act or acts the Respondent is to take or refrain from taking; and

(3) include the date and hour of its issuance.

(c) Duration of Order

A temporary cease-and-desist order shall remain effective and enforceable until the issuance of a decision under Rule 9268 in the related disciplinary proceeding, unless the decision in the related disciplinary proceeding is appealed by the Respondent under Rule 9311. In such case, the order shall remain in effect for no more than 180 days after the Respondent files a written notice of appeal, or such longer time as consented to by the Respondent.

(d) Service

The Hearing Officer shall serve the Hearing Panel's decision and any temporary cease-and-desist order by personal service, overnight commercial courier, or facsimile. The temporary cease-and-desist order shall be effective upon service.

9850. Review by Hearing Panel

At any time after the Hearing Panel serves the Respondent with a temporary cease-and-desist order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request. The Hearing Panel response shall be served on the Respondent via personal service, overnight commercial courier, or facsimile. The filing of an application under this Rule shall not stay the effectiveness of the temporary cease-and-desist order, unless the Hearing Panel otherwise orders.

9860. Violation of TCDO

A Respondent who violates a temporary cease-and-desist order imposed under this Rule Series may have its association or membership suspend-

ed or canceled under the Rule 9510 Series. The President or Chief Operating Officer of NASD Regulation, Inc., must authorize the initiation of any such proceeding.

9870. Application to Commission for Review

The right to have any action under this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of a temporary cease-and-desist order, unless the Commission otherwise orders.

Endnotes

¹ Among other things, the proposed micro-cap rules would require members to review current issuer financial statements prior to recommending a transaction in an over-the-counter (OTC) security to a customer and require members to provide certain disclosures on the trade confirmation for customer transactions in an OTC equity security. Also, the rules prohibit a member from quoting a security on the OTC Bulletin Board unless the issuer has made current filings with the Securities and Exchange Commission or other regulatory authority.

² A permanent cease-and-desist order could be issued as part of the final resolution of a regular disciplinary proceeding conducted under NASD Rules 9100-9300.

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NASD Notice to Members 98-43

Federal Reserve System
Amends Regulations T,
U, And X

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Effective April 1, 1998, the Board of Governors (Board) of the Federal Reserve System (FED) adopted several amendments to Regulation (Reg) T, as well as Regs U and X. In addition, it is eliminating Reg G, which had applied to credit extended by "other lenders" (*i.e.*, other than banks and broker/dealers). These changes were made to reflect changes to the FED's statutory authority under the Securities Exchange Act of 1934, as amended by the National Securities Markets Improvement Act of 1996 (NSMIA). The FED retains the authority to adopt rules and regulations regarding the extension of credit where securities (other than exempt securities) are used as collateral.

Reg T is the regulation that governs the extension of credit by and to broker/dealers. Unless indicated otherwise, all changes to Reg T referenced in this *Notice* were effective April 1, 1998. *However, compliance with the revised Reg T is optional until July 1, 1998.*

Prior to April 1, 1998, Reg U applied to extensions of credit by banks only. As of April 1, 1998, Reg U was amended to now include banks and all other U.S. lenders (except broker/dealers). Consequently, Reg G has been eliminated.

Members are urged to review the FED's release in its entirety for a complete discussion of these changes. The release was published in the *Federal Register*, see 63 FR 2806 (January 16, 1998).

Questions concerning this *Notice* may be directed to Samuel Luque, Associate Director, Compliance, NASD Regulation, Inc., at (202) 728-8472, or Susan DeMando, Regional Compliance Supervisor, NASD RegulationSM, at (202) 728-8411.

Highlights Of Changes

Listed below are highlights of the changes caused by NSMIA and their impact on Regs T, U, and X.

Changes To The Securities Exchange Act Of 1934 As A Result Of NSMIA

- NSMIA repealed section 8(a) of the Securities Exchange Act of 1934 (the '34 Act), which had required broker/dealers obtaining credit against exchange-traded securities to borrow only from other broker/dealers, banks that were members of the FED, or banks that agreed to abide by certain restrictions applicable to member banks. *Broker/dealers can now borrow money from any lender.* (To reflect this change, the FED deleted Section 15 of Reg T.)
- NSMIA also amended section 7 of the '34 Act to grant two distinct statutory exemptions applicable to broker/dealers as borrowers. That is, these borrowings are exempt from the FED's rules under NSMIA. Therefore, a lender who would normally be required to comply with either Reg T or Reg U when lending to broker/dealers who can qualify for one of the two exemptions, is *free to lend on any terms.*
- The *transactional exemption* is applicable to credit extended to a broker/dealer to the extent that credit is used to finance the broker/dealer's activities as a market maker or an underwriter.
- The *status exemption* is applicable to all borrowings by a broker/dealer where a substantial portion of its business consists of transactions with persons other than broker/dealers, *i.e.*, exempted borrowers. (To reflect this change, Reg T and Reg U have been amended to add a definition for exempted borrower. See the section on Reg T below.)

Reg T

- A broker/dealer must meet the test(s) for an exempted borrower on average for a 12-month period. A broker/dealer can qualify as an exempted borrower if it can meet one of these three alternative tests:
 1. The broker/dealer has 1,000 active accounts for persons other than brokers, dealers, or persons associated with a broker/dealer; or
 2. The broker/dealer has \$10 million in annual gross revenues from transactions with such persons; or
 3. The broker/dealer derives 10 percent of its annual gross revenues from transactions with such persons.
- Prior to April 1, 1998, Reg T provided a margin account and eight special purpose accounts in which to record all financial relations between a customer and a creditor. As of April 1, 1998, Reg T provides a margin account and four special purpose accounts: the cash account, the special memorandum account, the broker/dealer credit account, and a new account called the "good faith account."
- The good faith account incorporates the old "nonpurpose," "arbitrage," and "government securities" accounts, and can be used to extend good faith credit against all non-equity securities. Specifically, the good faith account may be used for:
 1. The purchase and sale of non-equity securities on a credit or cash basis; or
 2. Repurchase and reverse repurchase agreements on non-equity securities; or
 3. The purchase and sale of options on non-equity securities.
- A broker/dealer does not need a permitted purpose in order to borrow or lend non-equity securities in the good faith account.
- Bankers' acceptances, certificates of deposit, and commercial paper are acceptable collateral in the good faith account.
- The good faith account has no specific payment/margin requirements and does not require sell-out. In theory, transactions in the good faith account may liquidate to a deficit. However, broker/dealers must comply with National Association of Securities Dealers, Inc. (NASD[®]) Rule 2520 and/or New York Stock Exchange Rule 431 on margin requirements.
- The loan value in the good faith account cannot be used to effect transactions in equity securities in the cash or margin accounts. These three accounts *must* be treated separately.
- The special memorandum account (SMA) is being retained. There are no changes to it at this time. The SMA will continue to be available for use in conjunction with a margin account, but is not available for use with a good faith account.
- Broker/dealers may continue to arrange for credit that they can not extend themselves provided that the credit is not otherwise prohibited by the FED, *i.e.*, that it does not violate Reg U or Reg X.
- The only securities that have no loan value under Reg T are nonmargin nonexempt equity securities. The FED defers to the Securities and Exchange Commission (SEC) on the exact parameters of the definition of equity security.
- The FED is rescinding its interpretation that options are not convertible securities and amending the Supplement of Reg T to allow a listed call option to serve as partial margin for short sales of the underlying security.
- The definition of "foreign margin stock" is being amended to include both the securities on the FED's List of Foreign Margin Stocks (Foreign List) and those deemed to have a "ready market" for capital purposes, as determined by the SEC and as appear on the Financial Times/Standard & Poor's World Actuaries Indices (FT/S&P Indices).
- The FED is retaining its Foreign List to identify those foreign securities that it finds meet its eligibility and continued listing requirements. The list will not duplicate those securities that meet the ready-market test and appear on the FT/S&P Indices.
- Reg T now excludes from its scope financial relations between a foreign branch of a U.S. broker/dealer and a foreign person involving foreign securities.
- FED changes clarify that creditors may also extend credit denominated in any freely convertible foreign currency in the good faith account and the broker/dealer credit account as well as the margin account.
- When a customer sells or delivers out securities in the cash account that have not been paid for, the 90-day freeze need not be applied until the permissible payment period has passed.
- Effective January 1, 1999, all issues listed on The Nasdaq Stock MarketSM (Nasdaq National Market[®]) and The Nasdaq SmallCap

MarketSM) will be marginable. The FED will cease publication of its quarterly OTC list after the list is published in November 1998.

Reg U

- Reg U is expanded to include banks and other lenders; and Reg G is eliminated.
- The definition of "margin stock" in Reg U is amended to exclude stocks trading in the SmallCap tier of The Nasdaq Stock Market, as the Board will no longer choose which Nasdaq[®] stocks qualify as a margin stock for purposes of Reg U. This eliminates the need for the FED's quarterly OTC list for banks and other nonbroker lenders. Information on Nasdaq securities is available on the Nasdaq Web Site at www.nasdaq.com.

- Reg U is amended to give good faith loan value to money market mutual funds, as was done in Reg T in 1995.
- Lenders other than broker/dealers may extend 50 percent loan value against listed options. Unlisted options continue to have no loan value when used as part of a mixed collateral loan.
- The FED is amending the revolving credit provisions in Reg U to require a lender to call for additional collateral when the lender is relying on margin stock that is insufficient to cover an extension of purpose credit.
- The FED is deleting the mixed collateral provision in Reg U. Banks must still make a good faith determination that nonmargin stock collateral, if any, has sufficient good

faith loan value to make up the difference between the regulatory loan value of margin stock and the amount of credit extended for a purpose loan.

Reg X

- Reg X applies the Board's margin regulations to U.S. persons and related parties who obtain credit *outside* the U.S. to purchase or carry U.S. securities. Borrowers must conform the credit they receive with Reg T if the credit is obtained from a foreign branch of a broker/dealer or with Reg U if the credit is obtained from a foreign branch of a bank or from any non-bank lender.

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NASD Notice to Members 98-44

SOES Tier-Size Levels Set To Change July 1, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

Effective July 1, 1998, tier sizes for 520 Nasdaq National Market[®] securities will be revised in accordance with National Association of Securities Dealers, Inc. (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 SystemSM (SOESSM) 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 IITM 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 is applied to those Nasdaq National Market securities that have an average daily non-block volume of 3,000 shares or more a day, a bid price that is less than or equal to \$100, and three or more market makers.
- A 500-share tier size is applied to those Nasdaq National Market securities that have an average daily non-block volume of 1,000 shares or more a day, a bid price that is less than or equal to \$150, and two or more market makers.
- A 200-share tier size is applied to those Nasdaq National Market securities that have an average daily non-block volume of less than

1,000 shares a day, a bid price that is less than or equal to \$250, and two or more 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, 1998, 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, 1998, were not subjected to the SOES tier-size review.

Following is a listing of the 520 Nasdaq National Market issues that will require an SOES tier-level change on July 1, 1998.

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Nasdaq National Market SOES Tier-Size Changes
All Issues In Alphabetical Order By Security Symbol
(Effective July 1, 1998)

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
A				B			
ABFSP	ARKANSAS BEST CV P	500	200	BACU	BACOU USA INC	500	1000
ACAS	AMER CAP STRATEGIES	500	1000	BASI	BIOANALYTICAL SYST	200	500
ACMR	A C MOORE ARTS SA	500	1000	BBHF	BARBERS HAIRSTYLIN	500	1000
ACMTA	A C M A T CP CL A	200	500	BBQZY	BARBEQUES GAL ADS	500	1000
ACSY	ACSYS INC	200	500	BCICF	BELL CANADA INTL I	500	1000
ACYT	AUTOCYTE INC	500	1000	BDMS	BIRNER DENTAL	200	500
ADECY	ADECCO SA ADR	500	1000	BDOG	BIG DOG HLDGS INC	500	1000
AEHCF	ASIA ELECTRONICS HLD	500	1000	BEDS	BRIDGESTREET ACCOM	500	1000
AFCO	APPLIED FILMS CORP	200	500	BEERF	BIG ROCK BREWERY LTD	1000	500
AFED	AFSALA BANCORP INC	1000	500	BEIQ	BEI TECHS INC	500	1000
AIFC	AMER INDEMNITY FIN	1000	500	BERW	BERINGER WINE EST	500	1000
AIII	AUTOLOGIC INFO INT	500	1000	BESIF	B E SEMICON ORD SHRS	1000	500
AKZOY	AKZO NOBEL NV ADR	1000	500	BEST	BEST SOFTWARE INC SE	500	1000
ALFC	ALLIED LIFE FINL C	500	1000	BFEN	B F ENTERPRISES IN	500	200
ALSI	ADVANTAGE LEARNING	500	1000	BFOH	BANCFIRST OHIO CP	1000	500
ALYD	ALYDAAR SOFTWARE	200	500	BFSB	BEDFORD BCSHS INC	500	1000
AMBC	AMER BNCP OHIO	1000	500	BLCA	BOREL BK & TR (CA)	200	500
AMCC	APPLIED MICRO	200	500	BLDPF	BALLARD POWER SYST	1000	500
AMCE	AMER CLAIMS EVALUA	1000	500	BLPG	BORON LEPORE & ASSOC	500	1000
AMIE	AMBASSADORS INTL I	500	1000	BMCCP	BANDO MCGLOC PFD A	500	200
AMPLI	AMPLICON INC	500	1000	BNBCP	B N B CAP TR PFD	200	500
AMSFF	AMERICAN SAFETY	200	500	BNHN	BENIHANA INC	1000	500
AMSGA	AMSURG CORP CL A	200	500	BNHNA	BENIHANA INC A	1000	500
AMSGB	AMSURG CORP CL B	200	500	BNSC	BANK OF SANTA CLAR	200	500
ANDR	ANDERSEN GROUP INC	1000	500	BONS	BMJ MEDICAL MGMT	200	500
APPM	AMERICAN PHYS PART	200	500	BOOT	LACROSSE FOOTWEAR	500	1000
APSOP	APPLE SOUTH FIN PFD	200	500	BORAY	BORAL LTD ADS	500	200
APWR	ASTROPOWER INC	200	500	BOYD	BOYD BROS TRANS IN	1000	500
ARTI	ARTISAN COMPONENTS	200	500	BPOPP	POPULAR INC PFD A	500	1000
ASFD	AUTHENTIC SPEC FOODS	500	1000	BRHZ	BRIGHT HORIZONS	500	1000
ASFN	ALLSTATE FINL CP	500	1000	BTIM	BIOTIME INC	500	1000
ASII	AIRPORT SYS INTL I	1000	500	BUCK	BUCKHEAD AMERICA C	500	1000
AVTM	AVTEAM INC	500	1000	BUYR	CONS CAPITAL CORP	200	500
				BWSI	BLUE WAVE SYS	500	1000

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
C				CTAC	1-0 CONTACTS INC	200	500
CABL	CABLE MICHIGAN INC	500	1000	CTBC	CTB INTL CORP	500	1000
CAFI	CAMCO FINANCIAL CP	500	1000	CTBP	COAST BANCORP	500	1000
CANNY	CANON INC ADR	500	1000	CTHR	C3 INC	500	1000
CAPS	CAPITAL SAV BNCP I	1000	500	CTRIS	CLEVETRUST RLTY SBI	500	1000
CARS	CAPITAL AUTO SBI	200	500	CVAL	CHESTER VALLEY BNC	200	500
CASH	FIRST MIDWST FIN I	500	1000	CVBK	CENTRAL VA BKSHS I	200	500
CASL	CASTLE DENTAL CTRS	500	1000	CWBC	COMMUNITY WEST	500	1000
CASS	CASS COMMERCIAL CO	500	1000	CWST	CASELLA WASTE SYS	500	1000
CAWW	CULTURALACCESS WW	200	500				
CBCI	CALUMET BANCORP IN	1000	500	D			
CBCLP	CAPITOL TRUST I PF	200	500	DCBI	DELPHOS CITIZENS B	500	1000
CBIV	COMMUNITY BANCSHAR	500	1000	DCPI	DICK CLARK PROD IN	500	200
CCBP	COMM BANCORP INC	200	500	DENT	DENTAL CARE ALLINC	500	1000
CCRD	CONCORD COMMUNIC SA	500	1000	DEVC	DEVCON INTL CP	1000	500
CDNW	CDNOW INC	200	500	DGAS	DELTA NATURAL GAS	1000	500
CELS	COMMNET CELL	200	500	DGIC	DONEGAL GROUP INC	200	500
CERB	C E R B C O INC	1000	500	DINE	ADVANTICA RES	200	500
CFBXL	CFB CAPITAL I CUM	1000	500	DINEW	ADVANTICA WTS	200	500
CFBXZ	CFB CAPITAL II	200	500	DKWD	D & K HEALTHCARE	500	1000
CFCI	C F C INTL INC	1000	500	DMSC	DISPATCH MGMT SVCS	200	500
CFIN	CONSUMERS FIN CP	500	1000	DNFCP	D & N CAP CORP PFD	1000	500
CFNC	CAROLINA FINCORP I	500	1000	DNLI	DENALI INC	200	500
CHANF	CHANDLER INS CO LTD	500	1000	DTRX	DETREX CP	500	1000
CHCO	CITY HOLDING CO	500	1000	DXPE	DXP ENTERPRISES IN	200	500
CHERA	CHERRY CP CL A	500	1000				
CHNL	CHANNELL COMML CORP	500	1000	E			
CHRW	C.H. ROBINSON WW SA	500	1000	ECTLW	ELCOTEL INC WTS	200	500
CINS	CIRCLE INCOME SHAR	1000	500	EDAC	EDAC TECH CP	500	1000
CKEYF	CROSSKEYS SYS	200	500	EDBR	EDISON BROS STORES	200	500
CLBK	COMMERCIAL BANKSHR	1000	500	EDIN	EDUCATIONAL INSIGH	1000	500
CLGYW	CELLEGY PHARM INC WT	1000	500	EDUT	EDUTREK INTL INC	500	1000
CNBC	CENTER BANCORP INC	200	500	ELIX	ELECTRIC LIGHTWAV	200	500
CNBF	C N B FINANCIAL CP	200	500	ELRWF	ELRON ELEC INDS WTS	500	200
CNBT	CITIZENS NATL TX SR	500	1000	ENGEF	ENGEL GNRL DEV SE	500	1000
CNDO	CRESCENDO PHARM CO	500	1000	ENGSY	ENERGIS ADS	200	500
CNDR	CONDOR TECH SOLU	200	500	ENSI	ENERGYSOUTH INC	500	1000
CNGL	CONTL NATURAL GAS	1000	500	EONE	ENVIRONMENT ONE CP	500	1000
CNNG	CONNING CORP	200	500	EPTG	E P L TECH INC	500	1000
CNTL	CANTEL INDS INC	500	1000	EQUUS	EQUUS GAMING UTS A	1000	500
COGIF	C O G N I C A S E SA	500	1000	ESATY	ESAT TELCOM GR ADR	500	1000
COPI	CRESCENT OPERATING	500	1000	ESBFP	PENNFIRST PFD	200	500
CPLNY	CONCORDIA PAPER ADS	500	1000	ESREF	E S G RE LTD	200	500
CPTI	COMPASS PLASTICS	500	1000	ETFS	EAST TEXAS FIN SVC	200	500
CRGO	MOTOR CARGO INDS	200	500	EXEC	EXECUSTAY CORP	500	1000
CRRC	COURIER CP	1000	500	EYES	VISION TWENTY-ONE	500	1000
CRSB	CRUSADER HLDG CORP	200	500				
CRXA	CORIXA CORP SE	500	1000				
CSWC	CAPITAL SOUTHWEST	500	200				

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
F				GICOF	GILAT COMMUN LTD	200	500
FACT	FIRST ALBANY COS I	500	1000	GLDBP	GBCI CAP TR PFD	200	500
FAMCK	FEDERAL AGRIC MORT C	1000	500	GLGC	GENE LOGIC INC	200	500
FARO	FARO TECH INC	500	1000	GMCC	GEN MAGNAPLATE CP	500	1000
FBAYF	FRISCO BAY INDUS	500	1000	GMTC	GAMETECH INTL INC	200	500
FBER	1ST BERGEN BANCORP	500	1000	GNCNF	GORAN CAPITAL INC	500	1000
FBHC	FORT BEND HLDG COR	500	1000	GRTS	GART SPORTS CO	200	500
FBNC	FIRST BANCP TROY N	200	500	GSBC	GREAT SOUTHERN BNC	1000	500
FBNKO	FIRST PFD CAP TR PFD	1000	500	GSOE	GROUP I SOFTWARE	500	200
FBSI	FIRST BANCSHARES I	200	500	GTSG	GLOBAL TELESYSTEMS	200	500
FCBF	F C B FINANCIAL CP	1000	500	H			
FCFCO	FIRSTCITY SPCL PFD	200	500	HABC	HABERSHAM BANCORP	200	500
FCGI	FIRST CONSULTING	200	500	HACH	HACH CO	1000	500
FDJA	FAROUDJA INC	500	1000	HACHA	HACH COMPANY CL A	500	1000
FELE	FRANKLIN ELEC INC	1000	500	HAYZ	HAYES CORP ## S2S3	200	500
FFFLP	FIDELITY CAP TR I	200	500	HBNK	HIGHLAND FEDERAL B	200	500
FFHH	FSF FINANCIAL CP	1000	500	HDLD	HEADLANDS MTG CO	200	500
FFLC	FFLC BNCP INC	1000	500	HDVS	H. D. VEST INC	500	1000
FKFS	FIRST KEYSTONE FIN	500	1000	HFBC	HOPFED BANCORP INC	200	500
FKKY	FRANKFORT FRST	1000	500	HFFC	H F FINANCIAL CP	500	1000
FLWR	CELEBRITY INC	1000	500	HFWA	HERITAGE FINL CP	200	500
FLXI	FLEXIINTL SOFTWARE	200	500	HHLAF	HURRICANE HYDROCAR	200	500
FMAX	FRANCHISE MORTGAGE	200	500	HIFS	HINGHAM INSTI SAVI	200	500
FNBF	FNB FINANCIAL SVC	200	500	HMLD	HOMELAND HLDG CORP	500	1000
FNBN	F N B CORPORATION	200	500	HOLT	HOLT'S CIGAR HLDGS	200	500
FNCE	FIRST INTL BANCORP	500	1000	HPAC	HAWKER PACIFC AERO	200	500
FOBC	FED ONE BANCORP IN	500	1000	HPBC	HOME PORT BNCP INC	500	1000
FOCL	FOCAL INC	200	500	HRBF	HARBOR FED BNCP IN	1000	500
FORSF	FORSOFT LTD	500	1000	HRLYW	HERLEY INDS WTS	200	500
FORTY	FORMULA SYS ADR	500	1000	HSDC	HEALTH SYS DESIGN	1000	500
FRND	FRIENDLY ICE CRM	500	1000	HWLD	HEALTHWORLD CORP	200	500
FRPP	F R P PROPERTIES I	200	500	HYBR	HYBRID NETWORKS	500	1000
FSACF	FIRST SO AFRICA CP	500	1000	HZWW	HORIZON BNCP INC	1000	500
FSFF	FIRST SECURITYFED	500	1000	I			
FSLB	FIRST STERLING BKS	500	1000	IACO	INFORMATION ADVANT	200	500
FSPG	FIRST HOME BNCP IN	500	1000	IAIS	INTL AIRCRAFT INV	500	1000
FSVBP	FRANKLIN FIN PD A ##	200	500	IBHVF	INTL BRIQUETTES	200	500
FTCG	FIRST COLONIAL GP	500	200	ICMI	IMPERIAL CREDIT SA	500	1000
FTFN	FIRST FIN CP (RI)	200	500	IHIW	INDUSTRIAL WTS D	200	500
FUSNR	FUSION SYSTEMS CVR	500	1000	IINT	INDUS INTL INC	500	1000
G				ILDCY	ISRAEL DEVEL LTD ADR	500	200
GABC	GERMAN AMER BANCOR	200	500	ILFO	IL FORNAIO (AMER) CP	500	1000
GBCOB	GREIF BROS CP CL B	200	500	IMAG	IMAGEMAX INC	200	500
GBTVP	GRANITE BRDCT CP PFD	500	1000	IMSX	INTL MANUFACTURIN SA	500	1000
GENBB	GENESEE CP B	200	500	INSL	INSILCO CP	500	1000
GETY	GETTY IMAGES INC	200	500	INTG	INTERGROUP CP THE	500	200
GFLSP	GCB CAP TRUST PFD	500	200				
GGEN	GALAGEN INC	500	1000				

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
IRWNP	IRWIN FIN CUM TR P	500	1000	M			
ISAC	IC ISAACS & CO	200	500	MACC	MACC PRIVATE EQU I	200	500
ITCD	ITC DELTACOM INC	500	1000	MAHI	MONARCH AVALON INC	1000	500
ITIC	INVESTORS TITLE CO	1000	500	MALT	LION BREWERY INC T	1000	500
ITSW	INTL TOTAL SVCS	500	1000	MARN	MARION CAP HLDGS I	1000	500
ITVU	INTERVU INC	200	500	MASB	MASSBANK CP	1000	500
IUBC	INDIANA UNITED BNC	200	500	MBIO	MEGABIOS CORP	500	1000
IUBCP	IUB CAP TRUST PFD	200	500	MBLF	M B L A FINL CORP	200	500
IVISF	ICOS VISION SYST	200	500	MBRK	MEADOWBROOK REHAB	500	1000
IVTC	INNOVATIVE VALVE	500	1000	MBSI	MILLER BUILDING SY	1000	500
				MCCL	MCCLAIN INDUSTRIES	500	1000
				MCHM	MACROCHEM CORP	500	1000
J				MDWY	MIDWAY AIRLINES CP	200	500
JANNF	JANNOCK LIMITED	1000	500	METNF	METRONET NON-VTG B	200	500
JCORM	JACOR COMM WTS	200	500	MEXP	MILLER EXPLORATION	200	500
JDEC	J D EDWARDS & CO	500	1000	MFNX	METROMEDIA FIBER	500	1000
JEVC	JEVIC TRANS INC SA	500	1000	MGNB	MAHONING NATL BCP	200	500
JPST	JPS TEXTILE GRP	200	500	MHCO	MOORE HANDLEY INC	1000	500
				MICTF	MICROCELL TELECOM	500	1000
				MIGI	MERIDIAN INS GP IN	1000	500
K				MILK	BROUGHTON FOODS	200	500
KAYE	KAYE GROUP INC	1000	500	MKFCF	MACKENZIE FIN CP	500	200
KEQU	KEWAUNEE SCIENTIFI	1000	500	MMCN	M M C NETWORKS	500	1000
KLLM	K L L M TRANSPORT	1000	500	MOYC	MOYCO TECH INC	500	1000
KNDL	KENDLE INTL INC	500	1000	MPWG	MPW INDUSTRIAL SVS	200	500
KOFX	KOFAX IMAGE PRODS SA	500	1000	MRCY	MERCURY COMP SYS	200	500
KOGCP	KELLEY OIL & GAS P	200	500	MRET	MERIT HOLDING CP	500	1000
KTIC	KAYNAR TECHS INC	1000	500	MROC	M O N R O C INC	1000	500
KWIC	KENNEDY-WILSON INT	500	1000	MSDX	MASON-DIXON BCSHS	500	1000
				MSEX	MIDDLESEX WATER CO	1000	500
				MTIC	M T I TECH CORP	500	1000
L				MTMS	MADE2MANAGE SYS	200	500
LABL	MULTI COLOR CP	500	1000	MUEL	MUELLER PAUL CO	500	200
LAIX	LAMALIE ASSOCIATES	500	1000	MUSE	MICROMUSE INC	200	500
LDMK	LANDMARK SYSTEMS	200	500	MVBI	MISSISSIPPI VALLEY	500	1000
LFED	LEEDS FED SAV BANK	500	200	MVII	MARK VII INC	1000	500
LGCB	LONG ISLAND COMM	200	500	MWHX	MARKWEST HYDROCARB	500	1000
LGTY	LOGILITY INC SA	500	1000	MWRK	MOTHERS WORK INC	1000	500
LIFC	LIFECCELL CP	500	1000	MYST	MYSTIC FINANCIAL	200	500
LIHRY	LIHIR GOLD LTD ADR	1000	500				
LIQB	LIQUI BOX CP	500	1000	N			
LITE	VARI-LITE INTL SA	500	1000	NANX	NANOPHASE TECHS CP	200	500
LKFN	LAKELAND FINL CP	200	500	NARA	NARA BANK N A	200	500
LNCC	LINC CAPITAL	500	1000	NASI	NORTH AMERN SCI	200	500
LNDL	LINDAL CEDAR HOMES	1000	500	NBAK	NATL BNCP ALASKA	500	200
LOILY	LUNDIN OIL GDS	200	500	NBSI	NORTH BSCHS INC	500	1000
LTCW	LET'S TALK CELL	200	500	NCES	NOVACARE EMPL SVCS	500	1000
LXBK	L S B BANCSHARES N	500	1000	NERAY	NERA AS ADR	500	1000
LYNX	LYNX THERAPEUTICS	200	500				

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
NFLIW	NUTRITION FOR LFE WT	500	1000	PFSCF	POSITRON FIBER SYS	500	1000
NICH	NITCHES INC	1000	500	PGEI	PETROGLYPH ENERGY SA	500	1000
NMTXZ	NOVAMETRIX WTS B	1000	500	PGLD	PHOENIX GOLD INTL	1000	500
NOVI	NOVITRON INTL INC	500	1000	PGNX	PROGENICS PHARM	200	500
NRCI	NATIONAL RESEARCH SA	500	1000	PHCC	PRIORITY HLTHCARE	500	1000
NRIM	NORTHRIM BANK	1000	500	PHFCP	PITT HOME CAP TR	200	500
NSCC	N S C CORPORATION	500	1000	PHSB	PEOPLES HOME SVGS	1000	500
NSCF	NORTHSTAR COMPUTER	1000	500	PHSYF	PACIFICARE CV PFD	500	200
NSDB	N S D BANCORP INC	200	500	PLCE	THE CHILDREN'S PLACE	500	1000
NSOL	NETWORK SOLUTIONS	500	1000	PLEN	PLENUM PUBLISHING	500	1000
NSPR	INSPIRE INSURANCE	500	1000	PMFRA	PENNSYLVANIA MAN	200	500
NTAWF	NAM TAI ELEC WTS	200	500	PMORW	PHAR-MOR INC WTS	200	500
NTKI	N2K INC	500	1000	POPEZ	POPE RESOURCE UTS LP	200	500
NWCM	NEWCOM INC	500	1000	POWI	POWER INTEGRATN	200	500
NWCMW	NEWCOM INC WTS	500	1000	PPCCP	PEOPLE'S PFD CAP C	500	1000
NXLK	NEXTLINK COMM CL A	500	1000	PPLS	PEOPLES BK CP OF I	500	200
NYMXF	NYMOX PHARM CORP	200	500	PRBZ	PROBUSINESS SVCS INC	500	1000
NZSKY	SKY NETWORK TV ADS	200	500	PRFN	PRESTIGE FIN CP	500	1000
				PRHC	PROVINCE HEALTHCR	200	500
				PRTG	PRT GROUP	200	500
				PSEM	PERICOM SEMICONDC	500	1000
O				PSMT	PRICESMART INC	500	1000
OAOT	O A O TECH SOL	500	1000	PTVL	PREVIEW TRAVEL INC	200	500
ODFL	OLD DOMINION FREIG	500	1000	PVII	PRINCETON VIDEO	200	500
OHSL	O H S L FINL CORP	200	500	PVSW	PERVASIVE SOFTWARE	500	1000
OKSB	SOUTHWEST BNCP INC	1000	500	PWCC	POINT WEST CAP CP	500	1000
OMGA	OMEGA RESEARCH SR	500	1000	PWER	POWER-ONE INC SR	500	1000
OMNI	OMNI ENERGY SVCS	200	500	PWHS	PAPER WAREHOUSE	200	500
ORAL	ORTHALLIANCE INC	500	1000				
ORCI	OPINION RESEARCH C	500	1000	R			
OSIS	O S I SYSTEMS INC SA	500	1000	RARB	RARITAN BANCORP IN	500	200
OSIX	OUTSOURCE INTL	500	1000	RBCF	REPUBLIC BKG CP FL	200	500
OTFC	OREGON TRAIL FINL SR	500	1000	RBKV	RESOURCE BANK	200	500
OTRX	O T R EXPRESS INC	500	1000	RCNC	RCN CORPORATION	500	1000
OWOS	OWOSSO CP	1000	500	RDCMF	RADCOM LTD	500	1000
OYOG	OYO GEOPSPACE CP	200	500	RDGE	READING ENT INC	1000	500
				REFR	RESEARCH FRONTIERS	500	1000
P				RENX	RENEX CORPORATION	500	1000
PACI	PRECISION AUTO	500	1000	REPBP	RBI CAP TR I PFD	500	1000
PACK	GIBRALTAR PKG GP I	1000	500	RESR	RESEARCH INC	1000	500
PAMM	PACIFICAMERICA MON	500	1000	RGCO	ROANOKE GAS CO	500	1000
PATH	AMERIPATH INC	500	1000	RLCO	REALCO INC	1000	500
PBKBP	PEOPLES CAP TR PFD	1000	500	RNWK	REALNETWORKS INC	200	500
PCCI	PACIFIC CREST CAP	500	1000	ROAC	ROCK OF AGES CORP	500	1000
PCCIP	PCC CAPITAL I PFD	200	500	ROCLF	ROYAL OLYMPIC CRU	200	500
PEBO	PEOPLES BNCP INC	500	1000	ROSI	USA FLORAL PRODUCT	500	1000
PEDE	GREAT PEE DEE BCP	200	500	RSLCF	RSL COMMUNICATION SR	500	1000
PFACP	PRO-FAC COOP PFD A	1000	500	RTRO	RETROSPETTIVA INC	500	1000
PFCO	PAULA FINANCIAL	500	1000	RTROW	RETROSPETTIVA WTS	500	1000
PFDC	PEOPLES BANCORP	500	200				

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
S				TKGFV	TEKGRAF INC WTS	500	1000
SASR	SANDY SPRING BNCP	500	1000	TKTL	TRACK 'N TRAIL SA	500	1000
SBGIP	SINCLAIR BRD PFD SE	500	1000	TMAX	TOYMAX INTL INC	500	1000
SBHC	SECURITY BK HLDG C	500	1000	TONSF	NOVAMERICAN STEEL	500	1000
SBIBP	STERLING CAP TR PF	200	500	TPNZ	TAPPAN ZEE FIN	500	1000
SCBHF	STIRLING COOKE BRN	200	500	TREVW	TREEV INC WTS	200	500
SCMM	S C M MICROSYS SA	500	1000	TRKA	TRAK AUTO CP	500	200
SDCOZ	SPIROS DEV CP UTS	200	500	TRMS	TRIMERIS INC SA	500	1000
SECD	SECOND BANCORP	500	1000	TRNS	TRANSMATION INC	500	1000
SENEB	SENECA FOODS CP B	200	500	TRVL	TRAVEL SVCS INTL I	500	1000
SEYE	SIGNATURE EYEWEAR	500	1000	TSBK	TIMBERLAND BANCORP	200	500
SFFB	SOUTHERN FIN BNC	500	1000	TSIC	TROPICAL SPORTSWR	500	1000
SFNCA	SIMMONS FIRST NATL A	500	1000	TSSS	TRIPLE S PLASTICS	1000	500
SFSW	STATE FINL SVCS CL	500	1000	TWFC	T & W FINANCIAL CP	500	1000
SGDE	SPORTSMEN'S GUIDE	200	500				
SGNS	SIGNATURE INNS INC	500	1000	U			
SHEN	FIRST SHENANGO BNC	500	1000	UBCD	UNIONBANCORP INC	1000	500
SHLL	SHELLS SEAFOOD RES	500	1000	UBIX	UBICS INC	500	1000
SIXR	SIX RIVERS NAT BK	500	1000	UCBC	UNION COMM BANCORP	200	500
SJNB	S J N B FINANCIAL	1000	500	UFAB	UNIFAB INTL INC	500	1000
SKAN	SKANEATELES BANC	500	1000	UFPT	U F P TECH INC	1000	500
SLFC	SHORELINE FIN CP	500	1000	UNEWY	UNITED NEWS & MEDIA	200	500
SLFI	STERLING FINL CP	200	500	UPCPO	UNION PLANTERS PFD E	500	200
SLGN	SILGAN HOLDINGS	500	1000	UPEN	UPPER PENINSULA ER	1000	500
SMEDF	SMED INTL INC	200	500	USNC	U S N COMM INC	200	500
SMPX	SYMPHONIX DEVICES	200	500	USVI	U S VISION INC	200	500
SOMN	SOMNUS MEDICAL	500	1000	USWB	US WEB CORPORATION	200	500
SPLI	SPECTRA-PHYSICS	200	500	UTCIW	UNIROYAL TECH CP WTS	500	200
SPLN	SPORTSLINE USA INC	500	1000				
SPRI	SPR INC SR	500	1000	V			
SRCEO	1ST SOURCE CAP II	500	200	VBNJ	VISTA BANCORP INC	500	1000
STGC	STARTEC GLOBAL COM	500	1000	VDRY	VACU DRY CO	1000	500
STRZ	STAR BUFFET INC	500	1000	VENT	VENTURIAN CP	200	500
STVI	S T V GROUP INC	200	500	VGCOW	VIRGINIA GAS WTS	500	200
SVECF	SCANVEC CO LTD	500	1000	VNWK	VISUAL NETWORKS	200	500
SXNB	SUCCESS BANCSTRS	500	1000	VRBA	VRB BANCORP	500	1000
				VRSN	VERISIGN INC	200	500
T				VTNAF	VITRAN CP INC	200	500
TAVA	T A V A TECH	200	500	VTRAO	VBC CAPITAL I CAP	200	500
TCBK	TRICO BANCSHARES	500	1000	VYSI	VYSIS INC	200	500
TCICP	TCI COMMUN PFD A	1000	500				
TCIVA	TELE-COM TCI VENT A	500	1000	W			
TCIX	TOTAL CONTAINMENT	500	1000	WABC	WESTAMERICA BNCP	500	1000
TCMS	TRANSCOASTAL MAR	500	1000	WASH	WASHINGTON TRUST	1000	500
TFCO	TUFCO TECHS INC	500	1000	WEYS	WEYCO GP INC	500	200
TGNT	TELIGENT INC	200	500	WHCP	WHITE CAP INDS	500	1000
TIER	TIER TECHS CL B	200	500	WHRC	WHITE RIVER CP	500	1000
TIMBZ	US TIMBERLAND UTS	500	1000				
TKGFA	TEKGRAF INC CL A	500	1000				

Symbol	Security Name	Old Tier Level	New Tier Level	Symbol	Security Name	Old Tier Level	New Tier Level
WINS	STEVEN MYERS ASSOC	200	500	Z			
WLSNW	WILSONS LEATHER WT	500	1000	ZING	ZING TECHS INC	1000	500
WMFG	WMF GROUP LTD	200	500	ZMTX	ZYMETX INC	500	1000
WSBI	WARWICK COMMUN	200	500				
WYNT	WYANT CORP	500	1000				
X							
XLSW	EXCEL SWITCHING CP	500	1000				
XOMD	XOMED SURG PRODS I	500	1000				
XTRM	BRASS EAGLE INC	200	500				

NASD Notice to Members 98-45

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of May 22, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of May 22, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPSSM).

Symbol	Name	Coupon	Maturity
AES.GB	AES Corp	8.375	08/15/07
AES.GC	AES Corp	8.500	11/01/07
AES.GD	AES Corp	8.875	11/01/27
AMTV.GA	Acme Television LLC	10.875	09/30/04
DHI.GB	D.R. Horton Inc	10.000	04/15/06
FFIJ.GB	Finlay Fine Jewelry Corp	8.375	05/01/08
FLCN.GB	Falcon Drilling Inc	12.500	03/15/05
FNLY.GB	Finlay Enterprises Inc	9.000	05/01/08
HNP.K.GA	Huntsman Packaging Corp	9.125	10/01/07
IPCX.GA	IPC Information Systems Inc	10.875	05/10/08
ISH.GB	Intl Shipholding corp	7.750	10/15/07
JOIN.GE	Jones Intercable Inc	7.625	04/15/08
MLTI.GB	Multicare Cos Inc	9.000	08/01/07
MTRS.GA	Metris Cos Inc	10.000	11/01/04
NVSI.GA	Navistar Intl Corp	8.000	02/01/08
SRCM.GA	Source Media Inc	12.000	11/01/04
STXX.GA	Sterling Chemicals Hldgs	13.500	08/15/08
TMAR.GB	Trico Marine Svc Inc	8.500	08/01/05
TMAR.GC	Trico Marine Svc Inc	8.500	08/01/05
TRWP.GA	Transwestern Publishing Co L.P.	9.625	11/15/07
TRWS.GA	Transwestern Hldgs L.P.	11.875	11/15/08
TSAT.GA	TCI Satellite Entmt Inc	10.875	02/15/07
TSAT.GB	TCI Satellite Entmt Inc	12.250	02/15/07
TSFU.GA	T/SF Communications Corp	10.375	11/01/07
ZD.GA	Ziff-Davis Inc	8.500	05/01/08

As of May 22, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
APFC.GA	American Pacific Corp	9.250	03/01/05
BEAV.GA	BE Aerospace Inc	9.750	03/01/03
DAL.GB	Delta Airlines Inc	9.000	05/15/16
DAL.GC	Delta Airlines Inc	9.875	05/15/00
DAL.GD	Delta Airlines Inc	10.125	01/15/10
DAL.GE	Delta Airlines Inc	9.875	01/01/98
DAL.GF	Delta Airlines Inc	10.375	02/01/11
DAL.GG	Delta Airlines Inc	9.750	05/15/21
DAL.GH	Delta Airlines Inc	8.500	03/15/02
DAL.GU	Delta Airlines Inc	8.500	03/15/22
DAL.GV	Delta Airlines Inc	10.375	12/15/22
DAL.GW	Delta Airlines Inc	8.540	01/02/07
DAL.GX	Delta Airlines Inc	8.540	01/02/07
DAL.GY	Delta Airlines Inc	8.540	01/02/07
DAL.GZ	Delta Airlines Inc	8.540	01/02/07
DAL.HA	Delta Airlines Inc	8.540	01/02/07
DAL.HB	Delta Airlines Inc	8.540	01/02/07
DAL.HC	Delta Airlines Inc	9.300	01/02/10

Symbol	Name	Coupon	Maturity
DAL.HD	Delta Airlines Inc	9.300	01/02/10
DAL.HE	Delta Airlines Inc	9.300	01/02/10
DAL.HF	Delta Airlines Inc	9.300	01/02/10
DAL.HG	Delta Airlines Inc	9.300	01/02/10
DAL.HH	Delta Airlines Inc	9.300	01/02/11
FFIJ.GA	Finlay Fine Jewelry Corp	10.625	05/01/03
FNLY.GA	Finlay Enterprises Inc	12.000	05/01/05
IEX.GA	Idex Corp	9.750	09/15/02
PMK.GA	Primark Corp	8.750	10/15/00
PNH.GB	Public Service Co NH	9.170	05/15/98
PUNA.GA	Purina Mills Inc	9.000	03/15/10
REVL.GE	Revlon Consumer Products Corp	9.375	04/01/01
SELY.GA	Sealy Corp	9.500	05/01/03
VICN.GC	Viacom Intl Inc	8.750	05/15/01

As of May 22, 1998, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
AES.GA	AESC.GA	AES Corp	9.750	06/15/00
FNLY.GA	FLAY.GA	Finlay Enterprises Inc.	12.000	05/01/05

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, NASD RegulationSM 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.

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Independence Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock MarketSM and the securities exchanges will be closed on Friday, July 3, 1998, in observance of Independence Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
June 26	July 1	July 6
29	2	7
30	6	8
July 1	7	9
2	8	10
3	Markets Closed	—
6	9	13

Independence Day: Trade Date-Settlement Date Schedule

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

*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."

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Disciplinary Actions

Disciplinary Actions Reported For June

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (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 15, 1998. The information relating to matters contained in this *Notice* is current as of the end of May 21.

Firm Expelled, Individual Sanctioned

Patterson Icenogle, Inc. (Tulsa, Oklahoma) and **Mark D. Icenogle (Registered Principal, Tulsa, Oklahoma)** submitted an Offer of Settlement pursuant to which the firm was expelled from membership in the NASD. Icenogle was censured, fined \$15,000, and barred from association with any NASD member in any principal 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 Icenogle, failed to exercise reasonable and proper supervision over an individual associated with the firm and failed to establish, maintain, and enforce supervisory procedures designed to detect and prevent the misappropriation of customer funds and excessive trading by this individual.

Firm Suspended, Individual Sanctioned

Patterson, Travis, Inc. (New York, New York) and **David T. Travis (Registered Principal, Englewood, Colorado)** submitted an Offer of Settlement pursuant to which they were censured, and fined \$35,000, jointly and severally. Travis was suspended from association with any NASD member in any principal capacity for

20 business days, and the firm was suspended from participation in any initial public offering of any security meeting the definition of “penny stock” for one year. In addition, the firm was required to retain, at or about three months prior to the conclusion of the suspension from participation in “penny stock” underwritings, an independent consultant to review the firm’s policies, practices, and procedures with respect to the sale of penny stocks and provide the NASD a copy of the report, together with documentation of the changes implemented by the firm as a result of the consultant’s review. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Travis, maintained inventory in amounts exceeding the maximum inventory value permitted by its restriction agreement and employed more registered representatives than its restriction agreement allowed.

The findings also stated that the firm, acting through Travis, offered securities in an initial public offering that met the definition of a “penny stock,” but did not comply with Securities and Exchange Commission (SEC) Rules 15g-2, 15g-5, and 15g-9 in connection with the offer and sale of those securities. Furthermore, the NASD determined that the firm, acting through Travis, failed to supervise three individuals and to establish written supervisory procedures reasonably designed to achieve compliance with rules regarding the conduct of business by unregistered persons.

Firm Fined, Individual Sanctioned

Joseph Charles & Associates, Inc. (Boca Raton, Florida) and **Victor C. Sibilla (Registered Principal, Phoenix, Arizona)** submitted a Letter of Acceptance, Waiver and Con-

sent pursuant to which they were censured and fined \$12,500, jointly and severally, and ordered to pay \$21,528 in restitution to a public customer. In addition, Sibilla was suspended from association with any NASD member in all principal capacities for 10 business days and must requalify as a principal prior to resuming any supervisory or principal duties. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Sibilla, failed to reasonably supervise the trading activity in the account of a public customer to prevent and detect excessive trading by two registered representatives.

Firm And Individual Fined

Lam Securities Investments, Inc. (San Francisco, California) and Dick Lam (Registered Principal, San Francisco, California) submitted an Offer of Settlement pursuant to which they were censured and fined \$9,500, jointly and severally, and fined \$2,500, jointly and severally, with another individual. In addition, the firm was ordered to obtain approval of all advertisements and sales literature from the NASD prior to use for one year, ordered to review and revise its written supervisory procedures concerning SEC Rule 15c3-1 and advertising and sales material, and provide its new procedures to the NASD. Lam was ordered to requalify as a general securities 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 Lam, failed to file with the NASD newspaper advertisements and Web sites on the World Wide Web. The findings also stated that the firm, acting through Lam, failed to establish and implement written supervisory procedures to detect and prevent an indi-

vidual from disseminating misleading and exaggerated statements on a Web site, and engaged in securities business while failing to maintain minimum required net capital.

Firms Fined

A. S. Goldman & Company (Iselin, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$13,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting. Furthermore, the NASD found that the firm failed to maintain adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, recordkeeping, the Limit Order Protection Interpretation, and the registration of persons with the NASD.

Barron Chase Securities, Inc. (Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$19,000. 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 in violation of applicable securities laws and regulations regarding trade reporting, recordkeeping, and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, recordkeeping, the Limit Order Protection Interpretation, the registration of persons with the NASD, and short sales.

D. H. Blair & Co., Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$12,000, and required to implement and provide to the NASD revised written supervisory procedures concerning trade reporting and limit orders. 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 in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting and the Limit Order Protection Interpretation.

Meyers Pollock Robbins, Inc. (New York, New York) submitted an Offer of Settlement pursuant to which the firm was censured, fined \$50,000, and required to pay \$279,204 plus interest in restitution to a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm effected transactions as principal in securities at prices that were unfair and unreasonable taking into consideration all of the relevant factors.

Podesta & Co. (Chicago, Illinois) was censured, fined \$26,250, and fined \$5,000, jointly and severally, with an individual. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of a Chicago District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm participated as an underwriter in a negotiated underwriting of certain bonds within two years of having made political contributions to officials of the issuer. In addition,

the firm failed to file Form G-37 reports with the Municipal Securities Rulemaking Board (MSRB) in a timely manner and failed to establish, maintain, or enforce written supervisory procedures to prevent the occurrence of the conduct described above.

Troster Singer, a Division of Spear, Leeds & Kellogg (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,000. 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 in violation of applicable securities laws and regulations regarding trade reporting, recordkeeping, and the Limit Order Protection Interpretation.

Wilson-Davis & Co., Inc. (Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$16,000. 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 in violation of applicable securities laws and regulations regarding trade reporting. Furthermore, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws, regulations, and rules regarding trade reporting and recordkeeping.

Individuals Barred Or Suspended

Ronald L. Ahumada (Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Without admitting or deny-

ing the allegations, Ahumada consented to the described sanctions and to the entry of findings that he received funds in the amount of \$15,000 from public customers intended for investment purposes and misappropriated such funds for his own use and benefit.

Kathleen Anderson (Registered Representative, Palatine, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$280,774, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that she received checks in the amount of \$56,154.78 from public customers intended for deposit in annuities. The NASD found that Anderson instead deposited the checks into a personal bank account without the knowledge or consent of the customers, and used the proceeds for some purpose other than for the benefit of the customers.

Stephan P. Boruchin (Registered Principal, Denver, Colorado) was censured, suspended from association with any NASD member in any capacity for 45 days, and required to requalify by exam as a registered representative and a general securities principal. The sanctions were based on findings that Boruchin, acting in his capacity as trader for his member firm, accepted and executed orders to buy and sell securities in customer accounts when he knew that the persons receiving and soliciting those orders on behalf of the firm were not effectively registered with the firm. Furthermore, Boruchin functioned as a principal of the firm without having qualified as a principal.

Edward W. Breault (Registered Representative, Hopedale, Massachusetts) submitted a Letter of

Acceptance, Waiver and Consent pursuant to which he was censured, fined \$100,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Breault consented to the described sanctions and to the entry of findings that he forged and converted checks from public customers totaling \$20,935.77.

Larry Dean Bryan (Registered Representative, Edwardsville, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$58,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bryan consented to the described sanctions and to the entry of findings that he received a check for \$10,000 from a public customer with instructions to use the funds to open a money market account in the customer's name. The NASD found that Bryan, without the customer's knowledge or consent, added another customer's name to the account application form as joint tenant with right of survivorship, listed a post office address on the money market account instead of the customer's home address, drew checks payable to himself in the amount of \$7,500, and used the funds for some purpose other than for the benefit of the customer. Bryan also failed to respond to NASD requests for information.

Gregory M. Cooper (Registered Representative, Denver, Colorado) and **Wayman L. Morgan (Registered Representative, Denver, Colorado)** submitted an Offer of Settlement pursuant to which they were censured, fined \$30,000 individually, 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 they

solicited outside investments without obtaining their member firm's approval. The findings also stated that Cooper and Morgan made oral misrepresentations and disseminated written misrepresentations about the investment and failed to disclose the risks associated with it. In addition, the NASD determined that Morgan transferred a public customer's funds to an entity purportedly receiving such funds for the investment when he knew that these funds were subject to a risk of loss. Cooper and Morgan also failed to respond to NASD requests for information.

Charles Joseph Cottone (Registered Representative, Gobles, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$16,768 in restitution to a public customer. Without admitting or denying the allegations, Cottone consented to the described sanctions and to the entry of findings that he received \$23,817 from a public customer with instructions to purchase securities products. Contrary to the customer's instructions and without the customer's knowledge or consent, Cottone failed to invest the funds in any securities products and instead used the funds for some purpose other than for the benefit of the customer.

Jack E. DeLong, Jr. (Registered Principal, Dunwoody, Georgia) was censured, fined \$30,000, 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 DeLong, failed to maintain complete, current, and accurate books and records; conducted a securities business while failing to maintain the minimum required net capital; and filed FOCUS Reports Part I and II that

materially overstated the firm's net capital.

The appeal to the NAC was dismissed as abandoned; therefore, this DBCC decision constitutes final action.

Gerald Divozzo (Registered Representative, Mount Clemens, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Divozzo consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities on a private basis and failed to give his member firm prior written notice of, or obtain prior written authorization to participate in, such activities.

Divozzo's suspension began May 1, 1998, and concluded May 30, 1998.

Robbie D. Dosty (Registered Principal, Tucson, Arizona) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dosty consented to the described sanctions and to the entry of findings that he received a \$330 refund check from his member firm to be delivered to a public customer and instead forged the customer's signature on the check and deposited the check into his own account. Dosty also failed to respond to NASD requests for information.

Richard G. Dunn (Registered Representative, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in

any capacity. Without admitting or denying the allegations, Dunn consented to the described sanctions and to the entry of findings that he forged a policyholder's signature on a policy change application that increased the face amount of an insurance policy owned by the customer from \$150,000 to \$350,000.

Eugene Anthony Eusanio (Registered Representative, Lancaster, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$60,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eusanio consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to, or receive written approval from, his member firms.

Paul W. Feeny (Registered Principal, Bayside, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$54,000, suspended from association with any NASD member in any capacity for two years, and required to pay \$81,232 in restitution to public customers. Without admitting or denying the allegations, Feeny consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with the solicitation and execution of securities transactions. The findings also stated that Feeny predicted the future price of securities without a reasonable basis for such predictions, failed to follow customer instructions to sell securities, and effected transactions without the customers' prior authorization and consent. Furthermore, Feeny guaranteed a customer against loss in the customer's account.

Frank R. Gittens (Registered Representative, West Hempstead, New York) was censured, fined \$70,000, barred from association with any NASD member in any capacity, and ordered to pay \$5,798 in restitution to public customers. The sanctions were based on findings that Gittens effected unauthorized transactions in the accounts of public customers and failed to respond to NASD requests to provide information and to appear for an on-the-record interview.

Phillip A. Goodwin (Registered Principal, O'Fallon, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$13,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goodwin consented to the described sanctions and to the entry of findings that he participated in private securities transactions and outside business activities and failed to give prior written notice of such activities to his member firm. The findings also stated that Goodwin failed to update his Form U-4 to disclose a Cease and Desist Order issued by the State of Missouri.

Kendall D. Gregory (Registered Representative, Biloxi, Mississippi) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Gregory consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of a public customer, thereby exercising discretion in those accounts, without having obtained prior written authorization from the customer and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that Gregory executed individual purchase trans-

actions in one of the customer's accounts without informing the customer that such purchases could have been executed at reduced sales charges at the various breakpoint levels under the rights of accumulation features of such fund. Moreover, Gregory failed to provide the customer with the benefit of reduced sales charges for purchases of the subject fund that exceeded the breakpoint levels.

Frank C. Grigsby (Registered Representative, Phoenix, Arizona) was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Grigsby participated in outside business activities without providing prompt written disclosure of such activity to his member firm.

The appeal to the NAC was dismissed as abandoned; therefore, this DBCC decision constitutes final action.

Mark Lloyd Grosche (Registered Representative, Agoura Hills, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$4,200, and suspended from association with any NASD member in any capacity for 30 days. In addition, Grosche must cooperate with the NASD in its investigation of issues relating to activities at his member firm's Office of Supervisory Jurisdiction and testify at any hearing resulting from any disciplinary action brought by the NASD concerning such matters. Without admitting or denying the allegations, Grosche consented to the described sanctions and to the entry of findings that he engaged in a course of conduct that resulted in an individual at his member firm executing trades in corporate securities even though this individual was not licensed to offer and/or sell corporate securities. Grosche

allowed the individual to use his account executive number. He then received the commission checks and signed them over to the individual.

Gary Dee Harris (Registered Representative, Cedar Falls, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$18,762.56, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam in any capacity. Without admitting or denying the allegations, Harris consented to the described sanctions and to the entry of findings that he functioned as a representative and engaged in securities business without proper registration and permitted an individual who was not properly registered to function as a representative and engage in securities business.

Frank Henry, Jr. (Registered Representative, San Diego, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, barred from association with any NASD member in any capacity, and ordered to pay \$6,000 in restitution to his member firm. Without admitting or denying the allegations, Henry consented to the described sanctions and to the entry of findings that he received \$6,000 from a public customer for investment, failed to execute the purchase on the customer's behalf, and instead, converted the funds to his own use and benefit without the customer's knowledge or consent. The NASD also determined that, in furtherance of the conversion, Henry falsified a fund statement to evidence the customer's purchase of the fund when in fact no such fund was purchased and the account number on the statement was a nonexistent account.

Lawrence Mark Jasinover (Registered Representative, New York, New York) was censured, fined \$120,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jasinover effected unauthorized transactions in the securities accounts of public customers. In addition, Jasinover falsified his member firm's books and records and failed to respond to NASD requests to appear for an on-the-record interview.

Roderick Fitzgerald Kocanda (Registered Representative, Columbus, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$65,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kocanda consented to the described sanctions and to the entry of findings that he received a check for \$13,000 made payable to a public customer intended for life insurance premium payments. The NASD determined that Kocanda did not use the funds as intended, and used them instead for some purpose other than for the benefit of the customer.

Lauren Lessard (Registered Representative, Northport, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$15,000, suspended from association with any NASD member in any capacity for three months, required to pay \$5,335 in restitution, and required to requalify by taking the Series 7 exam. Without admitting or denying the allegations, Lessard consented to the described sanctions and to the entry of findings that she engaged in unauthorized trading, price predictions, and improper tie-ins of securities held by a public customer, and sold shares of a public customer's securities without autho-

ization. The findings also stated that Lessard used the proceeds to make an unauthorized purchase of other securities in that customer's account. The findings also stated that Lessard allowed a public customer to purchase securities in initial public offerings only if that customer committed to buy the stock of the same issuers in the aftermarket at a four to one ratio. Lessard also made improper price predictions in soliciting a public customer to purchase securities.

Adam S. Levy (Registered Representative, Aventura, Florida) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Levy executed unauthorized transactions in the account of a public customer.

Kelly A. Machecha (Registered Representative, Arabi, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$8,800,000, barred from association with any NASD member in any capacity, and required to pay \$1,764,478.40 in restitution to appropriate parties. Without admitting or denying the allegations, Machecha consented to the described sanctions and to the entry of findings that she received funds in the amount of \$1,764,478.40 from public customers intended as payment of annuity premiums and for investment purposes. The NASD determined that Machecha failed to submit these funds to her member firm or execute the purchase of such securities on the customers' behalf, and instead, converted the funds to her own use and benefit, without the customers' knowledge or consent.

Lawrence W. McGary (Registered Representative, San Antonio, Texas) submitted an Offer of Settlement pursuant to which he was censured, fined \$80,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, McGary consented to the described sanctions and to the entry of findings that he sold shares of stock to public customers and failed to disclose to the customers and his member firm the total remuneration he received or would receive from the transactions.

Robert J. Mitchell (Registered Representative, Garden City, New York) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mitchell failed to respond to NASD requests to appear for an on-the-record interview.

Kishor Parekh (Registered Principal, Miami, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Parekh consented to the described sanctions and to the entry of findings that he sent a letter to the Dade County, Florida Commission and several publications concerning Dade County's financial advisor, falsely portraying that the president of another member firm was the author and sender of the letter.

James T. Patten (Registered Principal, Bernardville, New Jersey) was censured, fined \$55,000, jointly and severally with a member firm, fined \$175,000 individually, suspended from association with any NASD member as a registered representative for one year, and suspended in a principal capacity for two years. In

addition, Patten must not associate with any NASD member in any capacity until he requalifies by exam. The NAC affirmed the sanctions following appeal of a Market Regulation Committee decision to the SEC. The sanctions were based on findings that Patten intentionally reported fictitious and substantive transactions to The Nasdaq Stock MarketSM (Nasdaq[®]) at or near the close of the market in order to affect the closing price of the securities. In addition, Patten effected transactions between accounts that he owned and controlled, which involved no change in beneficial ownership, for the purpose of creating a false and misleading appearance of active trading in the securities at issue. Patten also published and circulated reports of purchase and sale transactions which he knew or should have known were not bona fide.

Furthermore, Patten, acting through a member firm, violated the firm's restriction agreement with the NASD by effecting more than an occasional transaction per month in the firm's investment account without obtaining prior approval to modify the agreement, and failed to enforce supervisory procedures that would have enabled the firm to detect and deter marking the close activity.

John Michael Peterson (Registered Representative, Broken Bow, Nebraska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Peterson consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Richard Ringel (Registered Representative, Old Bethpage, New York) and **Peter Rubenstein (Registered Representative, Bayside, New York)** submitted Offers of Settlement pursuant to which Ringel was censured, fined \$50,000, and barred from association with any NASD member, and Rubenstein was censured, fined \$20,000, suspended from association with any NASD member in any capacity for three years, and ordered to requalify by exam. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ringel and Rubenstein made unauthorized transactions in the accounts of public customers and made baseless and improper price predictions as to speculative securities. The findings also stated that Ringel and Rubenstein misled customers as to the risk of investing in a new issue, including false promises to limit customers' potential losses, and that Rubenstein made baseless and improper comparisons among unrelated securities to a customer.

Furthermore, the NASD determined that Ringel falsely promised to make up orders with new trading, made a misrepresentation to an issuer, refused to execute, or aggressively discouraged, sell orders, induced a customer with limited income and assets to make unsuitable investments in speculative securities, and falsified customer records as to the customers' financial conditions in order to justify investment in speculative securities.

Scott Thomas Smith (Registered Representative, Shoreview, Minnesota) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described

sanctions and to the entry of findings that, without the knowledge or consent of his employer, he transferred \$3,856 from his employer's settlement account to his personal account and converted the funds to his own use and benefit. Smith also misrepresented to his employer that he had not received a \$500 check from the settlement account when, in fact, it had been deposited in his personal bank account. On the basis of this misrepresentation, Smith was paid an additional \$500 that he converted to his own use and benefit.

Tony R. St. John (Associated Person, Gilbert, Arizona) was censured and barred from association with any NASD member in any capacity. The sanctions were based on findings that St. John failed to disclose a criminal charge on his Form U-4.

James F. Sweeney (Registered Representative, Toms River, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$100,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sweeney consented to the described sanctions and to the entry of findings that he disregarded his duty of fair dealing with public customers and his duty to research securities recommended to public customers. The findings also stated that Sweeney misled customers by making material misrepresentations, including price predictions, and omitting material negative information during the offer, purchase, and sale of securities. In addition, Sweeney effected transactions in the accounts of public customers without their prior authorization or consent.

Merrill W. Sywenki (Registered Representative, Lehigh, Pennsylvania) was censured, fined \$338,500, barred from association

with any NASD member in any capacity, and ordered to pay \$57,700 in restitution to public customers. The sanctions were based on findings that Sywenki misappropriated customer funds in the amount of \$57,700 intended for investment purposes and intentionally converted the funds to his personal use. Furthermore, Sywenki prepared false account statements representing that the funds received from the customers were used to purchase securities and further concealed his misuse by falsely representing to the customers that certain payments they received were dividend payments.

Paul T. Westervelt, Jr. (Registered Principal, Folsom, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$40,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Westervelt consented to the described sanctions and to the entry of findings that, in contravention of the NASD Front Running Policy, he received a not held customer order to sell shares of common stock and, while in possession of material, non-public information relating to the imminent block-size transaction, and prior to the time that the information concerning the block-size transaction had been made publicly available, Westervelt caused call options contracts in the stock to be executed in his personal account at his member firm.

Christopher S. Wolf (Registered Representative, San Francisco, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wolf consented to the described

sanctions and to the entry of findings that he failed to respond, or to respond completely, to NASD requests for information and to appear for an on-the-record interview.

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

The appeal to the NAC was dismissed as abandoned; therefore, this DBCC decision constitutes final action.

Individuals Fined

Joshua A. Cohen (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers.

Robert Manning Davison (Registered Representative, Princeton, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$13,375. Without admitting or denying the allegations, Davison consented to the described sanctions and to the entry of findings that he opened a joint securities account at a member firm, failed to provide written notice to the firm of his registration status, and failed to notify his employer member firm that he had a beneficial interest in this account. The findings also stated that Davison purchased shares of stock that traded at a premium in the immediate aftermarket in contravention of the

NASD Board of Governors' Free-Riding and Withholding Interpretation.

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of April 24, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Thomas D. Coldicutt (Registered Representative, San Diego, California) and **Wallace Kantor (Registered Principal, San Diego, California)**. Coldicutt was censured, fined \$20,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$12,500 to the NASD. Kantor was censured, fined \$7,500, suspended from association with any NASD member in any capacity for 30 days, and barred from association with any NASD member as a financial and operations principal, with the right to reapply to become so associated after three years. The sanctions were based on findings that a member firm, acting through Coldicutt, received varying amounts of consideration from, or on behalf of, issuers for filing a Form 211 with the NASD to list the issuers' securities on the OTC Bulletin Board[®]. Kantor, during the course of an NASD interview, failed to disclose that he had resigned as his member firm's financial and operations principal, thereby misleading the NASD into thinking the firm was operating with a registered financial and operations principal.

Coldicutt and Kantor have appealed this action to the NAC and the sanc-

tions are not in effect pending consideration of the appeal.

Pamela A. Hartsock (Registered Representative, Montoursville, Pennsylvania) was censured and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hartsock received \$2,500 from a public customer for investment purposes and neither remitted such funds for their intended purposes nor promptly informed her member firm of any possible loss of the funds.

This action has been called for review by the NAC and the sanctions are not in effect pending consideration of the review.

Christopher B. Pascente (Registered Principal, Aurora, Illinois) was censured, fined \$10,000, and ordered to requalify by exam as a financial and operations principal (FINOP) by taking and passing the Series 27 exam. If Pascente does not requalify as a FINOP within 30 days of the date of the decision, he shall be suspended as a FINOP until he so requalifies. The sanctions were based on findings that a member firm, acting through Pascente, conducted a securities business while failing to maintain minimum required net capital, failed to maintain complete, current, and accurate books and records, and filed inaccurate FOCUS Part I reports that materially overstated the firm's net capital.

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

Theodore L. Pittman, III (Registered Representative, McFarland, Wisconsin) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pittman failed to

respond to NASD requests for information.

Pittman has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Lance E. Van Alstyne (Registered Representative, Laguna Niguel, California) was censured, fined \$95,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Van Alstyne engaged in the management of the securities business of a member firm without being registered as a principal of the firm. Furthermore, Van Alstyne offered and sold securities to public customers for which a registration statement was not filed and in effect with the SEC and for which no exemption was applicable. In addition, Van Alstyne failed to respond to NASD requests for information and to appear for an on-the-record interview.

Van Alstyne has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD 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 these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Thomas J. Brown (Registered Representative, Nanuet, New York) was named as a respondent in

an NASD complaint alleging that he received \$24,000 from a public customer as premium payments intended for deposit in the customer's life insurance policy. The complaint alleges that Brown did not deposit the money on the customer's behalf but, rather, misappropriated the funds for his own personal use. The complaint also alleges Brown failed to respond to NASD requests for information and to appear for an on-the-record interview.

Sandy Charles Giglio (Registered Representative, Palm Coast, Florida) was named as a respondent in an NASD complaint alleging that he forged the signatures of public customers on forms in order to move their accounts from his former member firm to his current member firm. The complaint also alleges that Giglio altered an application submitted by a public customer to purchase stock by deleting the designated registered representative's name and member firm as the designated investment dealer and replacing those entries with his own name and his current member firm.

Duane Joseph Koerner (Registered Representative, Denver, Colorado) was named as a respondent in an NASD complaint alleging that he entered unauthorized transactions in the securities account of a public customer. The complaint also alleges that Koerner made false and misleading statements to the public customer that were related to the status of the customer's account.

Donerval Kevin Moreland (Registered Representative, San Clemente, California) was named as a respondent in an NASD complaint alleging that he recommended, offered, and sold \$25,000 worth of securities to a public customer while not properly registered with the NASD. The complaint also alleges that Moreland made these recom-

mendations without having reasonable grounds for believing that they were suitable for the customer in view of the size and nature of the recommended transactions and the facts disclosed by the customer as to her investment objectives and financial situation. Additionally, the complaint alleges that Moreland failed to respond to NASD requests for information.

Rene Reyes (Registered Representative, New Orleans, Louisiana)

was named as a respondent in an NASD complaint alleging that he received \$5,000 from a public customer intended for investment in initial public offerings. The complaint alleges that Reyes failed to invest these funds on the customer's behalf, and instead converted the funds to his own use and benefit. The complaint also alleges that Reyes failed to notify his member firm, in writing, that he had established and maintained securities accounts with other member firms, and he also failed to notify those firms of his association with a member firm. Additionally, the complaint alleges that Reyes failed to respond to NASD requests for information.

John S. Smoot, Jr. (Registered Representative, Jackson, Tennessee)

was named as a respondent in an NASD complaint alleging that he received insurance premium payments totaling \$6,300 from public customers, failed to submit these funds to his member firm, and converted the funds to his own use and benefit, without the customers' knowledge or consent. The complaint also alleges that Smoot failed to respond to NASD requests for information.

John J. Squeri, Jr. (Registered Representative, Atlantic Beach, New York)

was named as a respondent in an NASD complaint alleging that, while associated with a member

firm, he executed a transaction in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint alleges that he improperly exercised discretionary authority in the account of a public customer without the customer's written permission and, as a result, executed a transaction in the account. Additionally, the complaint alleges that Squeri misrepresented his identity to another public customer who resided in a state in which Squeri's registration had been suspended.

Waldith G. Thompson (Registered Representative, Lauder Hills, Florida)

was named in a complaint alleging that he received funds in the amount of \$10,000 from an insurance customer intended for the purchase of a life insurance policy, failed to purchase the policy, and failed to return the funds to the customer. The complaint also alleges that Thompson failed to respond to NASD requests for information.

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.

Arrowhead Capital Services, Inc., New York, New York (April 30, 1998)

Avatar Financial Group, Ltd., Blue Bell, Pennsylvania (April 30, 1998)

Lone Mountain Securities, Inc., Scottsdale, Arizona (April 30, 1998)

Schuparra Securities Corporation, San Antonio, Texas (April 30, 1998)

Wise Choice Discount Brokerage, Inc., New York, New York (April 30, 1998)

WR Lazard, Laidlaw Inc., New York, New York (April 30, 1998)

Suspensions Lifted

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

Corporate Funding, Ltd., Minot, North Dakota (May 1, 1998)

Euromax Financial Services, Inc., Daly City, California (May 19, 1998)

First Commonwealth Securities Corporation, New Orleans, Louisiana (April 27, 1998)

Kopfer Financial Services, Inc., Easton, Pennsylvania (May 12, 1998)

Sanford Roberts Inc., Miami, Florida (April 30, 1998)

U.S.A. Investments, Inc., Morristown, New Jersey (April 27, 1998)

William & Co. Capital Markets, Ltd., New York, New York (May 12, 1998)

Firms Whose Registrations Were Suspended Pursuant To NASD Rule 9622 For Failure To Pay Arbitration Award

A.J. Michaels & Co., Inc.,
Hauppauge, New York (May 6, 1998 to May 14, 1998)

Greenway Capital Corp. n/k/a Cortlandt Capital Group,
New York, New York (May 4, 1998)

Investors Associates, Inc.,
Hackensack, New Jersey (May 12, 1998)

Island Securities, Inc., Garden City,
New York (May 6, 1998)

Joseph Roberts & Co., Inc.,
Pompano Beach, Florida (May 6, 1998)

Landmark International Equities,
Westbury, New York (May 7, 1998)

Individuals Whose Registrations Were Suspended Pursuant To NASD Rule 9622 For Failure To Pay Arbitration Award

Basile, Jack Robert, Brooklyn,
New York

Cutrone, William Michael,
Woodbury, New York

Duca, Frank Peter, East Meadow,
New York

Epstein, Herman, Franklin Lakes,
New Jersey

Evans, Robert Stewart, Mount Pleasant,
South Carolina

Jusko, Jan Joseph, Oyster Bay,
New York

Keyser, John T., Lighthouse Point,
Florida

Liakos, Dean, Rego Park, New York

McCluskley, Brian T., Glendale,
New York

Tropeano, Fred, Brooklyn,
New York

Weinrich, Sr., Joseph J., Kansas City,
Missouri

NASD Regulation Fines NationsSecurities \$2 Million for Term Trusts Sales; Two Senior Officials And Branch Manager Also Sanctioned

NASD Regulation announced that it fined and censured NationsSecurities, two senior officials, and a branch manager in connection with the marketing and sale of the Nations Government Income Term Trust 2003 and the Nations Government Income Term Trust 2004. The officials—a NationsBank N.A.'s senior vice president and the national sales manager for mutual funds, NationsSecurities' executive vice president of sales and deputy chief operating officer, and its Houston branch office manager during the relevant period—were all fined, suspended, and censured.

NationsSecurities, without admitting or denying NASD Regulation's findings, was fined \$2 million. NASD Regulation found that, during a focused sales campaign aimed at bank customers, including investors who owned bank certificates of deposit (CDs), NationsSecurities engaged in practices that blurred the distinctions between the bank and the brokerage firm, disseminated false and misleading information to investors, failed to adequately disclose the Trusts' risks, and made unsuitable sales to investors.

As part of a coordinated regulatory effort, the SEC and the Office of the Comptroller of the Currency (OCC) also announced settlements with NationsSecurities and NationsBank

today. NASD Regulation thanked the SEC and the OCC for their assistance in this case.

Blurring Practices. As part of NationsSecurities' program to increase referrals from bank employees, brokers were encouraged to "blend in" with the bank, and some were also told, in effect, that they would be foolish to point out that they were not part of the bank. The brokers were advised to use the term "receipt" instead of "confirmation," the term "account" instead of "closed-end fund," and not to use the term "commission" or "broker." NASD Regulation also found that some brokers sold the Term Trusts from banking centers that lacked the required signage identifying them as representatives of the brokerage firm. As a result, many bank customers believed they were doing business with a bank employee, not a broker.

"Bank broker/dealers have a duty to ensure that bank customers who purchase mutual funds and other investment products in banks are not confused about the distinction between a bank-insured product and a securities product. The misleading information disseminated about the investments, along with blurring the distinction between the bank and the securities firm, subjected numerous investors to undue risk and loss," said NASD Regulation President Mary L. Schapiro.

False and Misleading Sales Practices. The Term Trust 2003 went public in August 1993; the Term Trust 2004 did so in February 1994. The Trusts are proprietary closed-end funds that, because of the concentration in mortgage-backed securities, investments in derivative securities, the use of leverage, and the long average maturity of the securities, were highly sensitive to interest rate changes. During 1994,

interest rates rose significantly and the market price of the Term Trusts fell 35 to 40 percent below the \$10 offering price. More than 11,000 customers across the country invested more than \$300 million in the Term Trusts. NationsSecurities earned more than \$11 million from sales of the Term Trusts.

NASD Regulation found that NationsSecurities' sales effort included the use and dissemination of materially misleading scripts and statements, which were not filed with the NASD Regulation's Advertising Regulation Department for review, as required. According to one script, the Term Trusts would provide "certainty in an uncertain world"—a materially misleading description of the fund. Some investors were told that the Term Trusts were safe or guaranteed, and would provide a full return of the principal invested, when, in fact, the principal was at risk. Investors were also told that shares could be sold at any time, but some were not informed that such a sale could result in a loss of principal, or that closed-end funds generally trade at below net asset value. In certain instances, the Term Trusts were compared to CDs, without an explanation of the significant differences between the two.

Unsuitable Sales. NASD Regulation also found that NationsSecurities was aware that, by soliciting sales from bank customers, its sales efforts would reach elderly, conservative, and unsophisticated investors. The firm's orientation training materials noted that "NationsSecurities customers who are NationsBank retail customers are generally an older, more conservative investor. They are not very sophisticated in evaluating investment products. Most wouldn't go to a brokerage firm, but feel comfortable using the bank for investment advice."

Sixty-five percent of the investors in the Term Trusts were more than 60 years old; 36 percent were at least 70 years old; and 11 percent were more than 80 years old. Forty-seven percent of Term Trust investors had annual incomes of \$25,000 or less, with 19 percent of all Term Trust investors having annual incomes of \$15,000 or less.

Individuals Sanctioned. All three Nations officials neither admitted nor denied NASD Regulation's findings. NationsBank N.A.'s National Sales Manager for Mutual Funds, Daniel Wroble, was fined \$100,000, suspended for six months in all capacities, suspended an additional six months as a principal, and censured. He must also requalify by examination before he can act in any registered capacity. Wroble made as many as three presentations a day to Nations' sales force, and participated in conference calls with wholesalers, branch managers, and brokers to promote the Term Trusts. NASD Regulation found that, while Wroble understood the essential nature of the Term Trusts, his sales presentations to brokers were materially misleading because he failed to adequately disclose the characteristics, nature, and risks of these investments.

Wroble consistently used a speech in which he held up a brochure featuring a picture of the U.S. Capitol and told the sales force (a significant number of whom were inexperienced) that as long as the U.S. Capitol was standing in 10 years, investors would receive their original investments back. This false and misleading statement—the promise of the return of full principal—was ultimately disseminated to investors.

Charles King, NationsSecurities executive vice president of sales and deputy chief operating officer during this period, was fined \$50,000, suspended for three months in all capacities,

and censured. He must requalify by examination as a registered principal. Houston Branch Office Manager, Jamie Atkinson, was fined \$35,000, suspended for one month in all capacities, suspended an additional three months as a principal, and censured. He must requalify by examination before he can act in any registered capacity.

NASD Regulation found that Atkinson developed the "Four-Step Process" as part of a training session on sales techniques. King distributed this document to eight state managers, encouraged its use by all branch managers, and suggested that it be used to help less experienced brokers sell more successfully. The "Four-Step Process" used materially misleading descriptions of the 2004 Trust, including: emphasizing safety, predictability, and yield with no discussion of material risks; misleading comparisons to bank accounts; misleading comparisons of the liquidity of the Term Trust to highly liquid, exchange-listed issuers; and referring to this closed-end trust as an "account."

Supervision. NASD Regulation found that NationsSecurities failed to establish, maintain, and enforce reasonable supervisory procedures to prevent these problems from occurring. These supervisory inadequacies existed notwithstanding the NASD's continued emphasis on the importance of ensuring adequate disclosure in the sale of investment products to CD holders, in conducting sales at a bank-affiliated brokerage firm, and in effecting sales in off-site offices.

NationsSecurities was acquired by NationsBanc Investments, Inc., on January 1, 1998, and the findings and sanctions imposed by NASD Regulation apply to NationsBanc Investments, Inc., and to any future successor entity.

The investigation leading up to this action was conducted by NASD Regulation's Enforcement Department in consultation with NASD Regulation's Advertising Regulation Department.

NASD Regulation Charges Biltmore Securities, Inc., And Two Principals With Fraud

NASD Regulation announced that it issued a complaint charging Biltmore Securities, Inc.; its Chief Executive Officer, Elliott A. Loewenstern; and its President, Richard B. Bronson, with fraud in connection with the sale of United Restaurants, Inc., A and B warrants. The complaint alleges that profits from this misconduct amounted to more than \$2.1 million, of which Loewenstern and Bronson personally received almost \$1.5 million.

In the complaint, NASD Regulation charges that the firm, Loewenstern, and Bronson carried out this fraud by failing to disclose to potential customers that they, and other Biltmore employees, were in the process of selling their personal holdings of United Restaurants warrants while simultaneously recommending that customers buy them. They also failed to disclose to the potential customers that they had obtained the warrants without paying for them.

Warrants entitle the holder to buy a proportionate amount of common

stock at a specified price, usually higher than the market price at issuance, for a specified period of time.

Biltmore Securities had co-underwritten the initial public offering of United Restaurants, Inc., in April of 1994. The complaint alleges that, in October 1994, Biltmore transferred approximately one million United Restaurants, Inc., B warrants to 19 Biltmore employees, including both Loewenstern and Bronson, who received 425,000 each. According to the complaint, the warrants were transferred to the individuals, without cost, in lieu of a cash bonus at a time when the warrants were trading for approximately \$1.25.

The complaint alleges that, between November 14 and November 22, 1994, Loewenstern sold virtually all of the warrants back to the firm from the employee accounts without their knowledge. The firm repurchased the warrants at a price of \$1.75 per warrant (when the bid price was only \$1.50 per warrant). This resulted in a profit of more than \$1.8 million to the 19 employees, of which Loewenstern and Bronson each received approximately \$750,000 (or about \$1.5 million collectively). During this time, it is alleged that Biltmore dominated the market in these warrants. The repurchases covered the firm's sales efforts in recommending and selling these warrants to its cus-

tomers. The complaint alleges a similar course of misconduct with respect to the A warrants, which were given to 10 Biltmore employees in late 1994 and which generated profits to these employees of almost \$250,000.

In the complaint, NASD Regulation asks that the respondents be ordered to relinquish the profits that were illegally obtained and make restitution to defrauded investors. Other potential sanctions include a fine, suspension, individual bar, or firm expulsion from the NASD. Under NASD rules, the individuals and the firm named in the complaint can file a response and request a hearing before an NASD Regulation disciplinary panel.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD 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 respondents before drawing any conclusion regarding the allegations in the complaint.

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For Your Information

Testing And Continuing Education Scheduling Procedures Revised

To provide a better level of service to members, NASD Regulation, Inc., and the Sylvan Technology Center Network (Sylvan) have agreed that certain appointment scheduling activities regarding testing and continuing education sessions will become the direct responsibility of NASD RegulationSM. **Effective June 1, 1998**, NASD Regulation Field Support Services (FSS), **(800) 999-6647**, will be taking over responsibility from Sylvan in the following areas:

- **Registration Authorization Discrepancies.** FSS will assume responsibility for handling registration validation problems and their resolution. This should eliminate the majority of appointment cancellations due to validation problems.
- **Group Appointment Scheduling.** Firms scheduling group appointments (five or more people at one location on the same day), or scheduling five or more individual appointments at one time will do so by calling FSS rather than Sylvan. This will provide for a more time efficient process for the firm.
- **Special Accommodations Appointment Scheduling Pursuant To Mandates Of Americans With Disabilities Act (ADA).** After approving special accommodation requests, FSS will make all arrangements for the accommodation with Sylvan. Firms and candidates need only contact FSS; the current procedure of contacting both FSS and Sylvan will no longer be necessary.

More detailed information about these important changes, along with a current delivery location list, will be published in the June issue of the NASD's *Regulatory & Compliance Alert*.

NASD Regulation, Year 2000 Program Office Develop Member Regulation Plan

As the year 2000 gets closer, all National Association of Securities Dealers, Inc. (NASD[®]) member firms have a responsibility to move their Year 2000 program plans forward to ensure continued successful operation. NASD members are the first line of action in fulfilling the mission of investor protection and market integrity. If businesses—including NASD member firms—are not ready for the Year 2000, the consequences could be enormous. In order to help NASD members, NASD Regulation, in conjunction with the NASD Year 2000 Program Office, has developed a Year 2000 Member Regulation Plan.

Member Regulation Plan

Under this plan, NASD Year 2000 staff will be focused on educating member firms and service bureaus on the importance of developing Year 2000 programs to ensure that all proprietary and nonproprietary systems used in conducting a securities business will continue to operate successfully after December 31, 1999. Specifics of the plan include the following:

- **Ongoing Awareness And Education.** This area involves ongoing communication with members regarding the progress of the industry in preparing for Year 2000 issues and challenges. Currently, most NASD publications contain articles targeted to increase members' awareness, discuss reporting requirements, and provide helpful hints. In addition, while the staff will not be inspecting and/or evaluating Year 2000 project plans developed by members or service bureaus, the Year 2000 Program Office provides education through forums and participation in conferences. For example, NASD staff conduct-

ed 34 Year 2000 seminars in May and June 1998, and the 1998 NASD Regulation Spring Securities Conference included a pre-conference entirely devoted to Year 2000 issues and prominently featured Year 2000 issues in the conference itself, with keynote speakers and workshops. These types of activities will continue throughout 1999.

• **Membership Information Collection And Disclosure.** There will be a series of surveys and reports for members to indicate and certify their progress related to Year 2000 readiness. An NASD-sponsored survey was conducted in late 1997/early 1998, and the staff is still in the process of assuring 100 percent participation in that effort. In March, the Securities and Exchange Commission (SEC) proposed a temporary rule amendment to SEC Rule 17a-5 requiring broker/dealers to file two Year 2000 compliance reports. The NASD submitted comments to the SEC in April stating that the proposed amendments are a positive addition to the regulatory and industry-wide Year 2000 initiatives currently underway. The NASD also indicated that the SEC's amendment should extend to all broker/dealers, rather than the SEC's proposed \$100,000 net capital reporting threshold, but that smaller firms should not be subject to an outside attestation requirement. Furthermore, the NASD commented that the results of these reports should be made available to the public and should be collected and published under a standard reporting format. The SEC is expected to act on this shortly.

In addition, NASD Regulation implemented an exam procedure to verify that member firms have provided information to the NASD about the status of their Year 2000 planning activities.

Important Note: Member firms that fail to provide Year 2000 information as required by the NASD will be subject to disciplinary action for violation of NASD Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books) and SEC Rule 17a-5.

- **Membership Analysis.** Using data collected from the NASD Year 2000 survey, the proposed SEC reports, and data gathered by individual calls to member firms, Year 2000 Program Office staff will be able to increase the reporting and analysis of membership risks and readiness. The NASD will also use this data to evaluate members' progress toward industry milestones, monitor members' overall Year 2000 contingency plan preparedness, and report to the SEC on the industry's progress.
- **Other Activities.** The NASD will continue its ongoing coordination with the many groups that affect and would be affected by the success of the various Year 2000 initiatives. This includes coordination with the SEC, Securities Industry Association (SIA), International Organization of Securities Commissions (IOSCO), NASD Small Firm Advisory Board, and the Municipal Securities Rulemaking Board (MSRB).

For further information about the Year 2000 challenge in general and/or NASD's Year 2000 Program, visit the Year 2000 Web pages on either the NASD Regulation Web Site (www.nasdr.com) or the NASD Web Site (www.nasd.com); or contact Lyn Kelly at the NASD Year 2000 Program Office, at (888) 227-1330, or via e-mail at y2k@nasd.com.

Court Limits Arbitration Requirement For Employment Discrimination Claims

A federal appellate court in the Ninth Circuit issued a decision on May 8, 1998, which held that, under the United States Civil Rights Act of 1991, employers may not, as a condition of employment, compel individuals to waive their right to a judicial forum in cases alleging employment discrimination. The Ninth Circuit is the only U.S. Court of Appeals to reach this conclusion. The jurisdiction of the Ninth Circuit includes the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

The case, *Duffield v. Robertson Stephens & Co.*, involved a situation in which an associated person had signed a Form U-4 that required her to arbitrate all employment-related disputes. The associated person sued her employer in federal court, alleging sex discrimination and sexual harassment in violation of federal and California state statutes, as well as other claims based on state law. The employer moved to compel arbitration pursuant to the Form U-4 requirement. The court held that the Form U-4 is unenforceable as applied to claims under Title VII of the Civil Rights Act and a parallel California anti-discrimination law. The court determined, however, that there is no constitutional bar to employers requiring employees to agree in advance to arbitrate state law tort and contract claims (other than claims for violation of state civil rights laws).

Members and associated persons who are subject to the jurisdiction of the Ninth Circuit may wish to consult counsel if they are involved in a matter covered by the decision. The docket number of the decision is 97-15698. The decision may be obtained from various legal research services, and may be

accessed via the Internet at a Web site maintained by the Villanova Center for Information Law and Policy at www.law.vill.edu/Fed-Ct/ca09.html.

In addition, members and associated persons are reminded that an NASD rule proposal currently awaiting SEC approval provides that associated persons will no longer be required, solely by virtue of their association or registration with the NASD, to arbitrate claims of statutory employment discrimination. Associated persons will still be required to arbitrate other employment-related claims, as well

as any business-related claims involving investors or other persons. If approved, the proposed rule will become effective on January 1, 1999, and will apply nationwide to claims filed on or after that date. The proposed rule will not affect private arbitration agreements entered into between members and associated persons. Further information with regard to the rule filing is available on the NASD Regulation Web Site at www.nasdr.com, under "Arbitration/Mediation—Rules and Procedures."

Errata Page Issued For NASD Sanction Guidelines

An errata page for the *NASD Sanction Guidelines* published last month may be found on page 348 of the print version of this month's *Notices to Members*. The Guidelines are available on-line through the NASD Regulation Web Site at www.nasdr.com.

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Errata Page: NASD Sanction Guidelines

**The following is a correction to the 1998 version
of *NASD Sanction Guidelines*.**

Page 11 — The last sentence should read:
“In addition, the index lists all the
guidelines alphabetically by name.”

