NASD NOTICE TO MEMBERS 95-1

NASD Solicits Comment On NASD Mediation Program And Draft Mediation Procedures; **Comment Period Expires On March 1, 1995**

Suggested Routing

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Executive Summary

At its November 1994 meeting, the NASD Board of Governors approved the issuance of a *Notice to Members* soliciting comments on the National Arbitration Committee's (Committee or NAC) recommendation to establish an NASD Mediation Program to resolve securities disputes. The Committee proposed a set of procedures governing mediation proceedings conducted under the auspices of the NASD. The NASD is soliciting comments regarding the proposed structure and provisions of the program to be established. Comments received on or before March 1, 1995, will be considered. The complete text of the draft mediation procedures follows this Notice.

Background

From 1989 to 1993 the NASD Arbitration Department engaged in two pilot mediation programs. These programs were established in response to the rapidly growing use, and success, of mediation in the commercial and insurance sectors. The goal of mediation was to provide parties with an alternative to arbitration that would give them more control over the outcome of their dispute, thereby obtaining a more satisfactory resolution earlier than could be achieved in arbitration. The parties would save expenses associated with protracted litigation. In addition to the benefits derived by the parties, the NASD expected a direct benefit in reduction of its backlog, and administrative as well as arbitrator costs associated with processing arbitration cases.

Under both pilot programs, outside mediation specialists were contracted to provide services. The parties used the rules and mediators associated with the specialists. Under the second pilot program the NASD subsidized the customers' fees. Members committed to participate in both programs. Despite best efforts, participation in both programs was lower than expected. In addition, the success rate for closing cases through mediation was lower than experienced in commercial or insurance areas. Feedback from the parties who chose not to utilize mediation, and those who did utilize mediation consistently, indicated a preference for the NASD to establish its own mediation program, as well as utilize experienced NASD arbitrators who also were trained mediators to facilitate the resolution of cases.

As a result of this feedback, the Committee established a Mediation Subcommittee[1] in January 1994 to study the issue and develop recommendations. The Subcommittee was requested to study the continued use of outside mediation providers as well as the feasibility of developing NASD model mediation procedures and an internal NASD Mediation Program.

NAC Conclusions

The NAC received reports from the Mediation Subcommittee at each of its meetings during 1994. The NAC discussed an analysis of the potential mediation market, the NASD's competitors, and the history of the previous pilot programs. The NAC determined that although the actual

[1] The Mediation Subcommittee's current chairperson is Philip S. Cottone of Rutherford, Brown & Catherwood, Inc., Wayne, Pennsylvania. The other members include Robina F. Asti (New York, New York), W. Reece Bader (Orrick, Herrington & Sutcliffe, San Francisco, California), Joan L. Lavell (Coastal Securities Corporation, Sugar Land, Texas), Thomas W. Smith (Merrill Lynch Pierce Fenner & Smith, New York, New York), and Walter Wallace (New York, New York).

use of mediation in the securities area has been relatively low, the initial experience is not unlike what has transpired in other industries. Initial resistance is followed by extensive participation after parties have gained experience with mediation and have achieved success with it. The NAC determined that the primary advantage to mediation is its ability to help parties settle a dispute much earlier than in arbitration or litigation, and thus greatly reduce the average total cost per claim to the parties. By achieving an earlier settlement, the parties could significantly reduce discovery costs, arbitration fees, and attorney fees. For example, Travelers Insurance Company found that their average cost per claim fell almost 20 percent when they mediated extensively.

The NAC supports the goal of the Arbitration Department to provide a wide range of dispute settlement services to investors, members, and associated persons. It has concluded that mediation has proven in the last decade to be an effective, faster, less costly, and a less adversarial method of resolving business and employment disputes. Commitment to customer service advances the need to provide the same mediation option to our members and customers that is provided by outside dispute-resolution organizations.

NAC Action

Support For Mediation Program

The NAC voted unanimously that an NASD Mediation Program should be developed and implemented as soon as possible. It concluded that the program should be administered by the NASD and that cases should not be referred to an outside provider or providers, except on a limited basis. Based on feedback from the participants in the previous pilots, it was believed that such a program would have strong credibility, but only if administered by the NASD using NASD staff and mediators.

Use For Investor, Employment, Hearings, And Paper Cases

The Committee believes that the mediation process should be available for investor/customer and industry/employment cases, and for hearings and paper cases. Participation should be voluntary.

Submitted Procedures And Fee Schedule

The NAC reviewed ground rules and procedures that were developed by the Mediation Subcommittee for an NASD Mediation Program. The draft of those ground rules and procedures follows this Notice. The NASD Mediation Program and its procedures were developed to govern claims over $10,000. A slightly modified rule will be developed in the future for paper cases that would envision telephonic mediation conferences and not in-person meetings. The ground rules may be modified or amended as the parties desire. The provisions suggested would permit the direct filing of cases for mediation that have not yet been filed for arbitration with the NASD. The NASD Mediation Program provides for a right to directly file mediation cases only if the subject matter would otherwise be appropriate for the NASD arbitration facilities.

The fee schedule provides that no additional administrative fee will be assessed to the parties on pending NASD arbitration cases if they utilize the NASD Mediation Program. This is consistent with the policy of all other national arbitration/mediation providers. If a mediation case is filed without a companion arbitration claim, the fee schedule requires an administrative fee of $150 per party on customer cases and $250 per party on industry/employment cases. The NASD Mediation Program directs that all other costs of mediation be borne by the parties. This includes the mediator's session fees and expenses as well as any off-site room rentals needed for the mediation meetings.

Mediator Qualification And Selection

The Arbitration Department staff has identified NASD arbitrators who have substantial mediation training and experience. A decision was made to defer any NASD-sponsored mediator training programs. Letters inviting individuals to apply for approval as NASD mediators are being distributed. The NAC will review and approve or disapprove the application of any person who applies to be a mediator.

The NASD Mediation Program provides that the NASD will recommend to the parties a person who will serve as a mediator, or will provide a list of mediators from which the parties will select one person. All parties must agree on the mediator they wish to serve on their case before the mediation will go forward. If any party does not agree, the mediation will not proceed unless and until parties reach agreement on who the mediator will be.

Authority Of The Mediator

The mediator will help the parties arrive at a settlement. The mediator will not impose his or her opinion on the parties and cannot compel the parties to settle. Mediation is nonbinding and any party may withdraw from the mediation at any point before the parties' execution of a written settlement agreement.

Compliance With Settlement Agreement

To promote conformity with settlement terms, the NAC recommends

that the Board Resolution entitled "Failure to Act Under the Provisions of the Code of Arbitration Procedure" be expanded to include all settlements, including settlements that occur through the efforts of a mediator. Similar steps in support of mediation have been taken by the National Futures Association.

Confidentiality Of Process

Pursuant to the NASD Mediation Program and in accordance with standard practice in mediation, the underpinning of the process is the confidentiality of the proceeding. The mediator is not permitted to disclose to a third party information received in conjunction with mediation proceedings unless authorized to do so by the party who provided the information. There is no record of the mediation proceeding.

The majority of the mediation session usually involves caucuses between a mediator and a party separately. During the caucus a party may disclose confidential information to the mediator. The mediator may not communicate this information to another party unless expressly authorized to do so by that party. At the conclusion of the mediation sessions, all materials submitted to the mediator are returned to the party who submitted them. This occurs whether or not the mediation results in a settlement. Members and associated persons are required to update Forms U-4 and U-5 pursuant to regulatory requirements should a case settle through mediation.

Initiation Of Program

The NASD is planning to launch the mediation prototype program in the San Francisco Regional Arbitration Office, which includes Alaska, California, Hawaii, Nevada, Oregon, Utah, and Washington. This location was chosen because participants on the West Coast have the greatest exposure to mediation and are generally the most receptive to it. Expansion of the NASD Mediation Program will be determined after assessing the success rate in the San Francisco Region.

The NASD is soliciting comments from members and interested persons to elicit reaction or suggestions to the draft ground rules, and to determine whether there is likelihood that the parties will utilize the NASD Mediation Program and its procedures. It also seeks any other comments regarding the design and nature of an NASD Mediation Program. **Comments must be submitted by March 1, 1995,** and be addressed to:

Joan C. Conley
Corporate Secretary
National Association of
Securities Dealers, Inc.
1735 K Street, NW
Washington, DC 20006-1500.

Text Of Proposed NASD Mediation Program

Mediation Goals

The goal of mediation is to provide public customers, member firms, and associated persons with an additional effective process for resolution of their disputes. Mediation is a nonbinding negotiation facilitated by an experienced third-party neutral. Mediation allows the parties an opportunity for early resolution of their disputes. The resulting settlement is likely to save the parties substantial time and expense.

The National Association of Securities Dealers, Inc. (NASD) has proposed an internal NASD Mediation Program (Program) that will provide parties the alternative of using mediation to resolve their disputes. The first step in developing the Program was to identify a select group of mediators from its own arbitrator pool as well as from outside sources. A set of rules and procedures has been designed to assure the prompt, fair, and orderly administration of mediations under NASD jurisdiction.

Mediation is beneficial because:

• The procedure is private and confidential.

• The case can be resolved very promptly and informally.

• The parties retain control over the process and outcome.

• The parties save time and money.

• The parties get an expert, impartial look at their case's potential strengths and weaknesses.

• Even when the process fails to resolve the dispute, it usually adds value by narrowing the issues and reducing the time and effort needed in preparing for arbitration.

• The process helps preserve the business relationship of the parties by settling the matter much faster, focusing more on solutions and interests rather than positions, and utilizing a less adversarial process.

• The mediator can help identify creative solutions to the dispute that none of the parties may have considered.

Parties and their representatives are encouraged to consider these procedures and the Program for any securities controversy before them.

NASD Mediation Procedures

Mediation is an informal and flexible procedure. The parties may, by agreement, amend these procedures

and ground rules to meet their own circumstances.

Matters Eligible For Submission

Parties may, by agreement, submit any pending NASD arbitration case to mediation under the Program. Such cases will be administered by the NASD only where all parties to the arbitration agree to such submission in writing. Disputes arising between or among parties, which are not filed for arbitration with the NASD, may be submitted if the parties agree and if the matter would be permitted for filing under the NASD Code of Arbitration Procedure (Code). Any question about whether a matter would be eligible for mediation will be determined by the Director of Arbitration.

An arbitration case will proceed parallel to any mediation filing on the matter unless the parties agree otherwise.

The parties may submit all or some of the issues in dispute on a given matter to NASD mediation, whether such matters relate to the substantive issues in controversy or to disputes over such procedural issues as the extent, nature, and schedule of discovery.

Authority Of The Mediator And The Non-Binding Nature Of Mediation

The mediator has no authority to compel the parties to settle.

Mediation is non-binding by its nature. The parties consent, however, that should they reach a settlement of all or some of the issues before them, they shall execute a written, binding settlement agreement setting forth the terms and conditions of such settlement.

Filing For Mediation

Any party to an NASD securities arbitration who is interested in requesting mediation should file an "Interest in Mediation" form with the office to which the arbitration case is currently assigned. Any other person should file an interest in mediation form with the Director of Arbitration. Parties also may indicate their interest in mediation, and fulfill this filing requirement, by stating such interest on their signed Uniform Submission Agreement. This form provides the NASD with the name of the interested party or parties, the title and arbitration case number (if assigned), the names of other interested parties (and representatives if known) and a brief description of the nature of the controversy to be submitted to mediation.

The NASD will then contact all other parties, explain the mediation process, answer any questions, and determine whether all parties are agreeable to mediation.

On reaching such agreement, the parties will be required to execute a Mediation Submission Agreement (see Appendix A). A mediator is assigned to the case only with the agreement of all parties to the dispute. Mediation session dates and times will also be chosen only with the agreement of all parties.

The NASD mediation process is designed to run concurrently with the arbitration process, pursuant to the Code. Any NASD associated arbitration case will proceed on its normal processing/hearing track under the Code.

Selection Of Mediator

Unless the parties agree otherwise, the NASD will assign a single mediator. The NASD will select the mediator unless the parties request that a list of approved names be submitted for their consideration. Parties are free to select any mediator on whom they may agree, whether such person is drawn from the NASD pool of mediators, some other qualified mediation organization or pool, or a person who serves in an independent capacity.

The parties may also agree to refer their pending NASD arbitration matter to an outside mediator or mediator provider organization for administration of the mediation process under its own rules of procedure and outside of the NASD. Such referral does not in any way diminish the NASD's arbitral authority or jurisdiction over the arbitration case under the Code.

Mediator Disclosure

The NASD will send to the parties a copy of the mediator's disclosure and narrative statement. It shall provide information on the mediator's employment, education, and professional history, as well as information regarding mediator experience, training, and credentials. Any mediator selected or assigned to a case must make full written disclosure of any direct or indirect financial, social, personal, or other interest that he or she has with any party or its counsel, or with any individual whom he or she has been told will be a witness. He or she should also disclose any such relationship involving members of his or her family or his or her current employer, partners, or business associates. Persons agreeing to serve as mediators should disclose any such relationships that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. All disclosures will be consistent with the Code of Ethics for Arbitrators in Commercial Disputes found in SICA's Arbitrator's Manual.

All provisions of Section 23(a) through Section 23(c) of the Code (Disclosures Required of Arbitrators) will govern the obligations of the mediator concerning such disclosures.

Under the provisions of Section 23 of the Code, each mediator is required to disclose any circumstances that might preclude such arbitrator from rendering an objective and impartial determination.

This duty to disclose is a continuing one throughout the mediation process and requires that mediators make reasonable efforts to inform themselves of any interests or relationships described under Section 23 of the Code.

Persons whose background discloses significant regulatory, disciplinary, or civil actions will be disqualified from participating as a mediator. Mediators are required to disclose new information as it arises.

Vacancies

In any instances where the mediator becomes disqualified, or is unable, or unwilling to serve, the NASD shall appoint another mediator at the request of any party. The provision governing the initial appointment or selection of the mediator shall govern any such replacement.

Mediation Process Ground Rules

Once a mediator has been chosen, agreed to by the parties, and has consented to serve, the parties and their representatives will meet jointly with the mediator to discuss the following Mediation Process Ground Rules (Rules) and any possible agreed upon amendments to them. Such meeting may be held in person or by conference call as determined by the mediator or by mutual agreement of the parties.

(1) The process is voluntary and nonbinding.

(2) Any party may withdraw from mediation any time following its agreement to mediate, but before execution of a written settlement agreement, by giving written notice of its withdrawal to the mediator, the other party or parties, and to the NASD.

(3) The mediator shall be neutral, impartial, and without authority to impose a settlement on the parties.

(4) The mediator determines the procedural aspects of the mediation. The parties and their representatives agree to cooperate fully with him or her.

(a) The mediator is free to meet and communicate separately with each party's representative. Such meetings and communications must be in accordance with the confidentiality provision of Rules 10 and 11 below.

(b) The mediator will decide when to hold separate meetings with the parties and when to hold joint meetings. The mediator will, in consultation with the party or parties with whom the meetings are to take place, determine the agenda of such meetings as well as their date, time, and place. Notice of all such meeting sessions will be given to all parties.

(5) The parties agree that they will engage in good faith efforts at a negotiated settlement throughout the mediation process, and are free to continue direct negotiations if they wish during the NASD's administration of the mediation. They agree to keep the mediator advised of such negotiations consistent with Rule 4(a) above.

(6) The mediator may withdraw at any time by written notice to the parties and the NASD (i) for overriding personal reasons, (ii) if the mediator believes that any party is not acting in good faith to reach a settlement, (iii) if the mediator concludes that further mediation efforts would not be useful, or (iv) if the mediator has been requested to withdraw by any party to the mediation and be replaced by the NASD.

(7) Parties will be represented by a person with authority to settle the case.

(8) The mediation process will be conducted expeditiously. Each party and representative will make every effort to be available for mediation sessions.

(9) The mediator will not transmit information given by any party or party representative to anyone unless authorized to do so by the party transmitting the information.

(10) The entire mediation process is private and confidential. While the parties need not, however, retain in confidence the fact that the process has taken place, they agree not to introduce into evidence in any court action, arbitration, or other proceeding information discussed during the mediation.

Confidential information disclosed to the mediator during the mediation process by any party, party representative, or witness shall not be divulged by the mediator. This information includes, but is not limited to, oral testimony whether direct or by electronic communication, depositions, interrogatories, affidavits, or any other records, correspondence, or documents presented to the mediator. The mediator shall not be required to divulge such information or to testify before any judicial, arbitral, or adversarial proceeding, except as compelled by law in connection with a governmental proceeding or investigation.

Each party agrees to maintain the confidentiality of the mediation and agrees not to introduce as evidence, into any arbitral, judicial, or other proceeding: any views, opinions, suggestions, proposals, offers, or

admissions made by any other party with relation to possible settlement of the dispute; the fact or nature of any response by another party or witness to any suggestion, proposal, or question of the mediator; any views, opinions, or proposals expressed by the mediator during the mediation process.

In accordance with the confidential nature of mediation and these provisions, the parties are not entitled to a stenographic or other recording of any mediation proceeding, nor to the mediator's notes taken during the mediation process. Persons attending mediation sessions shall be limited to the parties and their representatives unless all parties and the mediator consent that other persons may attend.

(11) If the dispute is not resolved and continues in an arbitration proceeding, the mediator cannot serve as an arbitrator of such dispute. The mediator cannot represent any party or participant to the mediation in any judicial, arbitral, or other proceeding relating to the subject matter of the arbitration or related mediation.

(12) Neither the mediator nor the NASD nor any of its employees will be liable for any act or omission relating to their roles in a mediation administered pursuant to these provisions.

(13) The mediator, if a lawyer, may freely express his or her views to the parties on the legal issues of the dispute. Such views are opinions and observations only and do not constitute legal advice to, nor legal representation of, any party or participant in the mediation process.

(14) Each party or party's representative will agree in writing to all provisions of this NASD Mediation Program, as may be modified by written agreement of the parties. A uniform model Mediation Submission Agreement is in Appendix A.

Submission To The Mediator

The parties will submit such information as they deem necessary to familiarize the mediator with the dispute and their respective positions. Submissions at the mediation sessions may be made in writing or orally. The mediator may request additional information from the parties as he or she deems necessary.

The mediator may require a summary memorandum of claim or defense from the parties. Such memorandum shall briefly state the issues in dispute and the claims or defenses asserted and, if requested, should be filed with the mediator at least 10 days before the first mediation session.

The mediator may raise questions and issues to evaluate the likely outcome of the dispute if it were to be brought in litigation or arbitration. The mediator may request each party, at separate or joint meetings or at a combination of both, to present its case informally and in summary.

The mediator will keep confidential all written materials, information, and communications disclosed to the mediator. The parties and their representatives are not entitled to receive or review any such materials or information submitted to the mediator by any other party without the concurrence of the party who submitted the information. At the conclusion of the mediation process, the mediator will return all written materials and documentary evidence to the parties who provided them to the mediator.

Mediation Dates And Meetings

The mediator will work with the parties to select mutually convenient dates and locations for the mediation meeting sessions. These meetings may be conducted in person, by telephone, video conference, or any other method to which the parties and the mediator agree.

The NASD will provide hearing room facilities to the parties, when available, after giving first preference to the scheduling of its arbitration cases. The parties will be responsible for hearing room rental charges incurred for off-site facilities. Such charges will be divided equally among the parties unless they agree otherwise.

Negotiation Of Settlement Terms

The mediator may promote settlement in any manner the mediator believes appropriate, consistent with the Rules. If the parties fail to develop mutually acceptable settlement terms, the mediator may at his or her discretion, and before declaring an impasse of the parties' settlement negotiations, submit to the parties a settlement proposal. The parties are then free to discuss its terms and conditions with the mediator and to renew their settlement efforts in the mediation forum.

Efforts to reach a settlement will continue until (i) written settlement is reached, or (ii) the mediator concludes that further efforts would not be useful and declares the settlement negotiations at an impasse, or (iii) any party or the mediator withdraws from the mediation by written notice. Termination of the mediation at such point does not prevent any of the parties from pursuing future efforts at negotiating a settlement or even agreeing to mediation again at a future date.

Settlement

If a settlement is reached, the mediator or any party will draft a written

settlement document incorporating all settlement terms, including mutual general releases from all liability relating to the subject matter of the mediation. The drafting party will circulate this document among the parties for review and comment, after which it will be put in final form. When all parties agree to its terms, it will then be signed and executed by the parties.

No party to the executed settlement agreement shall bring or maintain any action or proceeding in law or equity that may be inconsistent with the terms, purpose, and spirit of the settlement, even if otherwise permitted by law. The settlement will constitute a waiver of any such right and a complete defense to any such related charge, complaint, action, or proceeding.

Interpretation Of Mediation Rules

The mediator shall be empowered to determine the applicability of all provisions and procedures under the NASD Mediation Program, as they relate to the mediator's powers and duties.

Mediation Fee Schedule

Administrative Filing Fees

Pending NASD Arbitration Case—All mediation administrative filing fees for NASD administration of the case shall be paid by the NASD, provided the matter involves an NASD arbitration on file.

No Pending NASD Arbitration File—Should the matter not involve a pending NASD arbitration, the administrative fee will be as follows and apportioned equally among the parties:

• Customer Dispute: $150 per party.

• Industry Dispute: $250 per party.

There is no administrative filing fee for submitting a request for mediation with the NASD. This fee becomes due only if all parties to the dispute subsequently agree to mediate.

Mediator Session Fees

Mediator session fees and expenses, including the mediator's travel expenses, are the responsibility of the parties and all such charges will be apportioned equally among them unless they mutually agree otherwise.

Ordinarily, mediations will be conducted by one mediator, unless all parties agree to a larger number. Each party must deposit its proportional share of the anticipated mediator compensation, as determined by the NASD, before the first mediation session begins.

A hearing session is any meeting between the parties (whether joint sessions or separate private sessions) and the mediator, including telephone or other electronic conferencing, which lasts four hours or less. The session fees per mediator follow;

• Initial Hearing Session Fee: $600.

• Additional Session Fees: $150 per hour or portion thereof.

• Settlement Contract Fee: $100 charge for the mediator to draw up the written settlement agreement.

Expenses

All other expenses of the parties during the mediation process must be borne by them, unless they agree otherwise. Each party is responsible for any fees, charges, or expenses charged by that party's own representative for the mediation process unless the parties agree otherwise.

Refunds

Administrative Filing Fees—If the matter involves a pending NASD arbitration, any arbitration case fee refunds will be made in accordance with the refund provisions of the Code of Arbitration Procedure, Sections 43(e), (f), and (g) (for customer disputes) and Sections 44(e), (f), and (g) (for industry and clearing disputes).

If the matter does not involve a pending NASD arbitration, there will be no refund of the filing fee once all parties to the dispute have agreed to mediate.

Mediator Session Fees—All advance deposited session fees remaining, after payments made or owed to the mediator for his or her work and expenses under the fee schedule, will be refunded in full to the parties.

Appendix A

Mediation Submission Agreement

The undersigned parties agree to mediate their dispute in accordance with the Mediation Procedures of the National Association of Securities Dealers, Inc. (NASD). The provisions applicable shall be those as amended by the NASD and/or parties and in effect at the date of the NASD's receipt of this executed agreement. This submission will serve as our agreement concerning the mediation process and each party's respective role and obligations in it.

[ ], the agreed upon mediator, will provide a neutral environment designed to foster communication. He or she will facilitate discussion between the parties with the goal of assisting the parties in reaching their own resolution of the dispute. The mediator will not impose any judgment on the parties and will not compel them to reach a settlement. All parties have control over any agreements they reach in the course of the mediation.

Each party understands that the mediation process is voluntary and non-adversarial. Toward reaching an equitable resolution, each agrees to approach negotiations in this matter in good faith.

All parties agree that all information disclosed during the mediation process is confidential, as provided for in Sections 10 and 11 of the NASD Ground Rules of the Mediation Process (Rules), whether or not the parties reach a settlement of the issues before them during or after the mediation process.

Any party may choose to terminate the mediation process at any time. The mediator also has the right to terminate the mediation if any party fails to abide by this agreement or if, in the mediator's judgment, the mediation process is no longer appropriate for resolving the dispute at the time. Upon termination of the mediation for any reason, the underlying dispute will continue in arbitration before the NASD if it involves an arbitration case currently pending before it.

When all parties agree they have resolved all issues referred to mediation, a proposed, written settlement agreement will be prepared in accordance with the Rules. The matter will not be considered formally settled until the written agreement is reviewed, amended as agreed upon, and signed by all parties to the mediation.

The fee of the mediator and any administrative fees of the NASD will be assessed in accordance with the Fee Schedule of the Rules. The parties have agreed to apportion the fees and expenses of the mediator, and any NASD mediation administrative fees that may be due, as follows:

[ ]

None of the parties to this agreement, nor any of their respective officers, directors, employees, agents, or affiliates, shall institute any proceeding or suit at law or equity against the NASD, its affiliates or their respective officers, directors, employees, or agents, nor against any person who served as a mediator on this matter, for any act or omission arising out of or relating to this Mediation Submission Agreement or the mediation proceedings.

Agreed:

Name of Party:	Name of Party:
_____	_____
Representative:	Representative:
_____	_____
Signature:	Signature:
_____	_____
Address:_____	Address:_____
_____	_____
_____	_____
_____	_____

Phone: _____	Phone: _____
Fax: _____	Fax: _____
Date:_____	Date:_____

Nature of Dispute: _____

_____

_____

_____

_____

_____

NASD Arbitration Case Number if Applicable: _____

Please check the box below if applicable.

[ ] This does not involve a pending NASD arbitration case.

Please file an original and three copies of this form with the NASD arbitration office to which your arbitration case is currently assigned, or with the Director of Arbitration if it involves a securities dispute not filed for arbitration with the NASD. The submission form must be accompanied with full payment of the administrative filing fee if the matter does not involve a pending NASD arbitration. No additional administrative filing fee is required if the dispute involves an arbitration currently pending before the NASD. You must also submit three copies of any contract mediation provision that may apply to this dispute. Attach an addendum to this form to identify any additional parties.

NASD NOTICE TO MEMBERS 95-2

SEC Adopts Changes To Rule 10b-10; Defers Action On Proposed New Rule 15c2-13

Suggested Routing

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Executive Summary

The Securities and Exchange Commission (SEC) recently adopted amendments to Rule 10b-10 that require the disclosure of additional information on customer confirmations. The SEC deferred action on a proposal to require disclosure of markup/markdown information for riskless principal trades in debt securities. Likewise, the SEC deferred action on proposed Rule 15c2-13 that would require similar disclosure for municipal securities transactions. The amendments are effective April 3, 1995.

Background

SEC Rule 10b-10 requires a broker/dealer that effects transactions for customers in securities, other than U.S. savings bonds or municipal securities, to provide a written confirmation to the customer at or before completion of the transaction. The rule also requires disclosure of specified transaction details on the confirmation. Providing written confirmation of a securities transaction forms a basis for customer protection under the federal securities laws.

In March 1994, the SEC requested comments on amendments to Rule 10b-10 and a new proposed rule, Rule 15c2-13, affecting municipal securities transactions. The changes are intended to strengthen investor protection by providing customers with additional details about their securities transactions. In particular, the SEC sought to improve the availability of information for transactions in municipal securities and other debt markets.

Deferred Proposals

The SEC proposed changes to Rule 10b-10 that would require disclosure of markups/markdowns for riskless principal transactions in debt securities, other than municipal securities and U.S. savings bonds. At the same time, the SEC proposed Rule 15c2-13 to require disclosure of markup/markdown information in riskless principal trades in municipal securities.

Subsequent to these proposals, several initiatives were undertaken to improve the availability of price information in the municipal securities market. The SEC decided to defer, for six months, adopting Rule 15c2-13. Similarly, the SEC is deferring the proposed amendment to Rule 10b-10 requiring markup/markdown disclosure for other debt securities.

Proposed Rule 15c2-13 also contains an additional provision requiring broker/dealers to disclose if a municipal security has not been rated by a nationally recognized statistical rating organization (NRSRO). This provision also is deferred by the SEC's action and will be withdrawn if the Municipal Securities Rulemaking Board adopts this requirement as an amendment to its confirmation rule, Rule G-15.

Description Of Amendments

Unrated Status Disclosure

The SEC is adopting the proposed amendment to Rule 10b-10 requiring disclosure if a debt security, other than a government security, has not been rated by an NRSRO. The SEC is taking this action despite its decision to defer a similar proposal affecting municipal securities (see above). In adopting this requirement the SEC notes that, in most cases, this disclosure should merely confirm information that was disclosed to the investor before the transaction. If the customer was not informed that the security was unrated, this disclosure

will alert the customer to obtain additional information from the broker/dealer.

Disclosure In Principal Transactions

Since 1985, Rule 10b-10 has required broker/dealers acting as principals in transactions in Reported Securities to disclose on customer confirmations the reported trade price, the price to the customer, and the difference between the two prices. Reported Securities are defined in SEC Rule 11Aa3-1 as any exchange-listed equity security or Nasdaq® security for which transaction reports are made available on a real-time basis pursuant to an effective transaction reporting plan.

With the extension of last-sale reporting to additional securities, the SEC is adopting an amendment requiring similar disclosure in principal transactions in The Nasdaq SmallCap Market℠ securities and regional exchange-listed securities. By this action, Rule 10b-10 will treat all equity securities subject to last-sale reporting similarly, irrespective of their trading markets. Members should note that NASD rules already require that customer confirmations for The Nasdaq SmallCap Market securities contain the same disclosures as are required under Rule 10b-10 for Nasdaq National Market® securities.

Disclosure Of SIPC Coverage

The SEC also is amending Rule 10b-10 to require broker/dealers not belonging to the Securities Investor Protection Corporation (SIPC) to affirmatively state on the customer confirmation that they are not SIPC members. In addition, the amendment requires disclosure if the account is carried by a broker/dealer that is not a SIPC member. This change will reduce customer confusion concerning a firm's SIPC coverage, especially regarding accounts with government securities broker/dealers registered under Section 15C of the Securities Exchange Act that are excluded from SIPC membership.

In response to comments that there are certain instances where disclosure should not apply, the SEC included one exclusion from this provision. The exclusion applies only in cases where the non-SIPC broker/dealer does not receive or handle customer funds or securities in connection with a purchase or redemption of registered open-end investment company or unit investment trust shares, and the customer sends its money or securities to the fund, its transfer agent, its custodian, or its designated agent, none of whom is an associated person of the broker/dealer. Moreover, the checks may not be made payable to the broker/dealer, and the broker/dealer may not handle any customer checks in connection with the transaction; otherwise, the broker/dealer must disclose its non-SIPC status.

Asset-Backed Securities Disclosure

Currently, Rule 10b-10 exempts from the yield disclosure requirements any instrument that is a "participation interest in notes secured by liens upon real estate continuously subject to prepayment." Since the adoption of these yield disclosure requirements, there has been an increase in other asset-backed securities with similar problems of variable yield.

The SEC proposed expanding the range of securities subject to the exemptions from yield disclosure to include asset-backed securities that are not insulated from prepayment risk or susceptible to accurate forecast of yield. The SEC determined to adopt the amendment exempting these securities.

Also, the SEC is modifying the proposed amendment concerning collateralized mortgage obligations (CMOs). Instead of requiring broker/dealers to disclose the prepayment assumptions, weighted average life, and estimated yield, the SEC is requiring broker/dealers to include on the confirmation a statement alerting customers that their yields are subject to fluctuation depending on prepayment and that specific information is available upon written request.

Introductory Note

Finally, the SEC is adding the proposed brief preliminary note to Rule 10b-10, making explicit the SEC's longstanding position that the rule was not intended to codify all the disclosure that may be needed for a particular transaction and that additional disclosure may be required to satisfy anti-fraud provisions of the federal securities laws.

* * *

These amendments to Rule 10b-10 are effective April 3, 1995. This will allow firms an appropriate time to adapt their systems to accommodate the new disclosure requirements.

A copy of the release adopting these amendments, which appeared in the November 17, 1994, *Federal Register*, follows this Notice. Questions concerning this Notice may be directed to Janet Marsh at (202) 728-8228.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-34962; File No. S7-6-94]

RIN 3235-AF84

Confirmation of Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to Rule 10b-10 under the Securities Exchange Act of 1934 that will require brokers and dealers to provide customers immediate written notification of information relevant to their securities transactions. Consistent with the Commission's investor protection mandate and in keeping with innovations in securities products and markets, the amendments will require brokers and dealers to provide information concerning customer transaction costs in specified NASDAQ and exchange-listed securities, the status of certain unrated debt securities, the status of certain non-SIPC member broker-dealers, and the availability of information regarding asset-backed securities.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, C. Dirk Peterson, Senior Counsel, or Terry R. Young, Attorney (202/942-0073), Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7-10, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

A. Price Transparency

During the past year, the Commission has initiated efforts to further improve the efficiency of, and to protect investors in, the municipal securities and other debt markets. In September 1993, the Commission's Division of Market Regulation published the *Staff Report on the Municipal Securities Market* ("Staff Report"),[1] which contained several recommendations to improve the municipal securities market. The Staff Report recommended, among other things, riskless principal mark-up disclosure as a means of providing greater information to investors purchasing municipal securities.[2] The Staff Report noted that, unlike the equity markets where mark-ups and mark-downs[3] are disclosed to investors in non-market maker riskless principal transactions and principal transactions in "reported securities,"[4] mark-ups are not disclosed in any principal transaction in municipal securities.[5] Thus, investors of municipal securities are constrained in their ability to compare transaction costs among broker-dealers and across markets. The Staff Report identified this ability as one of the benefits of mark-up disclosure.[6]

In addition to enhanced confirmation disclosure, the Staff Report discussed the overall benefits of price transparency and the need for greater transparency in the municipal securities market.[7] Notably, price transparency enhances market liquidity and depth, and fosters investor confidence,[8] while a lack of price information impairs market pricing mechanisms, weakens competition, and prevents investors from monitoring the quality of their executions.[9]

To address some of the recommendations contained in the Staff Report, on March 9, 1994, the Commission issued for comment proposed Rule 15c2-13 under the Securities Exchange Act of 1934 ("Exchange Act")[10] to require disclosure of mark-ups in riskless principal transactions in municipal securities. Because the same benefits of mark-up disclosure apply to other debt transactions, the Commission proposed amendments to Rule 10b-10 ("Rule") under the Exchange Act that would require riskless principal mark-up disclosure for debt securities other than municipal securities.[11]

Since the Proposing Release was issued for comment on March 9, 1994, municipal market participants have proposed significant new ways of making pricing information more widely available to investors. The Municipal Securities Rulemaking Board ("MSRB") has taken the first step toward a system that will make publicly available price information for municipal securities transactions on a next day basis. Recently, the MSRB stated that its "ultimate goal for the [transparency] program is to collect and make available transaction information in a comprehensive and contemporaneous manner (footnote omitted) * * * [and] wishe[d] to reiterate to the Commission its commitment to these goals."[12] The Public Securities Association ("PSA") also has proposed a system to publicize municipal securities price information. These proposals will create the infrastructure necessary to enhance transparency in the market, and when fully implemented, will provide last sale reporting for virtually all municipal securities transactions.

The Commission is encouraged by these developments, and after careful consideration, has determined to defer the riskless principal mark-up proposal for six months[13] in anticipation of meaningful progress by the industry toward enhanced price transparency in the municipal securities market. The riskless principal mark-up proposals would provide better information only to a certain segment of transactions in the debt markets. The industry's efforts to improve transparency, on the other hand, ultimately will result in enhanced price disclosure for *all* transactions. Moreover, better dissemination of price information will benefit investors by providing them with useful information at the time they are making their investment decision, rather than after-the-fact when the confirmation is received. If, at the end of the six-month

[1] *Staff Report on the Municipal Securities Market* (September 1993).

[2] Staff Report, at 16 and 18.

[3] For purposes of this release, references to mark-ups also will apply to mark-downs or commission equivalents.

[4] *See infra* note 71 for a discussion of "reported securities."

[5] Staff Report, at 15-16.

[6] *Id.* at 16.

[7] Staff Report, at 20 and 36.

[8] Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning International Markets and Individuals Before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, September 28, 1994.

[9] *See* Brandon Becker, Director, Division of Market Regulation, Address at 19th International Organization of Securities Commissions Annual Conference (1994).

[10] Securities Exchange Act Release No. 33743 (March 9, 1994), 59 FR 12767 ("Proposing Release").

[11] The Commission previously proposed disclosure requirements of mark-ups in riskless principal transactions on three other occasions. *See* Securities Exchange Act Release No. 15220 (Oct. 6, 1978), 43 FR 47538 (proposing mark-up disclosure for riskless principal transactions in municipal securities); Securities Exchange Act Release No. 13661 (June 23, 1977), 42 FR 33348 (proposing mark-up disclosure by non-market makers in riskless principal equity and debt securities, but not municipal securities); and Securities Exchange Act Release No. 12806 (Sept. 16, 1976), 41 FR 41432 (proposing mark-up disclosure by non-market makers in riskless principal transactions involving equity and debt securities).

[12] Letter from Robert H. Drysdale, Chairman, MSRB, to Arthur Levitt, Chairman, SEC (Nov. 3, 1994), at pp. 1-2. Available in Public Reference File No. S7-6-94.

[13] Recently, the MSRB set forth a tentative schedule for the completion of each of the four phases of its proposal: phase one (inter-dealer transactions, January 1, 1995); phase two (addition of time of trade and institutional customer transactions, December 1995); phase three (addition of retail customer transactions, November 1996); and phase four (more contemporaneous trade reporting, April 1997). *See* Letter from Robert H. Drysdale, Chairman, MSRB, to Arthur Levitt, Chairman, SEC, (Nov. 3, 1994), at pp. 3-7. Available in Public Reference File No. S7-6-94.

period, industry initiatives to improve price transparency have not progressed to the Commission's satisfaction, however, the Commission may reconsider the riskless principal mark-up proposal in light of existing alternatives.

B. Other Disclosures

In addition to the riskless principal mark-up proposals, the Commission proposed several other amendments designed to improve confirmation disclosure so that customers can better evaluate their securities transactions. Specifically, the Commission proposed amendments to Rule 10b–10 that would require broker-dealers to disclose (1) mark-ups in connection with transactions in certain NASDAQ and regional exchange-listed securities; (2) if they are not members of the Securities Investor Protection Corporation ("SIPC"); (3) information relevant to certain types of collateralized debt instruments; and (4) if a debt security has not been rated by a nationally recognized statistical rating organization ("NRSRO"). Proposed Rule 15c2–13 contained a similar provision requiring broker-dealers to disclose the unrated status of a municipal security.

The Commission also requested comment on the broader issue of whether the shortened settlement period of three days ("T+3 Settlement") will have an effect on the future utility of the confirmation and whether some information currently required in the confirmation could be shifted to an account statement.[14] In addition, the Commission proposed adding a preliminary statement to Rule 10b–10 designed to clarify that the Rule is not intended as a safe harbor from the general antifraud provisions of the federal securities laws.[15]

In response to the request for comment, the Commission received 344 comment letters, the majority of which addressed the mark-up disclosure proposals for riskless principal transactions. Commenters included regional and national broker-dealers, industry associations, financial institutions, law firms, insurance companies, and individual investors.[16] The comments presented a range of views with respect to the proposals and the effects that the proposed disclosure requirements may have on broker-dealers, investors, and markets.

After a review of the comments, the Commission is adopting the proposed amendments to Rule 10b–10 that require disclosure if a debt security is not rated by an NRSRO, with a modification to exclude all government securities from the disclosure requirement; mark-up disclosure in connection with transactions in certain NASDAQ and regional exchange-listed securities; disclosure if a broker-dealer is not a member of SIPC, except for certain transactions in investment company shares by non-SIPC member firms that do not handle customer funds or securities; and disclosure with respect to the availability of information with respect to transactions in collateralized debt securities. The Commission also is adopting the preliminary note to Rule 10b–10. To allow firms the appropriate time to adapt their systems to accommodate these disclosure requirements, the proposals will become effective April 3, 1995.

In addition, that portion of Rule 15c2–13 that would require disclosure if a municipal security was not rated by an NRSRO has been deferred and will be withdrawn if the MSRB acts to adopt similar amendments to its confirmation rule, Rule G–15.[17] The MSRB recently reiterated its willingness to amend Rule G–15 to require disclosure if a municipal security is not rated by an NRSRO.[18]

II. Description of Amendments

A. Role of the Confirmation

The Commission's confirmation rule, Rule 10b–10[19] under the Exchange Act,[20] generally requires a broker-dealer effecting a customer transaction in securities (other than U.S. Savings Bonds or municipal securities) to provide written notification to its customer, at or before completion of a transaction, that discloses information specific to the transaction. The confirmation requires, among other things, the disclosure of: The date, time, identity, and number of shares bought or sold;[21] the capacity of the broker-dealer;[22] the net dollar price and yield of a debt security;[23] and, under specified circumstances, the amount of compensation paid to the broker-dealer and whether payment for order flow is received.[24] For over 50 years, the customer confirmation has served basic investor protection functions by conveying information allowing investors to verify the terms of their transactions; alerting investors to potential conflicts of interest with their broker-dealers; acting as a safeguard against fraud; and providing investors the means to evaluate the costs of their transactions and the quality of their broker-dealer's execution.

1. T+3 Settlement

In the Proposing Release, the Commission requested comment on the future utility of the confirmation once T+3 Settlement is implemented on June 7, 1995.[25] Rule 10b–10 requires that a confirmation be sent at or before completion of a customer transaction.[26] Commenters noted that T+3 Settlement will diminish the confirmation's usefulness as a customer invoice and questioned the practicability of requiring the disclosure of additional information on a document that an investor will receive after already having made his or her investment decision and tendering funds or securities.[27]

Notwithstanding the shortened settlement period of T+3 and the possibility that an investor may receive the confirmation after payment has been made, the Commission believes that the confirmation will continue to serve important investor protection functions. T+3 Settlement's implementation merely may mean that the confirmation may take on a different role. Some firms may continue to use the confirmation as

[14] *See* Proposing Release, *supra* note 10, at 59 FR 12767–68.

[15] *Id.* at 59 FR 12772.

[16] The comment letters and a summary of comments have been placed in Public Reference File No. S7–6–94, which is available for inspection in the Public Reference Room.

[17] MSRB Rule G–15, MSRB Manual (CCH) ¶ 3571.

[18] Letter from Robert H. Drysdale, Chairman, MSRB, to Arthur Levitt, Chairman, SEC (Nov. 3, 1994). Available in Public Reference File No. S7–6–94.

[19] 17 CFR 240.10b–10.

[20] 15 U.S.C. 78a *et seq.*

[21] 17 CFR 240.10b–10(a)(2).

[22] 17 CFR 240.10b–10(a)(1).

[23] 17 CFR 240.10b–10(a)(4)(i); and 17 CFR 240.10b–10(a)(5).

[24] 17 CFR 240.10b–10(a)(7) (ii) and (iii); 17 CFR 240.10b–10(a)(8)(i)(A); and 17 CFR 240.10b–10(a)(8)(i)(B).

Recently, the Commission proposed for comment additional disclosures relevant to payment for order flow, which would include for monetary payment for order flow, the range of payments received on a per share basis and on an aggregate basis annually. For non-monetary payment for order flow, the Commission proposed requiring disclosure of an estimate of the range of payment for order flow on a per share basis and on an aggregate basis annually. *See* Securities Exchange Act Release No. 34903 (Oct. 27, 1994), 59 FR 55614.

[25] T+3 Settlement was adopted in Securities Exchange Act Release No. 33023 (Oct. 6, 1993), 58 FR 52891.

[26] Rule 15c1–1 under the Exchange Act defines "the completion of the transaction." 17 CFR 240.15c1–1(b).

[27] *See, e.g.*, Letters from A. George Saks, Executive Vice President, Secretary, and General Counsel, Smith Barney (Aug. 1, 1994); Robert M. Sweeney, Vice President/Assistant Comptroller, Gibraltar Securities Co. (June 14, 1994); William J. Jester, Jr., Chemical Banking Corp. (June 14, 1994); and Kurt D. Halvorsen, Vice President & Controller, AmeriTrade (May 27, 1994), to Jonathan G. Katz, Secretary, SEC.

a customer invoice, while financing positions when customer payment is received after settlement date. For other firms, the confirmation may not continue to serve in all circumstances as an invoice of a transaction because ordinary confirmation delivery and transfer of customer funds and securities may not be feasible within a three-day settlement cycle.[28] Rather, the confirmation may serve primarily as written evidence of the contract between the customer and broker-dealer.[29] As a written record of the transaction, the confirmation will continue to provide investors the necessary information to assist them in evaluating the quality and accuracy of their trades while assisting them in correcting mistakes and verifying the terms of their transactions. Accordingly, while T+3 Settlement may affect the mechanics of settlement, it will not eliminate the confirmation's investor protection functions.

2. Periodic Account Statement

The Commission also requested comment on the feasibility of transferring information currently disclosed on the confirmation to a periodic account statement.[30] Many commenters addressing this issue opposed such a use of the periodic account statement and noted that it was not the appropriate document to convey particularized trade information.[31] Rather, as one commenter indicated, account statements are intended to summarize the activity and status of an account; they are not intended to convey information regarding the features and risks of each individual securities transaction.[32] Other commenters, however, noted that, as investors increasingly rely upon periodic account statements, the confirmation will diminish as a primary disclosure device.[33] At this time, the Commission has determined to retain the confirmation as the basic transaction disclosure document and use the account statement, the account opening document, or annual disclosure requirements as needed to supplement or summarize confirmation disclosures.

The Commission noted in the Proposing Release, however, that a customer may waive the receipt of an immediate confirmation in the context where a fiduciary has discretion over the customer's account.[34] The Commission noted that, in its view, the account, rather than the fiduciary, was the customer for purposes of Rule 10b–10. To effect a valid waiver, the broker-dealer must (1) obtain from the customer a written agreement that the fiduciary receive the immediate confirmation; and (2) send to the customer a periodic report, not less frequently than quarterly, containing the same information that would have been contained in an immediate confirmation.[35] The customer may not waive this periodic report.[36]

The requirement to send a periodic report is intended to ensure that the *beneficial owner* of the account receives material information needed to verify the transaction in the account.[37] As the

[28] One commenter suggested that the Commission reevaluate the meaning of "give or send" under Rule 10b–10 in light of T+3 Settlement and current technology, such as electronic messaging, E-mail, direct computer links, telefax, and fax modems. *See* Letter from Sullivan & Cromwell, to Jonathan G. Katz, Secretary, SEC (July 15, 1994).

In the Proposing Release, the Commission recognized the use of a facsimile machine to send customer confirmations. *See* Proposing Release, *supra* note 10, at 59 FR 12767 n.5. To the extent that a customer has a facsimile machine, a broker-dealer would fulfill its confirmation delivery obligation if it sent the confirmation via facsimile transmission. The staff also has allowed, under specified conditions, confirmations to be sent by other electronic means. *See Letter regarding Thomson Financial Services, Inc.* (Oct. 8, 1993).

The Commission agrees that T+3 Settlement may encourage alternatives to the mail system for sending confirmations and that a flexible approach may be necessary to accommodate T+3 Settlement with existing technology. The Commission, however, believes that each approach should be viewed on a case-by-case basis, as has been previous practice, to ensure the safety and reliability of the confirmation transmission.

[29] Under the current text of the Uniform Commercial Code, the confirmation serves as a written record of the transaction, thus satisfying the statute of frauds. Uniform Commercial Code Section 8–319 states that a "contract for the sale of securities is not enforceable by way of action or defense unless * * * there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker, sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price." A confirmation, bearing the broker-dealer's letterhead or some other identifying marking, generally fulfills that requirement. Revised Article 8 of the Uniform Commercial Code, which was endorsed recently by both the American Law Institute and the National Conference of Commissioners on Uniform State Laws, would omit current Section 8–319. Due to the prior difficulties in applying Section 8–319 to the sale of securities over the telephone and the more common use of electronic means for securities transactions, proposed Section 8–113 states that "[a] contract or modification for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making."

[30] See Proposing Release, *supra* note 10, at 59 FR 12768.

[31] *See, e.g.*, Letters from A. George Saks, Executive Vice President, Secretary, and General Counsel, Smith Barney (Aug. 1, 1994); Barry H. Zucker, President & CEO, J.B. Hanauer & Co. (June 20, 1994); and Jon S. Corzine, Goldman, Sachs & Co. (June 15, 1994), to Jonathan G. Katz, Secretary, SEC.

[32] *See, e.g.*, Letter from Donald E. Walter, Compliance Director/Principal, Edward D. Jones & Co., to Jonathan G. Katz, Secretary, SEC (July 15, 1994). Another commenter noted that transferring confirmation information to an account statement may clutter the account statement and make it less readable. *See* Letter from Barry H. Zucker, President & CEO, J.B. Hanauer & Co., to Jonathan G. Katz, Secretary, SEC (June 20, 1994).

[33] *See, e.g.*, Letters from Robert M. Sweeney, Vice President/Assistant Comptroller, Gibraltar Securities Co. (June 14, 1994); William J. Jester, Jr., Chemical Banking Corp. (June 14, 1994); and Kurt Halvorson, Vice President & Comptroller, AmeriTrade (May 27, 1994), to Jonathan G. Katz, Secretary, SEC.

[34] *See* Proposing Release, *supra* note 10, at 59 FR 12767 n.3.

[35] To satisfy this requirement, a broker-dealer may deliver, directly to its customer, duplicate confirmations representing each of the customer's transactions for the prior period, together with the customer's account statement. This procedure would allow investors to rely on the account statement to monitor their accounts, while referring to the confirmation for the details of each specific trade. Investors already look to old confirmations for details which are not present on the account statement, and this procedure would allow investors to continue to rely on their confirmations and their account statements in substantially the same way.

[36] Some concerns have been raised with respect to the application of this policy and its relationship with Rule 409 of the New York Stock Exchange ("NYSE"). *See, e.g.*, letter from Kevin J. Mackay, President/Compliance and Legal Division, Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, SEC (July 22, 1994). Specifically, Rule 409(b) permits NYSE member firms to send a confirmation to a *non-member* person holding power of attorney over a customer account if "either (A) the customer has instructed the member organization in writing to send such confirmations, statements, or other communications in care of such person, or (B) duplicate copies are sent to the customer at some other address designated in writing by him." NYSE Rule 409, 2 NYSE Guide (CCH) ¶ 2409.

Under the Commission's position articulated above, a customer who waived receipt of the immediate confirmation would receive more information with his quarterly account statement than that currently required under NYSE Rule 409. To the extent the rules of the NYSE, or any self-regulatory organization, conflict with the Commission's stated policy, the more restrictive requirement would govern. Thus, a NYSE member wishing to take advantage of a waiver would be required to adhere to these Commission requirements in addition to any obligations imposed by Rule 409.

The SIA argued that this position would (1) lead to duplicative efforts on the part of broker-dealers because broker-dealers already will have sent trade information to the fiduciary in an immediate confirmation; (2) depart from standard industry practice; and (3) require expensive system changes to comply with the position. The Commission emphasizes that this substitution of quarterly statements for the immediate confirmation is optional. No broker-dealer is required in the first instance to include all relevant trade information in a quarterly statement; however, if the broker-dealer, with the written authorization of the customer, wishes to omit sending the customer an immediate confirmation and instead send it to the account fiduciary, then the requirements of written instructions from the customer and a non-waiveable periodic report, as described above, must be satisfied in order to effect a valid waiver. These requirements are necessary to allow investors to monitor their accounts in the absence of a transaction-by-transaction report in the confirmation.

[37] The requirement to send a periodic report to the customer, if the customer has requested in

Commission noted in the release originally adopting Rule 10b–10, the Rule is not intended to require a broker-dealer dealing with the trustee of a plan to deliver statements to plan participants where the trustee is the shareholder of record of the securities being purchased or sold. In those instances, the Rule would require the broker-dealer to deliver a confirmation, or upon written request, a periodic report, only to the trustee.[38] A beneficiary of the trust would be required to receive an immediate confirmation, or upon written request, the periodic report, only if that beneficiary was a beneficial owner of the trust assets on the books of the broker-dealer, enjoying the rights and privileges of beneficial ownership.

The Commission also believes that the broker-dealer can satisfy its obligation to send a confirmation to the customer if it sends the confirmation to a custodian of the customer authorized to receive securities and disburse funds for the customer.[39] The custodian in question must not be affiliated with a broker-dealer or an investment adviser or have any role in choosing the broker-dealer or investment adviser used;[40] and the customer must retain the right to request that the confirmation be sent directly to the customer, at no extra charge by the custodian or broker-dealer. Moreover, an account custodian may not choose to receive a periodic report in place of an immediate confirmation.

3. Preliminary Note

The Commission proposed adding a preliminary note to Rule 10b–10 clarifying that the Rule is not intended as a safe harbor from disclosure obligations imposed by the general antifraud provisions of the federal securities laws.[41] This note is intended to respond to claims made by litigants that Rule 10b–10 prescribes all the necessary disclosure relevant to a customer's securities transaction.[42] A few commenters addressed the inclusion of the preliminary note to Rule 10b–10, with equal support for[43] and opposition to[44] the note. One supporter suggested that the Commission could accomplish the same purpose of clarification in an interpretative release.[45] One opponent of the preliminary note argued that its existence would lead to frivolous claims against broker-dealers.[46]

After reviewing the comments, the Commission is adopting the preliminary note to Rule 10b–10. The Commission is not persuaded that the existence of the preliminary note would lead to any additional litigation against broker-dealers. The preliminary note is merely making explicit a longstanding position that the antifraud provisions of the federal securities laws may impose, given the circumstances, greater disclosure than what may be required by a specific rule or regulation.[47]

B. Mark-Up and Mark-Downs in Riskless Principal Transactions in Debt Securities

The majority of comment letters addressed the proposed amendments to Rule 10b–10 and the portion of proposed Rule 15c2–13 that would require mark-up disclosure of riskless principal trades in debt securities.[48] Generally, most commenters opposed the proposals on the grounds that the requirements would have detrimental effects on competition and market liquidity; would cause compliance difficulties; would create customer confusion; and are not based upon findings of abusive practices in the debt market.

It has been argued by some commenters that greater price transparency in the municipal market could achieve similar goals as riskless principal mark-up disclosure without the alleged negative effects purported to result from mark-up disclosure.[49] Since the proposals were published for comment in March, progress has been made to develop price transparency in the debt markets. In particular, the MSRB has proposed a program that ultimately would provide same day price reporting of all transactions in municipal securities, including same day reporting of retail trades. This program is to be implemented in four phases. As proposed, the first phase of the MSRB program will collect reports of interdealer transactions and make available to the public daily high-low and average price figures for the most frequently traded issues (initially defined as those trading at least four times during the day).[50] These

writing that the immediate confirmation be sent to the customer's fiduciary, applies only if the broker-dealer has an existing duty under Rule 10b–10 to send an immediate confirmation directly to the customer in the absence of such a written request. This requirement therefore would not apply to paragraph 10b–10(b), which governs purchases and sales of securities in a money market fund, as defined in newly amended paragraph 10b–10(b)(1), a periodic plan, as defined in paragraph 10b–10(d)(5), and an investment company plan, as defined in paragraph 10b–10(d)(6). Paragraph (b) of Rule 10b–10 permits, upon written request of the customer, written statements containing the information specified in that paragraph to be sent not less frequently than quarterly, directly to the customer or some other person designated by the customer for distribution to the customer.

Because there are circumstances, not enumerated specifically in Rule 10b–10, that would make compliance with the rule unduly burdensome, paragraph 10b–10(f) authorizes the Commission to exempt broker-dealers from the rule's requirements with regard to specific transactions or specific classes of transactions for which the broker or dealer will provide alternative procedures to effect the purposes of Rule 10b–10. This authority has been delegated to the Division of Market Regulation. 17 CFR 200.30–3(a)(32).

[38] Securities Exchange Act Release No. 13508 (May 5, 1977), at n.24.

[39] The custodian must not hold itself out as a broker-dealer or an investment adviser. *But see* Investment Advisers Act Release No. 1406 (March 16, 1994), 59 FR 13464 (proposing a rule to require investment advisers to ensure that custodians of investment adviser client accounts provide the client or its designee with account statements not less than quarterly).

[40] Securities orders must be placed by the customer or the customer's investment adviser, not the custodian.

[41] *See* Proposing Release, *supra* note 10, at 59 FR 12772.

[42] *See, e.g.*, Shivangi v. Dean Witter Reynolds, Inc., 637 F. Supp. 1001 (S.D. Miss. 1986), *aff'd*, 825 F.2d 885 (5th Cir. 1987); Krome v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 637 F. Supp. 910, 915–16 (S.D.N.Y. 1986); and Ettinger v. Merrill Lynch, Pierce, Fenner & Smith, Fed. Sec. L. Rep. (CCH) ¶ 93,102 (E.D. Pa. 1986), *rev'd*, 835 F.2d 1031 (3d Cir. 1987).

[43] *See, e.g.*, Letters from Donald E. Walter, Compliance Director/Principal, Edward D. Jones & Co. (July 11, 1993); and Douglas L. Kelly, Director/Law & Compliance Division, A.G. Edwards & Sons, Inc. (June 13, 1994), to Jonathan G. Katz, Secretary, SEC.

[44] *See, e.g.*, Letters from A.B. Krongard, Chief Executive Officer, Alex. Brown & Sons, Incorporated (July 14, 1994); and Jeffrey Rubin, President, InterCapital Assets, Inc. (June 13, 1994), to Jonathan G. Katz, Secretary, SEC.

[45] Letter from Douglas L. Kelly, Director/Law & Compliance Division, A.G. Edwards & Sons, Inc., to Jonathan G. Katz, Secretary, SEC (June 13, 1994). This commenter also suggested that if a note were added to Rule 10b–10, a similar note also should precede Rule 15c2–13. At this time, the Commission is not adopting Rule 15c2–13.

[46] Letter from A.B. Krongard, Chief Executive Officer, Alex. Brown & Sons, Incorporated, to Jonathan G. Katz, Secretary, SEC (July 14, 1994).

[47] *See supra* note 42. One commenter argued that the preliminary note provides no useful guidance because the Commission has not articulated a set of guidelines concerning disclosure requirements in addition to those required in a prospectus and under the Exchange Act. *See* Letter from Sullivan & Cromwell, to Jonathan G. Katz, Secretary, SEC (July 15, 1994), at pp. 2–3.

The Commission does not intend to specify key disclosure items under the antifraud provisions of the federal securities laws. Each circumstance is different and determining the materiality of any particular item of disclosure depends on the facts and circumstances of each case.

[48] Of the 344 comment letters received, 313 addressed the mark-up disclosure proposals.

[49] *See, e.g.*, Letters from A.B. Krongard, Chief Executive Officer, Alex. Brown & Sons, Incorporated (July 14, 1994); James D. McKinney, Partner and Manager of Fixed Income Dept., William Blair & Company (July 13, 1994); Thomas W. Masterson, Chairman, Masterson Moreland Sauer Whisman, Inc. (July 13, 1994); G. Frederick Kasten, Jr., President and Chief Executive Officer, Robert W. Baird & Co., Incorporated (June 15, 1994); and Rauscher Pierce Refnes, Inc. (June 14, 1994), to Jonathan G. Katz, Secretary, SEC.

[50] To implement phase one, the MSRB, pursuant to Rule 19b–4 of the Exchange Act, has filed with the Commission a proposed rule change to amend Rule G–14 of the MSRB Rules, which, once

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requirements will be expanded in phase two to include institutional customer transactions. The third phase will expand the daily reporting requirements to include retail customer transactions, and phase four will advance reporting times closer in time to the transaction, such as by the end of day or within a specified time period following the trade. In the initial phases of the MSRB's proposal, information regarding the prices and volume of transactions in approximately 80 to 240 issues would be reported each day. As each phase is implemented, the MSRB will review closely this information and system operations, with a view toward reflecting a greater number of issues and transactions in the reports.

In addition to the proposal by the MSRB, the PSA has proposed two initiatives to convey municipal securities pricing information to retail investors. First, the PSA proposes to develop a generic scale and yield curve for AAA-insured revenue bonds. This information, which will be made available to daily newspapers, is intended to provide customers with grade information on the price and yield of a representative range of bonds. Second, the PSA proposes to establish a 900-number which investors could call to obtain price information regarding particular municipal securities.

Although the MSRB's initiative is in a developmental stage, the Commission believes it ultimately could provide the public with improved information about the price of municipal securities. If widely published, this information would allow investors to better assess the prices provided by their broker-dealers in a municipal securities trade. In light of these proposals, the Commission has decided to defer for a period of six months adoption of that part of Rule 15c2–13 requiring the disclosure of mark-ups for riskless principal transactions in municipal securities.

The Commission has deferred adoption of the riskless principal mark-up disclosure proposal in order to ascertain whether the proposed price information systems can provide more meaningful benefits to investors in the long-term and to assess the progress of the industry in developing the proposed systems. Price transparency, if fully developed, will provide better market information to investors on a timely basis (*e.g.*, before the transaction). Potentially, price transparency also could provide investors the ability to determine the value of their municipal securities purchased in principal transactions. The proposed mark-up disclosure, on the other hand, would have provided cost information to investors only in riskless principal transactions and would not have applied to other principal transactions, the majority of transactions in the debt market. Price transparency, if fully developed, meets investors' need for information without focusing on only one portion of the market, which commenters argued could lead to a deleterious restructuring of the market, thus reducing market liquidity and narrowing the available choices of securities sold to customers.[51]

The Commission recognizes that these benefits depend on the sound design and successful implementation of transparency proposals. Their value to investors further depends on widespread availability of the information, and customer understanding of how it should be used. At the end of six months, the Commission will assess the need for further action based upon the prospects for the availability of meaningful pricing information to a broad range of investors about a full range of securities. If such information is not likely to be available, the Commission will explore alternatives to better provide information to fixed income investors. To this end, the Commission similarly is deferring the proposed amendment to Rule 10b–10 requiring mark-up disclosure for other debt securities. While the Commission believes it is appropriate to address transparency in municipal securities initially because of the presence of a large proportion of individual investors in that market, during the deferral, the Commission expects the industry to address the extent to which customer price information can be increased in debt markets other than the municipal securities market. The Commission recognizes that the government, corporate, and mortgage securities markets have different levels of price information publicly available. For example, GovPx, a joint venture of primary dealers and interdealer brokers formed in 1990, provides to investors real-time quotations, trade prices, and volume information for U.S. Treasury and other government securities via a worldwide network of 12,000 terminals. In addition, the National Association of Securities Dealers, Inc. ("NASD") developed the Fixed Income Pricing System ("FIPS"), which collects, processes, and disseminates real-time firm quotations for 30 to 50 of the most liquid, high yield bonds traded in the over-the-counter market.[52] The Commission expects the industry to review the availability of information to investors in each of these markets and consider methods of increasing transparency as an alternative to riskless principal disclosure in these markets.

Even though the Commission is deferring the adoption of riskless principal mark-up disclosure, the Commission continues to believe that, absent transparency in the debt markets, the disclosure of the dealer's cost along with the mark-up would be of use to customers in assessing the value of their debt securities. In the absence of progress on transparency, the Commission will revisit its riskless principal proposal. The Commission also may consider whether to require the disclosure of all mark-ups in principal transactions based on the underlying inventory costs,[53] or the prevailing market price[54] or to mandate alternative price transparency systems.

The Commission strongly believes that real progress is needed in a timely fashion to achieve the goal of better customer information for market prices in the debt market. Achievement of this goal will add strength to and confidence in the debt markets, to the benefit of both broker-dealers and investors.

C. Disclosure of Unrated Securities

The Commission also published for comment a requirement to disclose, if applicable, that certain debt securities have not been rated by an NRSRO.[55] The proposal excluded government securities defined under Section 3(a)(42)(A) and (B) of the Exchange Act,[56] but

approved, will require the reporting of interdealer municipal securities transactions to a designee (*e.g.*, the National Securities Clearing Corporation) for compilation in a daily report and for use by regulators.

[51] *See, e.g.*, Letters from Philip T. Colton, Maun & Simon (June 14, 1994); Lawrence T. Lewis, III, Managing Director, Clark Melvin Securities Corporation (June 8, 1994); and Adam Crews, President/Chief Executive Officer, Crews & Associates, Inc. (June 1, 1994), to Jonathan G. Katz, Secretary, SEC.

[52] *See* Securities Exchange Act Release No. 32019 (March 19, 1993), 58 FR 16428 for a discussion of the order approval allowing the NASD to implement FIPS.

[53] To comply with this disclosure, broker-dealers would have to assign a value to a security bought into inventory on either a last in, first out or first in, first out accounting basis.

[54] *See* 17 CFR 240.15g–4 and Securities Exchange Act Release No. 30608 (April 13, 1992), 57 FR 19022 for a discussion of compensation disclosure requirements for transactions in penny stocks.

[55] *See* Proposing Release, *supra* note 10, at 59 FR 12770.

[56] Securities exempt from the proposed rating disclosure would include (1) securities that are direct obligations of the U.S., or in which the U.S. has guaranteed the principal or interest; or (2) securities which are issued or guaranteed by corporations in which the U.S. has a direct or indirect interest and which the Secretary of

requested specific comment on whether other securities should be excluded from this disclosure.[57] In addition, specific comment was requested whether the MSRB should implement the disclosure requirement with respect to municipal securities, rather than the Commission.[58]

Of the 43 commenters that addressed this disclosure proposal, 24 supported the proposal.[59] Some commenters believed that the disclosure requirement did not go far enough and indicated that specific ratings also should be disclosed on the confirmation.[60] In particular, commenters believed that the confirmation should bear all ratings of securities, particularly those rated below investment grade.[61]

Ten commenters opposed the disclosure requirement on the grounds that requiring this disclosure may be unhelpful to investors. They argued that such disclosure may cause investors to believe that unrated securities are inferior to rated securities, when the unrated security may pose less risk than a rated security, particularly a security rated below investment grade.[62] They noted that such disclosure does not explain the reasons why a security may not have a credit rating—notably that smaller, but no less sound, issuers may not wish to bear the expense of obtaining a credit rating.[63] Commenters also questioned why the Commission excluded from the disclosure requirement only government securities defined under Section 3(a)(42)(A) and (B) of the Exchange Act.[64] In particular, Freddie Mac argued that securities issued by government sponsored enterprises ("GSEs"), including those issued by Freddie Mac, also should be excluded from the disclosure requirement. Freddie Mac argued that, because of the market's assessment of the creditworthiness of GSEs, it makes little economic sense for a GSE to bolster its creditworthiness with an independent rating.[65] Finally, some commenters believed that the MSRB should adopt any rule affecting the municipal securities market; other commenters were neutral whether the Commission or the MSRB implemented rulemaking.

After considering the comments, the Commission is adopting the proposed amendments to Rule 10b-10 requiring disclosure if a debt security, other than a government security, has not been rated by an NRSRO. Such disclosure would be more meaningful to the investor if it is made together with the description of the security. As noted in the Proposing Release, this disclosure is not intended to suggest that an unrated security is inherently riskier than a rated security.[66] Rather, the disclosure is intended to alert customers that they may wish to obtain further information or clarification from their broker-dealers. In most cases, this disclosure should verify information that was disclosed to the investor prior to the transaction. If a customer was not previously informed of the security's unrated status, then confirmation disclosure may prompt a dialogue between the customer and broker-dealer.

The Commission agrees with commenters that all "government securities" should be excluded from the unrated debt disclosure requirement, not just those defined under Section 3(a)(42)(A) and (B) of the Exchange Act.[67] Therefore, government securities meeting the definition under sub-paragraphs (C) and (D) of Section 3(a)(42), which includes securities issued by GSEs, will be exempt from the disclosure requirement. The Commission, however, does not intend to expand the class of securities subject to the exclusion beyond those defined as government securities in Section 3(a)(42).

The non-rated debt proposal for municipal securities was contained in proposed Rule 15c2-13. In its comment letter, the MSRB stated that, "[t]he Board agrees with the Commission that, while the fact that a bond is unrated is not necessarily indicative of problems, disclosure of the fact would be helpful to investors."[68] The MSRB also noted that, if the Commission determined that such information was needed by investors in debt securities, it would amend its confirmation rule, Rule G-15, and require disclosure if a municipal security has not been rated by an NRSRO.[69] Inasmuch as other confirmation requirements for municipal securities are currently set forth in Rule G-15 of the MSRB, the Commission is willing to defer this portion of the proposal to allow the MSRB to adopt the requirement as part of its rules, and will withdraw it after the MSRB has taken action.

D. Disclosure of Mark-Ups and Mark-Downs in Certain NASDAQ and Exchange-Listed Securities

As part of the amendments to Rule 10b-10, the Commission proposed requiring the disclosure of mark-up information for principal transactions in

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Treasury has designated for exemption. 15 U.S.C. 78c(a)(42)(A) and (B).

[57] Proposing Release, *supra* note 10, at 59 FR 12770.

[58] *Id.*

[59] *See, e.g.*, Letters from A.B. Krongard, Chief Executive Officer, Alex. Brown & Sons, Incorporated (July 14, 1994); David C. Clapp, Chairman, MSRB (June 15, 1994); and Douglas L. Kelly, Director, Law and Compliance, A.G. Edwards & Sons, Inc. (June 13, 1994), to Jonathan G. Katz, Secretary, SEC.

Alex. Brown & Sons, Incorporated sought clarification that a bond rated by a single NRSRO, but not necessarily other NRSROs, nonetheless would be excluded from the disclosure requirement. (Letter from A.B. Krongard, Chief Executive Officer, Alex. Brown, to Jonathan G. Katz, Secretary, SEC (July 14, 1994), at p.6). The rule language states that a broker-dealer would be required to disclose when a security was not rated by an NRSRO. Accordingly, if a single NRSRO has rated a security, then it follows that no disclosure would be required.

[60] *See, e.g.*, Letters from Grant T. Callery, Vice President/General Counsel, NASD (July 26, 1994); and Robert Reeves, Sr. Vice President, Ferris Baker Watts, Incorporated (June 14, 1994), to Jonathan G. Katz, Secretary, SEC.

[61] One commenter argued that disclosure of ratings, and in particular ratings below investment grade, would better assist investors in comparing an unrated security that may be of a high credit quality with one that, while rated, may be of lesser credit quality. *See* Letter from James H. Morgan, President/Chief Operating Officer, Interstate/Johnson Lane, to Jonathan G. Katz, Secretary, SEC (June 14, 1994). The Commission will revisit the issue of whether Rule 10b-10 should require the disclosure of ratings for corporate debt securities once commenters have responded to a recent Commission proposal addressing the feasibility of disclosing ratings in a prospectus. See Securities Act Release No. 7086, (Aug. 31, 1994), 59 FR 46304.

[62] *See, e.g.*, Letters from Sullivan & Cromwell (July 15, 1994); R. Fenn Putman, Chairman, PSA (June 20, 1994); and Jon S. Corzine, Goldman, Sachs & Co. (June 15, 1994), to Jonathan G. Katz, Secretary, SEC.

[63] One commenter noted that rural issuers would be harmed by the disclosure requirement because the size of a rural issue makes bearing the expense of obtaining a rating economically impractical. See Letter from Ian B. Davidson, Chairman, and Kreg A. Jones, Chief Operating Officer, D.A. Davidson & Co., to Jonathan G. Katz, Secretary, SEC (June 14, 1994).

[64] *See, e.g.*, Letter from Mitchell Delk, Vice President/Government and Industry Relations, Freddie Mac, to Jonathan G. Katz, Secretary, SEC (June 15, 1994).

[65] Freddie Mac also described the anomalous situation in which, on the one hand, GSE securities would be subject to the disclosure requirement, but on the other hand, rated private label asset-backed securities would not, even though the underlying securities were GSE securities and primarily responsible for the rating. See Letter from Mitchell Delk, Vice President/Government and Industry Relations, Freddie Mac, to Jonathan G. Katz, Secretary, SEC (June 15, 1994), at pp. 2-3.

[66] Nevertheless unrated municipal bonds, which make up approximately 33% of the market, in the aggregate have a higher default rate than do rated bonds. *See Municipal Bond Defaults—The 1980's Decade in Review* 1-2, at 1, J.J. Kenny Co., Inc. (1993). According to this study on default rates between January 1, 1980 to December 31, 1991, 628 unrated issues defaulted compared with 98 rated issues. According to data provided by the Securities Data Company, unrated debt defaults make up approximately 75% of all defaults. *See also* Public Securities Association, *An Examination of Non-Rated Municipal Defaults 1986-1991* 4 (Jan. 8, 1993).

[67] 15 U.S.C. 78c(a)(42).

[68] Letter from David C. Clapp, Chairman, MSRB, to Jonathan G. Katz, Secretary, SEC (June 15, 1994).

[69] *Id.*

certain securities quoted on NASDAQ or listed on regional exchanges.[70] This proposal covered securities that are subject to last sale reporting, but are not technically "reported securities" under Rule 11Aa3–1 of the Exchange Act.[71] As noted in the Proposing Release, the NASD adopted amendments to its confirmation rule requiring the disclosure of mark-up information in principal transactions in securities that are not NASDAQ/NMS securities—*i.e.*, NASDAQ Small Cap Securities.[72] The purpose of the proposed amendment is to consolidate disclosures already required under NASD rules. Because last sale information is available for regional exchange-listed securities, the Commission proposed to extend the disclosure requirements to those securities, in addition to Small Cap Securities. By adopting this proposal, the confirmation rule will treat all equity securities subject to last sale reporting similarly, irrespective of their trading markets.

The two comments that addressed this requirement supported the proposal.[73] Accordingly, under Rule 10b-10, broker-dealers effecting principal transactions in Small-Cap NASDAQ and regional exchange-listed securities that are subject to last-sale reporting will be required to disclose on the confirmation the reported trade price, price to the customer, and the difference, if any, between the two prices.

[70] *See* Proposing Release, supra note 10, 59 FR 12770.

[71] 17 CFR 240.11Aa3–1(a)(4). This provision defines "reported security" as any exchange-listed equity security or NASDAQ security for which transaction reports are made available on a real-time basis pursuant to an effective transaction reporting plan. An "effective transaction reporting plan" refers to a transaction reporting plan that the Commission has approved pursuant to Rule 11Aa3–1. 17 CFR 240.11Aa3–1(a)(3).

Reported securities currently include:

1. NASDAQ securities that meet standards set forth in the National Market System Securities Designation Plan ("NASDAQ/NMS securities).

2. Certain securities listed on a national securities exchange that meet standards of the transaction reporting plan known as the Restated Consolidated Tape Association Plan. This would include securities that are registered or admitted to unlisted trading privileges on a national securities exchange, including securities listed on various regional exchanges, and that substantially meet NYSE or American Stock Exchange, Inc. original listing criteria.

[72] NASD Schedule to By-Laws, Schedule D, pt. XI, Section 3, NASD Manual (CCH) ¶ 1867D.

[73] *See* Letters from Robert F. Price, Chairman/Federal Regulation Committee, SIA (July 15, 1994); and Kurt D. Halvorson, Vice President/Controller, AmeriTrade (May 27, 1994), to Jonathan G. Katz, Secretary, SEC.

E. Disclosure of Coverage by the Securities Investor Protection Corporation

In order to reduce investor confusion concerning a firm's SIPC coverage,[74] the Commission proposed to amend Rule 10b–10 to require affirmative disclosure, if applicable, when a broker-dealer is not a member of SIPC and when an account is carried by a non-SIPC-member broker or dealer. Generally, the Securities Investor Protection Act of 1970 requires broker-dealers registered with the Commission under Section 15(b) of the Exchange Act to be members of SIPC. Certain types of broker-dealers registered under Section 15(b), as well as all broker-dealers registered as government securities brokers and dealers under Section 15C of the Exchange Act, are excluded from SIPC membership.[75]

Many commenters addressing this issue supported the Commission's proposal to inform customers when their broker-dealers are not SIPC members.[76] Other commenters generally agreed with requiring the disclosure, but disagreed that the confirmation was the appropriate disclosure medium and suggested that non-membership status in SIPC be disclosed in a periodic account statement or opening account document.[77] Commenters opposing the disclosure initiative argued that the disclosure would be misleading to investors in that they would believe that they are at greater risk when dealing with a non-SIPC firm.[78] The Investment Company Institute ("ICI") argued that requiring "negative disclosure" concerning the lack of SIPC coverage is contrary to the reasons certain persons are exempted from the membership requirement in the first instance—namely, excluded broker-dealers present limited risks to investors because they do not hold customer funds.[79]

The Commission, consistent with its authority under the Government Securities Act Amendments of 1993,[80] is adopting the proposed amendment to ensure that customers are not led to believe that their accounts are subject to protection beyond what actually is the case.[81] This disclosure is relevant and meaningful to investors. Further, the confirmation is the best vehicle to convey this information to customers on a transaction-specific basis, particularly in situations where a customer is dealing with affiliated broker-dealers and one or more of the affiliates is not a SIPC member.

The Commission agrees, however, that certain instances exist where this disclosure should not apply.[82] For instance, the ICI stated that in some cases when a broker-dealer contracts with an investment company for the distribution of fund shares, customers purchasing such shares will send their purchase money directly to the fund's

[74] SIPC, a non-profit, membership corporation, was established under the Securities Investor Protection Act of 1970. SIPC is funded by assessments on its members and interest earned on fund assets. The fund is used to protect securities customers of SIPC-member broker-dealers that fail financially. 15 U.S.C. 78aaa *et seq.* For example, in the event of the failure of a SIPC member firm, SIPC provides protection up to $500,000 for claims for cash and securities (although claims solely for cash are limited to $100,000) of each customer. 15 U.S.C. 78fff–3(a)(1).

[75] In addition to government securities brokers and dealers, the following broker-dealers are not required to be members of SIPC: (1) Persons whose principal business in the determination of SIPC (and with Commission approval) is conducted outside the U.S.; and (2) persons whose business consists exclusively of (a) the distribution of shares of registered open-end investment companies or unit investment trusts, (b) the sale of variable annuities, (c) the business of insurance, or (d) the business of rendering investment advisory services to registered investment companies or insurance company separate accounts. 15 U.S.C. 78ccc(a)(2)(A) and 78lll(12).

[76] *See, e.g.*, Letters from Ronald S. Plaine, President, Comerica Securities (undated); David M. Beckius, Vice President/Sr. Attorney, Dean Witter Reynolds, Inc. (July 14, 1994); and William E. Kramer, Assistant Vice President, Nomura Securities International, Inc. (July 15, 1994), to Jonathan G. Katz, Secretary, SEC.

[77] *See, e.g.*, Letters from William E. Kramer, Assistant Vice President, Nomura Securities International, Inc. (July 15, 1994); A.B. Krongard, Chief Executive Officer, Alex. Brown & Sons, Incorporated (July 14, 1994); and R. Fenn Putman, Chairman, PSA (June 21, 1994), to Jonathan G. Katz, Secretary, SEC.

[78] *See, e.g.*, Letters from Lawrence J. Latto, Shea & Gardner (June 17, 1994); and Peter C. Clapman, Sr. Vice President/Chief Counsel, College Retirement Equities Fund (June 15, 1994); to Jonathan G. Katz, Secretary, SEC.

[79] *See* Letter from Paul Schott Stevens, General Counsel, ICI, to Jonathan G. Katz, Secretary, SEC (June 15, 1994). *See also* Letter from Fred J. Franklin, Vice President/Chief Compliance Officer, Aetna Life Insurance and Annuity Co., to Jonathan G. Katz, Secretary, SEC (June 14, 1994).

[80] 15 U.S.C. 78O–5(a)(4).

[81] The legislative history of the Government Securities Act Amendments of 1993 discussed SIPC coverage and the exemption from SIPC coverage afforded to government securities brokers and dealers. The Government Accounting Office noted that the gap in SIPC coverage could be confusing to investors and recommended, among other things, that the lack of SIPC coverage be disclosed. The amendments ultimately took a disclosure approach and authorized the Commission to require disclosure of non-SIPC status of government securities brokers and dealers. S. Rep. No. 422, 103rd Cong., 1st Sess. 16 (1993). The same reasons to require this disclosure of government securities brokers and dealers applies to other broker-dealers that are exempt from SIPC coverage.

[82] Some commenters believed that the proposed disclosure was inconsistent with a letter, *Letter regarding Benjamin M. Vandegrift* (Dec. 21, 1993), issued by the Division of Investment Management. The disclosure requirement adopted today recognizes the position taken in the letter, reserving the right to revisit SIPC-related disclosure issues.

transfer agent.[83] The transfer agent then will issue shares to the customer against receipt of the purchase money and send the money to the fund's custodian bank. In this situation, customer funds are not handled by the broker-dealer. In addition, the ICI argued that the transfer agent or fund underwriter, when sending the confirmation on behalf of the broker-dealer, may not know the SIPC status of a particular broker-dealer. Accordingly, the disclosure provision contains an exclusion that is intended to apply only in cases where the non-SIPC broker-dealer does not receive or handle in any form customer funds or securities in connection with a purchase or redemption of registered open-end investment company or unit investment trust shares and the customer sends its purchase money or securities to the fund, its transfer agent, its custodian, or its designated agent, none of whom are associated persons of the broker-dealer. Furthermore, checks may not be made payable to the broker-dealer, and the broker-dealer may not handle any customer checks in connection with the transaction. Otherwise, the broker-dealer would be required to disclose its non-SIPC status. Therefore, if a broker-dealer, including a fund underwriter, receives customer funds or securities and promptly forwards funds or securities to the investment company, transfer agent, custodian, or other designated agent, the confirmation would have to disclose the non-SIPC status of the broker-dealer.

F. Disclosures Relating to Asset-Backed Securities

In 1983, the Commission adopted amendments to Rule 10b–10 to require disclosure of yield information on a customer confirmation, recognizing that such information is important to investors when evaluating the merits of investing in various debt securities.[84] Currently, Rule 10b–10 requires the disclosure of (1) the yield to maturity, if the transaction is effected on the basis of dollar price;[85] (2) the dollar price calculated from yield, if the transaction is effected on a yield basis;[86] and (3) if effected on a basis other than dollar price or yield to maturity, and the yield to maturity will be less than the represented yield, then both the yield to maturity and the represented yield.[87]

Rule 10b–10 exempts from the yield disclosure requirements any instrument that is a "participation interest in notes secured by liens upon real estate continuously subject to prepayment."[88] Since the adoption of the yield disclosure requirements, structured financings have expanded to include securities backed by mortgage notes, automobile loans, computer leases, consumer debt, and other receivables. These asset-backed securities raised similar problems of variable yield. Accordingly, the Commission proposed to expand the range of securities subject to the exemptions from yield disclosure to include asset-backed securities that are not insulated from prepayment risk or susceptible to an accurate forecast of yield.[89]

In addition, the Commission proposed to require particularized disclosures in connection with transactions in collateralized mortgage obligations ("CMOs").[90] Specifically, the Commission proposed amendments that would require broker-dealers to disclose on the confirmation the particular CMO's (1) estimated yield; (2) weighted average life; and (3) prepayment assumptions underlying the yield.[91]

Some commenters supported the Commission's proposal to require disclosure of CMO information and noted that such disclosures were provided to investors as a matter of course, either in a confirmation or other disclosure statements.[92] Other commenters opposed confirmation disclosure of the estimated yield, weighted average life, and prepayment assumptions on the grounds that the confirmation is not an appropriate disclosure vehicle to convey the information.[93] In addition, commenters opposed disclosing such complex information in a confirmation because it could not be accomplished in a meaningful way due to the document's limited size and space.[94] Many commenters noted that detailed discussions concerning particular aspects of CMOs are contained in the prospectus or other offering documents that are sent to investors prior to the time in which they make their investment decisions.[95]

No comments were received regarding the proposal to expand the range of instruments that would be exempted from the yield disclosure requirements. Because some instruments are not subject to predictable forecasts of the yield, the Commission is adopting amendments exempting asset-backed instruments that are continuously subject to prepayment. The exemption would apply only to those instruments that are not insulated from prepayment risk or otherwise susceptible to an accurate forecast of yield.[96]

In addition, in light of the comments concerning the proposed CMO disclosure, the Commission is modifying the amendment requiring the disclosure of prepayment assumptions, weighted average life, and estimated yield of a CMO. The Commission recognizes that broker-dealers intend confirmations to be brief, and thus size limitations may affect the detail of disclosure that may be practically and meaningfully conveyed to the customer.

[83] *See* Letter from Paul Schott Stevens, General Counsel, ICI, to Jonathan G. Katz, Secretary, SEC (June 15, 1994), at 2, n.5.

[84] *See* Securities Exchange Act Release No. 19687 (Apr. 18, 1983), 48 FR 17583.

[85] 17 CFR 240.10b–10(a)(4)(ii) and (5)(i).

[86] 17 CFR 240.10b–10(a)(5)(ii).

[87] 17 CFR 240.10b–10(a)(5)(iii).

[88] 17 CFR 240.10b–10(a)(4)(ii) and (5)(iii). Essentially, this exemption was aimed at mortgage pass-through notes that were issued or guaranteed by the Government National Mortgage Association, Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

[89] *See* Proposing Release, *supra* note ———, at 59 FR 12771.

[90] CMOs are collateralized pools of residential mortgage loans that are divided into multiple tranches (sometimes as many as 15 to 20) which can be tailored to a broad spectrum of investors or particularized to the cash flow needs of a single or discrete group of investors. Like other asset-backed securities, the rate of prepayment on the underlying collateral of CMOs is influenced by changes in interest rates and shifts in the general economy, which in turn may affect the actual maturities of CMOs as prepayment speeds accelerate or decrease. CMOs are priced on the basis of the estimated weighted average life of individual CMO tranches. As interest rates decline, prepayments increase, with a corresponding shortening of weighted average life. Conversely, an increase in interest rates results in a lengthening of maturity.

[91] Proposing Release, *supra* note ———, at 59 FR 12771.

[92] *See, e.g.*, Letters from David M. Beckius, Vice President/Sr. Attorney, Dean Witter Reynolds, Inc. (July 14, 1994); Silas L. Matthies, Sr. Vice President, Norwest Securities, Inc. (June 14, 1994); Rauscher Pierce Refsnes, Inc. (June 14, 1994); and Bill Duepree, Jr., President, Morgan Keegan & Co., Inc. (June 1, 1994), to Jonathan G. Katz, Secretary, SEC.

[93] Commenters noted that investors receive disclosure documents containing numerous models depicting different prepayment assumptions. These commenters questioned which of the multiple assumptions would be disclosed in the confirmation. *See, e.g.*, Letters from Robert F. Price, Chairman/Federal Regulation Committee, SIA (July 15, 1994); and R. Fenn Putman, Chairman, PSA (June 21, 1994), to Jonathan G. Katz, Secretary, SEC.

[94] *See, e.g.*, Letters from Robert F. Price, Chairman, Federal Regulation Committee, SIA (July 15, 1994); R. Fenn Putman, Chairman, PSA (June 21, 1994); and Mitchell Delk, Vice President Government and Industry Relations, Freddie Mac, (June 15, 1994), to Jonathan G. Katz, Secretary, SEC.

[95] *See, e.g.*, Letters from Kathryn S. Reimann, Sr. Vice President, Lehman Brothers, Inc. (July 14, 1994); R. Fenn Putman, Chairman, PSA (June 21, 1994); and Mitchell Delk, Vice President/ Government and Industry Relations, Freddie Mac (June 15, 1994), to Jonathan G. Katz, Secretary, SEC.

[96] This position codifies a no-action position in *Letter regarding Merrill Lynch, Pierce, Fenner & Smith* (Oct. 19, 1988), granting no-action with respect to the yield disclosure requirements for those mortgage and asset-backed securities that are not subject to an accurate forecast of yield. The staff noted that if an accurate forecast of yield could be made, then the yield should be disclosed in the confirmation.

Thus, while yield information is important to investors of CMOs, as well as all mortgage and asset-backed securities, the Commission agrees that these securities contain complexities that are difficult to explain using single figures in a confirmation. Accordingly, rather than require the disclosure in the confirmation of specific numbers identifying the estimated yield, weighted average life, and prepayment assumptions underlying the yield, the Commission is adopting a requirement that broker-dealers include on the confirmation a statement alerting investors that their yields are subject to fluctuation depending on the speed in which the underlying note or receivable prepays and that specific information is available upon written request of the customer.[97]

While information concerning prepayment assumptions and pricing of CMOs and other asset-backed securities may be contained in disclosure documents at the offering stage, this type of detailed information has not been as readily available in the secondary market for some asset-backed securities and to some investors.[98] Under the Rule, as adopted, such information would be required to be sent to customers upon written request. In addition, if in fact a CMO or other asset-back security is sold solely on the basis of one yield amount, the yield and underlying assumptions should be disclosed on the confirmation, as well as the legend stating that these items may vary.[99] This is consistent with those commenters that noted that they disclose yield information in CMO transactions as a matter of course.[100] The antifraud provisions of the federal securities laws would require that any information provided upon request reflect changes or developments in the characteristics of the asset-backed security.

III. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act [101] requires that the Commission, when adopting rules under the Exchange Act, consider the anticompetitive effects of those rules, if any, and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission believes that adoption of the amendments to Rule 10b–10 will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") regarding the amendments to Rule 10b–10, in accordance with 5 U.S.C. 604. The FRFA notes the potential initial costs of operational and procedural changes that may be necessary to comply with the amendments. In addition, the FRFA notes the benefits to investors of increased disclosure that will result from these amendments. The Commission believes that the benefits of added disclosure outweigh the costs that will be incurred by industry participants in complying with these amendments.

A copy of the FRFA will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Amendments

For the reasons set forth in the preamble, the Commission hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.10b–10 is amended by adding a preliminary note prior to paragraph (a), revising paragraphs (a) and (b), removing paragraph (c), redesignating paragraphs (d) through (f) as paragraphs (c) through (e), adding a heading to newly designated paragraph (d), revising the introductory text of paragraph (d) and the introductory text of paragraph (d)(6), and adding paragraph (d)(10) to read as follows:

§ 240.10b–10 Confirmation of transactions.

Preliminary Note. This section requires broker-dealers to disclose specified information in writing to customers at or before completion of a transaction. The requirements under this section that particular information be disclosed is not determinative of a broker-dealer's obligation under the general antifraud provisions of the federal securities laws to disclose additional information to a customer at the time of the customer's investment decision.

(a) *Disclosure Requirement.* It shall be unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing:

(1) The date and time of the transaction (or the fact that the time of the transaction will be furnished upon written request to such customer) and the identity, price, and number of shares or units (or principal amount) of such security purchased or sold by such customer; and

(2) Whether the broker or dealer is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for its own account; and if the broker or dealer is acting as principal, whether it is a market maker in the security (other than by reason of acting as a block positioner); and

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[97] This approach builds upon an alternative suggested by one commenter that rather than the proposed disclosure, the Commission impose a requirement that a broker-dealer print a legend on the confirmation. *See* Letter from Mitchell Delk, Vice President/Government and Industry Relations, Freddie Mac, to Jonathan G. Katz, Secretary, SEC (June 15, 1994).

[98] The Commission recognizes the positive efforts made to educate and provide information to investors in the CMO market. For example, the PSA developed a brochure entitled, "Investors Guide to Real Estate Mortgage Investment Conduits (REMICs)," which is approved by the NASD as an investor education tool. In addition, one commenter stated that prepayment information and interest rate information are available to dealers and investors in the secondary market through various vendors and proprietary services. This commenter also indicated that for those market participants that do not have access to this information, they should be able to obtain it from the selling broker-dealer. *See* Letter from Mitchell Delk, Vice President/Government and Industry Relations, Freddie Mac, to Jonathan G. Katz, Secretary, SEC (June 15, 1994).

[99] 17 CFR 240.10b–10(a)(5)(i). *See also* Securities Exchange Act Release No. 19667 (Apr. 18, 1983), 48 FR 17583. The Commission is concerned that in some cases asset-backed securities may be sold to retail investors on the basis of a single yield figure, without adequate disclosure that this yield can vary based upon prepayment speeds. This inadequate disclosure would potentially violate self-regulatory organization and Commission antifraud rules. In addition, to make this disclosure complete, a broker-dealer would need to disclose that the single yield may vary.

[100] *See supra* note 92.

[101] 15 U.S.C. 78w(a)(2).

(i) If the broker or dealer is acting as agent for such customer, for some other person, or for both such customer and some other person:

(A) The name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that the information will be furnished upon written request of such customer; and

(B) The amount of any remuneration received or to be received by the broker from such customer in connection with the transaction unless remuneration paid by such customer is determined pursuant to written agreement with such customer, otherwise than on a transaction basis; and

(C) For a transaction in any subject security as defined in § 240.11Ac1–2 or a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in Section 17B of this Act (15 U.S.C. 78q-2), a statement whether payment for order flow is received by the broker or dealer for transactions in such securities and the fact that the source and nature of the compensation received in connection with the particular transaction will be furnished upon written request of the customer; and

(D) The source and amount of any other remuneration received or to be received by the broker in connection with the transaction: *Provided, however,* that if, in the case of a purchase, the broker was not participating in a distribution, or in the case of a sale, was not participating in a tender offer, the written notification may state whether any other remuneration has been or will be received and the fact that the source and amount of such other remuneration will be furnished upon written request of such customer; or

(ii) If the broker or dealer is acting as principal for its own account:

(A) In the case where such broker or dealer is not a market maker in that security and, if, after having received an order to buy from a customer, the broker or dealer purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the broker or dealer sold the security to another person to offset a contemporaneous purchase from such customer, the difference between the price to the customer and the dealer's contemporaneous purchase (for customer purchases) or sale price (for customer sales); or

(B) In the case of any other transaction in a reported security, or an equity security that is quoted on NASDAQ or traded on a national securities exchange and that is subject to last sale reporting, the reported trade price, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer.

(3) Whether any odd-lot differential or equivalent fee has been paid by such customer in connection with the execution of an order for an odd-lot number of shares or units (or principal amount) of a security and the fact that the amount of any such differential or fee will be furnished upon oral or written request: *Provided, however,* that such disclosure need not be made if the differential or fee is included in the remuneration disclosure, or exempted from disclosure, pursuant to paragraph (a)(2)(i)(B) of this section; and

(4) In the case of any transaction in a debt security subject to redemption before maturity, a statement to the effect that such debt security may be redeemed in whole or in part before maturity, that such a redemption could affect the yield represented and the fact that additional information is available upon request; and

(5) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected, and

(ii) The yield to maturity calculated from the dollar price: *Provided, however,* that this paragraph (a)(5)(ii) shall not apply to a transaction in a debt security that either: (A) Has a maturity date that may be extended by the issuer thereof, with a variable interest payable thereon; or

(B) Is an asset-backed security, that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment; and

(6) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (*e.g.,* current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date and call price; and

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; *Provided, however,* that this paragraph (a)(6)(iii) shall not apply to a transaction in a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest rate payable thereon; or

(B) Is an asset-backed security, that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment; and

(7) In the case of a transaction in a debt security that is an asset-backed security, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of such asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of such customer; and

(8) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if such is the case; and

(9) That the broker or dealer is not a member of the Securities Investor Protection Corporation (SIPC), or that the broker or dealer clearing or carrying the customer account is not a member of SIPC, if such is the case: *Provided, however,* that this paragraph (a)(9) shall not apply in the case of a transaction in shares of a registered open-end investment company or unit investment trust if:

(i) The customer sends funds or securities directly to, or receives funds or securities directly from, the registered open-end investment company or unit investment trust, its transfer agent, its custodian, or other designated agent, and such person is not an associated person of the broker or dealer required by paragraph (a) of this section to send written notification to the customer; and

(ii) The written notification required by paragraph (a) of this section is sent on behalf of the broker or dealer to the customer by a person described in paragraph (a)(9)(i) of this section.

(b) *Alternative Periodic Reporting.* A broker or dealer may effect transactions for or with the account of a customer without giving or sending to such customer the written notification described in paragraph (a) of this section if:

(1) Such transactions are effected pursuant to a periodic plan or an investment company plan, or effected in shares of any open-end management investment company registered under

the Investment Company Act of 1940 that holds itself out as a money market fund and attempts to maintain a stable net asset value per share: *Provided, however,* that no sales load is deducted upon the purchase or redemption of shares in the money market fund; and

(2) Such broker or dealer gives or sends to such customer within five business days after the end of each *quarterly* period, for transactions involving investment company and periodic plans, and after the end of each *monthly* period, for other transactions described in paragraph (c)(1) of this section, a written statement disclosing each purchase or redemption, effected for or with, and each dividend or distribution credited to or reinvested for, the account of such customer during the month; the date of such transaction; the identity, number, and price of any securities purchased or redeemed by such customer in each such transaction; the total number of shares of such securities in such customer's account; any remuneration received or to be received by the broker or dealer in connection therewith; and that any other information required by paragraph (a) of this section will be furnished upon written request: *Provided, however,* that the written statement may be delivered to some other person designated by the customer for distribution to the customer; and

(3) Such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in paragraph (c)(1) of this section in lieu of an immediate confirmation.

* * * * *

(d) *Definitions.* For the purposes of this section:

* * * * *

(6) *Investment company plan* means any plan under which securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940 are purchased by a customer (the payments being made directly to, or made payable to, the registered investment company, or the principal underwriter, custodian, trustee, or other designated agent of the registered investment company), or sold by a customer pursuant to:

* * * * *

(10) *Asset-backed security* means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

* * * * *

By the Commission.

Dated: November 10, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-28450 Filed 11-16-94; 8:45 am]

BILLING CODE 8010-01-P

NASD NOTICE TO MEMBERS 95-3

Annual Check List Of NASD *Notices To Members*

Suggested Routing

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

The NASD published the following *Notices to Members* during 1994. Duplicate copies are available at $25 per monthly or special issue. A bound-volume, indexed reprint of the entire year's Notices is also available at $150. Request, 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 MediaSource℠, P.O. Box 9403, Gaithersburg, MD 20898-9403. Credit card telephone orders for bound volumes can be made by telephoning (301) 590-6578, Monday to Friday, 9 a.m. to 5 p.m., Eastern Time.

NASD NOTICE TO MEMBERS 95-4

Presidents' Day: Trade Date-Settlement Date Schedule

Suggested Routing

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

The Nasdaq Stock Market℠ and the securities exchanges will be closed on Monday, February 20, 1995, in observance of Presidents' Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Feb. 10	Feb. 17	Feb. 22
13	21	23
14	22	24
15	23	27
16	24	28
17	27	Mar. 1
20	Markets Closed	—
21	28	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 seven (7) business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column entitled "Reg. T Date."

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

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

NASD NOTICE TO MEMBERS 95-5

Nasdaq National Market Additions, Changes, And Deletions As Of December 28, 1994

Suggested Routing

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

As of December 28, 1994, the following 56 issues joined the Nasdaq National Market®, bringing the total number of issues to 3,752:

Symbol	Company	Entry Date	SOES Execution Level
BPTM	Bridgeport Machines, Inc.	11/29/94	500
VECO	Veeco Instruments, Inc.	11/29/94	500
AMSE	American Mobile Systems, Inc.	11/30/94	200
ELRWF	Elron Electronic Industries Ltd. (Wts 9/1/98)	11/30/94	200
TKOCF	Taseko Mines Ltd.	11/30/94	200
FNRI	Flores & Rucks, Inc.	12/1/94	500
RDIOA	Multi-Market Radio, Inc. (Cl A)	12/1/94	200
RDIOW	Multi-Market Radio, Inc. (Cl A Wts exp 3/23/99)	12/1/94	200
RDIOZ	Multi-Market Radio, Inc. (Cl B Wts exp 3/23/99)	12/1/94	200
ARLWF	Arel Communications & Software (Wts Ser A)	12/2/94	200
ARLCF	Arel Communications & Software (Ord Shs)	12/2/94	200
CPLNY	Concordia Paper Holdings, Ltd. (ADR)	12/2/94	500
HRVY	Harvey Entertainment Company	12/5/94	200
APOLA	Apollo Group, Inc. (Cl A)	12/6/94	200
AVRT	Avert, Inc.	12/7/94	200
AVRTW	Avert, Inc. (Wts 12/22/95)	12/7/94	200
MCTH	MethCath Incorporated	12/7/94	500
DIAGF	Spectral Diagnostics Inc.	12/7/94	200
AVTC	Applied Voice Technology, Inc.	12/8/94	200
EMCR	EmCare Holdings Inc.	12/8/94	500
NMTXW	Novametrix Medical Systems Inc. (Wts A 12/8/97)	12/8/94	200
NMTXZ	Novametrix Medical Systems Inc. (Wts B 12/8/99)	12/8/94	200
APLX	Applix, Inc.	12/9/94	200
MCRL	Micrel, Incorporated	12/9/94	200
RIDE	Ride Snowboard Company	12/9/94	200
APTV	Advanced Promotion Technologies, Inc.	12/14/94	500
ARKR	Ark Restaurants Corp.	12/14/94	500
CNSK	Covenant Bank for Savings	12/14/94	200
SDTI	Security Dynamics Technologies, Inc.	12/14/94	200
SPOR	Sport-Haley, Inc.	12/14/94	500
BLLE	Bolle America, Inc.	12/15/94	500
LNTVV	LIN Television Corporation (WI)	12/15/94	200
MTEC	Microtec Research, Inc.	12/15/94	200
NETC	NETCOM On-Line Communication Services, Inc.	12/15/94	500
TBDI	TMBR/Sharp Drilling, Inc.	12/15/94	200
IBET	Trans World Gaming Corporation	12/15/94	200

Symbol	Company	Entry Date	SOES Execution Level
IBETW	Trans World Gaming Corporation (Wts 12/15/99)	12/15/94	200
BTGI	BTG, Inc.	12/16/94	200
GENZL	Genzyme Corp. - Tissue Repair Division	12/16/94	500
JEWLF	IWI Holding, Ltd.	12/16/94	200
PHAM	PHAMIS, Inc.	12/16/94	500
PGMS	Stillwater Mining Company	12/16/94	500
AGRAV	The Associated Group, Inc. (Cl A WI)	12/16/94	200
AGRBV	The Associated Group, Inc. (Cl B WI)	12/16/94	200
VDNX	Videonics, Inc.	12/16/94	200
BNSWF	Bonso Electronics Int'l, Inc. (Wts exp 12/14/99)	12/19/94	200
BNSOF	Bonso Electronics International, Inc.	12/19/94	200
NEOS	NeoStar Retail Group, Inc.	12/19/94	500
HMII	Health-Mor Inc.	12/20/94	500
OCAI	Orthodontic Centers of America, Inc.	12/20/94	200
SCTR	Specialty Teleconstructors, Inc.	12/20/94	200
SCTRW	Specialty Teleconstructors, Inc. (Wts 11/2/99)	12/20/94	200
IPEC	Integrated Process Equipment Corp.	12/21/94	200
PREN	Price Enterprises, Inc.	12/21/94	500
KURZ	Kurzweil Applied Intelligence, Inc.	12/27/94	200
CNMWW	Cincinnati Microwave, Inc. (Wts 12/31/98)	12/28/94	200

Nasdaq National Market Symbol And/Or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since November 29, 1994:

New/Old Symbol	New/Old Security	Date of Change
RHEM/RHEM	Rheometrics Scientific, Inc./Rheometrics Inc.	11/30/94
WAMU/WAMU	Washington Mutual, Inc./Washington Mutual Savings Bank	12/1/94
WAMUO/WAMUO	Washington Mutual, Inc. (Pfd C)/ Washington Mutual Savings Bank (Pfd C)	12/1/94
WAMUN/WAMUN	Washington Mutual, Inc. (Pfd D)/ Washington Mutual Savings Bank (Pfd D)	12/1/94
WAMUM/WAMUM	Washington Mutual, Inc. (Pfd E)/ Washington Mutual Savings Bank (Pfd E)	12/1/94
ARELW/ARELW	Alpharel, Inc. (Wts 12/12/95)/Alpharel, Inc. (Wts 12/12/94)	12/5/94
MECC/MEKK	Minnesota Educational Computing Corp./ Minnesota Educational Computing Corp.	12/6/94
WBPR/WFPR	Westernbank Puerto Rico/ Western Federal Savings Bank of Puerto Rico	12/8/94
APOL/APOLA	Apollo Group, Inc. (Cl A)/Apollo Group, Inc. (Cl A)	12/13/94
CNMWR/CNMWR	Cincinnati Microwave, Inc. (Rts 12/27/94)/ Cincinnati Microwave, Inc. (Rts 12/15/94)	12/16/94
GENZ/GENZ	Genzyme Corp. - General Division/Genzyme Corp.	12/16/94
NOEL/NOELZ	Noel Group, Inc./Noel Group, Inc. (CBD Certs)	12/16/94
WLFIV/LOEW	WinsLoew Furniture, Inc. (WI) (1.05 Shs WLFI)/ Loewenstein Furniture Group, Inc.	12/19/94

New/Old Symbol	New/Old Security	Date of Change
EPURW/EPURW	Enviropur Waste Refining & Tech. (Wts 12/31/95)/ Enviropur Waste Refining & Tech. (Wts 12/31/94)	12/20/94
AGRPA/AGRAV	Associated Group, Inc. (Cl A)/Associated Group, Inc. (Cl A WI)	12/23/94
AGRPB/AGRBV	Associated Group, Inc. (Cl B)/Associated Group, Inc. (Cl B WI)	12/23/94
CMAX/CMAX	CableMaxx Holdings, Inc./CableMaxx Inc.	12/23/94
BHWKW/BHWKW	Black Hawk Gaming & Development Co., Inc. (Wts A 6/30/95)/ Black Hawk Gaming & Development Co., Inc. (Wts A 12/30/94)	12/27/94
ALLY/UGAM	Alliance Gaming Corp./United Gaming, Inc.	12/27/94

Nasdaq National Market Deletions

Symbol	Security	Date
BARC	Barrett Resources Corp.	11/29/94
AVFC	AmVestors Financial Corp.	11/30/94
CGRP	Coastal Healthcare Group, Inc.	11/30/94
DSCC	Datasouth Computer Corp.	11/30/94
ELRRF	Elron Electronic Industries, Ltd. (Rts 11/29/94)	11/30/94
SMTS	Somanetics Corp.	11/30/94
SMTSZ	Somanetics Corp. (Redeemable Cl B Wts)	11/30/94
HDVSZ	H.D. Vest, Inc. (Wts B)	12/1/94
ITHB	Ithaca Bancorp, Inc.	12/1/94
KNOW	KnowledgeWare, Inc.	12/1/94
NCSIW	National Convenience Stores, Inc. (Wts 3/9/98)	12/1/94
RFIN	Rock Financial Corp.	12/1/94
CTEXR	C-TEC Corporation (Rts 12/1/94)	12/2/94
GSBK	Germantown Savings Bank	12/5/94
CPSC	Carson Pirie Scott & Co.	12/6/94
NAWE	Nahama & Weagant Energy Company	12/6/94
SNPL	Snapple Beverage Corporation	12/7/94
NYCLE	NYCAL Corporation	12/8/94
APTV	Advanced Promotion Technologies, Inc.	12/9/94
OPTOQ	Opto Mechanik, Inc.	12/9/94
INTK	INOTEK Technologies Corp.	12/12/94
OMET	Orthomet, Inc.	12/12/94
SGAT	Seagate Technology	12/12/94
CECOA	Communications and Entertainment Corp. (Cl A)	12/14/94
ACCMA	Associated Communications Corp. (Cl A)	12/16/94
ACCMB	Associated Communications Corp. (Cl B)	12/16/94
BBGS	Babbage's, Inc.	12/16/94
BSRF	BioSurface Technology, Inc.	12/16/94
SFWR	Software Etc. Stores, Inc.	12/16/94
WFCI	Winston Furniture Company	12/19/94
SPLKA	Jones Spacelink, Ltd.	12/20/94
CRNT	CareNetwork, Inc.	12/21/94
ACTYF	Applied Carbon Technology, Inc.	12/22/94
CSAVP	Continental Svgs of America (Ser A Pfd)	12/22/94
WCBC	West Coast Bancorp	12/22/94
CNTOW	Centocor, Inc. (Wts 12/31/94)	12/23/94
GENZW	Genzyme Corp. (Wts 12/30/94)	12/23/94

Symbol	Security	Date
JBOH	JB Oxford Holdings, Inc.	12/23/94
GANL	Galey & Lord, Inc.	12/27/94
LASR	Laser Precision Corporation	12/27/94
TRCO	Trico Products Corporation	12/27/94
CNMWR	Cincinnati Microwave, Inc. (Rts 12/27/94)	12/28/94
TATWF	TAT Technologies Ltd. (Cl A Wts exp 10/31/94)	12/28/94

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

NASD NOTICE TO MEMBERS 95-6

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

Suggested Routing

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

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

Symbol	Name	Coupon	Maturity
SPRC.GA	Southern Pacific Rail Corp.	9.625	8/15/05
AMMO.GA	American Media Operations	11.625	11/15/04
RXEN.GA	Rexene Corp.	11.750	12/1/04
BOMT.GA	Boomtown Inc.	11.500	11/1/03
GRBK.GA	Gearbulk Holding Ltd.	11.250	12/1/04
MDFG.GA	Midland Fdg Corp.	10.330	7/23/02
PLNT.GA	Plantronics Inc.	10.000	1/15/01
WEBC.GA	Webcraft Technologies Inc.	9.375	2/15/02
CDES.GA	Card Establishment Services Inc.	10.000	10/1/03
SHUL.GA	Schuller International Group Inc.	10.875	12/15/04
ADLA.GD	Adelphia Communications Corp.	9.875	3/1/05
HMJQ.GA	Hammons John Q Hotels L.P.	8.875	2/15/04
IMAX.GA	Imax Corp.	10.000	3/1/01
DADO.GA	Data Documents	13.500	7/15/02
WCIS.GA	WCI Steel Inc.	10.500	3/15/02
ENVI.GB	Envirotest Sys Corp.	9.125	3/15/01
KNDC.GA	Kindercare Learning Center	10.375	6/1/01

As of December 29, 1994, the following change to the list of FIPS symbols occurred:

New/Old Symbol	Name	Coupon	Maturity
CYH.GA/CHSI.GA	Community Health	10.250	11/30/03

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

DISCIPLINARY ACTIONS

Disciplinary Actions Reported For January

The NASD has taken disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice; securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions will begin with the opening of business on Monday, January 16, 1995. The information relating to matters contained in this Notice is current as of the fifth of this month. Information received subsequent to the fifth is not reflected in this edition.

Firms Expelled, Individuals Sanctioned

Chelsea Street Securities, Inc. (Irving, Texas), Gary Steven Williky (Registered Principal, Colleyville, Texas), and **Peter Anthony Stoll (Registered Principal, Irving, Texas)** submitted an Offer of Settlement pursuant to which they were fined $25,000, jointly and severally. In addition, the firm was expelled from NASD membership, Williky was barred from association with any NASD member in any capacity, and Stoll was suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Williky and Stoll, failed to buy securities from and/or sell securities to public customers at prices that were fair.

The NASD also found that the firm, acting through Williky and Stoll, used instrumentalities of interstate commerce to effect transactions in nonexempt securities while failing to maintain its required minimum net capital. Furthermore, the findings stated that the firm, acting through Williky and Stoll, failed to respond to an NASD request for information and failed to file a report of the annual certified audit within the time required. In addition, the NASD determined that the firm, acting through Williky and Stoll, failed to give telegraphic notice of the firm's net capital deficiency and failed to comply with its restriction agreement with the NASD.

R. B. Webster Investments, Inc. (Lauderhill, Florida) and **Robert Bruce Orkin (Registered Principal, Coconut Creek, Florida)** were fined $200,000, jointly and severally, and ordered to pay $53,784 in restitution to customers. R. B. Webster was also expelled from NASD membership and Orkin was barred from association with any NASD member in any capacity. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a July 1993 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Orkin, effected principal transactions with public customers at unfair prices in two securities.

The SEC affirmed NASD findings that R. B. Webster and Orkin had charged markups ranging from 10 to 138 percent for one security and from 10 to 84 percent for another, in violation of the NASD Mark-Up Policy. The NASD found that the firm abused its dominant position in the market to set arbitrary prices and to execute sales to the public at arbitrarily high prices. In addition, the firm and Orkin used their domination and control of the market to manipulate the prices of such securities.

Firms Fined, Individuals Sanctioned

First Capital Securities (Provo, Utah) and **Joseph Ollivier (Registered Representative, Provo,**

Utah) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were required to pay $61,264.55 in restitution to customers. In addition, Ollivier was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ollivier maintained customer funds in an improper location in that on at least 19 occasions, he withdrew a total of $111,067.29 in customer funds from the firm and deposited the funds into a bank account, over which he was a co-signatory with his son, without the authorization of the customers. The findings also stated that Ollivier participated in private securities transactions, and the firm, acting through Ollivier, effected principal transactions in securities with retail customers at unfair and excessive prices.

In violation of Regulation T of the Federal Reserve Board, the NASD found that the firm, acting through Ollivier, extended credit in a cash account in connection with the purchase of mutual funds by a customer. Moreover, the NASD determined that the firm, acting through Ollivier, disseminated advertising and sales literature that contained exaggerated and unwarranted statements, incomplete and unfair comparisons between mutual funds and other investment vehicles, predictions and projections of investment results, and otherwise failed to conform with the NASD standards with respect to communications with the public.

Santa Fe Securities Corp. (Rancho Santa Fe, California), Randel S. Moore (Registered Principal, Rancho Santa Fe, California), and **William J. Zures (Registered Principal, Rancho Santa Fe, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally. In addition, Moore and Zures were ordered to requalify by examination as general securities principals within 60 days or be suspended from acting as such. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Moore and Zures, participated in two contingent offerings of limited partnership interests and failed promptly to transmit funds received from investors to a separate escrow account. According to the findings, the funds were transmitted directly to bank accounts opened under the limited partnerships' names wherein Moore and/or Zures were signatories and had the power to withdraw funds.

Toluca Pacific Securities Corp. (Burbank, California), Peter J. H. Blowitz (Registered Principal, Studio City, California), and **James Everett Brumm (Associated Person, Yountville, California).** The firm and Blowitz submitted an Offer of Settlement pursuant to which they were fined $25,000, jointly and severally, and Blowitz was suspended from association with any NASD member in any principal capacity for two years. In addition, Blowitz must requalify by examination in any principal capacity in which he seeks to become associated upon completion of his suspension or remain suspended in such capacity until he requalifies. Brumm was fined $10,000 and required to requalify by examination.

The sanctions against Brumm were based on findings that he became and continued to be associated with Toluca Pacific after being statutorily disqualified. Without admitting or denying the allegations, the firm and Blowitz consented to the described sanctions and to the entry of findings that they permitted Brumm, a barred individual, to become and remain associated with the firm. Furthermore, the firm, acting through Blowitz, failed to implement written or unwrittten supervisory procedures and to supervise Brumm's activities.

Firms And Individuals Fined

James W. Bullard, Jr., Inc. (New York, New York) and **Mark Israel Meskin (Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally. In addition, Meskin was required to requalify by examination 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 Meskin, conducted a securities business while failing to maintain its required minimum net capital.

Cantella & Co., Inc. (Boston, Massachusetts) and **Vincent M. Cantella (Registered Principal, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally, and agreed to implement certain improvements in the firm's supervisory, compliance, and management structure. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Cantella, failed accurately to compute its reserve requirement, which resulted in a deficiency in its reserve account.

In addition, the NASD determined that the firm, acting through Cantella, failed to comply with the requirements of Regulation T of the Federal Reserve Board in that transactions in customer accounts were not fully paid for within the prescribed time period. Transactions were also effect-

ed in frozen customer accounts, in violation of Regulation T, wherein there were no funds in the accounts before execution. The NASD also found that the firm, acting through Cantella, allowed an associated person of the firm continually to perform functions that required registration as either a general securities representative or limited representative pursuant to NASD By-Laws.

Individuals Barred Or Suspended

Diah W. Anderson (Registered Representative, Lakewood, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $6,750, barred from association with any NASD member in any capacity, and required to pay restitution to her member firm. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that she misappropriated $1,349.50 from two insurance customers.

Allan Belmonte Beraquit (Registered Representative, Edison, New Jersey) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, in connection with an investment recommendation to two public customers, Beraquit made misrepresentations to the customers, guaranteed the investment, failed to honor the guarantee, and converted $1,000 to his own benefit. In addition, Beraquit failed to respond to NASD requests for information.

Robert Meredith Blanchard (Registered Principal, Lantau Island, Hong Kong) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blanchard failed to respond to NASD requests for information concerning an investigation of his termination from a member firm.

Troy A. Briceno (Registered Representative, Chula Vista, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Briceno consented to the described sanctions and to the entry of findings that he withdrew $11,000 from a public customer's savings account, and deposited the funds into his own bank account without the customer's knowledge or consent by purchasing cashier's checks using a pre-signed withdrawal slip. The NASD determined that Briceno returned $10,000 to the customer two days later by depositing the funds into the customer's checking account, and returned the remaining $1,000 (plus $34.62 in interest) to the customer four months later by depositing the funds into her savings account. The findings also stated that Briceno caused $25,000 to be withdrawn from the same customer's checking account by obtaining a presigned personal check from the customer and making it payable to himself. The NASD determined that Briceno returned the $25,000 (plus $209.45 interest) four months later, by depositing the funds into the customer's savings account.

Vincent Whittfield Brown, Sr. (Registered Representative, Brooklyn, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brown failed to respond to NASD requests for information concerning a customer complaint.

Sherwin Presley Brown (Registered Representative, Roseville, Minnesota) submitted an Offer of Settlement pursuant to which he was fined $7,500, suspended from association with any NASD member in any capacity for five business days, and required to pay $5,432 in restitution to public customers. In addition, Brown must reassign 20,000 shares of stock transferred to him back to the issuer. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notification to his member firm.

Harold E. Butcher (Registered Representative, Bloomington, Indiana) 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, Butcher consented to the described sanctions and to the entry of findings that he received from a public customer a $1,005 check with instructions to use such funds to purchase a medical insurance policy. According to the findings, Butcher deposited the funds in an account he controlled or had an interest in, and retained a portion of the funds for his own use and benefit. The findings also stated that Butcher failed to respond to NASD requests for information.

Kendall William Cameron (Registered Representative, Bellevue, Washington) was fined $34,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination. The sanctions were based on findings that Cameron effected transactions in customer accounts while exercising discretion granted pursuant to oral authority. Cameron engaged in this activity without having obtained prior written discretionary authoriza-

tion from the customers for options trading and without written acceptance of such accounts from his member firm. Cameron also recommended option trading to the customers without having a reasonable basis for believing such recommendations were suitable for the customers.

Salvatore John Cannatella (Registered Representative, Williamsville, New York) was fined $30,000 and suspended from association with any NASD member in any capacity for 45 days. The NBCC modified the sanctions following appeal of a Chicago District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Cannatella operated as a registered person without proper registration with the NASD, and was associated with a member firm when he was statutorily disqualified. In addition, Cannatella improperly received commission-related compensation while he was not registered and failed to respond fully and timely to NASD requests for information.

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

Jon Scott Chaussee (Registered Representative, Beaver Creek, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chaussee consented to the described sanctions and to the entry of findings that he caused at least eight advertisements to be published that contained misleading and exaggerated statements and were not approved by a registered principal before their use. The findings also stated that Chaussee sent at least one letter to an individual on his previous employer's letterhead and sent a letter containing a signature guarantee stamp in direct contravention of that firm's instructions.

In addition, the NASD found that Chaussee caused at least 13 customer checks to be deposited into accounts other than accounts in which the issuers of the checks had a beneficial interest. The findings also stated that Chaussee participated in private securities transactions without providing prior written notice to his member firm and without receiving prior approval from his firm to participate in such activities; and participated in outside business activities without providing notice of such activities to his firm. Moreover, the NASD determined that Chaussee failed to amend his Uniform Application for Securities Industry Registration (Form U-4) to disclose that he was the subject of an investigation by a self-regulatory organization.

Stephen L. Cross (Registered Representative, Marietta, Georgia) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cross withheld and misappropriated for his own use and benefit customer funds totaling $110,000 intended for investment in a money market and a mutual fund.

Paula Ann Davies-Palmieri (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which she was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Davies-Palmieri consented to the described sanctions and to the entry of findings that she disclosed proprietary, non-public information to a client of her member firm for the express purpose of assisting the client tender a successful bid for certain bonds, thereby unfairly increasing the client's ability to purchase these bonds. In addition, the NASD found that Davies-Palmieri failed to respond to NASD requests for information.

Samuel Dwight Dean (Registered Representative, Lewisville, Texas) was suspended from association with any NASD member in any capacity for 30 days and required to requalify by examination in any capacity. The sanctions were based on findings that Dean participated in private securities transactions involving offers and sales of a common and preferred stock and received compensation in connection therewith without providing written notice to or receiving approval from his member firm.

Keith L. DeSanto (Registered Representative, New York, New York) was fined $15,000, suspended from association with any NASD member in any capacity for five days, and required to requalify by examination in all capacities. If DeSanto does not requalify within 60 days, he will be suspended until requalification occurs. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that DeSanto caused securities transactions to be effected in the accounts of two public customers without their knowledge, authorization, or consent.

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

Robert P. Dolan (Registered Representative, Bridgewater, Massachusetts) 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, Dolan consented to the described sanctions and to the

entry of findings that he received four insurance disbursement checks on lapsed policies, cashed the checks, paid an initial premium on a new policy for each of the customers, and misappropriated the remaining funds totaling $1,523.

Stylianos C. Elias (Registered Representative, Santa Monica, California) submitted an Offer of Settlement pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Elias consented to the described sanctions and to the entry of findings that while associated with a member firm, he opened four accounts at different branch offices of another broker/dealer without notifying his member firm in writing that he had intended to open these accounts. Furthermore, the NASD determined that Elias failed to notify his member firm in writing of his association with another member firm.

Rafael A. Fernandez (Registered Representative, Windsor, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fernandez consented to the described sanctions and to the entry of findings that he received from an insurance customer $1,500 intended for an insurance premium payment, applied $651.36 to the policy, and misused the remaining $848.64 without the customer's knowledge or consent.

Mark A. Fischer (Registered Representative, Tampa, Florida) was fined $25,050 and suspended from association with any NASD member in any capacity for 30 days. In addition, Fischer must requalify by examination in any capacity that he seeks to be associated. The sanctions were based on findings that Fischer effected unauthorized transactions in customer accounts and failed to respond to NASD requests for information.

Donald Edward Foley (Registered Representative, Manhattan Beach, California) was fined $15,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by examination in any capacity in which he seeks to become associated within 60 days following the conclusion of the suspension. If Foley fails to requalify within the time frame stated above, he will be suspended until he requalifies. The sanctions were based on findings that Foley engaged in a scheme to conceal, each month, the unrealized losses that existed in a firm inventory account, by executing sales of certain warrants before month-end to certain customer accounts and then repurchasing such warrants from these customer accounts after month-end.

David E. Freitag (Registered Representative, Cary, Illinois) 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, Freitag consented to the described sanctions and to the entry of findings that he withdrew $103,745.97 from a public customer's annuity without the customer's knowledge or consent and deposited the funds in accounts of other customers, some of which were related to him, thereby earning $5,492.03 in commissions.

Patricia Suzanne Gale (Registered Principal, Gaylord, Michigan) and **Ralph Dale Meredith (Registered Principal, Port Huron, Michigan)**. Gale was fined $50,000 and barred from association with any NASD member in any capacity. Meredith was fined $50,000 and barred from association with any NASD member in any principal or supervisory capacity. The sanctions were based on findings that Gale participated in private securities transactions while failing to notify her member firm in writing and to obtain written approval from her member firm to engage in such activities. In addition, Gale induced public customers to purchase stock by means of deceptive or fraudulent devices or contrivances and made unsuitable recommendations to customers.

Furthermore, in connection with the offering and sale of limited partnership interests, Gale and Meredith failed to return investors' funds when the terms of the contingency were not met, in violation of SEC Rule 10b-9. Moreover, Meredith failed to enforce written supervisory procedures properly or to otherwise supervise the activities of Gale concerning her unsuitable recommendations.

Joseph F. Gennocro (Registered Representative, Cheektowaga, 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, Gennocro consented to the described sanctions and to the entry of findings that he misappropriated from 30 insurance customers $3,813.01 designated for the payment of insurance premiums.

Ronald W. Gibbs (Registered Representative, Chicago, Illinois) was fined $50,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Gibbs participated in 37 private securities transactions while failing to give his member firm prior written notice of his intention to engage in

such activities.

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

Brian D. Griffiths (Registered Representative, Centerville, Massachusetts) 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, Griffiths consented to the described sanctions and to the entry of findings that he received from a public customer $10,000 intended for mutual fund investment, and without the customer's knowledge or consent converted the proceeds to his own use and benefit.

Jose M. Gutierrez (Registered Representative, Avenel, New Jersey) submitted an Offer of Settlement pursuant to which he was fined $17,775, barred from association with any NASD member in any capacity, and required to pay $1,555 in restitution to his member firm. Without admitting or denying the allegations, Gutierrez consented to the described sanctions and to the entry of findings that he obtained from a public customer a $1,555 check to be credited to the customer's account. The NASD found that, without the customer's knowledge or consent, Gutierrez endorsed the check and deposited it to his account for his own use and benefit. In addition, the NASD found that Gutierrez failed to respond to NASD requests for information.

Harold B. Hayes (Registered Representative, Pleasant Hill, California) was fined $300,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following the appeal of an April 1993 NBCC decision. The sanctions were based on findings that Hayes entered into a payment arrangement with the issuer of common stock whereby he purchased the stock offering with the proceeds from subsequent sales, in violation of SEC Rule 10b-5. Hayes then effected a series of transactions in the common stock that created actual and apparent trading activity to induce the purchase or sale of the stock by others. However, Hayes failed to disclose to his customers the special payment arrangement, that he was paying for the stock with the proceeds of its sales at higher prices to the customers, or that his self-interest could influence recommendations to his customers. As a result of this fraudulent activity, Hayes realized profits of $277,564.

As a creditor and a customer, Hayes arranged for the extension of credit to himself in his payment arrangement with the issuer of the common stock, in violation of Regulation T, and, as a borrower who caused an extension of credit, violated Regulation T, thereby violating Regulation X of the Federal Reserve Board. In furtherance of the manipulative scheme, Hayes solicited customers and recommended purchases of the aforementioned stock by making misrepresentations and omitting material facts. Furthermore, in his plan to manipulate the stock, Hayes was an undisclosed underwriter in the securities' distribution in that he purchased the stock from the issuer for the purpose of distributing them.

Richard Albert Hernandez (Registered Representative, Torrance, California) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hernandez failed to respond to NASD requests for information regarding his termination from a member firm.

Kenneth A. Horwitz (Registered Representative, Auburn, Indiana) 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, Horwitz consented to the described sanctions and to the entry of findings that he requested from his member firm a $1,000 cash advance on behalf of a registered representative without the individual's knowledge or consent. The NASD determined that Horwitz deposited the funds or caused them to be deposited in an account in which he had a beneficial interest, and used the funds for some purpose other than to benefit the registered representative. The findings also stated that Horwitz failed to respond to NASD requests for information.

David M. Hume (Registered Representative, Portland, Oregon) was fined $15,000 and suspended from association with any NASD member in any capacity for 30 days. The NBCC modified the sanctions following appeal of a Seattle DBCC decision. The sanctions were based on findings that Hume recommended to public customers the purchase and sale of securities through the use of margin and a dividend recapture strategy without having reasonable grounds for believing that the transactions were suitable for the customers considering their financial situation, investment objectives, and needs.

Stephen Ray Hunt (Registered Representative, Springfield, Missouri) submitted an Offer of Settlement pursuant to which he was fined $5,000, barred from association with any NASD member in any capacity, and must pay $25,500 plus interest in restitution to entitled parties. Without admitting or denying the allegations, Hunt consented to the described sanctions and to the entry

of findings that he received from public customers checks totaling $45,500 for the purchase of a securities fund and mutual fund and, instead, endorsed the checks and retained the proceeds. The NASD also found that Hunt sent to the same customers fictitious statements that had been altered to reflect the customers' requested purchases, although no such purchases were made. In addition, the findings stated that Hunt failed to respond to NASD requests for information in a timely fashion.

Mark A. Kolowich (Associated Person, Palm Desert, California) 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, Kolowich consented to the described sanctions and to the entry of findings that he submitted to his member firm a Form U-4 that contained false information regarding his disciplinary history.

David M. Lalima (Registered Representative, Tampa, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lalima consented to the described sanctions and to the entry of findings that he caused a $41,000 check to be issued from the account of a public customer and converted the proceeds to his own use and benefit without the customer's authorization.

Stephen V. Lamoreaux (Registered Representative, New Fairfield, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lamoreaux consented to the described sanctions and to the entry of findings that, without authorization, he diverted public customer funds totaling $118,950 to his control and benefit. The NASD found that Lamoreaux engaged in this activity through the alteration of five checks and forgery of a letter of authorization, and thereafter converted the funds to his own use without the knowledge or consent of the customer.

Kevin Francis LaPlante (Registered Representative, Maple Grove, Minnesota) was fined $7,500, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination in any capacity that he wishes to function. The NBCC imposed the sanctions following review of a Kansas City DBCC decision. The sanctions were based on findings that LaPlante failed to amend his Form U-4 to disclose that he was the subject of a disclosable criminal prosecution. In addition, LaPlante failed to respond to NASD requests for information.

Frank A. Latronica, Jr. (Registered Representative, Westminister, California) submitted an Offer of Settlement pursuant to which he was fined $36,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Latronica consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to provide prompt written notification to his member firm before participating in such transactions.

Marc David Lieber (Registered Representative, Dallas, Texas) was fined $10,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to disgorge $13,268. The sanctions were based on findings that Lieber effected unauthorized and excessive transactions in the accounts of a public customer. The NASD found that Lieber engaged in this activity without having reasonable grounds for believing that such transactions were suitable for the customer upon the basis of facts, if any, disclosed as to her other security holdings, financial situation, and needs.

Cynthia B. Maglio (Associated Person, New Britain, Connecticut) submitted a Letter of Acceptance, Waiver and Consent 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, Maglio consented to the described sanctions and to the entry of findings that she received from insurance customers $4,631.69 intended for insurance premium payments, and without the knowledge or consent of the customers misappropriated the funds for her own use and benefit.

Mary Martha Martin (Registered Principal, Long Beach, New York) and **Michael Peter Galterio (Registered Principal, Wantagh, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which Martin was fined $2,500, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by examination as a general securities principal. Galterio was fined $2,500 and suspended from acting in a supervisory capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that a member firm, acting through Martin, failed to comply with SEC Rule 15c2-6 in that they sold shares of des-

ignated securities to non-established and non-accredited public customers, in contravention of the Rule's strict compliance requirements.

The NASD also found that the firm, acting through Martin, distributed to public customers sales literature that was misleading, unwarranted, contained promissory statements, and failed to adhere to the specific standards regarding recommendations. In addition, the findings stated that the firm, acting through Galterio, failed to supervise the activities of Martin as to her compliance with SEC Rule 15c2-6.

Keith M. Mason (Registered Representative, Detroit, Michigan) was fined $35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mason obtained a $3,000 cashier's check from a public customer with instructions to use the funds as an investment in an annuity account. Mason failed to follow said instructions, deposited the funds in an account in which he had a beneficial interest, and used the funds for some purpose other than for the benefit of the customer. The findings also stated that Mason failed to respond to NASD requests for information.

Christopher D. McFarland (Registered Representative, Burnham, Illinois) submitted an Offer of Settlement pursuant to which he was fined $2,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, McFarland consented to the described sanctions and to the entry of findings that, on two occasions, he signed and submitted to the NASD a Form U-4 that failed to disclose that he pled guilty to two counts of misdemeanor retail theft in 1984.

Craig Medoff (Registered Representative, New York, New York) was fined $120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Medoff made misrepresentations and omissions of material facts to induce public customers to purchase a large position in a corporation. In addition, Medoff guaranteed the same customers' investments and forged one of their signatures on a letter of authorization providing for the transfer of shares from a customer's account to unrelated accounts without the customer's knowledge or consent. Furthermore, Medoff failed to respond to NASD requests for information.

Mark R. Mellinger (Registered Representative, Manitowac, Wisconsin) 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, Mellinger consented to the described sanctions and to the entry of findings that he obtained a $5,000 check made payable to a public customer as a partial surrender for a single premium retirement annuity for the customer. According to the findings, Mellinger was instructed by the customer to use the funds to pay the remainder owed on a $22,000 whole life policy for the customer, but failed to follow said instructions. Instead, the NASD found that Mellinger deposited the check in an account in which he had a beneficial interest without the customer's knowledge or consent, used only $578.08 as instructed, and used $4,421.92 for some purpose other than to benefit the customer.

Dennis Lee Moore (Registered Representative, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Moore consented to the described sanctions and to the entry of findings that he signed a public customer's name to an authorization for change of dealer form without the knowledge or consent of the customer.

Jann L. Nichols (Registered Representative, Orange, California) submitted an Offer of Settlement pursuant to which she was fined $40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nichols consented to the described sanctions and to the entry of findings that she participated in private securities transactions while failing to provide prompt written notification to her member firm before participating in such transactions.

Michael A. Niebuhr (Registered Representative, La Costa, California) was fined $15,000, which can be offset upon demonstration that he has paid $4,414 in restitution to a customer. Niebuhr was also suspended from association with any NASD member in any capacity for 90 days and thereafter until restitution has been paid in full. The NBCC affirmed the sanctions on review of a Los Angeles DBCC decision. The sanctions were based on findings that Niebuhr violated Section 5 of the Securities Act of 1933 by offering and selling unregistered stock to public customers. In addition, Niebuhr received shares of stock at no cost, purportedly as a bonus, and recommended and sold those shares to a customer without disclosing certain material information to the customer. Specifically, Niebuhr failed to disclose that he was selling his own stock at the same time he was recommending that the customer purchase it, that the shares

that would fill the customer's purchase orders were those he owned in his personal account, and that he received those shares at no cost. As a result of these transactions, Niebuhr made a $3,966 profit.

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

Richard D. North (Registered Representative, Duxbury, Massachusetts) was fined $2,000,000 and barred from association with any NASD member in any capacity. However, the fine may be reduced to $200,000 upon demonstration that he has paid $1,862,299 in restitution to public customers. The sanctions were based on findings that, on behalf of at least six clients, North had under his control and management various assets in the form of cash and securities totaling about $1,862,299 that he converted to his own personal use and benefit. Furthermore, North prepared and sent to the aforementioned clients statements reflecting various investments and portfolio values all of which were false and misleading. In addition, North failed to respond to NASD requests for information.

Sheldon W. Olander, a.k.a, Shelley W. Olander (Associated Person, Van Nuys, California) submitted an Offer of Settlement pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. In addition, Olander must pay $3,600 in restitution to a customer. Without admitting or denying the allegations, Olander consented to the described sanctions and to the entry of findings that he solicited a customer to buy shares of stock and received $3,600 from the customer. The NASD determined that Olander did not use the funds to purchase the stock for the customer, but converted the funds for his own use.

Paul David Pack (Registered Representative, Philadelphia, Pennsylvania) was fined $5,000 and suspended from association with any NASD member in any capacity commencing November 9, 1993 and concluding September 13, 1994. The SEC imposed the sanctions following appeal of a May 1994 NBCC decision. The sanctions were based on findings that Pack obtained a year-to-date production statement that reflected commissions of $196,385.43 earned by one of his colleagues and affixed his own name to the statement. At that time, his own year-to-date production had been $75,748.99. When Pack sought employment with another firm, he submitted the altered production statement to the firm and falsely represented it as his own.

Steven P. Palladino (Registered Representative, Westwood, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Palladino consented to the described sanctions and to the entry of findings that he withheld and misappropriated for his own use and benefit insurance customer funds totaling $40,361.

Cabin W. Parker (Registered Representative, Newport Beach, California) was fined $31,595.28 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Parker effected unauthorized transactions in a customer's account and failed to respond to NASD requests for information regarding his handling of customer accounts.

Frank Nicholas Pellegrino (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pellegrino consented to the described sanction and to the entry of findings that he hired an individual to impersonate him at two PROCTOR® Certification Testing Centers to take qualifications examinations for him.

Michael Joseph Pierce (Registered Representative, New York, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pierce failed to respond to NASD requests for information regarding allegations made by public customers of unauthorized trading.

Krishna Prasad (Registered Representative, Farmington Hills, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $60,000, barred from association with any NASD member in any capacity, and required to pay $11,731.16 in restitution to a member firm. Without admitting or denying the allegations, Prasad consented to the described sanctions and to the entry of findings that he signed, or caused to be signed, customers' names on policy owners' service request forms without the customers' knowledge and consent, resulting in funds being issued from these policies totaling $11,731.16. In connection with this activity, the findings stated that Prasad obtained the funds and used it for some purpose other than for the benefit of the customers.

Carol Ann Rhoads (Registered Principal, Little Rock, Arkansas) submitted an Offer of Settlement pursuant to which she was fined $2,734 and suspended from association with

any NASD member in any capacity for two months. Without admitting or denying the allegations, Rhoads consented to the described sanctions and to the entry of findings that she participated in and received compensation for the sale of a zero coupon certificate of deposit without providing prior written notice to her member firm.

Todd M. Riley (Registered Representative, Weidman, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Riley consented to the described sanctions and to the entry of findings that he received from public customers funds totaling $751 with instructions to use the funds to purchase insurance policies. The NASD determined that Riley used the funds for some purpose other than for the benefit of the customers.

Edward Lawrence Ripley (Registered Representative, Ross, California) 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 Ripley recommended certain securities to a public customer and thereafter effected purchase transactions in the customer's account without the customer's knowledge or consent.

Roneice A. Seckman (Registered Representative, Littleton, Colorado) was fined $100,000 and barred from association with any NASD member in any capacity. In addition, Seckman must pay $145,305 in restitution as ordered by the State of Colorado, Second Judicial District Court. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Seckman obtained and misused customer funds by forging signatures to applications for loans against the cash value of 13 insurance policies and submitting unauthorized change of address forms reflecting addresses under her control. As a result, Seckman received $132,966 in policy loan checks made payable to the customers, forged their endorsements on the checks, and used the funds for her personal benefit.

Steven Arnold Seffren (Registered Representative, New York, New York) was fined $80,000, barred from association with any NASD member in any capacity, and required to pay $53,352 in restitution. The sanctions were based on findings that Seffren made recommendations to a public customer without having a reasonable basis to believe that the recommendation was consistent with the customer's stated investment objectives or suitable based on her financial needs. Furthermore, Seffren prepared a letter to his clearing firm and signed the same customer's name to the letter authorizing the withdrawal of $20,000 from the customer's account without her prior authorization or consent.

Also, Seffren changed certain information on transfer papers executed by the same customer without the customer's authorization, thereby transferring her account to a different firm than was indicated by Seffren. Thereafter, Seffren purchased shares of a common stock in the customer's account without her prior authorization, knowledge, or consent. Seffren also participated in private securities transactions for compensation without providing written notice to his member firm, and failed to respond to NASD requests for information.

Linda Sue Smith (Associated Person, Del Rey Oaks, California) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Smith failed and refused to provide the NASD with requested documents.

Patricia H. Smith (Registered Representative, Hanover, Pennsylvania) was fined $7,500, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by examination before again becoming registered in any capacity. The NBCC affirmed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that, on four occasions, Smith submitted to her member firms applications for the purchase of securities with her name listed on the application as the soliciting representative, when, these transactions had actually been solicited by other unregistered individuals.

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

Steven Lance Smith (Registered Representative, Prior Lake, Minnesota) 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 30 days. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he participated in private securities transactions by selling shares of a common stock to public customers without providing prior written notice to his member firm.

John Paul Sopsic, Jr. (Registered Principal, Apple Valley, Minnesota) submitted an Offer of Settlement pursuant to which he was fined $1,000 and barred from association with any NASD member in any capacity. Without admitting or deny-

ing the allegations, Sopsic consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in a timely manner.

Don Spendlove (Registered Representative, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Spendlove consented to the described sanctions and to the entry of findings that he submitted a falsified document in connection with his application for registration with the NASD.

Ronald Peter St. Cyr (Registered Representative, Brooklyn, New York) was fined $27,500 and barred from association with any NASD member in any capacity. However, the fine may be offset against any amount he pays in restitution to public customers or his member firm. The sanctions were based on findings that St. Cyr received from public customers endorsed policy loan checks totaling $2,026.26 for insurance payments and other investments and, instead, cashed the checks and used the funds for his own personal use. Furthermore, St. Cyr forged the endorsement of another customer on a loan request form and on a $878.01 check for an unauthorized loan and used the funds for his own personal use. In addition, St. Cyr failed to respond to NASD requests for information.

Richard K. Steele, Sr. (Registered Representative, Beverly Hills, California) 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 days. Without admitting or denying the allegations, Steele consented to the described sanctions and to the entry of findings that he participated in a private securities transaction while failing to provide prompt written notification to his member firm before participating in such transaction.

Joseph Eugene Torres, Jr. (Registered Representative, Deer Park, New York) was fined $75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Torres caused shares of common stock to be purchased in the accounts of public customers without the knowledge or consent of the customers. Furthermore, Torres made various misrepresentations to public customers concerning purchase and sale transactions in the customers'accounts. Thereafter, in an attempt to conceal these misrepresentations to one customer, Torres altered, or caused to be altered, a confirmation slip reflecting an inaccurate sale price. In addition, Torres failed to honor a $31,627.50 joint and several NASD arbitration award and failed to respond to NASD requests for information.

David C. White (Registered Representative, Framingham, 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, White consented to the described sanctions and to the entry of findings that he received from an insurance customer $1,469 intended for payment of a homeowners' insurance policy premium and without the customer's knowledge or consent, converted the funds for his own use and benefit.

Robert P. Willard (Associated Person, Bloomington, Indiana) 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, Willard consented to the described sanctions and to the entry of findings that, in an attempt to receive commissions, he forged a customer's signature on a surrender of paid-up additions form, resulting in the cancellation of and the payout of proceeds from an existing term life insurance policy previously purchased by the customer. The NASD found that Willard used the proceeds to purchase a whole life insurance policy for the customer without the customer's knowledge or consent. In addition, the NASD determined that Willard forged another customer's signature on an application for term conversion form resulting in the cancellation of an existing term life insurance policy previously purchased by the customer and the issuance of a new whole life insurance policy to the customer. The findings also stated that Willard forged the same customer's signature on a policy loan agreement for the new whole life insurance policy, that was purchased for the customer without his knowledge or consent.

Individuals Fined

James Woo Fong (Registered Representative, Newton Centre, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and required to requalify by examination as a registered representative. Without admitting or denying the allegations, Fong consented to the described sanctions and to the entry of findings that he engaged in private securities transactions outside the regular course or scope of his association with his member firm without providing prior written notice to the firm.

Curtis W. Haggar (Registered

Principal, Grand Junction, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and required to requalify by examination before becoming associated with any NASD member in any capacity. Without admitting or denying the allegations, Haggar consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notice of such activities to his member firm. The findings also stated that Haggar effected transactions in the accounts of two public customers pursuant to an oral grant of discretion, while failing to obtain prior written discretionary authority from the customers and the acceptance of the account as discretionary by his member firm.

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of Article IV, Section 5 of the NASD Rules of Fair Practice and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after each entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Aaogi Investment Corp., Sandy, Utah (December 23, 1994)

Arthur Highland Company, Scottsdale, Arizona (December 23, 1994)

CMS Financial Group, Inc., Virginia Beach, Virginia (December 23, 1994)

E.F. Martin & Company, Inc., South Charleston, West Virginia (November 30, 1994)

Jenkins Securities Corporation, Norcross, Georgia (November 25, 1994)

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

Jeremy S. Cohen, Dallas, Texas

Allen D. Hawkins, Clarksville, Indiana

Michael T. Johnston, Fort Lauderdale, Florida

Finley H. Martell, Irvine, California

Herbert B. Moriarty, III, Memphis, Tennessee

Jon C. Stanley, Honolulu, Hawaii

Firm Suspended Pursuant To Article VI Section 2 Of The NASD Code Of Procedures For Failure To Pay An Arbitration Award

The date the suspension commenced is listed after each entry.

Emanuel & Co., New York, New York (December 6, 1994)

Individuals Whose Registrations Were Cancelled/Suspended Pursuant To Article VI Section 2 Of The NASD Code Of Procedures For Failure To Pay Arbitration Awards

The date the suspension commenced is listed after each entry.

David Charles Dever, Huntington, New York (December 8, 1994)

Frederic William Rittereiser, Lakehurst, New Jersey (December 8, 1994)

Peter Theodorellis , Brooklyn, New York (December 6, 1994)

The Citadel Funding Corporation Pays NASD-Imposed Fine For Highly Leveraged Repo Transactions Violations; NASD Also Suspends Two Of Its Principals

The National Association of Securities Dealers, Inc. (NASD), has taken disciplinary action against The Citadel Funding Corp. (Citadel) of Denver, Colorado and three of its principals, Robert I. Kessler (Kessler), Karen Haschenburger (Haschenburger), and Michael A.J. Farrell (Farrell).

Pursuant to an Offer of Settlement in which the respondents neither admitted nor denied the allegations, Citadel, Haschenburger, and Farrell were fined $150,000, jointly and severally, and Kessler was fined $25,000. In addition, Haschenburger was suspended from association with any NASD member in any capacity for 15 days, and Farrell was suspended from association with any NASD member in any capacity for 30 days. Haschenburger and Farrell must requalify by examination.

The NASD found that Citadel conducted a securities business while failing to maintain minimum financial standards required under federal net capital securities laws on six separate occasions. Kessler and Haschenburger were found to be responsible for all of these violations, while Farrell was found responsible for one of the net capital violations.

The NASD also found that in connection with two of the net capital violations, Citadel, acting through Kessler and Haschenburger, failed to

send prompt telegraphic notice of the violations to the Securities and Exchange Commission and the NASD.

These net capital deficiencies resulted from the firm's failure to accurately account for certain highly leveraged lending and borrowing transactions that it engaged in to finance its operations, and purchases of large amounts of securities by customers of its affiliate, Kessler-Ehrlich Investments, Inc. These borrowing and lending transactions, referred to as repurchase and reverse repurchase agreements, involved the transfer of large amounts of U.S. Government and mortgage-backed securities to collateralize financing arrangements totaling about $900 million.

In addition to these violations, the NASD found that Citadel, acting through Kessler, Haschenburger, and Farrell, maintained materially inaccurate books and records, and filed inaccurate specialized financial FOCUS Reports with the NASD. Citadel, Kessler, and Farrell were also found to have allowed Farrell to represent himself as president of Citadel and to act as a principal of the firm without being properly qualified.

"This enforcement action by the NASD is indicative of our commitment to focus our regulatory efforts on significant activity in highly leveraged financing arrangements and on the financial integrity of our member firms," says Frank Birgfeld, District Director of the Denver regional office of the NASD. "Based on the facts and findings in this matter, we believe the interests of the investing public have been well served."

The Offer of Settlement resolves two complaints issued by the District Business Conduct Committee for the Denver region following an extensive examination of the firm by the local NASD staff. The Denver region of the NASD exercises jurisdiction over members with main and branch

FOR YOUR INFORMATION

SEC Approves Amendment To Section 65 Of Uniform Practice Code

On November 30, 1994, the SEC approved an amendment to Section 65 of the Uniform Practice Code relating to customer account transfers. The NASD filed the amendments along with other amendments to the NASD's rules designed to implement the SEC's mandate to move to T+3 settlement of securities transactions. Although the SEC continues to consider the remaining NASD T+3 rule changes, the amendments to Section 65 were approved on an accelerated basis to permit the implementation of changes to the Automated Customer Account Transfer System (ACATS).

The amendments to Section 65, among other things: (1) require members to validate or object to a transfer within three days; (2) require members to complete the transfer within four days of validation; (3) place more limits on the ability of a member to object to a transfer; (4) resolve discrepancies within five days; (5) mandate the use of ACATS for partial account transfers and transfers of mutual fund shares; and (6) mandate the transfer of residual credit balances for six months. To coincide with the implementation of changes to the ACATS system, the amendments to the NASD's rules and other self-regulatory organizations took effect on December 2, 1994, *except* for the requirement to transfer residual credit balances for six months, which will take effect on March 3, 1995.

NASD Free-Riding And Withholding Interpretation Changed

On December 7, 1994, in Release No. 34-35059, File No. SR-NASD-94-15, the SEC approved amendments relating to the NASD's Free-Riding and Withholding Interpretation (Interpretation), an Interpretation of the Board of Governors under Article III, Section 1 of the Rules of Fair Practice. The changes to the Interpretation affect stand-by purchase arrangements by restricted persons; the definition of immediate family members, public offerings, and associated persons; the use of the "carve out" mechanism for restricted persons in Investment Partnerships and Corporations; issuer-directed securities; and other provisions of the Interpretation. The NASD will be publishing a *Notice To Members* in February 1995 that will contain a detailed discussion of these changes.

Reuters' New York Office Moves

Reuters New York financial news bureau moved on January 16, 1995. As of this date, the corporate news reporting desk, industry specialist correspondents, and stock market reporting team will be located at:

166 Water Street
New York, NY 10038
Telephone: (212) 859-1700
Fax: (212) 859-1717.

NASD NOTICE TO MEMBERS 95-7

SEC Approves NASD Proposal Amending Free-Riding And Withholding Interpretation Provisions

Suggested Routing

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

Executive Summary

On December 7, 1994, in SEC Release No. 34-35059, File No. SR-NASD-94-15, the Securities and Exchange Commission (SEC) approved amendments to the NASD Free-Riding and Withholding Interpretation (Interpretation), an Interpretation of the Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice. The changes to the Interpretation affect:

• stand-by purchase arrangements by restricted persons;

• the definition of immediate family members, public offerings, and associated persons;

• the use of the "carve out" mechanism for restricted persons in Investment Partnerships and Corporations;

• issuer-directed securities; and

• other provisions of the Interpretation.

The rule change was effective on December 7, 1994.

Background And Description

The Interpretation protects the integrity of the public offering system by ensuring that members make a bona fide public distribution of "hot-issue" securities and do not withhold such securities for their own benefit or use the securities to reward other persons who are in a position to direct future business to the member. Hot issues are defined by the Interpretation as securities of a public offering that trade at a premium in the secondary market whenever such trading commences. The Interpretation prohibits members from retaining the securities of hot issues in their own accounts and prohibits members from using sales of such securities to directors, officers, employees, and associated persons of members and other broker/dealers. It also restricts member sales of hot-issue securities to the accounts of specified categories of persons, including among others, senior officers of banks, insurance companies, registered investment companies, registered investment advisory firms, and any other persons within such organizations whose activities influence or include the buying or selling of securities. These basic prohibitions and restrictions are also made applicable to sales by members of hot-issue securities to accounts in which any such persons may have a beneficial interest and, with limited exceptions, to members of the immediate family of those persons restricted by the Interpretation.

The substantive amendments to the Interpretation are as follows.

Stand-By Arrangements

Before the amendments, the Interpretation prohibited the sale of a hot issue to a group of stand-by purchasers if any purchaser is restricted under the Interpretation and has a beneficial interest in the stand-by account. This prohibition could affect the successful completion of an offering in which some of the offered securities are not otherwise purchased during the offering period. The Interpretation has been amended to permit restricted accounts to purchase hot-issue securities pursuant to a stand-by arrangement (i.e., an agreement to purchase securities not purchased during the offering period) under certain conditions:

• disclosure of the arrangement in the prospectus;

• the arrangement is the subject of a formal written agreement;

• the managing underwriter represents in writing no other purchases were available;

• three-month holding period.

Members are reminded that when the securities are sold by the stand-by purchasers, such purchases would need to comply with all applicable regulatory requirements including prospectus delivery pursuant to Section 5 of the Securities Act of 1933 and Rule 10b-6 under the Securities Exchange Act of 1934.

Definition Of Immediate Family

The Interpretation previously restricted immediate family members of persons enumerated in Paragraph 2 (persons associated with broker/dealers), and Paragraphs 3 and 4 (persons having a connection to the offering and individuals related to banks, insurance companies, and other institutional type accounts) of the Interpretation from participating in hot-issue distributions. The Interpretation defined immediate family members very broadly and included such persons as father-, mother-, brother-, and sister-in-law. The NASD determined that the immediate family member provisions often placed inequitable restrictions on a person with a fairly remote connection to a restricted person named in the Interpretation (e.g., the sister-in-law of a bank vice president), and often resulted in unduly burdensome compliance difficulties for members monitoring whether such persons are restricted or become restricted. The amendments to the immediate family member provisions will ensure that those persons with a substantial nexus to a restricted person will be similarly restricted under the Interpretation, provide a clearer test for NASD members in determining whether such persons are restricted, and eliminate the Interpretation's application to persons for whom the restriction did not serve an important regulatory purpose.

The amendments do the following:

• retain the investment history exemption, and expand it to include the use of investment history at firms other than the member making the allocation. The burden of obtaining such information would remain with the firm making the sale;

• the immediate family restrictions on persons enumerated in paragraphs 3 and 4 of the Interpretation are eliminated and the Interpretation only applies to the enumerated individuals in those categories and to persons who are supported directly or indirectly to a material extent by the restricted person;

• the immediate family restrictions on persons associated with broker/dealers continue to apply to persons supported by the restricted individual and to allocations by the restricted individual's firm, but no longer prohibit sales to non-supported family members of a person associated with a broker/dealer by a broker/dealer that does not employ the restricted person, where the restricted person has no ability to control the allocation of the hot issue.

It will continue to be a violation if it can be determined that the restricted person has a beneficial interest in the account to which an allocation is made.

Venture Capital Investors

The NASD concluded that bona fide venture-capital investors should be allowed to purchase a hot issue to maintain their percentage ownership in an entity, notwithstanding that the venture-capital investor may be a restricted person, or that such person may have a beneficial interest in the venture-capital account. Venture-capital investors often play a pivotal role in the continued viability of an entity before its public offering, and such an investor should be allowed to maintain his or her ownership interest after the entity completes its public offering.

The venture capital investor, to purchase the hot issue without implicating the Interpretation's restrictions, will have to meet these conditions:

• one year of pre-existing ownership in the entity;

• no increase in the investor's percentage ownership above that held for the three months before the filing of a registration statement in connection with the initial public offering;

• a lack of special terms connection with the purchase; and

• the venture-capital investor will not sell, pledge, hypothecate, or otherwise dispose of the securities for three months after the effective date of the registration statement in connection with the offering.

The NASD believes that the conditions imposed on the venture-capital investor ensure that the securities may be purchased by a bona fide venture-capital investor who has had an on-going interest in an entity, yet protects against any attempt to circumvent the Interpretation's restrictions by investing in an entity shortly before its public offering.

Investment Partnerships And Corporations

Before the amendments, the Interpretation, under Investment Partnerships and Corporations, generally disallowed sales of a hot issue to an investment partnership or corpora-

tion, or similar account (investment partnership) if a restricted person has a beneficial interest in the entity. In August 1992 and October 1993 Notices to Members, the NASD announced it was going to allow investment partnerships, on an interim basis, to use a carve-out mechanism to prevent restricted persons with an interest in an investment partnership from participating in hot-issue allocations. This carve-out mechanism required the NASD member making such allocation to set up a separate account for these transactions and obtain from the investment partnership and its accountant's documentation that indicates that the restricted persons are prevented from participating in a hot-issue allocation.

The NASD concluded that the carve-out methodology was the most equitable and appropriate approach for investment partnerships in which restricted persons have a beneficial interest, and the carve-out procedure has been codified under the Beneficial Interest section of the Interpretation. The carve-out procedure will not allow a person restricted under the Interpretation to receive a hot-issue allocation inconsistent with the Interpretation's provisions, but will not inequitably penalize persons not restricted under the Interpretation due to their interest in an investment partnership in which a restricted person also has an interest. A typical scenario is where a limited partnership with many limited partners is restricted under the Interpretation because one of the limited partners is an officer of an insurance company, and therefore restricted under Paragraph 4 of the Interpretation. Rather than restricting the whole limited partnership, the carve-out procedure would allow the limited partnership to purchase the hot issue by properly allocating the hot issue away from the restricted limited partner according to the specified requirements proposed.

In addition, the NASD believes that a beneficial interest, as defined under the previous Interpretation, should not be created by the receipt of a management fee based on the performance of an account. The NASD believes that investment partnerships and other similar accounts require that the management fee structure of such accounts include a performance-based component. Thus, an investment advisor restricted under Paragraph 4 of the Interpretation could restrict an entire investment partnership, in which no restricted persons have an interest, based solely on the investment advisor receiving a fee based on the performance of the securities in the investment partnership account. The NASD believes that the receipt of a performance-based fee, without the existence of any other beneficial interest, should not create such an interest.

Definition Of Public Offering

Under the previous Interpretation, the definition of a public offering included all distributions of securities, whether registered or unregistered under the Securities Act of 1933. The NASD concluded that the definition had the unintended effect of implicating the Interpretation's restrictions for bona fide private placements of securities that do not present the potential abuses that the Interpretation is intended to guard against. The amendment to the definition, which will not apply the Interpretation to a traditional private placement of securities, is appropriate because such distributions generally are limited in scope and have holding periods placed on the placed securities. Thus, such placements will not be within the purview of the Interpretation in that distribution is limited and that the potential for restricted persons to purchase the securities and resell or "flip" them in a short period of time is limited due to the resale restrictions associated with such offerings.

Associated Person Definition

Article I, Section (m) of the NASD By-Laws defines a "person associated with a member" to include a partner of a broker/dealer and any person who is directly or indirectly controlling or controlled by such member, whether or not such person is registered with the Association. The NASD has found that a certain degree of confusion exists as to the status of passive investors in broker/dealers, such as broker/dealer limited partners, equity owners, or subordinated lenders.

The NASD believes that, under certain circumstances, such persons should not be restricted as persons associated with a broker/dealer for purposes of the Interpretation due to their limited, passive investment in a broker/dealer. Thus, the NASD has determined that if a person owns or has contributed 10 percent or less to a broker/dealer's capital, such person should not be construed to be an associated person; provided that such ownership interest is a passive investment, the person does not receive hot issues from the member in which he or she has the ownership interest, and that the broker/dealer is not in a position to direct hot issues to the person. The NASD believes that the limitations placed on such persons not to be considered associated persons will prevent the same from attempting to use their ownership interests in a broker/dealer to effect the purchase of hot issues, and circumvent the Interpretation's objective of a bona fide distribution of a hot issue. This definition is being used only to determine restriction under the Interpretation and should not be construed as determinative of whether a person is associated with a broker/dealer for other purposes.

Persons Associated With Limited Business Broker/Dealers

Similar to the status of persons with a limited ownership interest in a broker/dealer, the NASD concluded that persons associated with certain broker/dealers that transact a limited securities business should also not be restricted as associated persons under Paragraph 2 of the Interpretation. Specifically, the Interpretation has been amended so that persons associated with broker/dealers whose business is limited to direct participation programs or investment company/variable product securities will not be restricted under the Interpretation to the same extent as those persons associated with broker/dealers with a more comprehensive securities business. It should be noted, however, that the amendment applies only to a person associated with such a limited broker/dealer, and not to the broker/dealer itself. The NASD does not believe that it is appropriate for any NASD member to purchase a hot-issue security for its own account, regardless of the scope of its securities business.

Issuer-Directed Securities

Previously, an employee of an issuer, who also was restricted under the Interpretation, had to receive permission from the NASD Board of Governors to purchase hot-issue securities of its employer, if the employee did not have the requisite investment history with the NASD member making the securities distribution.

The NASD concluded that it was inequitable to impose such restrictions on employees of issuers who are in most cases tangentially restricted under the Interpretation, in connection with their purchase of securities issued by their employer. Issuer-directed share programs are viewed as a valuable tool in employee development and retention, and the NASD does not believe that the objectives of the Interpretation are furthered by imposing essentially the same restrictions on such purchases as those not involving an employer/employee relationship. Thus, the amendment to the Issuer Directed Securities section of the Interpretation will allow employees of issuers to purchase hot-issue securities of the employer under the same terms and conditions as persons associated with NASD members are permitted to purchase securities issued by the member, pursuant to an exemption provided in Section 13 of Schedule E to the NASD By-Laws.

Under the changes to the issuer-directed provision of the Interpretation, the employee will still be restricted if the restricted person directly or indirectly materially supports the employee. If permission is granted by the Board of Governors, the employee is allowed to purchase the securities of the employer without meeting the investment history requirement, but the amount purchased would still have to meet the insubstantial and not disproportionate tests described above.

Cancellation Provision

The NASD determined to clarify in the Interpretation that it will not be a violation if an NASD member makes an allocation of a hot issue to a restricted person or account, so long as the member canceled the trade and reallocated the security at the public offering price to a unrestricted account, prior to the end of the first business day after the date on which secondary market trading begins. The NASD believes that the clarification will remedy any concerns caused by inadvertent violations of the Interpretation that are corrected by the NASD member making the distribution.

To help members meet their responsibilities under this cancellation provision, the NASD will provide notification on the Nasdaq News Frame of the name of those new issues that the NASD has determined to have traded at a premium in the secondary market and therefore will be subject to regulatory review by the NASD under its Free-Riding Interpretation. This notification on the News Frame will take place by no later than after the close of business on the first day of trading and will continue to be displayed on the next business day as well. This will allow members adequate time to cancel trades made to restricted accounts and to reallocate those shares.

Members are reminded that cancellation and reallocation may raise issues under Rule 10b-6. Members are directed to the SEC Release approving these rule changes where this issue is discussed.

Other Considerations

The amendments to the Interpretation clarify the NASD's position that unregistered investment advisors (persons who manage hedge funds, investment partnerships or corporations, investment clubs, or similar entities) are considered Paragraph 4 restricted persons. The amendments also make clear that if investment partnerships and corporations accept investment funds from other investment entities, the investing entities must provide the partnership or corporation with documentation and assurances as outlined in the Rule that restricted persons, if any, are not participating in the purchase of hot issues. The NASD would also point out that shares purchased in the hot-issue account for investment partnerships and corporations must remain in that account until they are sold.

Questions regarding this Notice

should be directed to the NASD Office of General Counsel at (202) 728-8294.

Text Of Amendments To The NASD's Free-Riding And Withholding Interpretation Under Article III, Section 1 Of The NASD Rules Of Fair Practice

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

Introduction

The following Interpretation of Article III, Section 1 of the Association's Rules of Fair Practice is adopted by the Board of Governors of the Association pursuant to the provisions of Article VII, Section 3(a) of the Association's By-Laws and Article I, Section 3 of the Rules of Fair Practice.

This Interpretation is based upon the premise that members have an obligation to make a bona fide public distribution at the public offering price of securities of a public offering which trade at a premium in the secondary market whenever such secondary market begins (a "hot issue") regardless of whether such securities are acquired by the member as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or a selling group member, or otherwise. The failure to make a bona fide public distribution when there is a demand for an issue can be a factor in artificially raising the price. Thus, the failure to do so, especially when the member may have information relating to the demand for the securities or other factors not generally known to the public, is inconsistent with high standards of commercial honor and just and equitable principles of trade and leads to an impairment of public confidence in the fairness of the investment banking and securities business. Such conduct is, therefore, in violation of Article III, Section 1 of the Association's Rules of Fair Practice and this Interpretation thereof which establishes guidelines in respect to such activity.

As in the case of any other Interpretation issued by the Board of Governors of the Association, the implementation thereof is a function of the District Business Conduct Committees and the Board of Governors. Thus, the Interpretation will be applied to a given factual situation by individuals active in the investment banking and securities business who are serving on these committees or on the Board. They will construe this Interpretation to effectuate its overall purpose to assure a public distribution of securities for which there is a public demand.

The Board of Governors has determined that it shall not be considered a violation of this Interpretation if a member which makes an allocation to a restricted person or account of an offering that trades at a premium in the secondary market, cancels the trade for such restricted person or account, prior to the end of the first business day following the date on which secondary market trading commences and reallocates such security at the public offering price to a non-restricted person or account.

Interpretation

Except as provided herein, it shall be inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Article III, Section 1 of the Association's Rules of Fair Practice for a member, or a person associated with a member, to fail to make a bona fide public distribution at the public offering price of securities of a public offering which trade at a premium in the secondary market whenever such secondary market begins regardless of whether such securities are acquired by the member as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member, or otherwise. Therefore, it shall be a violation of Article III, Section 1 for a member, or a person associated with a member, to:

1. Continue to hold any of the securities so acquired in any of the member's accounts;

2. Sell any of the securities to any officer, director, general partner, employee or agent of the member or of any other broker/dealer, or to a person associated with the member or with any other broker/dealer, or to a member of the immediate family of any such person; provided however, that:

(a)This prohibition shall not apply to a person in a limited registration category as that term is defined below;

(b)The prohibition shall not apply to sales to a member of the immediate family of a person associated with a member who is not supported directly or indirectly to a material extent by such person if the sale is by a broker/
dealer other than that employing the restricted person and the restricted person has no ability to control the allocation of the hot issue.

3. Sell any of the securities to a person who is a finder in respect to the public offering or to any person acting in a fiduciary capacity to the managing underwriter, including, among others, attorneys, accountants and financial consultants, or to [a member of the immediate family of any such person;] any other person who is supported directly or indirectly, to a material extent, by any person

specified in this paragraph.

4. Sell any securities to any senior officer of a bank, savings and loan institution, insurance company, [registered] investment company, [registered] investment advisory firm or any other institutional type account (including, but not limited to, hedge funds, investment partnerships, investment corporations, or investment clubs), domestic or foreign, or to any person in the securities department of, or to any employee or any other person who may influence or whose activities directly or indirectly involve or are related to the function of buying or selling securities for any bank, savings and loan institution, insurance company, [registered] investment company, [registered] investment advisory firm, or other institutional type account, domestic or foreign, or to [a member of the immediate family of any such person;] any other person who is supported directly or indirectly, to a material extent, by any person specified in this paragraph.

5. Sell any securities to any account in which any person specified under paragraphs (1), (2), (3) or (4) hereof has a beneficial interest;

Provided, however, a member may sell part of its securities acquired as described above to:

(a) persons enumerated in paragraphs (3) or (4) hereof; and

(b) members of the immediate family of persons enumerated in paragraph (2) hereof provided that such person enumerated in paragraph (2) does not contribute directly or indirectly to the support of such member of the immediate family; and

(c) any account in which any person specified under paragraph (3) or (4) or subparagraph (b) of this paragraph has a beneficial interest; if the member is prepared to demonstrate that the securities were sold to such persons in accordance with their normal investment practice [with the member], that the aggregate of the securities so sold is insubstantial and not disproportionate in amount as compared to sales to members of the public and that the amount sold to any one of such persons is insubstantial in amount.

6. Sell any of the securities, at or above the public offering price, to any other broker/dealer; provided, however, a member may sell all or part of the securities acquired as described above to another member broker/dealer upon receipt from the latter in writing assurance that such purchase would be made to fill orders for bona fide public customers, other than those enumerated in paragraphs (1), (2), (3), (4) or above, at the public offering price as an accommodation to them and without compensation for such.

7. Sell any of the securities to any domestic bank, domestic branch of a foreign bank, trust company or other conduit for an undisclosed principal unless:

(a) An affirmative inquiry is made of such bank, trust company or other conduit as to whether the ultimate purchasers would be persons enumerated in paragraphs (1) through (5) hereof and receives satisfactory assurance that the ultimate purchases would not be such persons, and that the securities would not be sold in a manner inconsistent with the provisions of paragraph (6) hereof; otherwise, there shall be a rebuttable presumption that the ultimate purchasers were persons enumerated in paragraphs (1) through (5) hereof or that the securities were sold in a manner inconsistent with the provisions of paragraph (6) hereof;

(b) A recording is made on the order ticket, or its equivalent, or on some other supporting document, of the name of the person to whom the inquiry was made at the bank, trust company or other conduit as well as the substance of what was said by that person and what was done as a result thereof;

(c) The order ticket, or its equivalent, is initialed by a registered principal of the member; and

(d) Normal supervisory procedures of the member provide for a close follow-up and review of all transactions entered into with the referred to domestic bank, trust companies or other conduits for undisclosed principals to assure that the ultimate recipients of securities so sold are not persons enumerated in paragraphs (1) through (6) hereof.

8. Sell any of the securities to a foreign broker/dealer or bank unless:

(a) In the case of a foreign broker/dealer or bank which is participating in the distribution as an underwriter, the agreement among underwriters contains a provision which obligates the said foreign broker/dealer or bank not to sell any of the securities which it receives as a participant in the distribution to persons enumerated in paragraphs (1) through (5) above, or in a manner inconsistent with the provisions of paragraph (6) hereof; or

(b) In the case of sales to a foreign broker/dealer or bank which is not participating in the distribution as an underwriter, the selling member:

(i) makes an affirmative inquiry of such foreign broker/dealer or bank as to whether the ultimate purchasers would be persons enumerated in paragraphs (1) through (5) hereof and receives satisfactory assurance that the ultimate purchasers of the securities so purchased would not be such

persons, and that the securities would not be sold in a manner inconsistent with the provisions of paragraph (6) hereof;

(ii) a recording is made on the order ticket, or its equivalent, or upon some other supporting document, of the name of the person to whom the inquiry was made at the foreign broker/dealer or bank as well as the substance of what was said by that person and what was done as a result thereof; and

(iii) the order ticket, or its equivalent, is initialed by a registered principal of the member.

The obligations imposed upon members in their dealings with foreign broker/dealers or banks by this paragraph 8(b) can be fulfilled by having the foreign broker/dealer or bank to which sales falling within the scope of this Interpretation are made execute Form FR-1, or a reasonable facsimile thereof. This form, which gives a blanket assurance from the foreign broker/dealer or bank that no sales will be made in contravention of the provisions of this Interpretation, can be obtained at any District Office of the Association or at the Executive Office. The acceptance of an executed Form FR-1, or other written assurance, by a member must in all instances be made in good faith. Thus, if a member knows or should have known of facts which are inconsistent with the representations received, such will not operate to satisfy the obligations imposed upon him by this paragraph.

Scope and Intent of Interpretation

In addition to the obvious scope and intent of the above provisions, the intent of the Board of Governors in the following specific situations is outlined for the guidance of members.

Limited Business Broker/Dealer

The restrictions placed on associated persons pursuant to Paragraph 2 of the Interpretations shall not apply to persons associated with NASD members engaged solely in the purchase or sale of either investment company/variable contracts securities or direct participation program securities.

Issuer Directed Securities

This Interpretation shall apply to securities which are part of a public offering notwithstanding that some or all of those securities are specifically directed by the issuer to accounts which are included within the scope of paragraphs (3) through (8) above. Therefore, if a person within the scope of those paragraphs to whom securities were directed did not have the required [an] investment history [with the member or registered representative from whom they were to be purchased], the member would not be permitted to sell him such securities. Also, the "disproportionate" and "insubstantial" tests would apply as in all other situations. Thus, the directing of a substantial number of securities to any one person would be prohibited as would the directing of securities to such accounts in amounts which would be disproportionate as compared to sales to members of the public. If such issuer-directed securities are sold to the issuer's employees or directors or potential employees or directors resulting from an intended merger, acquisition, or other business combination, such securities may be sold without limitation as to amount and regardless of whether such employees have an investment history as required by the Interpretation; provided, however, that in the case of an offering of securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of three months following the effective date of the offering. This Interpretation shall also apply to securities which are part of a public offering notwithstanding that some of those securities are specifically directed by the issuer on a non-underwritten basis. In such cases, the managing underwriter of the offering shall be responsible for insuring compliance with this Interpretation in respect to those securities.

Notwithstanding the above, sales of issuer directed securities may be made to non-employee/director restricted persons without the required investment history after receiving permission from the Board of Governors. Permission will be given only if there is a demonstration of valid business reasons for such sales (such as sales to distributors and suppliers [or key employees], who are in each case incidentally restricted persons), and the member seeking permission is prepared to demonstrate that the aggregate amount of securities so sold is insubstantial and not disproportionate as compared to sales to members of the public, and that the amount sold to any one of such persons is insubstantial in amount; provided, however, that such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of three months following the effective date of the offering.

Stand-By Purchasers

Securities purchased pursuant to a stand-by arrangement shall not be subject to the provisions of the Interpretation if the following conditions are met:

1.The stand-by agreement is disclosed in the prospectus.

2.The stand-by arrangement is the subject of a formal written agreement.

3.The managing underwriter represents in writing that it was unable to find any other purchasers for the securities.

4.The securities purchased shall be restricted from sale or transfer for a period of three months.

Investment Partnerships and Corporations

A member may not sell [securities of a public offering which trade at a premium in the secondary market whenever such secondary market begins ("hot issue"),] a hot issue to the account of any investment partnership or corporation, domestic or foreign (except companies registered under the Investment Company Act of 1940) including but not limited to, hedge funds, investment clubs, and other like accounts unless the member complies with either of the following alternatives:

(A) prior to the execution of the transaction, the member has received from the account a current list of the names and business connections of all persons having any beneficial interest in the account, and if such information discloses that any person [enumerated in paragraphs (1) through (4) hereof] restricted under this Interpretation has a beneficial interest in such account, any sale of securities to such account must be consistent with the provisions of this Interpretation, or

(B) prior to the execution of the transaction, the member has obtained a copy of a written representation [current opinion] from counsel admitted to practice law before the highest court of any state or the account's independent certified public accountant stating that such counsel or accountant reasonably believes that no person with a beneficial interest in the account is a restricted person under this Interpretation and stating that, in providing such [opinion] representation, counsel or accountant:

(1) has reviewed and is familiar with this Interpretation;

(2) has reviewed a current list of all persons with a beneficial interest in the account supplied by the account manager;

(3) has reviewed information supplied by the account manager with respect to each person with a beneficial interest in the account, including the identity, the nature of employment, and any other business connections of such persons; and

(4) has requested and reviewed other documents and other pertinent information and made inquiries of the account manager and received responses thereto, if counsel or the accountant determines that such further review and inquiry are necessary and relevant to determine the correct status of such persons under the Interpretation.

The member shall maintain a copy of the names and business connections of all persons having any beneficial interest in the account or a copy of the current [opinion of counsel] written representation in its files for at least three years following the member's last sale of a new issue to the account, depending upon which of the above requirements the member elects to follow. For purposes of this section, a list or [opinion] written representation shall be deemed to be current if it is based upon the status of the account as of a date not more than 18 months prior to the date of the transaction.

Beneficial Interest

The term beneficial interest means not only ownership interests, but every type of direct financial interest of any persons enumerated in paragraphs (1) through (4) hereof in such account [, including, without limitation, management fees based on the performance of the account].

Provided, however, that no restricted person shall be deemed to have a beneficial interest in an account receiving a hot issue as a result of ownership of an interest in an investment partnership or corporation, or similar type account ("investment entity"), if the following conditions are met.

1. The investment entity establishes a separate brokerage account, with a separate identification number, for its new-issue purchases. At the end of each fiscal year, the general partner, or similarly situated party, will certify in writing to its independent certified public accountants that: (a) all hot issues purchased by the investment entity were placed in this new-issue account; and (b) that the participants in the new-issue account are not restricted persons under this Interpretation.

2. Prior to the execution of the initial hot-issue transaction, the investment entity's accountant or attorney will provide a written representation that complies with paragraph B of the section of this Interpretation entitled "Investment Partnerships and Corporations."

3. As part of its audit procedure for the investment entity, the independent certified public accountant will confirm in writing to the investment entity that all allocations for the new-issue account were made in accordance with the provisions of the applicable investment entity agreement that restricts participation in hot-issue purchases.

4. The investment entity will maintain in its files copies of the certifications, representations, and

confirmations referred to in paragraphs (1) - (3) above for at least three years following the last purchase of a hot issue for the new-issue account.

5. The investment entity will accept investment funds from other investment entities if such other accounts provide the same documentation and assurances described in paragraphs (1) - (4) above that restricted persons will not participate in the purchase of hot issues.

6. The certifications and documents required in paragraphs (1) - (3) above shall be provided to the member holding such account at such time as these certifications and documents are filed with the investment entity and its independent certified public accountant and, the member shall make such documentation available to the NASD upon request.

Venture Capital Investors

This Interpretation shall not prohibit the sale of hot issues in an initial public offering to a person restricted under the Interpretation or to an account in which such restricted person has a beneficial interest (a "Venture Capital Investor") if the following conditions are met:

1.The Venture Capital Investor has held an ownership interest in the company issuing the hot issue securities for a period of one year prior to the effective date of the public offering;

2.The acquisition of the hot issue securities in the public offering does not increase the percentage equity ownership of the Venture Capital Investor in the company above that held three months prior to the filing of the registration statement in connection with the offering;

3.The Venture Capital Investor received no special terms in connection with the purchase; and

4.The securities purchased shall be restricted from sale or transfer for a period of three months following the conclusion of the offering.

Violations by Recipient

In those cases where a member or person associated with a member has been the recipient of securities of a public offering to the extent that such violated the Interpretation, the member or person associated with a member shall be deemed to be in violation of Article III, Section 1 of the Rules of Fair Practice and this Interpretation as well as the member who sold the securities since their responsibility in relation to the public distribution is equally as great as that of the member selling them. In those cases where a member or a person associated with a member has caused, directly or indirectly, the distribution of securities to a person falling within the restrictive provisions of this Interpretation the member or person associated with a member shall also be deemed to be in violation of Article III, Section 1 of the Rules of Fair Practice and this Interpretation. Receipt by a member or a person associated with a member of securities of a hot issue which is being distributed by an issuer itself without the assistance of an underwriter and/or selling group is also intended to be subject to the provisions of this Interpretation.

Violations by Registered Representative Executing Transaction

The obligation which members have to make a bona fide public distribution at the public offering price of securities of a hot issue is also an obligation of every person associated with a member who causes a transaction to be executed. Therefore, where sales are made by such persons in a manner inconsistent with the provisions of this Interpretation, such persons associated with a member will be considered equally culpable with the member for the violations found taking into consideration the facts and circumstances of the particular case under consideration.

Disclosure

The fact that a disclosure is made in the prospectus or offering circular that a sale of securities would be made in a manner inconsistent with this Interpretation does not take the matter out of its scope. In sum, therefore, disclosure does not affect the proscriptions of this Interpretation.

Explanation of Terms

The following explanation of terms is provided for the assistance of members. Other words which are defined in the By-Laws and Rules of Fair Practice shall, unless the context otherwise requires, have the meaning as defined therein.

Associated Person

A person associated with a member or any other broker/dealer, as defined in Article I, paragraph (m) of the NASD's By-Laws, shall not include a person whose association with the member is limited to a passive ownership interest in the member of ten percent or less, and who does not receive hot issues from the member in which he or she has the ownership interest; and that such member is not in a position to direct hot issues to such person.

Public Offering

The term public offering shall mean any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers,

rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings and all other securities distributions of any kind whatsoever except any offering made pursuant to an exemption under Section 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 (unless considered a public offering in the states where offered), Rule 505 or Rule 506 adopted under the Securities Act of 1933, as amended [all distributions of securities whether underwritten or not; whether registered, unregistered or exempt from registration under the Securities Act of 1933, and whether they are primary or secondary distributions, including intrastate distributions and Regulation A issues, which sell at an immediate premium, in the secondary market]. It shall not mean exempted securities as defined in Section 3(a)(12) of the Securities Exchange Act of 1934.

Immediate Family

The term immediate family shall include parents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children. In addition, the term shall include any other person who is supported, directly or indirectly, to a material extent by the member, person associated with the member or other person specified in paragraph[s] (2)[, (3), or (4)] above.

Normal Investment Practice

Normal investment practice shall mean the history of investment of a restricted person in an account or accounts maintained by the restricted person. [maintained with the member making the allocation. In cases where an account was previously maintained with another member, but serviced by the same registered representative as the one currently servicing the account for the member making the allocation, such earlier investment activity may be included in the restricted person's investment history.]

Usually the previous one-year period of securities activity is the basis for determining the adequacy of a restricted person's investment history. Where warranted, however, a longer or shorter period may be reviewed. It is the responsibility of the registered representative effecting the allocation, as well as the member, to demonstrate that the restricted person's investment history justifies the allocation of hot issues. Copies of customer account statements or other records maintained by the registered representative or the member may be utilized to demonstrate prior investment activity. In analyzing a restricted person's investment history the Association believes the following factors should be considered:

(1) The frequency of transactions in the account or accounts during that period of time. Relevant in this respect are the nature and size of investments.

(2) A comparison of the dollar amount of previous transactions with the dollar amount of the hot issue purchase. If a restricted person purchases $1,000 of a hot issue and his account revealed a series of purchases and sales in $100 amounts, the $1,000 purchase would not appear to be consistent with the restricted person's normal investment practice.

(3) The practice of purchasing mainly hot issues would not constitute a normal investment practice. The Association does, however, consider as contributing to the establishment of a normal investment practice, the purchase of new issues which are not hot issues as well as secondary market transactions.

Disproportionate

In respect to the determination of what constitutes a disproportionate allocation, the Association uses a guideline of 10% of the member's participation in the issue, however acquired. It should be noted, however, that the 10% factor is merely a guideline and is one of a number of factors which are considered in reaching determinations of violations of the Interpretation on the basis of disproportionate allocations. These other factors include, among other things:

the size of the participation;

the offering price of the issue;

the amount of securities sold to restricted accounts; and,

the price of the securities in the aftermarket.

It should be noted that disciplinary action has been taken against members for violations of the Interpretation where the allocations made to restricted accounts were less than 10% of the member's participation. The 10% guideline is applied as to the aggregate of the allocations.

Notwithstanding the above, a normal unit of trading (100 shares or 10 bonds) will in most cases not be considered a disproportionate allocation regardless of the amount of the member's participation. This means that if the aggregate number of shares of a member's participation which is allocated to restricted accounts does not exceed a normal unit of trading, such allocation will in most cases not be considered disproportionate. For example, if a member receives 500 shares of a hot issue, he may allocate 100 shares to a restricted account even though such allocation represents 20% of that member's participation. Of course, all of the remaining shares would have to be allocated to unrestricted accounts and

all other provisions of the Interpretation would have to be satisfied. Specifically, the allocation would have to be consistent with the normal investment practice of the account to which it was allocated and the member would not be permitted to sell to restricted persons who were totally prohibited from receiving hot issues.

Insubstantiality

This requirement is separate and distinct from the requirements relating to disproportionate allocations and normal investment practice. In addition, this term applies both to the aggregate of the securities sold to restricted accounts and to each individual allocation. In other words, there could be a substantial allocation to an individual account in violation of the Interpretation and yet be no violation on that ground as to the total number of shares allocated to all accounts. The determination of whether an allocation to a restricted account or accounts is substantial is based upon, among other things, the number of shares allocated and/or the dollar amount of the purchase.

SALES BY ISSUERS IN CONVERSION OFFERINGS

Definitions

(a) For purposes of this Subsection, the following terms shall have the meanings stated:

(1) "Conversion offering" shall mean any offering of securities made as part of a plan by which a savings and loan association or other organization converts from a mutual to a stock form of ownership.

(2) "Eligible purchaser" shall mean a person who is eligible to purchase securities pursuant to the rules of the Federal Home Loan Bank Board or other governmental agency or instrumentality having authority to regulate conversion offerings.

Conditions for Exemption

(b) This Interpretation shall not apply to a sale of securities by the issuer on a non-underwritten basis to any person who would otherwise be prohibited or restricted from purchasing a hot issue security if all of the conditions of this Subsection (b) are satisfied.

Sales to Members, Associated Persons of Members and Certain Related Persons

(1) If the purchaser is a member, person associated with a member, member of the immediate family of any such person to whose support such person contributes, directly or indirectly, or an account in which a member or person associated with a member has a beneficial interest:

(A) the purchaser shall be an eligible purchaser;

(B) the securities purchased shall be restricted from sale or transfer for a period of [150 days] three months following the conclusion of the offering; and

(C) the fact of purchase shall be reported in writing to the member where the person is associated within one day of payment.

Sales to Other Restricted Persons

(2) If the purchaser is not a person specified in Subsection (b)(1) above, and is [the purchaser shall be] an eligible purchaser pursuant to Subsection (a)(2), the conditions of Subsection (b)(1) shall not apply to such purchaser.

NASD NOTICE TO MEMBERS 95-8

Short-Interest Reporting Requirements Revision For Exchange-Listed Securities; **Effective March 1995**

Suggested Routing

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

Executive Summary

Some of the self-regulatory organizations (SROs) comprising the Intermarket Surveillance Group (ISG) agreed to adopt policies to ensure uniform reporting of all short interest in traded securities. The NASD has amended Article III, Section 41 of the NASD Rules of Fair Practice that revises the requirements for reporting short interest.

The amendment will require NASD members to report to the NASD short interest in listed securities that has not been reported to another SRO. This information will be provided by the NASD to the appropriate SRO for publication and regulatory purposes.

NASD members will continue to report short interest in securities included in The Nasdaq Stock Market℠ (Nasdaq) directly to the NASD. Under the rule change, short interest in exchange-listed securities will be reported to the firm's designated examining authority (DEA).

The new reporting requirements will be piloted during March and April 1995. During this period, members will report their short interest under the new method outlined in this document and also continue with their current method of reporting short interest in listed securities. The new reporting requirements will become mandatory in May 1995, replacing the current method of reporting, and will be included in the publication of the appropriate SRO's total short interest.

Reporting Requirements

Each member is required to maintain a record of short interest in all customer and proprietary firm accounts in all Nasdaq securities or those listed on a registered national securities exchange. The method of reporting the short interest is determined by the firm's NASD membership and its DEA.

All NASD members, regardless of their exchange affiliation, must report short interest in Nasdaq securities directly to the NASD. There is no change to the current requirement or methods for reporting Nasdaq short interest.

NASD members that are maintaining short interest in exchange-listed securities must report short interest in these securities to their DEA. Members will report their short interest in exchange-listed securities to the NASD when the NASD is their DEA. There are specific filing methods that must be followed for reporting listed short positions with the NASD using electronic filing software (see below).

Firms whose DEA is the Chicago Board Options Exchange (CBOE) will report to the NASD short interest in exchange-listed and Nasdaq securities. This is a special reporting arrangement made with the CBOE.

An introducing firm's obligation to report short interest in exchange-listed securities will be met by the clearing firm's short interest reporting to its DEA. NASD members that are clearing firms will report short interest in Nasdaq securities directly to the NASD for the introducing firms. Members that are introducing firms must verify that the clearing firm is submitting the introducing member's short-interest data in compliance with the proposed new rules, based on the clearing firm's NASD membership and DEA.

NASD Short-Interest Reporting

All short-interest reports must be made as of the close of the designated set-

tlement date, currently the 15th of the month or preceding business day.

All NASD members will continue with their current method (computer tape, ARRS, or Form NS-1 hard copy) of filing short interest in Nasdaq securities. Reports for short interest in Nasdaq securities must be received at the NASD by the close of the second business day after the settlement date.

Members that are required to file exchange-listed short interest with the NASD will submit their short interest in listed securities via a separate filing using NASDnet℠ software. Filings for short interest in exchange-listed securities must be received at the NASD by 1 p.m., Eastern Time, on the second business day after the settlement date.

ISG Pilot Program

In conjunction with the ISG, the NASD is participating in a pilot program for the new short-interest reporting requirements. During the months of March and April 1995, member firms are required to report their short interest under the current methods and under the new reporting requirements outlined in this document. In May 1995, the new reporting requirements will be mandatory and members must only file short-interest data using the new reporting requirements.

Notification Of Intent To File Exchange-Listed Short Positions

All members that are required to file short interest in exchange-listed securities with the NASD must contact NASD Regulatory Systems at (800) 321-6273. The required short-interest report must be filed separately, using electronic filing software (NASDnet). Members that must comply with these new NASD requirements will be given documentation and assistance with configuring the electronic filing software. If a service provider will be reporting the exchange-listed short interest for the member, the service provider should contact the NASD for assistance with installing and configuring the software.

Members that have questions about the new reporting methods for listed short interest can contact Regulatory Systems Customer Support at (800) 321-6273.

Members that have questions about the amendment to Article III, Section 41 of the NASD Rules of Fair Practice or changes to reporting requirements can contact Market Surveillance at (301) 590-6080.

Text Of Rule Amendment To Article III, Section 41 of the Rules of Fair Practice

Each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in securities included in The Nasdaq Stock Market and in each other security listed on a registered national securities exchange and not otherwise reported to another self-regulatory organization and shall regularly report such information to the Corporation in such a manner as may be prescribed by the Corporation. Reports shall be made as of the close on the settlement date designated by the Corporation. Reports shall be received by the Corporation no later than the second business day after the reporting settlement date designated by the Corporation.

NASD NOTICE TO MEMBERS 95-9

NASD Qualification Examinations Revisions; **Effective Date: May 1, 1995**

Suggested Routing

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

The Securities and Exchange Commission has recently approved revisions to several NASD qualification examinations. These changes become effective May 1, 1995. The revised examinations include the following.

Investment Company Products/Variable Contracts Representative Examination (Series 6)—The examination has been revised to reflect regulatory and business changes in this segment of the industry, emphasizing the sales and marketing aspect of a registered representative's daily tasks. The number of questions on the examination remains at 100, with two hours and 15 minutes of testing time.

Assistant Representative—Order Processing (Series 11)—The examination has been revised by updating the securities products covered on this test and applicable rules and regulations to reflect more accurately the limited scope of the job functions of the assistant representative—order processing. The number of questions on the Series 11 remains at 50 with one hour of testing time.

Direct Participation Programs Limited Representative Qualification Examination (Series 22)—The revised examination reflects changes to rules and regulations and current industry trends that affect duties and functions of this type of registered representative. The number of questions on the Series 22 remains at 100 with two hours and 15 minutes of testing time.

Direct Participation Programs Limited Principal Qualification Examination (Series 39)—Revisions to the Series 39 examination reflect recent rule changes that affect this area of the industry. The number of questions remains at 100 with two hours of testing time. This examination is still graded on the basis of two passing scores. Candidates must achieve 70 percent on Section 3, Compliance with Financial Responsibility Rules, and 70 percent on the remaining sections to pass the test. Those who fail either part of the test must re-take the Series 39 in its entirety.

Availability Of Study Outlines

Study outlines for the revised examination programs may be purchased from NASD MediaSource℠, 9513 Key West Avenue, Rockville, MD 20850, or from any of the NASD's District Offices. The study outlines are $5 each; please add 20 percent if the outlines are to be shipped first class.

Questions about this Notice may be directed to David Frandina at (301) 208-2787, Carole Hartzog at (301) 590-6696, or Elaine Warren at (301) 590-6135 in the NASD Qualifications Department in Rockville, MD.

NASD NOTICE TO MEMBERS 95-10

1994-95 Renewal Rosters And Final Adjusted Invoices

Suggested Routing

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

Executive Summary

The 1994-95 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 were mailed to all member firms in mid-January.

Final Adjusted Invoice Packages

On January 16, 1995, the NASD mailed final adjusted invoices and renewal rosters to all NASD member firms. The invoice reflects the year-end 1994 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 Stock Exchange (PSE), and Philadelphia Stock Exchange (PHLX) maintenance fees, state agent renewal fees, and state broker/dealer renewal fees. It also reflects payment submitted by an NASD member in response to the initial renewal invoice mailed in November 1994.

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 1994. In addition, the roster will list alphabetically all firm agents whose registrations were renewed in states. Firms with registered branch offices that were active as of December 31, 1994, will receive a branch-office roster in addition to the agent roster.

A member's final invoice will reflect an "amount due," a "credit due," or a "zero balance." If a firm's year-end 1994 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 additional renewal fees due at year-end on behalf of the member and will mail an "amount due" invoice to collect that sum.

If the firm's invoice reflects an amount due, the NASD requests payment by wire transfer or company check. Wire transfers instructions are in the renewal invoice packet or can be obtained by calling (301) 590-6088. Make check payable to the National Association of Securities Dealers, Inc., reference the firm's Central Registration Depository (CRD) number, and mail it with the top portion of the invoice. **Payments must be received by the NASD no later than March 10, 1995.**

If the firm's payment submitted in response to the initial renewal invoice exceeds its year-end 1994 total of NASD, NYSE, ASE, CBOE, PHLX, PSE, 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 it returned, it should sign the top portion of the invoice and send it to: Manolita Gorres, NASD, Inc., 9513 Key West Avenue, 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. Refund checks will be mailed to members within three weeks of the date that the NASD receives the signed invoice stub. 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 10, 1995**, the full credit amount will be transferred to the firm's CRD account as well.

Final adjusted invoices that reflect a $0 balance require no further action

by the member.

Reviewing The Renewal Roster

Member renewal rosters include all agent registrations renewed for 1995. **Registrations that were pending approval or were deficient at year-end 1994 and were not assessed renewal fees are not reported on the renewal roster.** Members should examine their roster carefully to ensure that all registration approvals and terminations are reflected properly.

Discrepancies should be reported **in writing**, along with supporting documentation, such as Notices of Approval/Termination, Forms U-4 or U-5, or Schedule E amendments. Report each discrepancy directly to the jurisdiction(s) involved—NASD, NYSE, ASE, CBOE, PSE, PHLX, or the applicable state. **All renewal roster discrepancies must be reported by March 18, 1995.**

The inside cover of the renewal roster contains detailed instructions to help members complete the renewal process. Questions about this Notice may be directed to the NASD Member Services Phone Center at (301) 590-6500, or to the firm's assigned Quality and Service Team.

NASD NOTICE TO MEMBERS 95-11

Nasdaq National Market Additions, Changes, And Deletions As Of January 26, 1995

Suggested Routing

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

As of January 26, 1995, the following 19 issues joined the Nasdaq National Market®, bringing the total number of issues to 3,747:

Symbol	Company	Entry Date	SOES Execution Level
CAFI	Camco Financial Corp.	12/30/94	200
TLMDA	Telemundo Group, Inc. (Cl A)	1/3/95	200
CHIRV	Chiron Corporation (W/D)	1/4/95	1000
CTYA	Century Communications Corp. (Cl A)	1/5/95	500
IVIAF	International Verifact, Inc.	1/6/95	200
IVIAW	International Verifact, Inc. (Wts)	1/6/95	200
FSNJ	First Savings Bank of New Jersey, SLA	1/9/95	200
ADIAY	Adia, S.A. (ADR)	1/10/95	200
ETFS	East Texas Financial Services, Inc.	1/10/95	500
XNVAY	Xenova Group plc (ADS)	1/10/95	200
WMCO	Williams Controls, Inc.	1/13/95	200
FOBC	Fed One Bancorp, Inc.	1/19/95	200
SMCC	SMC Corporation	1/20/95	200
NSIT	Insight Enterprises, Inc.	1/24/95	500
AHNT	Access HealthNet, Inc.	1/25/95	200
BTGCL	Bio-Technology General Corp. (Wts 12/31/98)	1/25/95	500
CPTL	Computer Telephone Corp. (Cl 1)	1/25/95	200
OSTX	Ostex International, Inc.	1/25/95	500
RCII	Renters Choice, Inc.	1/25/95	500

Nasdaq National Market Symbol And/Or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since December 29, 1994:

New/Old Symbol	New/Old Security	Date Of Change
LNTV/LNTVV	LIN Television Corp./ LIN Television Corp. (W/I)	12/29/94
TIGR/BDEV	Tiger Direct, Inc./BLOC Development Corp.	1/3/95
CFBN/CFBN	CFB Bancorp, Inc./Community First Bank	1/3/95
HLND/INBS	Homeland Bankshares Corp./ IOWA National Bankshares Corp.	1/3/95
MMGT/MRIM	Medical Management, Inc./ MRI Management Associates, Inc.	1/3/95
TDAY/NWIB	Today's Bancorp, Inc./ Northwest Illinois Bancorp, Inc.	1/3/95
CCHIA/CCLRA	C C H, Inc. (Cl A)/ Commerce Clearing House, Inc. (Cl A)	1/4/95

New/Old Symbol	New/Old Security	Date Of Change
CCHIB/CCLRB	C C H, Inc. (Cl B)/Commerce Clearing House, Inc. (Cl B)	1/4/95
TLMD/TLMDA	Telemundo Group, Inc. (Cl A)/Telemundo Group, Inc. (Cl A)	1/4/95
ADVG/CCOA	Advantage Companies, Inc./COMCOA Inc.	1/5/95
PREZ/PREZ	President Casinos, Inc./President Riverboat Casinos, Inc.	1/10/95
TCSI/TCSI	TCSI Corporation/Teknekron Communications Systems, Inc.	1/23/95
WLFI/WLFIV	WinsLoew Furniture, Inc./WinsLoew Furniture, Inc. (W/I)	1/23/95

Nasdaq National Market Deletions

Symbol	Security	Date
IDBX	IDB Communications Group, Inc.	1/3/95
PRET	The Price REIT, Inc.	1/3/95
TCNX	Triconex Corporation	1/4/95
BHICW	Baker Hughes Inc. (Wts 3/31/95)	1/5/95
KOKO	Central Indiana Bancorp	1/5/95
GNCR	GenCare Health Systems, Inc.	1/5/95
DGDN	Digidesign, Inc.	1/6/95
LNSB	Lincoln Savings Bank	1/6/95
ADIA	Adia Services, Inc.	1/9/95
CHCCQ	Community Health Computing Corp.	1/9/95
QUIN	Quincy Savings Bank	1/9/95
AFFC	AmeriFed Financial Corp.	1/10/95
CBVA	Commerce Bank	1/11/95
EASTS	Eastover Corporation	1/11/95
TLIOW	Telios Pharmaceuticals, Inc. (Wts)	1/11/95
CPIAW	CPI Aerostructures, Inc. (Wts 9/16/95)	1/12/95
DLPH	Delphi Information Systems, Inc.	1/13/95
ABKR	Anchor Bancorp, Inc.	1/16/95
CJER	Central Jersey Bancorp	1/16/95
CHIRV	Chiron Corporation (W/D)	1/20/95
HIWDF	Highwood Resources Ltd.	1/20/95
JEFF	Jefferson Savings & Loan Association, F.A.	1/20/95
MGMAV	Magma Power Co. (W/D)	1/24/95
SNSCV	Swing-N-Slide Corp. (W/D)	1/24/95

Questions regarding this Notice should be directed to Mark A. Esposito, Supervisor, Market Listing Qualifications, at (202) 728-6966. Questions pertaining to trade reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

NASD NOTICE TO MEMBERS 95-12

Fixed Income Pricing System Additions, Changes, And Deletions As Of January 30, 1995

Suggested Routing

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

As of January 30, 1995, the following bonds were added to the Fixed Income Pricing System (FIPS℠). These bonds are **not** subject to mandatory quotation:

Symbol	Name	Coupon	Maturity
DLMH.GA	Delaware Mgmt. Holdings	10.250	3/15/04
BVLF.GA	Beaver Valley Fdg. Corp.	8.625	6/1/07
MBTL.GA	Mobile Telecomm. Tech. Corp.	13.500	12/15/02
AMI.GG	Amer Med Int'l	9.500	4/15/06
FGGI.GA	Figgie Int'l Inc.	9.875	10/1/99
AMR.GS	AMR	8.600	3/4/02

As of January 30, 1995, the following changes to the list of FIPS symbols occurred:

New/Old Symbol	Name	Coupon	Maturity
MTEL.GA/MBTL.GA	Mobile Telecomm. Tech. Corp.	13.500	12/15/02
TRDT.GA/TRID.GA	Trident NGL	10.250	4/15/03

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

DISCIPLINARY ACTIONS

Disciplinary Actions Reported For February

The NASD has taken disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice; securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions will begin with the opening of business on Tuesday, February 21, 1995. The information relating to matters contained in this Notice is current as of the fifth of this month. Information received subsequent to the fifth is not reflected in this edition.

Firms Expelled, Individuals Sanctioned

Andrews, Hentges & Associates, Inc. (Tulsa, Oklahoma), Howard L. Andrews, Jr. (Registered Principal, Houston, Texas), Michael E. Hentges (Registered Principal, Tulsa Oklahoma), Kenneth E. Jones (Associated Person, Tulsa, Oklahoma), and **George M. Tipton (Associated Person, Henryetta, Oklahoma)** submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership. Andrews was fined $5,000 and suspended from association with any NASD member in any principal capacity for four months. Hentges was fined $15,000, barred from association with any NASD member in any principal capacity, and required to pay $100,000 in restitution to public customers within one year. Jones and Tipton were each 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, in connection with a best-efforts offering of securities to 13 investors, the firm, acting through Andrews, Hentges, and Jones, failed to disclose material information to the investors, in contravention of Securities and Exchange Commission (SEC) Rule 10b-5. The findings also stated that Hentges failed to obtain information necessary to determine the suitability of the investment for the 13 customers, based on their investment objectives, financial situations, and needs. The NASD also determined that, in connection with the above offering, the firm, acting through Andrews, Hentges, Jones, and Tipton, failed to record the sales of units on the firm's books and records.

Also, in connection with sales of investments in a pool of 11 Certificates of Origination Fees to seven public customers, the NASD found that the firm, acting through Andrews and Hentges, failed to inform public customers of the suitability requirements of the investment and the risks involved. According to the findings, these respondents also failed to establish a reasonable basis for determining whether the investment was suitable for five of the customers based on their respective investment objectives, financial situations, and needs. In addition, the findings stated that, in reference to the above certificates, the firm, acting through Hentges, misappropriated and misused funds received for the payment of interest on the 11 Certificates of Origination Fees by paying expenses of the firm and investing the funds in various bank accounts without the knowledge or consent of the customers.

The NASD further found that the firm, acting through Andrews, Hentges, and Tipton, failed to record the purchase and sale of the 11 Certificates of Origination Fees on the firm's books and records. In addition, the firm, acting through Hentges, Jones, and Tipton, prepared inaccurate net capital computations and submitted inaccurate FOCUS Part I and Part IIa reports. Furthermore, the

firm, acting through Jones, engaged in a securities business while failing to maintain its minimum required net capital. According to the findings, Tipton misrepresented to certain directors and officers of the firm that certain liabilities of the firm were being paid when in fact they were not, and failed to respond to NASD requests for information. The NASD also found that Hentges failed to disclose on his Uniform Application for Securities Industry Registration or Transfer (Form U-4) that he had filed for bankruptcy under the U.S. Bankruptcy laws; and Andrews failed to disclose on his Form U-4 that he had been served with a notice of levy issued by the U.S. Internal Revenue Service.

In addition, the findings stated that the firm, acting through Andrews and Hentges, allowed Jones to actively manage the firm without registration with the NASD in any capacity, and failed to adequately supervise the activities of Tipton in preparing the books and records of the firm and its parent company.

American Trading & Investments, Inc. (Oklahoma City, Oklahoma) and **Ronald L. Wigington (Registered Principal, Oklahoma City, Oklahoma)** were fined $15,000, jointly and severally. In addition, the firm was suspended from any and all underwriting activity for 30 days. The sanctions were based on findings that the firm, acting through Wigington, failed to disclose material facts in an offering memorandum. The firm, acting through Wigington, also accepted customer funds in the minimum-maximum contingency offering before entering into a written escrow agreement with a bank. In addition, the firm, acting through Wigington, failed and neglected to maintain accurate records to reflect the receipt of customer checks and account for customer funds and failed to deposit promptly $3,000 into an escrow account.

Boenning & Scattergood, Inc. (West Conshohocken, Pennsylvania) and **Harold F. Scattergood, Jr. (Registered Principal, West Conshohocken, Pennsylvania)** were fined $22,500, jointly and severally. The fine will be reduced by the aggregate amount of restitution the respondents make to customers who were charged excessive markups. The sanctions were based on findings that the firm, acting through Scattergood, effected principal sales to public customers of stock and warrants at prices that were unfair and unreasonable taking into consideration all relevant circumstances. The prices charged included markups ranging from 11 to 45 percent above the prevailing market price, in violation of the NASD Mark-Up Policy.

Dickinson & Co. (Des Moines, Iowa) and **Glenn Scott Cushman (Registered Principal, Phoenix, Arizona)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $80,000, jointly and severally. Cushman was also suspended from association with any NASD member in a principal capacity for 15 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 Cushman, sold securities that were not registered or exempt from registration pursuant to the Securities Act of 1933. The NASD also found that the firm, acting through Cushman, made certain misstatements or omissions of material fact when using two separate private placement memoranda. In addition, the findings stated that the firm failed to supervise the activities of Cushman adequately and properly.

Dickinson & Co. (Des Moines, Iowa) and **John Michael Herrmann (Registered Principal, Clive, Iowa)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally. Herrmann was also suspended from association with any NASD member as a general securities principal 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 Herrmann, distributed to brokers in its Des Moines branch office and permitted the use of certain sales scripts that failed to provide a sound basis for an investor to make an informed investment decision and contained exaggerated, unwarranted, and misleading statements.

Washington Investment Corporation (Washington, DC) and **James R. Johnson (Registered Principal, Annapolis, Maryland)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally. In addition, Johnson was required to requalify by examination as a general securities principal or cease to function in that capacity. Furthermore, the firm was precluded from maintaining non-Office of Supervisory Jurisdiction (OSJ) branch offices or executing solicited transactions involving a "penny stock," as defined in SEC Rule 3a51-1, promulgated under the Securities Exchange Act of 1934. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Johnson failed to establish, implement, and enforce adequate supervisory procedures in a branch office with respect to the sales practices of a registered representative.

Firms And Individuals Fined

Arneson, Kercheville, Ehrenberg and Associates (San Antonio, Texas) and **Joe B. Kercheville (Registered Principal, Boerne, Texas)** submitted an Offer of Settlement pursuant to which they were 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 Kercheville, failed to establish, maintain, and enforce adequate written supervisory procedures that would have enabled them to supervise properly the trading of certain securities.

First Empire Securities, Inc. (Hauppauge, New York) and **Michael Belfiore (Registered Principal, Commack, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $40,000, 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 Belfiore, failed to prepare accurate books and records. The findings also stated that the firm, acting through Belfiore, conducted a securities business while failing to maintain its minimum required net capital. In addition, the firm, acting through Belfiore, in three transactions, sold government agency securities to three customers at prices that were not as favorable as possible under the prevailing market conditions.

Oscar Gruss & Son, Inc. (New York, New York) and **Jonah M. Meer (Registered Principal, Brooklyn, New York)** were fined $10,000, jointly and severally. The sanctions were based on findings that the firm failed to meet its obligations under SEC Rule 15c2-11 by submitting and continuously pursuing, without independent inquiry or verification, a Form 211 application to quote a common stock in the National Quotation Bureau Pink Sheets that contained materially inaccurate and unreliable information regarding the issuer. In addition, the firm and Meer, failed to establish, maintain, and enforce written supervisory procedures that would have enabled them to supervise properly the activities of two individuals.

Individuals Barred Or Suspended

Kenneth James Adam (Registered Representative, League City, Texas) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adam circumvented the registration requirements of Schedule C of the NASD By-Laws and failed to respond to NASD requests for information.

Paul F. Adams, Jr. (Registered Representative, Pittsburgh, Pennsylvania) 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.

Thomas R. Alton (Associated Person, Alameda, California) was fined $50,000 and barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) affirmed the sanctions following appeal of a Los Angeles District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Alton submitted to his member firm a Uniform Application for Securities Industry Registration or Transfer (Form U-4) wherein he gave false responses to questions about his disciplinary history.

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

Frank A. Azzalina (Registered Representative, Easton, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Azzalina failed to make a written report concerning his reported failure to submit an application form and premium payments to his member firm or its affiliated insurance companies.

Joseph J. Bailey (Registered Representative, Binghamton, New York) was fined $100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bailey deposited customer checks totaling $101,683.68 into his personal mutual fund account, without the knowledge or consent of the customers, and misappropriated the funds for his own use and benefit.

David B. Bancroft (Registered Representative, Meridian, Mississippi) submitted an Offer of Settlement pursuant to which he was fined $30,220 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bancroft consented to the described sanctions and to the entry of findings that he failed and neglected to comply with instructions given to him by public customers by failing to enter purchase and/or sale transactions in the customers' accounts. The findings also stated that Bancroft shared in the losses of public customers when he deposited a check and a money order totaling $605 into the customers' accounts to cover losses sustained by the customers. The NASD also determined that Bancroft made misrepresentations to a public customer that a U.S. Treasury bond had been pur-

chased. In addition, the NASD found that Bancroft caused three checks totaling $8,008.50 to be issued to a public customer from the customer's account and misrepresented to him that the checks were interest payments from a U.S. Treasury Bond that he had failed to purchase for the customer's account.

Dale E. Barlage (Registered Representative, Jackson, Wyoming) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barlage consented to the described sanctions and to the entry of findings that he recommended and sold shares of stock directly from his personal account to a public customer without disclosing his material adverse interest in the security. In addition, the NASD found that Barlage sold shares of the same stock to two additional customers based on false and misleading representations he made about the performance of the stock.

Jerry A. Blackwell, Sr. (Registered Representative, Gaithersburg, Maryland) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blackwell failed to respond to NASD requests for information about alleged misrepresentations made in connection with an investment for a customer.

Mark A. Brewer (Registered Representative, Sapulpa, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,500 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Brewer consented to the described sanctions and to the entry of findings that he recommended and engaged in three purchase transactions in the account of public customers without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers based on their financial situations, investment objectives, and needs. The NASD also found that Brewer failed to complete accurately new account documentation for the aforementioned customers. In addition, the findings stated that Brewer engaged in private securities transactions without prior written notice to and approval from his member firm.

Michael L. Brod (Registered Principal, New York, New York) was fined $7,500, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify as a general securities principal within six months or be barred until he requalifies. The sanctions were based on findings that Brod, acting on behalf of a member firm, failed to enforce the firm's written supervisory procedures to prevent and detect violations by one of its registered representatives.

Richard L. Brown (Registered Representative, Cheyenne, Wyoming) and **David E. Foreman (Registered Representative, Cheyenne, Wyoming)** submitted Offers of Settlement pursuant to which Brown was fined $7,500 and barred from association with any NASD member in any capacity. Foreman was fined $7,500, suspended from acting as a general securities sales supervisor for 10 business days, and required to requalify by examination as a general securities sales supervisor within 45 days or cease acting in such a capacity until he requalifies. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Brown made two unsuitable recommendations to a customer and failed to have a reasonable basis for believing that this customer could meet the payment obligations set forth in Regulation T of the Federal Reserve Board. The findings also stated that Foreman failed to enforce his member firm's written supervisory procedures adequately with regard to the review of large orders and the determination of the suitability of customer transactions.

Scott D. Carr (Registered Representative, Dallastown, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Carr failed to respond to NASD requests for information in connection with an ongoing NASD investigation.

Lawrence W. Cinquemani (Registered Representative, Smyrna, Georgia) was fined $44,864.35, barred from association with any NASD member in any capacity, and ordered to pay $4,972.87 in restitution to his member firm. The sanctions were based on findings that Cinquemani caused the transfer of shares from the securities account of a public customer to his personal securities account without the customer's knowledge or authorization. Cinquemani also liquidated the aforementioned securities positions and converted the proceeds for his own use and benefit without the customer's knowledge or authorization. In addition, Cinquemani failed to respond to NASD requests for information.

William J. Cole (Registered Representative, Belen, New Mexico) 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, Cole consented to the described sanctions and to the entry of findings that he received a $38,000 check issued by his member firm payable to a public customer, which represented payment of a portion of a life insurance benefit. According to the findings, Cole forged the customer's endorsement on the check, signed his own name, and deposited the proceeds into his personal bank account. The findings also stated that Cole caused to be issued a $9,256.92 cashier's check in payment of the first year's premium for a variable life insurance policy for the same customer and retained the remaining $28,743 in his personal bank account. In addition, the NASD determined that Cole received from a customer a $13,476.22 check that was intended for investment purposes, and Cole kept the check in his desk until its discovery by his supervisor, thus failing to follow his customer's instructions. The NASD also found that Cole failed to respond to NASD requests for information.

Darryl T. Cristwell (Registered Representative, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $65,000, barred from association with any NASD member in any capacity, and required to pay $13,000 in restitution to the appropriate parties. Without admitting or denying the allegations, Cristwell consented to the described sanctions and to the entry of findings that he received, in error, a $14,529.14 check, deposited it into his growth fund account, and redeemed $13,000 of the funds. According to the findings, Cristwell knew, or should have known, that the funds had been deposited into his account in error, and thereby misappropriated such funds.

James R. Cruise (Registered Representative, West Barnstable, Massachusetts) 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, Cruise consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information about his alleged participation in private securities transactions.

John C. Cummings, III (Registered Representative, Birmingham, Alabama) was fined $25,000, barred from association with any NASD member in any capacity, and required to pay $19,600 in restitution to a customer. The sanctions were based on findings that Cummings induced a public customer to liquidate certain securities from her account and to loan a portion of the proceeds totaling $19,600 to him. In doing so, Cummings executed two promissory notes to the customer that promised an interest rate of 20 percent. Cummings engaged in this activity without having reasonable grounds for believing that the aforementioned recommendations and the resultant transactions were suitable for the customer on the basis of the customer's financial situation, investment objectives, and needs. The NASD also found that Cummings forged the name of his branch office manager to a memorandum that he used to misrepresent the terms of his compensation, and his ability to repay certain loans to the aforementioned customer.

Joseph Louis DeBeauchamp (Registered Representative, Bainbridge Island, Washington) submitted an Offer of Settlement pursuant to which he was fined $5,000, suspended from association with any NASD member in any capacity for 10 days, and required to pay $7,531 in restitution to a customer. Without admitting or denying the allegations, DeBeauchamp consented to the described sanctions and to the entry of findings that he recommended the purchase and sale of securities and the use of margin to a public customer without having reasonable grounds for believing such recommendations were suitable for the customer considering her investment objectives, financial situation, and needs.

David D. deBerardinis (Registered Representative, Shreveport, Louisiana) 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, deBerardinis consented to the described sanctions and to the entry of findings that he participated in distributions of promissory notes through a non-registered entity in which he had an ownership interest. In addition, the findings stated that deBerardinis sent to public customers correspondence that was misleading, in that it misrepresented certain safety features of the aforementioned notes, and failed to adequately disclose the risks of the offerings.

Richard E. Dilworth (Registered Representative, Connellsville, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $7,500, suspended from association with any NASD member in any capacity for seven business days, and ordered to pay $2,235 in restitution to customers. Without admitting or denying the allegations, Dilworth consented to the described sanctions and to the entry of findings that he made materially false and misleading statements to public customers about their mutual fund investments and failed to disclose material information that would provide shareholders with information that could affect their investment decision. The findings also stated that Dilworth sent to

customers sales literature that omitted material facts and contained inaccurate, unwarranted, and/or misleading statements and claims without having the literature approved by a principal of his member firm.

Robert L. Eaton (Registered Representative, Kingsport, Tennessee) submitted an Offer of Settlement pursuant to which he was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $85,221.57 in restitution to the appropriate parties. Without admitting or denying the allegations, Eaton consented to the described sanctions and to the entry of findings that he fraudulently induced at least nine public customers to invest about $85,221.57 in various securities, but neglected to invest these funds. The NASD found that Eaton converted the funds to his own use and benefit without the customers' knowledge or consent. The findings also stated that Eaton altered a customer's account statement to reflect fictitious investments in the customer's account. In addition, the NASD found that Eaton failed to respond to NASD requests for information.

Ivan J. Fisher (Registered Representative, Moore, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $26,500 in restitution to the appropriate parties. Without admitting or denying the allegations, Fisher consented to the described sanctions and to the entry of findings that he solicited and received checks totaling $26,500 from public customers for investment purposes, failed to return the funds or provide the customers with an accounting for their funds, and misappropriated customer funds. In addition, the NASD found that Fisher failed to respond fully to an NASD request for information.

David W. Fritz (Registered Representative, Martinez, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $33,224.35 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that he received from a public customer a $6,644.87 check representing the cash value from a life insurance policy that the customer had surrendered. According to the findings, the customer directed Fritz to use the funds to pay the premiums on a new insurance policy but, instead, he converted the funds for his own use and benefit.

Terry William Funk (Registered Representative, El Paso, Texas) submitted an Offer of Settlement pursuant to which he was fined $7,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Funk consented to the described sanctions and to the entry of findings that he functioned as a financial and operations principal for his member firm without qualifying by examination in that capacity. The findings also stated that the same firm, acting through Funk, failed to maintain a blanket fidelity bond and conducted a securities business while failing to maintain its required minimum net capital. Furthermore, the NASD determined that the firm, acting through Funk, conducted a securities business while failing to make and keep current books and records. In addition, the NASD found that the firm, acting through Funk, took possession of customers funds and securities while purporting to operate under exemptive provisions of SEC Rule 15c3-3.

Donald R. Gates (Registered Representative, Cabot, Arkansas) was fined $50,967.70, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a general securities representative. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Gates accepted payments based on commissions earned from transactions in a customer 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 state where the customer was domiciled.

Gates appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

William F. Giles (Registered Representative, Omaha, Nebraska) was fined $25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a general securities representative. The NBCC imposed the sanctions following review of a Market Surveillance Committee decision. The sanctions were based on findings that Giles knowingly and willfully engaged in a manipulative scheme to increase the reported closing price of a common stock. Specifically, Giles effected a series of purchases in the common stock at or near the close of the market with the intent to cause the market for the stock to close at a price higher than the previously reported trade and to reduce or eliminate margin calls.

Giles appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Gerald Michael Hagan (Registered Representative, Portland, Oregon) was fined $200,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hagan engaged in private securities transactions while failing to inform his member firm of such activities. In addition, the NASD found that Hagan engaged in improper use of customer funds by transferring $17,000 from a customer's account to another account at his member firm without the customer's knowledge and used the funds for his own benefit. Hagan also received from another customer $20,000 intended for investment purposes, failed to remit the funds for their intended purpose or to return the monies to the customer and, instead, used the funds for his own purposes. Hagan also failed to respond to NASD requests for information.

Michael K. Hall (Registered Representative, Sebring, Florida) 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, Hall consented to the described sanctions and to the entry of findings that he converted to his own use and benefit funds that he received from a public customer for the purchase of shares of a municipal bond mutual fund.

Robert Hammerman (Registered Representative, Vienna, Virginia) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Hammerman consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to provide prior written notice of such participation to his member firm.

Charles Hofheimer (Registered Representative, Virginia Beach, Virginia) submitted an Offer of Settlement pursuant to which he was fined $25,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Hofheimer consented to the described sanctions and to the entry of findings that he recommended securities transactions to public customers without having reasonable grounds for believing such recommendations were suitable for the customers considering their financial situations and needs. The findings also stated that Hofheimer accepted oral discretionary authority over the accounts of public customers and used it to effect discretionary securities transactions in the respective accounts without first having such authority in writing and accepted by his member firm.

Michael Patric Holmes (Registered Principal, Overland Park, Kansas) 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 10 business days, and required to requalify by examination as a general securities representative (Series 7). Without admitting or denying the allegations, Holmes consented the described sanctions and to the entry of findings that he received from a public customer a $20,000 check, made payable to an entity he controlled, that was intended for the purchase of shares of a corporation that Holmes owned. The findings stated that Holmes deposited the proceeds from the check into his personal bank account and issued transfer instructions to the corporation he owned asking that the shares be recertified in the customer's name, and that Holmes engaged in this activity without giving prior written notice to his member firm.

Kenneth E. Hudson (Registered Representative, Gadsden, Alabama) was fined $80,000, barred from association with any NASD member in any capacity, and required to pay $9,663.44 in restitution to the appropriate parties. The sanctions were based on findings that Hudson received from insurance customers $9,663.44 to purchase insurance products, but failed to execute the purchases or issue refund checks and, instead, converted the funds for his own use and benefit without the customers' knowledge or consent. In addition, Hudson signed the name of an insurance customer to a $1,602.22 refund check, cashed the check, and converted the funds for his own use and benefit without the customer's knowledge or consent. Also, Hudson failed to respond to NASD requests for information.

Donnell Howard Hughes (Registered Representative, Menlo Park, California) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 60 business days. Without admitting or denying the allegations, Hughes consented to the described sanctions and to the entry of findings that he recommended and effected purchase transactions in customers' accounts without having reasonable grounds for believing that such transactions were suitable for the customers considering their financial situations and needs.

William L. Joiner, Jr. (Registered Representative, Powder Springs, Georgia) was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $23,099.53 in restitution to his member firm. The NBCC imposed the sanctions following appeal of an

Atlanta DBCC decision. The sanctions were based on findings that Joiner withdrew $23,099.53 from the life insurance policies of six public customers and converted the funds for his own use and benefit without the knowledge or authorization of the customers. In addition, Joiner failed to respond to NASD requests for information.

Stephen J. Kende (Registered Representative, Burlington, Vermont) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kende consented to the described sanctions and to the entry of findings that he failed to remit to his member firm three checks totaling $87,344 for insurance premiums payments.

David Scott Kendrick (Registered Representative, Irving, Texas) was fined $25,000, suspended from association with any NASD member as a registered representative for six months, and required to requalify by examination. The sanctions were based on findings that, by means of manipulative, deceptive, or other fraudulent devices or contrivances, Kendrick effected unauthorized transactions in options in the accounts of public customers. In addition, Kendrick failed to respond to NASD requests for information.

Stephen A. Krzywiec (Registered Representative, Peckville, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $8,000, barred from association with any NASD member in any capacity, and required to pay $1,617.05 plus interest in restitution to a member firm. Without admitting or denying the allegations, Krzywiec consented to the described sanctions and to the entry of findings that he received from seven customers $1,617.05 that were to be applied to insurance policy premiums and that Krzywiec failed to remit or apply the funds properly and converted the funds for his own benefit.

Kenneth L. Lucas (Registered Principal, Englewood, Colorado) and **Jeffrey E. Modesitt, Sr. (Registered Principal, Littleton, Colorado)** were fined $15,000, jointly and severally with other respondents, and each suspended from association with any NASD member in any principal capacity for one month. Modesitt also submitted an Offer of Settlement pursuant to which he was ordered to disgorge $6,003 to the NASD. The SEC imposed the sanctions following appeal of an October 1991 NBCC decision. The sanctions were based on findings that Lucas and Modesitt failed to establish, maintain, and enforce written procedures governing the imposition of markups and markdowns on principal transactions.

The suspensions began August 15, 1994 and ended September 15, 1994.

Michael T. Mahoney (Registered Representative, Branford, Connecticut) was fined $1,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mahoney withheld and misappropriated for his own use and benefit customer funds totaling $260 that were intended as the initial premium payment on an automobile insurance. In addition, Mahoney failed to respond to NASD requests for information.

Alexander Marks, Jr. (Registered Representative, Hueytown, Alabama) was fined $35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Marks received a $95.76 insurance commission check that was issued to a fellow agent of his member firm, failed to remit the check to the agent and, instead, forged the agent's name on the check and converted the funds for his own use and benefit without the agent's knowledge or consent. In addition, Marks second-endorsed a $2,764.03 check made payable to a public customer and converted the funds for his own use and benefit without the knowledge or consent of the customer. Marks also failed to respond to NASD requests for information.

Keith E. Martin (Registered Representative, Spartanberg, South Carolina) was fined $35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Martin obtained from public customers a $2,930.89 check intended to be used to purchase investment company securities and without the knowledge or authorization of the customers, converted the funds to his own use and benefit. In addition, Martin failed to respond to NASD requests for information.

Algie L. McCormick (Registered Representative, St. Petersburg, Florida) was fined $1,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that during the course of a Series 6 examination, McCormick had in her possession notes relating to the subject matter of the examination.

Kenneth J. McGaffin, Sr. (Registered Representative, Jessup, Maryland) 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, McGaffin consented to the described sanctions and to the

entry of findings that he endorsed and negotiated a $250.56 check that was made payable to an insurance agency, and converted the proceeds for his personal use and benefit. The findings also stated that McGaffin failed to respond to NASD requests for information.

Keith S. Norris (Registered Representative, Hilton Head, South Carolina) was fined $10,000, suspended from association with any NASD member in any capacity for one year, required to disgorge commissions totaling $28,285.41, and ordered to pay restitution to his customers of the principal amounts they each invested. In addition, Norris was ordered to requalify by examination as an Investment Company and Variable Contracts Products Representative and receive a score of not less than 80. Furthermore, Norris was required to reimburse the member firm with which he was associated if the firm is ever ordered to pay restitution to Norris' customers. The sanctions were based on findings that Norris engaged in private securities transactions without providing to his member firm written notice of the transactions or obtaining prior approval from his member firm.

Larry James Oliver (Registered Representative, Port St. Lucie, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Oliver failed to respond to NASD requests for information concerning his termination from a member firm and a customer complaint.

William E. Powdrill, III (Registered Representative, Shreveport, Louisiana) submitted an Offer of Settlement pursuant to which he was fined $100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Powdrill consented to the described sanctions and to the entry of findings that he sold promissory notes to profit-sharing accounts and public customers without having a reasonable basis for determining that these purchases were suitable for the customers considering their financial situations, investment objectives, and needs. The findings also stated that Powdrill falsified information submitted with public customers' subscription agreements, and made oral misrepresentations to at least nine public customers concerning the safety of their principal and the risks associated with promissory notes. The NASD also found that Powdrill participated in the sale of interests in a limited partnership to at least eight investors without providing prior written notice to and receiving approval from his member firm. In addition, the NASD determined that Powdrill recommended and executed purchase and sale transactions in the account of a public customer without having a reasonable basis for determining that these investments were suitable for the customer considering her financial situation, investment objectives, and needs.

Michael J. Randy (Registered Representative, Richton Park, Illinois) and **Howard N. Barlow, Jr. (Registered Representative, Mundelein, Illinois).** Randy was fined $20,000 and barred from association with any NASD member in any capacity. Barlow was fined $15,000, suspended from recommending penny stocks for one year, and required to requalify by examination as a general securities representative. The NBCC imposed the sanctions following appeal and review of a Market Surveillance Committee decision. The sanctions were based on findings that Randy refused to participate in an NASD staff interview, and that Barlow charged retail customers unfair prices on trades in a common stock, in that the gross sales credits were patently excessive when compared to the dollar amounts of the transactions in question. In addition, the NASD found that Barlow effected retail sales of a designated security in contravention of SEC Rule 15c2-6, in that suitability forms required to be completed before the execution were not completed or were completed incorrectly.

William H. Raub, III (Registered Representative, Bethlehem, Pennsylvania) 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, Raub consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning his alleged embezzlement of funds.

Francis Linden Sanem, Jr. (Registered Representative, Bozeman, Montana) submitted an Offer of Settlement pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Sanem consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to provide prior written notice to his member firm describing the proposed transactions, his role therein, and stating whether he would receive selling compensation in connection with the transactions.

Harold R. Shailer (Registered Representative, Waterbury, Connecticut) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Shailer misappropriated for his own use and benefit, $50,000 intended for

investment on behalf of a public customer, without the knowledge or consent of a public customer or his member firm.

Joseph Robert Shaw (Registered Representative, Albuquerque, New Mexico) and **Michael Robert Shaw (Registered Representative, Albuquerque, New Mexico)** submitted an Offer of Settlement pursuant to which Joseph Shaw was fined $50,000 and barred from association with any NASD member in any capacity, and Michael Shaw was fined $35,000 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 Joseph Shaw received from individuals at least $123,803 intended for investment in various insurance-related products and neither invested the funds as intended, nor returned them to the investors. The findings also stated that Joseph and Michael Shaw engaged in outside business activities while failing to provide prompt written notice to their member firm. In addition, the NASD determined that Michael Shaw failed to respond fully to NASD requests for information about its investigation of possible misuse of customer funds.

Edward S. Skane (Registered Representative, Framingham, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Skane consented to the described sanctions and to the entry of findings that he submitted fraudulent insurance applications and disbursement request forms on behalf of insurance policyholders. In addition, the NASD found that Skane forged customers' signatures on insurance applications and dividend checks.

Rod M. Solow (Associated Person, New Orleans, Louisiana) 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, Solow consented to the described sanctions and to the entry of findings that he received $30,000 from a public customer for investment purposes, failed to execute the purchase on behalf of the customer and, instead, converted the funds for his own use without the public customer's knowledge or consent. In addition, the findings stated that Solow failed to respond to NASD requests for information.

Michael P. Stevens (Registered Representative, Clifton Heights, Pennsylvania) was fined $1,000 and suspended from association with any NASD member in any capacity for 30 days. The NBCC modified the sanctions following review of a Philadelphia DBCC decision and reconsideration of its own earlier decision. The sanctions were based on findings that while taking the Series 7 examination, Stevens was discovered to have in his possession notes related to the subject matter of the examination.

Walter L. Swafford (Associated Person, Boca Raton, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings in that during the course of a Series 7 examination, Swafford had in his possession notes relating to the subject matter of the examination.

Edward W. Tanner (Registered Representative, St. Petersburg, Florida) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tanner opened securities accounts for two public customers and submitted to his member firm inaccurate information on the new account cards. In addition, Tanner failed to respond to an NASD request for information.

Martin J. Tate (Registered Representative, Erie, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tate consented to the described sanctions and to the entry of findings that he affixed a signature purporting to be that of an insurance customer to an annuity application form and, thereafter, submitted such form to his member firm without the prior authorization or consent of the customer.

Joseph F. Taylor (Registered Representative, Casselberry, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Taylor failed to respond to an NASD request for information about his termination from a member firm.

Robert J. Thomas (Registered Representative, Ft. Lauderdale, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $21,392.39 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas consented to the described sanctions and to the entry of findings that he effected 21 transactions in the accounts of 10 public customers without the knowledge or authorization of the customers. In addition, the NASD found that Thomas provided some of these customers with falsified confirmations and/or account statements

intended to hide the unauthorized transactions.

Gene A. Tyrrell (Registered Representative, Peoria, Arizona) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that he submitted a Form U-4 that failed to disclose a revocation by the state of Arizona of Tyrrell's state securities registration. In addition, Tyrrell failed to amend in a timely manner his Form U-4 to reflect a personal bankruptcy proceeding.

Edward A. Verba (Registered Representative, Easton, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Verba failed to submit to the NASD a written report about the disposition of funds that he allegedly collected from policyholders but did not remit to his member firm.

Douglas M. Warner, Jr. (Registered Representative, Naples, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Warner consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in the account of a public customer without the customer's knowledge or consent. In addition, the NASD found that Warner signed customers' names to a client agreement and transfer documents.

Don M. Warren (Registered Representative, Montgomery, Alabama) was fined $16,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Warren converted customer funds totaling $2,982.68 for his own use and benefit without the customers' knowledge or consent.

John R. White (Registered Representative, Graniteville, South Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $49,365 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he received from 10 public customers checks totaling $9,873 intended for the purchase of insurance products but, instead, misused and/or converted the funds for his own use and benefit.

Oliver J. Williams, Jr. (Registered Principal, Miami, Florida) was fined $7,500, jointly and severally with another respondent and suspended from association with any NASD member as a financial and operations principal for 30 days and thereafter until he requalifies by examination. The sanctions were based on findings that a member firm, acting through Williams, conducted a securities business while failing to maintain its required minimum net capital. The NASD also found that the firm, acting through Williams, failed to accurately maintain certain books and records; filed a materially inaccurate FOCUS Part I report with the NASD; and failed to file FOCUS Part IIa reports and its annual audited report in a timely manner. In addition, the firm, acting through Williams, failed to send timely telegraphic notice with regard to its net capital deficiency.

Kenneth M. Wong (Registered Principal, San Rafael, California) submitted an Offer of Settlement pursuant to which he was fined $45,000 and suspended from association with any NASD member in any capacity for 22 months. Without admitting or denying the allegations, Wong consented to the described sanctions and to the entry of findings that he knowingly communicated, for his direct or indirect personal benefit or as a trading gift, material, nonpublic, confidential, and proprietary information pertaining to pending merger discussions to his son-in-law and a long-term friend.

Bruce Martin Zipper (Registered Principal, Miami, Florida) was fined $5,000 and suspended from association with any NASD member in any capacity for five business days. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Zipper failed to pay a $418,000 arbitration award.

Zipper has appealed this action to the SEC, and the sanctions are stayed pending consideration of the appeal.

Individuals Fined

Betty R. Cantelmo (Registered Representative, Hollywood, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $25,000. Without admitting or denying the allegations, Cantelmo consented to the described sanction and to the entry of findings that she engaged in private securities transactions outside the regular scope of her association with her member firm without giving prior written notice to the firm.

Paul A. Short (Registered Representative, Huntington, West Virginia) submitted an Offer of Settlement pursuant to which he was fined $12,525. Without admitting or denying the allegations, Short

consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm or receiving the firm's approval to engage in such transactions.

Steven Ralph Thorp (Registered Principal, Wayzata, Minnesota), David Harold Thorp (Registered Principal, Wayzata, Minnesota), and **Jay Courtney Cope (Registered Representative, Shorewood, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they allowed a member firm, of which they were limited partners, to purchase three hot issues in two customer accounts without obtaining and submitting the minimum information required, in violation of the NASD Board of Governors Free-Riding and Withholding Interpretation.

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

First of Philadelphia Investment Group, Philadelphia, Pennsylvania

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 Article IV, Section 5 of the NASD Rules of Fair Practice and Article VII, Section 2 of the NASD By-Laws. The date the suspension began is listed after each entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Boston International Group Securities Corp., Boston, Massachusetts (December 30, 1994)

Crandall, Vickery & Co., Inc., New York, New York (December 30, 1994)

De Anza Securities, Inc., Beverly Hills, California (December 30, 1994)

First Cascade Securities, Inc., Kent, Washington (December 30, 1994)

M.S.U. Inc., East Lansing, Michigan (December 30, 1994)

Regency Capital Group, Inc., Glendale, California (December 30, 1994)

Suspension Lifted

The NASD lifted a suspension from membership on the date shown for the following firm, because it has complied with formal written requests to submit financial information.

CMS Financial Group, Inc., Virginia Beach, Virginia (January 17, 1995)

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

Paul D. Baune, Huntsville, Alabama

Howard Biolos, Dana Point, California

Scott D. Carr, Dallastown, Pennsylvania

John Y. Cole, Dallas, Texas

Vickie L. Davis, Boca Raton, Florida

Mark A. Elliott, Blue Springs, Missouri

Michael J. Markowski, Miami Beach, Florida

Charles Patterson, Tampa, Florida

FOR YOUR INFORMATION

SEC Approves Extension Of "Interim SOES Rules"

In January, the Securities and Exchange Commission (SEC) approved the extension of the Interim Small Order Execution System (SOES℠) rules until March 27, 1995. These Interim SOES Rules, which the SEC approved in late 1993 on a pilot basis until January 25, 1995, provide for:

• a reduction in the maximum size order eligible for execution through SOES from 1,000 shares to 500 shares;

• a reduction in the minimum exposure limit for "unpreferenced" SOES orders from five times the maximum order size to two times the maximum order size, and for the elimination of exposure limits for "preferenced orders";

• implementation of an automated function for updating market-maker quotations when the market maker's exposure limit has been exhausted; and

• the prohibition of short sales through SOES.

Given that the NASD now has a short-sale rule, all of the Interim SOES Rules were extended, except the provision that prohibits short sales through SOES.

Members are reminded, however, that short-sale orders in Nasdaq National Market® securities entered into SOES will be executed in accordance with the NASD short-sale rule. Thus, if the current inside bid in Nasdaq® at the time of execution is lower than the previous inside bid, market orders to sell short entered into SOES and marketable limit orders to sell short entered into SOES will not be immediately executed. SOES will not execute such short sales until the inside bid is an "up" bid.

Direct any questions concerning this issue to Nasdaq Market Operations at (203) 378-0284.

Members Must Annotate Affirmative Determinations

In January, the NASD filed a proposal with the SEC to change the effective date of one provision of a previously approved rule change that amended the Interpretation of the Board of Governors—Prompt Receipt and Delivery of Securities (Interpretation). Effective January 9, 1995, absent an exemption, members must annotate their affirmative determinations as to stock availability when effecting short sales for their own proprietary accounts or the account of a customer. In making their affirmative determinations, however, members may rely on daily fax sheets and other "blanket" or standing assurances to satisfy the new annotation requirement until August 1, 1995. After August 1, 1995, absent further action by the NASD, members will not be permitted to rely on daily fax sheets. The new annotation requirement for short sales does not modify any exemptions from the affirmative determination requirements that are presently in the Interpretation (such as, the market-maker exemption).

As originally approved, the new annotation requirement specifically stated that an affirmative determination and annotation of that affirmative determination must be made for each and every transaction. A "blanket" or standing assurance that securities would be available for borrowing, would not be acceptable to satisfy the requirement. Thus, by requiring firms to annotate each and every affirmative determination, the amendment made clear the NASD's

policy that firms cannot rely on daily fax sheets of "borrowable stocks" to satisfy the Interpretation's requirements. However, with its January 1995 proposal to the SEC, the NASD extended the use of these standard assurances to give the NASD and its members ample time to consider whether to retain this provision or modify it to better reflect industry practice.

Chronology Of The Rule Change

In May 1994, the NASD filed with the SEC the proposed rule change for Article III, Section 1 of the NASD Rules of Fair Practice. The SEC approved the proposal in September 1994; and the NASD announced in *Notice to Members 94-80* (October 1994) a November 30, 1994, effective date for the Interpretation.

In response to *Notice to Members 94-80*, many NASD members raised concerns about their ability to comply with the changes to the Interpretation by November 30, 1994, because they needed to make a variety of operational adjustments. On November 29, 1994, the NASD announced a January 9, 1995, effective date to give members enough time to prepare for the rule change. The NASD sent a reminder to members in early January that the rule change would go into effect on January 9, and noted the one provision prohibiting the use of standard assurances that securities are available for borrowing would not go into effect until August 1, 1995.

Affirmative-Determination Requirements

Effective January 9, 1995, the new rule required members to annotate, on the trade ticket or on some other record they maintain for that purpose, the following:

• if a customer assures delivery, the member must annotate that conversation, noting the present location of the securities; whether the securities are in good deliverable form; and whether they will be delivered to the firm within time for settlement; or

• if the member locates the stock, the member must annotate the identity of the individual and firm contacted who offered assurance that the shares would be delivered or were available for borrowing by settlement date; and the number of shares needed to cover the short sale.

For details on this rule change, see *Notice to Members 94-80* (October 1994), or direct your questions about the affirmative-determination Interpretation to Tom Gira, Assistant General Counsel, at (202) 728-8957.

Alabama Joins Phase II

Effective January 16, 1995, the state of Alabama joined the Phase II program of the Central Registration Depository (CRD). By participating in Phase II, Alabama allows NASD member firms to apply for registration with that state by submitting a Form BD to the CRD requesting Alabama and depositing the BD registration fee of $200 in the firm's CRD account.

If you have any questions regarding these changes, please call the NASD Member Services Phone Center at (301) 590-6500 or your firm's assigned Quality and Service Team.

SPECIAL NASD NOTICE TO MEMBERS 95-13

SEC Approves Amendments Relating To Continuing-Education Requirements

Suggested Routing

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

Executive Summary

On February 8, 1995, the Securities and Exchange Commission (SEC) approved a new Part XII to Schedule C of the NASD By-Laws prescribing requirements for the continuing education of certain registered persons subsequent to their initial qualification and registration with the National Association of Securities Dealers, Inc. (NASD).

The Securities Industry Continuing Education Program (Program), which has been approved by the self-regulatory organizations (SROs) and the SEC, is a response to the challenges facing the securities industry. The Securities Industry/Regulatory Council on Continuing Education (Council), which is comprised of representatives from the securities industry and the SROs, recognized that the increasing complexity of the securities industry demands that professionals who deal with the public or who are in supervisory positions maintain minimum standards of competence and professionalism. The uniform Program now adopted will help ensure that registered persons stay current on products, markets, and rules to the ultimate benefit of the investing public.

* * *

The text of the new rules, which are amendments to Schedule C of the NASD By-Laws, follows this introduction. Reprinted with this Notice are:

- *Status Report On The Securities Industry Continuing Education Program,* including a questions and answers section to help member firms further understand the Program.
- *Content Outline For The Regulatory Element.*
- *Guidelines For Firm Element Training.*

Questions about this Notice may be directed to John Linnehan, NASD Director of Continuing Education, at (301) 208-2932; Frank J. McAuliffe, Vice President, NASD Membership, at (301) 590-6694; or Daniel M. Sibears, Director, NASD Regulatory Policy, at (202) 728-6911.

Text Of New Amendment To Schedule C Of The NASD By-Laws

(**Note:** New language is underlined.)

Part XII

Continuing Education Requirements

This Part prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with the NASD. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(1) Regulatory Element

(a) 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 Section (1) hereof.

(i) Each registered person shall complete the Regulatory Element on three occasions, after the occurrence of their second, fifth and tenth registration anniversary dates, or as otherwise prescribed by the NASD. On each of three occasions, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. The content of the Regulatory Element shall be prescribed by the NASD.

(ii) Registered persons who have been continuously registered for more than 10 years as of the effective date of this Part shall be exempt from participation in the Regulatory Element, provided such persons have not been subject to any disciplinary action within the last 10 years as enumerated in subsection (1)(c)(i)-(ii) of this Part. In the event of such disciplinary action, a person will be required to satisfy the requirements of the Regulatory Element by participation for the period from the effective date of this Part to 10 years after the occurrence of the disciplinary action.

(iii) Persons who have been currently registered for 10 years or less as of the effective date of this Part shall initially participate in the Regulatory Element within 120 days after the occurrence of the second, fifth or tenth registration anniversary date, 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.

(iv) 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 subsection (1)(c) of this Part.

(b) Failure to Complete—Unless otherwise determined by the NASD, any registered persons who have not completed the Regulatory Element within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Part shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of Parts II and III of Schedule C to the By-Laws. The NASD may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

(c) Re-entry into Program—Unless otherwise determined by the NASD, a registered person will be required to re-enter the Regulatory Element and satisfy all of its requirements in the event such person:

(i) becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;

(ii) becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(iii) is ordered as a sanction in a disciplinary action to re-enter the Continuing Education Program by any securities governmental agency or securities self-regulatory organization.

Re-entry shall commence with initial participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the disciplinary action becoming final, in the case of (ii) and (iii) 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.

(d) 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 based on the initial registration anniversary date rather than based on the date of reassociation in a registered capacity.

(e) Definition of registered person—For purposes of this Part, the term "registered person" means any person registered with the NASD as a representative, principal or assistant representative pursuant to Parts II, III or IV respectively of Schedule C to the By-Laws.

(2) Firm Element

(a) Persons Subject to the Firm Element—The requirements of this section shall apply to any person registered with a member who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons (collectively, "covered registered persons"). "Customer" shall mean any natural person and any organization, other than another broker or dealer, executing securities transactions with or through or receiving investment banking services from a member.

(b) Standards for the Firm Element

(i) 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.

(ii) Minimum Standards for Training Programs —Programs used to implement a member's training plan must be appropriate for the business of the members and, at a minimum, must cover the following matters concerning securities products, services and strategies offered by the member:

a. General investment features and associated risk factors;

b. Suitability and sales practice considerations; and

c. Applicable regulatory requirements.

(iii) 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.

(c) 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.

(d) Specific Training Requirements —The NASD may require a member, individually or as part of a larger group, to provide specific training to its covered registered persons in such areas the NASD 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.

Status Report On The Securities Industry Continuing Education Program

Background

In March 1993, six self-regulatory organizations (SROs)[1] announced the formation of an industry task force to consider whether the industry should develop a uniform continuing education program for registered persons. The task force was comprised of experienced individuals with diverse backgrounds from a broad range of firms, thus ensuring consideration of the interests and needs of a wide cross section of the industry. The SROs noted that the increasing complexity of the securities industry demands that professionals who deal with the public or who are in supervisory positions maintain minimum standards of competence and professionalism. The SROs also said that a formal industry-wide continuing education program to keep professionals up to date on products, markets, and rules was needed. By initiating a broad-based industry effort, the SROs hoped to provide a unified industry-wide approach acceptable to all segments of the industry.

In September 1993, the industry task force issued a report calling for a formal two-part Securities Industry Continuing Education Program (the Program) for securities industry professionals that would require uniform periodic training in regulatory matters (the Regulatory Element) and ongoing programs by firms to keep employees up to date on job- and product-related subjects (the Firm Element). The report also recommended the creation of a permanent Securities Industry/ Regulatory Council on Continuing Education (the Council)[2] to recommend to the SROs the specific content of the uniform Regulatory Element and the requirements for ongoing firm training programs undertaken to satisfy the requirements of the Firm Element. The task force recommended further that computer-based training be used as a primary delivery vehicle for the uniform Regulatory Element of the Program. In November 1993, the SROs endorsed, in concept, the recommendations of the industry task force.

Since November 1993, the Council has met at least monthly. Separate committees have worked on the Regulatory and Firm Elements. The Regulatory Element Committee developed the standardized subject matter for the computer-based training program. The Firm Element Committee developed standards for firms to follow in developing and implementing their training programs. The SROs adopted uniform rules to implement the Program based upon the Council's recommendations and filed them with the Securities and Exchange Commission (SEC) for approval in December 1994. The SEC approved the SRO rules on February 8, 1995, and the Securities Industry Continuing Education Program will be effective July 1, 1995.

Highlights Of The Securities Industry Continuing Education Program

The Regulatory Element

Who Is Covered

The Regulatory Element of the Securities Industry Continuing Education Program requires all registered persons to complete a prescribed computer-based training session within 120 days of the second, fifth, and tenth anniversary dates of their initial registration date. Persons who have been registered for more than 10 years and have not been the subject of a serious disciplinary action (as more fully described below) during the most recent 10 years are exempt from the Regulatory Element.

Any person who would otherwise be exempt from the Regulatory Element is required to re-enter the program for another 10 years when and if that person:

[1] The SROs include the American Stock Exchange, Inc. (AMEX), the Chicago Board Options Exchange, Incorporated (CBOE), the Municipal Securities Rulemaking Board (MSRB), the National Association of Securities Dealers, Inc. (NASD), the New York Stock Exchange, Inc. (NYSE), and the Philadelphia Stock Exchange, Inc. (PHLX).

[2] The Council includes representatives from 13 broker/dealers and the six SROs. In addition, the Securities and Exchange Commission and the North American Securities Administrators Association (NASAA) have each assigned liaisons to the Council.

- becomes subject to a statutory disqualification pursuant to the Securities Exchange Act of 1934, *or*

- becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with, or rule or standard of conduct of, any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding, *or*

- is ordered to re-enter the Regulatory Element as a sanction in a disciplinary action by any securities governmental agency or securities self-regulatory organization.

Failure To Comply With The Regulatory Element

Failure to complete the required Regulatory Element computer-based training session during the prescribed time period will result in a person's registration becoming inactive. A person whose registration becomes inactive cannot conduct a securities business, perform any of the functions of a registered person, or receive compensation for activities that require registration until he or she meets the requirements of the Regulatory Element.

Regulatory Element Computer-Based Training

The Regulatory Element computer-based training program is designed to transmit information broadly applicable to all registered persons regardless of their job functions or registration status (such as Series 6 or Series 7). The Regulatory Element training focuses on compliance, regulatory, ethical, and sales-practice standards. Its content has been recommended by a group of industry and SRO representatives, reviewed by the Council, and approved by the SROs. The Content Outline For The Regulatory Element section more fully explains the subject matter covered by the Regulatory Element.

While there will be no grading of individual performance on the Regulatory Element, information feedback indicating whether responses are correct or incorrect will be provided to individuals throughout the computer-based training session. Firms will be provided with aggregated information on all their covered registered persons who take the computer-based training program in a given period. Firms will be expected to consider this information when formulating their training plans for the Firm Element, as more fully described below.

The Firm Element

Who Is Covered

Unlike the Regulatory Element, for which only those persons registered for 10 years or less are covered, the Firm Element has no exemptions. It is applicable to all persons who have direct contact with customers in the conduct of the firm's securities sales, trading, or investment banking business, and the immediate supervisors of such persons.

Annual Requirements

The Firm Element requires each member to establish a training plan and identifies certain minimum requirements associated with that plan. Each year the firm must prepare a written training plan after an analysis of its training needs. Firms must consider certain factors when conducting their analyses and in developing their training plans, such as the firm's size, organizational structure, scope and type of business activities, as well as regulatory developments and the aggregate performance of covered registered persons in the Regulatory Element. The training plan must be implemented and records must be kept that clearly demonstrate the content of its training programs and the completion of the programs by the persons or categories of persons identified in the firm's training plan. Persons who are subject to the training plan have an affirmative obligation to participate in the programs as required by the member.

Minimum Standards For The Firm Element Training Programs

The Firm Element also establishes certain minimum standards for the training programs that are used in a member's plan. For example, such programs, when dealing with investment products and services, must identify their investment features and associated risk factors, their suitability in various investment situations and applicable regulatory requirements that affect the products or services. The SROs have the authority to require members, individually or as part of a group, to provide specific training to covered registered persons in any area the SROs deem necessary. Depending on the issue of concern, these requirements could be directed at specific individuals or portions of a firm, a specific firm or group of firms, or across the entire industry.

Implementation

The Regulatory Element

Administration Of The Regulatory Element

The SROs will begin administration of the Regulatory Element on July 1, 1995. The Central Registration Depository (CRD) system will track persons subject to the requirement

and notify members in advance of those individuals who, after July 1, 1995, are approaching their second, fifth, and tenth year anniversary dates of their initial securities registration and are required to participate in the Regulatory Element. These individuals will have 120 days to complete the Regulatory Element computer-based training session at an NASD PROCTOR® Center. Follow-up notices will also be sent as these persons approach the end of the 120 days following their registration anniversary. In addition, the CRD system will generate reports listing those persons whose registrations have become inactive due to failure to complete the requirement within the specified time. Persons who have completed 10 years of registration before July 1, 1995, without serious disciplinary action, will be exempt.

A person's registration anniversary dates will be determined by his or her first registration, regardless of any subsequent firm changes or changes in registration category, provided that the person has continuously remained registered. Persons who, in the 10-year period before July 1, 1995, have incurred a covered disciplinary event that would require them to re-enter the program will have an initial registration date that coincides with the effective date of the final decision in the disciplinary action. Individuals who have ceased to be registered and are required to take an examination before becoming re-registered will be subject to anniversary dates based on their most recent re-registration date.

The NASD PROCTOR system will deliver the computer-based training program in any of the PROCTOR Centers located throughout the country. In 1995, the PROCTOR network will be expanded by adding an additional center in Manhattan, and at least two mobile centers. The mobile centers will meet the needs of members requesting on-site administration of the Regulatory Element computer-based training according to final procedures to be announced by the NASD once the mobile centers are available.

The Firm Element

The Firm Element will be implemented in two stages. By July 1, 1995, members are required to complete their training needs analyses and to develop written training plans that will be available for review upon request by the SROs, the SEC, and state regulators. Members are expected to begin implementing their plans as soon as practicable but, in any event, no later than January 1, 1996. The SROs will develop a consistent approach for on-site reviews of the Firm Element requirements. Additionally, the SROs will coordinate their field inspection efforts to avoid any unnecessary regulatory overlap in the inspection process for firms that are members of two or more SROs.

Within the broad standards defined in the Continuing Education Rules, the Firm Element provides great flexibility to firms in designing training programs appropriate to their needs and consistent with their resources. The Firm Element framework is intended to be flexible enough to accommodate differences in the size, scope, and complexity of firm operations.

The Firm Element also requires that a member be responsible for assuring that training programs for investment products and services used in its training plan appropriately cover, at a minimum:

- the investment characteristics and associated risk factors of the product or service;
- their suitability for different investment situations; and
- any regulatory requirements that affect the product or service.

The Council and the SROs realize that some firms will rely upon training material and programs provided by a variety of outside training and education vendors. Nevertheless, the proposed rules place the responsibility on each member to ensure that such training meets the broad content standards included in the rule as they relate to that particular firm. The SROs do not intend to pre-approve training materials and programs developed by members or vendors. They will, however, communicate regularly with members regarding their expectations for the content of training programs. As the program evolves, it is expected that some curricula content standards will be defined by the SROs for products and services where heightened regulatory concerns exist.

The Council has developed guidelines to help firms carry out their responsibilities under the Firm Element (see the Guidelines For Firm Element Training). It is likely that the Guidelines will be updated in the future to reflect experience gained during, and issues that arise from, the implementation of the Program.

Regulatory Consequences For Non-Compliance With Firm Element Requirements

Failure to comply with Firm Element requirements may subject the firm and individual to disciplinary action. Failure to attend training provided by his or her firm to comply with the Firm Element requirements may subject the "covered person" to disciplinary action.

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The Securities Industry
Continuing
EDUCATION
Program

Questions And Answers Regarding The Securities Industry Continuing Education Program

Regulatory Element

1.

Q. Who is covered by the Regulatory Element?

A. Every person registered for 10 years or less will be covered by the Regulatory Element and will be required to take the regulatory computer-based training within 120 calendar days after his or her second, fifth, and tenth anniversaries of his or her initial registration date.

2.

Q. How does imposition of a serious disciplinary action affect a registered person's status in the Regulatory Element?

A. Within 120 days of imposition of the serious disciplinary action (fine of $5,000 or more for a rule violation, or as otherwise ordered pursuant to a disciplinary action), the person must participate in a Regulatory Element session followed by additional sessions within 120 days of the second, fifth, and tenth anniversaries of the date of the disciplinary action.

3.

Q. Will anyone be grandfathered or exempted?

A. Grandfathering applies to the Regulatory Element only. Those who have been registered more than 10 years and who have not been the subject of a serious disciplinary action (suspension, bar, fine of $5,000 or more, or a statutory disqualification) during the most recent 10 years will be grandfathered from the Regulatory Element.

4.

Q. How will registered personnel be notified that they must take the Regulatory Element computer-based training session?

A. The CRD system will track persons subject to the requirement and notify members in advance of those individuals who, after July 1, 1995, are approaching their second, fifth, and tenth year anniversary dates of their initial securities registration and are required to participate in the Regulatory Element. These individuals will have 120 days to complete the Regulatory Element computer-based training session at an NASD PROCTOR® Center. Follow-up notices will also be sent as these persons approach the end of the 120 days following their registration anniversaries. CRD will also provide notices of completion of the Regulatory Element to firms.

5.

Q. If a person has multiple registrations (such as Series 6 in 1988 and Series 7 in 1991), what is the applicable date to determine whether participation in the Regulatory Element is required?

A. The date of the initial registration (1988) applies, provided that the person has remained continuously registered since that time and has had no serious disciplinary action.

6.

Q. What if an individual's registration temporarily lapses?

A. If the person ceases to be registered for less than two years, the person will maintain the original registration date but will have to participate in any Regulatory Element program that may have been missed during the lapse period. For example, if the registration lapses at four and a half years and the person wishes to reactivate at what would be the six-year anniversary, the person must complete the fifth-year Regulatory Element requirement before the registration can be reactivated.

7.

Q. What if a person ceases to be registered for two or more years?

A. That person would begin the entire registration process anew. The person must take the appropriate qualification examination(s) and would re-enter the Regulatory Element at the beginning of a new 10-year cycle.

8.

Q. Where will the computer-based training of the Regulatory Element be administered and how long will the training last?

A. The NASD PROCTOR system will deliver the computer-based training program in any of the PROCTOR Centers located throughout the country. In 1995, the 55-center PROCTOR network will be expanded by adding an additional center in Manhattan, and at least two mobile centers. The mobile centers will meet the needs of members requesting on-site administration of the Regulatory Element computer-based training according to final procedures to be announced by the NASD once the mobile centers are available.

9.

Q. What topics will the Regulatory Element cover?

A. The Regulatory Element will cover topics of general applicability to all registered persons in seven broad areas, called modules:

- Registration And Reporting
- Communications With The Public
- Suitability
- Handling Customer Accounts
- Business Conduct
- Customer Accounts, Trade And Settlement Practices
- New And Secondary Offerings.

Please see the Content Outline For The Regulatory Element for more information about the subject matter encompassed by the Regulatory Element.

10.

Q. How will the material be presented in each module?

A. Participants will be led by an interactive computer program through scenarios involving a registered person and a customer and will be asked to choose the most appropriate response or responses to the facts in the story. The computer software will assess the participant's understanding of the topic and deliver tutorials about the subject if necessary. The computer program provides immediate feedback to the participant as he or she works through each module's subject matter.

11.

Q. Will the Regulatory Element computer-based training be the same for everyone?

A. The content of each training session will be the same for everyone, because each person taking the computer-based training must complete all seven modules. However, because there are five possible scenario sets in each of the seven modules and the scenario sets are selected at random, it is highly unlikely that any two people will see exactly the same stories during the course of his or her computer-based training session.

12.

Q. Will the individual receive a grade or any other kind of feedback from the computer-based training of the Regulatory Element?

A. The computer-based training is not graded. However, as described above, the interactive nature of the computer-based training provides immediate feedback as the person works through the scenarios and problems.

13.

Q. What type of feedback will firms receive about their employees?

A. Firms will receive aggregate feedback about the performance of their employees with respect to the subject areas in the Regulatory Element. Firms will be expected to use this feedback in the annual analysis of training needs and in the development of written training plans when complying with the Firm Element requirements. SROs will also review aggregate firm feedback to determine subject areas that may not be adequately covered in the firm programs.

14.

Q. How should an individual prepare for the Regulatory Element?

A. The Regulatory Element computer-based training program is designed to transmit information broadly applicable to all registered persons regardless of their job functions or registration status (such as Series 6 or Series 7). The Regulatory Element training focuses on compliance, regulatory, ethical, and sales-practice standards. Its content has been recommended by a group of industry representatives, reviewed by the Council, and approved by the SROs. The Content Outline For The Regulatory Element more fully explains the subject matter covered by the Regulatory Element.

15.

Q. If the computer-based training is not completed successfully, is there a waiting period before the computer-based training can be taken again?

A. The individual may schedule another appointment at the PROCTOR Center to take the computer-based training after a one-day

waiting period, as long as the 120-day window is still open. If the person does not complete the computer-based training in the 120-day window, his or her registration will be deemed inactive until he or she can reschedule an appointment and successfully complete the Regulatory Element. It is important that computer-based training sessions at PROCTOR Centers be scheduled early in the 120-day period.

16.

Q. Is each sitting for the computer-based training of the Regulatory Element recorded in CRD?

A. Yes.

17.

Q. What will each Regulatory Element computer session cost?

A. The cost is $75, which is intended solely to recoup the costs incurred in developing, monitoring, updating, and administering the Regulatory Element program. This fee will be adjusted (up or down) periodically to reflect these costs.

18.

Q. What is the rationale behind discontinuing the Regulatory Element after 10 years?

A. Because information to be transmitted through the Regulatory Element is primarily of a compliance, regulatory, ethical, and sales-practice nature, individuals registered for more than 10 years without a significant disciplinary action presumably have adequately absorbed this material, and this understanding should be reflected in their manner of doing business. In addition, all registered individuals who are "covered persons" will continue to be subject to the requirements of the Firm Element throughout their careers.

19.

Q. What regulatory consequences will result when an individual does not complete the Regulatory Element?

A. Noncompliance with Regulatory Element requirements will result in an individual's registration being deemed inactive until the person fulfills all applicable elements. Firms will receive reports identifying persons whose registrations have become inactive and must ensure that they are not permitted to engage in activities requiring registration. SROs will also monitor individual and firm compliance with these prohibitions during routine or special inspections. It is important that computer-based training sessions at PROCTOR Centers be scheduled early in the 120-day period.

20.

Q. May persons deemed inactive receive commissions?

A. Because persons may not conduct business during inactive registration periods, no commissions may be paid on such business. Trail or residual commissions for business conducted before the inactive period may be paid.

Firm Element

21.

Q. What is the Firm Element implementation schedule?

A. For most firms, the Firm Element will be a two-tier process. Firms must complete an analysis of their training needs and prepare their first annual written training plan to address their needs by July 1, 1995. The actual implementation of a firm's plan must begin no later than January 1, 1996, which will allow firms time to develop and secure materials, plan budgeting needs, arrange scheduling, and develop record-keeping procedures. Regulatory examination for Firm Element compliance will also proceed in accordance with this schedule. For example, written training plans are subject to inspection on or after July 1, 1995, and firm records should demonstrate programs in progress as of January 1, 1996.

22.

Q. Who will be covered by the Firm Element?

A. The Firm Element requirements apply to all "covered persons" (registered salespeople, traders, sales assistants, investment company shareholder servicing agents, investment bankers, and others who have direct contact with customers in the conduct of a securities sales, trading, or investment banking business, and their immediate supervisors) for as long as they are considered "covered persons." The term "customer" applies to retail, institutional, and investment banking customers, but does not apply to other broker/dealers.

23.

Q. Will anyone be grandfathered or exempted?

A. No "covered person" is grandfathered or exempted from the Firm Element.

24.

Q. Are branch managers "covered persons" within the Firm Element?

A. Yes, because they directly supervise salespeople in the branch. If a branch manager also has customer accounts, then his or her immediate supervisor is a "covered person" as well.

25.

Q. Are registered research analysts "covered persons" within the Firm Element?

A. Yes, if they engage in sales presentations to customers.

26.

Q. Are registered sales assistants or registered investment company shareholder servicing agents who handle service calls from customers "covered persons" within the Firm Element?

A. Yes, if their activities are construed as conducting a securities business in a sales context. The fact that the firm has decided to register such persons implies that there is enough potential for customer contact of the type prescribed by the rules for them to be considered a "covered person."

27.

Q. If a "covered person" has an insurance license and fulfills insurance continuing education obligations, can that substitute for the Firm Element?

A. Perhaps it may serve as a portion of the Firm Element requirements relating to insurance-related securities products. Whether broader training coverage would be required would depend upon whether the individual participated in a broader range of the firm's products and services.

28.

Q. What regulatory consequences will result when a "covered person" does not comply with the requirements of the Firm Element?

A. Failure to attend training required by his or her firm to comply with the Firm Element may subject the "covered person" to disciplinary action.

29.

Q. What will be the content of the Firm Element?

A. It will vary. Each firm is required to analyze and evaluate its training needs at least annually. The firm's size, organizational structure, and scope of business, as well as regulatory developments and the Regulatory Element performance of its registered persons, will need to be considered in determining training needs. Once its needs are identified, the firm will devise a written training plan to address those needs with training programs appropriate to its business.

Each firm must then administer its continuing education program 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 persons or categories of covered persons. Covered persons must take all appropriate and reasonable steps to participate in continuing education programs as required by the firm.

30.

Q. Is there a fixed number of hours of continuing education that each "covered person" must take in the Firm Element?

A. There are no set schedules or required number of hours for the Firm Element, but coverage must be sufficient to meet the criteria established by SRO rules. For example, it may or may not be necessary to include every "covered person" within each calendar year if the firm can demonstrate a reasonable allocation of resources in a well-conceived and executed plan. Firms may need to give priority for specific time periods to those areas of their business in which the identified needs are greatest.

31.

Q. Will training materials be available?

A. The Securities Industry/ Regulatory Council on Continuing Education has prepared the Guidelines For Firm Element Training.

As indicated in the Guidelines, Firm Element training should be consistent with each firm's unique needs and areas of business. Thus, firms will need to develop their own material or obtain assistance from outside sources such as commercial vendors. Some industry organizations have indicated an intention to produce materials for widespread use. In any event, the responsibility for the content and appropriateness of the material rests with the firm.

32.

Q. Will SROs or the Council pre-approve training materials and/or programs developed by members or providers?

A. Neither the SROs nor the Council will pre-approve training materials or training programs. SROs will, however, continue to communicate with members

regarding the expectations for the content of training programs. Also, as the program evolves, it is expected that some curricula content standards will be defined by the SROs for products and services where heightened regulatory concern exists.

33.

Q. Is the annual compliance meeting required under Article III, Section 27 of the NASD Rules of Fair Practice adequate to demonstrate compliance with the requirements of the Firm Element?

A. Probably not. It can certainly be used as an occasion on which to transmit information or conduct training. However, firms must address their own needs for sales practice and product training and carry out effective programs. In most instances, a significant expansion of material covered at the annual compliance meeting probably will be necessary. Also, it may be appropriate to conduct some training before waiting for scheduled annual compliance meetings.

34.

Q. Must each "covered person" meet personally with his or her supervisor annually to determine the training requirement for that person?

A. No. However, some firms may decide to meet to establish individual needs or to discuss training needs during regular performance reviews.

35.

Q. If a firm has significant internal training and education programs already in place, can these be used to meet the Firm Element requirements?

A. Probably, at least in part. For firms with comprehensive ongoing training programs in place, the requirements may result in expanded record keeping, more formalized planning, and the incorporation of any minimum criteria specified by the SROs. It is likely, however, that most firms will need to increase their education and training efforts substantially to meet the Program's requirements.

36.

Q. If a firm prescribes that a particular registered representative take part in the Firm Element training, must the representative do so?

A. Yes. The Program requires firms to implement a training program and to maintain records that clearly demonstrate its content and its completion by each person or groups of persons identified in the firm's training plan. Persons who are subject to the Program have an affirmative obligation to participate in training. Failure to do so could result in disciplinary action against the registered person by his or her firm or by a regulatory authority.

37.

Q. Must a firm develop supervisory procedures that address compliance with the Regulatory and Firm Elements of the Continuing Education Program?

A. Yes. Firms must develop written supervisory procedures designed to reasonably ensure compliance with the SRO rules governing the Continuing Education Program. No standardized procedures are mandated, however firms should consider, among other things:

- designating an appropriate manager to oversee compliance with the Program;
- ensuring no improper activities by persons with inactive registrations; and
- processes for designing Firm Element programs.

38.

Q. Will firms that are members of two or more SROs be subject to redundant inspections for compliance with the continuing education requirements?

A. No. The SROs will coordinate their field inspection efforts to avoid any unnecessary regulatory overlap for joint members. The SROs are especially committed to developing a consistent approach to examining and enforcing the Firm Element requirements.

The Securities Industry
Continuing
EDUCATION
Program

Content Outline For The Regulatory Element

Six self-regulatory organizations (SROs)—the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, the New York Stock Exchange, and the Philadelphia Stock Exchange—have enacted rules establishing a continuing education program for the securities industry. The rules call for a formal, two-part program, comprising a Firm Element and a Regulatory Element.

The Firm Element requires broker/dealers to keep employees up to date on job- and product-related subjects by means of a formal, ongoing training program. Each broker/dealer is required to establish a training process meeting certain minimum criteria and standards. In developing and implementing the Firm Element, each broker/dealer must take into consideration its size, structure, scope of business, and regulatory concerns.

The Regulatory Element requires all registered persons to participate in a prescribed computer-based training session within 120 days of their second, fifth, and tenth registration anniversary dates. The Regulatory Element is designed to transmit information broadly applicable to all registered persons. The content was recommended by an industry committee representing a diverse range of broker/dealers, in conjunction with the Securities Industry/Regulatory Council on Continuing Education, industry regulatory agencies, and SROs.

The Securities Industry Continuing Education Program is intended to ensure that registered securities industry personnel are informed of issues important to performing their jobs appropriately. Any registered person who violates industry regulations is subject to disciplinary action, including censure, fines, suspension, and/or permanent loss of registration and license.

The Regulatory Element

The Regulatory Element focuses on compliance, regulatory, ethical, and sales-practice standards. Its content is derived from rules and regulations, and is based on standards and practices widely accepted within the industry. Although the specific requirements of certain rules may differ slightly among the different SROs, the program is based on standards and principles applicable to all. In certain instances, particular SRO requirements may be more restrictive than those represented in the program. Additionally, many broker/dealers limit the types of activities in which their registered employees may engage and/or the investment products they may represent, or they may require specific approvals for certain functions. Registered persons are responsible for ensuring that their activities are within the scope permitted by their employing broker/dealers and conducted in accordance with the rule requirements of all of the SROs and jurisdictions regulating them.

The Regulatory Element is delivered through a computer-based program in a series of realistic situations and interactive instruction related to those situations, organized in the following seven modules:

- Registration and reporting issues;
- Communications with the public;
- Suitability;
- Handling customer accounts;
- Business conduct;
- Customer accounts, trade and settlement practices; and
- New and secondary offerings.

Each of these topics is covered thoroughly in its corresponding module, and some may be covered in more than one module. The content of these modules is outlined below.

A covered registered person must satisfactorily complete all seven modules contained in the program to satisfy the requirement to complete the Regulatory Element. The program is designed with the intent of providing ample time to complete all seven modules within the time allotted. Failure to complete the Regulatory Element within 120 days of the prescribed anniversary dates will result in a person's registration becoming inactive. Such person will be prohibited from performing any of the functions of a registered person until the person meets the requirement.

Content And Presentation Of The Regulatory Element

Each module is presented through a description of customer-related situations and fact patterns, combined with interactive questions, answers, and feedback. Unless otherwise specified, the topics are covered at basic levels of knowledge and understanding. In the process of interacting with the program, participants apply their existing knowledge and information presented in the modules.

Module 1: Registration And Reporting Issues

1.1 Registration/Licensing Requirements

Requirements of the SROs

State authority and jurisdiction, general requirements for registered representative (RR) and broker/dealer registration/licensing in states

Conditions, restrictions, and requirements for updating Form U-4

Restrictions on activities of RRs

General registration/licensing requirements for and limitations on activities of investment advisers

Restrictions on activities of non-registered persons

Consequences of violating registration/licensing requirements

1.2 Securities And Exchange Commission (SEC) And SRO Authority And Investigations

Jurisdiction of SEC, SROs, and state regulators

Obligations for response to regulatory inquiries

Definition and consequences of statutory disqualification [Section 3(a)(39) of the Securities Exchange Act of 1934]

Settlement of employer-employee disputes

1.3 Blue-Sky Laws, Registration Of Securities

Requirements for securities to be registered or exempt in states in which they are being sold

Distinction between exempt/non-exempt securities

General exemptions from registration

Module 2: Communications With The Public

2.1 Communications With The Public

Definitions, general standards, and required approvals for public communications:

- Telephone solicitations, correspondence, advertisements, market letters, research reports, sales literature, educational material, electronic communications, communications in and with the press, seminars, lectures

Restrictions on telephone solicitations/cold calling

2.2 Customer Complaints And Inquiries

Requirements for reporting, investigation, and documentation

Handling of disputes with customers; arbitration procedures and awards

CRD toll-free number and type of information publicly disclosed in disciplinary records

Module 3: Suitability

3.1 Specific Elements In Evaluating Current Status Of Customer

Financial profile—Balance sheet, income statement, other financial considerations

Life profile—Non-financial investment considerations

Risk tolerance and investment experience

Investment objectives and considerations

Solicited versus unsolicited accounts and transactions

Tax considerations

3.2 Concepts And Implications Related To Risk

Diversification and risk reduction—Concepts and specific responsibilities of the RR

Definitions and examples of types of risk—Liquidity risk, interest rate risk, call risk, credit risk, legislative risk, purchasing power risk (inflation risk), reinvestment risk, principal risk

Risk characteristics of categories of investments (e.g., equity, debt, asset-backed, mutual funds)

Business cycle—Definition and effects

Effects of national and international events, interest rate fluctuations

3.3 Monitoring Customer Needs, Objectives, And Portfolio

Obligation and procedures for routine monitoring and updating of customer's financial and life profile, investment objectives, and portfolio

Module 4: Handling Customer Accounts

4.1 Prohibited/Fraudulent Practices

Definitions and examples of prohibited and improper activities such as insider trading, market manipulations, entering false orders, misappropriation of funds, stealing/conversion, forgery, unfair and excessive pricing, unauthorized trading, guarantees to customers, selling away, front running, free-riding, piggy-backing/shadowing, trading at the close/marking the close, selling dividends, commingling funds, parking, selling to breakpoints, and churning

4.2 Third-Party Orders And Instructions

Required instructions, requirements for third-party checks, requirements for written authorization for orders

4.3 Account Transfers And Customer Records

General requirements and procedures for transferring accounts

Confidentiality issues and responsibilities related to customer accounts and records; firm ownership of records

4.4 Gifts And Gratuities

Restrictions on giving and receiving; requirements for approvals

4.5 Sharing Profits And Losses

Restrictions on and allowable circumstances

4.6 "Prudent Man" Rule

Basic principle

4.7 "Chinese Wall" Requirements

General knowledge

Module 5: Business Conduct

5.1 Private Securities Transactions (Private Offerings)

Restrictions, required authorizations, legal risks

5.2 Outside Business Activities

Permitted and prohibited activities—Dual licensing, part-time employment, conflicts of interest

Required notifications/approvals (regulatory and broker/dealer)

5.3 Compensation

Rules, regulations, and standards governing sharing commissions or part of compensation

5.4 Payment Of Referral Fees (To Non-Affiliated Persons)

Restrictions; approval and disclosure requirements

5.5 Restrictions On Loans To/From Customers

5.6 Conflicts Of Interest And Potentially Illegal Situations

RR awareness, things to watch for, recognition, prohibitions

5.7 Cash Transaction Reporting Requirements

Module 6: Customer Accounts, Trade, And Settlement Practices

6.1 Customer Accounts, Documents, Approvals, And Restrictions

Procedures for opening customer accounts, including required approvals, and record keeping

Definitions and requirements related to:

Accounts For Clients Of Investment Advisers—Additional trading authorization required, written evidence of power of attorney

Discretionary Accounts—Requirements for written authorization and broker/dealer approval; prohibition by many broker/dealers

Option Accounts—Requirement to provide customer with options disclosure document

Prohibited Accounts—Residents of states in which firm is not authorized (registered) to do

business, margin accounts for fiduciaries

Legally Restricted Accounts—Restrictions/prohibitions on accounts for minors, persons incompetent, entities, death of customer

Custodial Accounts (UGMA/UTMA)—General requirements and characteristics

Qualified Accounts [such as 401(k)]—Tax advantages, restrictions

Joint Accounts—Characteristics and purpose of accounts as joint tenants with right of survivorship, joint tenants in common

Broker/Dealer Employee Accounts—Approval of and disclosures, procedures for opening

Obligations of and limits on fiduciaries, limits on the use of powers of attorney

6.2 Regulation T, SRO Margin, And Short-Sale Rules

Distinctions between cash and margin accounts

Appropriate use of margin accounts and associated risks—initial and maintenance concepts

Obligations for informing customers of risks and benefits

6.3 Payment And Delivery For Securities Transactions

General requirements, consequences of non-payment/non-delivery

6.4 Correction Of Errors

Procedures, approvals, and prohibitions

Module 7: New And Secondary Offerings

7.1 SEC Registration And Prospectus Requirements (Securities Act Of 1933)

General Requirements—Definition of offer; prospectus delivery requirements; limits on advertising and other written materials; prohibition of sales before effective date; use of preliminary prospectus (red herring); restrictions before, during, and after a distribution; exemptions from registration; restriction on hot issues

New Issues And Securities Trading—Registration requirements, restricted accounts, prospectus requirements, exemptions from registration

7.2 Securities Investor Protection Corporation (SIPC)

Purpose of SIPC, coverage limits and amounts, disclosures to customers

7.3 Penny-Stock Rules

General knowledge of written suitability and disclosure requirements

The Securities Industry Continuing EDUCATION Program

Guidelines For Firm Element Training

Introduction

The Securities Industry/Regulatory Council on Continuing Education (the Council) has developed a Securities Industry Continuing Education Program. Uniform rules were adopted by the securities industry self-regulatory organizations (SROs) mandating a two-part program which consists of a Firm Element and a Regulatory Element.

The Regulatory Element requires that registered persons complete a computer-based training program on compliance, regulatory, ethical, and sales-practice standards within four months of their second, fifth, and tenth registration anniversary dates.

The Firm Element requires that each firm, after assessing its own specific needs, develop and implement a plan for training its covered registered persons. The assessment and plan must be done annually with the initial assessment and plan completed by July 1, 1995, and implementation beginning no later than January 1, 1996.

To help broker/dealers meet the requirements of the Firm Element, the Council has developed these guidelines to assist in the planning, development, execution, and documentation of their training programs. Because the Continuing Education Program represents a major new initiative by the securities industry, it is likely that the guidelines will be updated in the future to reflect experience gained during, and issues that arise from, the implementation of the Program.

These guidelines recognize the varying size, scope, and nature of broker/dealers, and the unique and often diverse lines of business in which each may be engaged. A full-service broker, for instance, may have goals or concerns that are different from those of a small, limited-product firm, an investment banking or institutional firm, or even a discount broker. Recognizing these differences and the fact that the training needs of each firm are just as diverse, the Firm Element provides for each training program to be uniquely tailored to meet specific needs.

Firms engaged in diverse lines of business or with complex organizational structures may need multiple training programs. These may be separate plans coordinated to cover appropriate areas, or they may be incorporated in a single master plan. Likewise, broker/dealers that are separate from, but affiliated with, another firm must have separate training plans, though these plans may incorporate common elements for training on common products and/or services. In the case of small firms, those with limited product lines, and sole proprietorships, the specific needs are uniquely different from those of large or full-service firms, and may be significantly less complex and narrower in scope.

The purpose of these guidelines is not to establish a uniform program, but is, rather, to establish a common approach for the development and implementation of a firm-specific training program that meets the needs of all types and sizes of firms. These guidelines are not intended to have the effect of rules or regulations, but should be helpful in enabling firms to comply with SRO rules. However, firms should recognize that the suggested components or recommended approaches will not create a "safe harbor" and that each firm must consider for itself what continuing education measures should reasonably be taken.

Covered Persons And The Scope Of The Firm Element

The Firm Element imposes a formal requirement on securities firms to provide training for registered persons who have direct contact with customers in the conduct of securities sales, trading, or investment banking activities, and for the immediate supervisors of these persons. Under the rules that mandate the Continuing Education Program, "registered person" means any member, allied member, registered representative, or other person registered or required to be registered under SRO rules. However, this definition does not include any such person whose activities are limited solely to the transaction of business on an exchange floor with members or registered broker/dealers. "Customer" is defined to mean any natural person and any organization, other than another broker or dealer, executing securities transactions with, through, or receiving investment banking services from, a member.

Registered persons employed in areas such as research are "covered persons" if they personally engage

in direct sales presentations to customers. For example, a research analyst whose work is limited to the preparation of written material for distribution to customers or potential customers would not be a covered person. However, if the analyst's role included personal participation in sales presentations, the analyst would be covered. Similarly, registered marketing personnel who prepare sales literature for mass distribution or use by sales personnel would not be covered if they had no personal involvement in sales presentations. Likewise, a trader dealing only with personnel at other registered broker/dealers would not be covered. However, a trader having direct contact with individual or institutional customers in a sales context would be covered. Registered investment banking employees are covered persons if they solicit new business (e.g., underwritings or mergers and acquisitions), contact customers or potential customers in an advisory capacity, or participate in sales presentations related to public offerings. Customer contacts or responses to customer inquiries on administrative, service, or operations matters do not constitute customer contact for purposes of determining covered person status.

The goal of the Firm Element is to foster high standards of ethical behavior, and just and equitable principles of trade, by ensuring that all covered persons are trained regularly and in acceptable depth on investments or services in which they deal. Covered persons included in a firm's training plan are required to take all appropriate and reasonable steps to participate as required by the firm.

The SROs periodically may identify issues or investment products that must be covered in the training programs of firms whose business encompasses those issues or products. In these instances, the SROs may mandate the coverage of specific areas of regulatory concern and may specify time frames by which those areas must be covered.

SRO rules do not require specific numbers of hours for Firm Element training; however, to achieve compliance, coverage must be sufficient to demonstrate good-faith efforts. For example, it may or may not be necessary to require continuing education for every covered person within each calendar year. In addition, it may or may not be necessary to conduct training annually relative to the entire range of a firm's products and services. Firms may need to give priority, for a specific time period, to those areas of their business in which the identified needs are greatest. In short, firms should be able to demonstrate that a reasonable allocation of resources in line with the firm's demographics and needs has been made to provide a well-conceived and executed plan.

Firms with pre-existing comprehensive training programs may be able to satisfy the requirements of the Firm Element primarily through more formalized planning, the incorporation of any subject matter periodically specified by the SROs, and expanded record keeping. Large firms engaged in diverse lines of business or with complex organizational structures may need to incorporate a variety of training approaches in their plans, delivering appropriate training to different groups of employees covering different subject areas. Specialized firms with limited product lines and small firms with only a few employees should be able to satisfy the requirements of the Firm Element with less elaborate training efforts that demonstrate a thoughtful, reasonable approach to meeting their identified training needs. Accordingly, in using this booklet, firms should be guided by that which is specifically applicable to their own identified needs, organizational structure, and nature of business.

Identification Of Training Needs And Development Of Training Plans

The firm should establish overall objectives for its training program in a statement of broad direction or general intent, arising from the process of defining and analyzing its specific training needs.

Analysis Of Training Needs

Each firm is required to conduct an analysis of its overall business annually to identify and target specific training needs. The results of this analysis should become the basis upon which firms can establish priorities and develop their own specific annual written training plans. In developing these plans, priority should be given to issues or products identified as subjects of general regulatory concern, or which have been the source of significant problems to the firm or elsewhere in the industry. At a minimum, firms should consider the following factors:

- How economic and market conditions may affect investment products or services offered or to be offered by the firm;
- Existing and planned business initiatives, especially new services, investment products, and strategies;
- Specific product- and service-related information appropriate for dissemination to covered persons;
- Legal and regulatory developments (e.g., new rules, regulations, or related firm policies);

- Customer complaints, arbitrations, litigations, or other actions involving the firm or its associated persons;

- Feedback and input on critical issues from areas such as compliance and legal, internal audit, trading, and operations;

- Consideration of sales and marketing strategies related to products and services, with attention to related suitability and other regulatory issues that reasonably may be anticipated;

- Regulatory reviews, investigations, and disciplinary actions;

- Review of previously used training materials, course critiques, or other training-related documentation that may reveal unaddressed needs or areas for enhancement;

- Incorporation of applicable information from industry organizations;

- Input from management and registered personnel in various capacities as to additional training that may be helpful;

- Use of performance reviews and business plans to identify development needs of individuals or groups of persons within a firm; and

- Aggregate performance of covered associated persons in the Regulatory Element as reported to the firm by the SROs.

Development Of Annual Training Plans

The information derived from the needs analysis should become the primary basis for the written training plan. In developing the training plan, areas to consider include the firm's products or services, available training technology and delivery mechanisms, the geographic location of individuals to be trained, and whether to deliver the training through internal personnel and facilities or through the use of outside vendors.

In developing a training plan, firms should:

- Identify the general objectives of the specific training programs to be incorporated in the plan;

- Identify the knowledge and skills to be imparted by the programs;

- Identify which specific training programs or activities should apply to specific covered persons or categories of persons;

- Identify the delivery mechanisms and resource requirements;

- Establish specific time schedules for delivery; and

- Provide for appropriate feedback to evaluate program effectiveness and for planning modifications to existing programs and developing future programs.

Information Standards And Delivery Of Training Programs

Minimum Standards For Training Material

A firm's training material must be appropriate for the firm's size, scope of business, and method of operation, and the securities products, services, and strategies it offers to customers or in which it conducts a trading or investment banking business. Training material developed by or for a firm to satisfy the requirements of the Firm Element should include coverage of the following, to the extent that they can be reasonably identified:

- Descriptive information regarding the general investment features of the products, services, or strategies;

- Basic techniques for pricing investment products, services, or strategies;

- Associated risk factors such as business risk, interest rate risk, inflation risk, market risk, and political risk;

- Features that may affect a product's liquidity, taxability, callability, convertibility, and legality for certain classes of investors;

- Suitability of the products, services, or strategies for different types of investors, considering their investment objectives and constraints, financial status, and level of sophistication; and

- Applicable regulatory requirements, including standards for communications with the public.

When these points are covered in training materials or presentations, the importance of clearly conveying appropriate information to customers or prospective customers in recommendations or sales presentations must be emphasized.

Annual Compliance Meeting

The annual compliance meeting required under Article III, Section 27 of the NASD's Rules of Fair Practice may be used to transmit information or conduct training. In most instances, however, a significant expansion of material covered at the annual compliance meeting will be necessary to comply with the Firm Element. Also, it may be appropriate to transmit some material in a manner more timely than waiting for a scheduled annual compliance meeting.

Timeliness And Flexibility

A firm's training plan must include the intended time schedule for development and delivery. While schedules may reflect both prioritized training needs and the availability of personnel and facilities, training plans should be sufficiently flexible to accommodate unforeseen needs. Information related to significant product developments, unforeseen problems, complaint patterns, or regulatory initiatives should be communicated in a timely manner.

Delivery Vehicles And Media

Firms have great flexibility in determining the most appropriate methods for the delivery of the training plan. Activities such as the following may be used alone or in combination, provided they are appropriate to the content and participants, and are reasonably designed to achieve the firm's training objectives:

- Direct-participation sessions with instructors or discussion leaders (e.g., seminars or lectures);
- Mentor relationships;
- Supervised independent study, assigned reading, or internally generated written material;
- Computer-based training;
- Audiotapes, videotapes, or internal broadcasts; and
- Meetings, video conferences, and telephone conference calls.

Regardless of whether a training presentation involves covered personnel attending a meeting or lecture, listening to an audiotape, viewing a videotape, or using a similar mechanism, the firm should create an appropriate training environment. Training to meet the requirements of the Firm Element may be accomplished in conjunction with meetings or programs with a different primary purpose, provided that the training itself is conducted in an appropriate setting and that a meaningful amount of time is devoted to it.

All materials and presentations must focus on the best interests of investors and be characterized by truthfulness, accuracy, and disclosure of material information. The information must, at a minimum, reflect regulatory and industry standards for communications with the public. Training focused exclusively on selling skills or prospecting will not meet program requirements. However, information on specific products, services, or investment strategies may be used, provided such information encompasses associated risks, suitability considerations, and applicable regulatory requirements.

Outside Programs And Vendors

A firm may produce or provide training internally, or may use external sources for some or all of its training needs, provided that programs and materials meet the firm's identified training needs and consequent plan. External sources may include institutions of higher education, professional associations and organizations, and other external vendors. If the firm chooses to use outside vendors or externally developed materials, the firm retains the overall responsibility to ensure that the content and delivery are appropriate to its identified needs and meet the requirements of the Firm Element. Likewise, the firm bears the responsibility for required planning and documentation.

Participation by a covered person in an educational program designed to meet the initial and/or ongoing requirements of a professional designation program in a field related to the securities industry may qualify as all or part of the firm's training plan for that person. In such instances, the firm must document and be prepared to demonstrate that the content is consistent with its training plan and meets the requirements of the Firm Element in the context of the individual's particular business.

Regulatory Review

Training plans, programs, and materials used to satisfy the requirements of the Firm Element are subject to review by the Securities and Exchange Commission, securities industry SROs, and state securities regulators. The responsibility for compliance with the requirements of the Firm Element must be clearly delineated within a firm. Failure to demonstrate compliance with the Firm Element or failure to make requested items available promptly for review may subject firms, individual registered persons, or their supervisors to regulatory action. Accordingly, documentation evidencing the conduct of reasonable needs analyses and the development and implementation of corresponding written training plans for appropriate participating personnel is extremely important.

Actual training materials and outlines, as well as detailed records reflecting how the Firm Element plan was developed, implemented, and administered, must be retained as part of the organization's books and records requirements under Rules 17a-3 and 17a-4 of the Securities Exchange Act of 1934. In addition, a firm must retain records documenting covered-person participation in train-

ing programs that are part of its Firm Element plan. The nature of such records will vary depending on the delivery mechanisms used by the firm.

The following are offered only as examples of the diverse methods that may be used and are not intended to suggest that any one of them should constitute the entirety of a firm's program. In fact, a program using multiple methods of delivery might best serve the needs of many firms, depending on the extent of their products and services, the geographic locations of their personnel, and their available technology.

Some firms may disseminate information of critical importance to all employees or specific groups of employees, and require written acknowledgment that the materials have been received and read. When classroom presentations and events such as annual compliance meetings are conducted, documentation as to the nature of material covered (with outlines or scripts) and attendance records must be retained. Likewise, delivery methods such as computer-based training lend themselves to maintenance of records relative to specific material covered and who participated in the program.

If information is transmitted through broad-based distributions of internal written communications, or through vehicles such as direct broadcasts to large numbers of employees, the firm must retain scripts, outlines, or recordings along with the date and extent of coverage. If this method is a component of the firm's formal Firm Element program but not the primary or majority part, the practice as described is acceptable. However, if this is the primary method of meeting the Firm Element Guidelines, appropriate documentation must be obtained from employees and retained to evidence receipt and understanding of the communications.

NASD NOTICE TO MEMBERS 95-14

Revised General Securities Registered Representative Examination (Series 7); **Effective Date: May 1, 1995**

Suggested Routing

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

In early 1993, six self-regulatory organizations (the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the New York Stock Exchange, and the Philadelphia Stock Exchange) formed an industry-wide committee to review the content outline and question selection specifications for the General Securities Registered Representative Examination (Series 7). The 10 industry members of the committee included branch/sales managers, compliance officers, training personnel, and registered representatives (RRs).

The committee reviewed the critical job functions RRs perform and the specific tasks within those functions. To further verify the job relevance of the examination, a job-analysis survey was conducted with a sample of entry-level RRs from a range of broker/dealers. In view of the survey results, the committee reviewed the number of items for each topic on the examination and the rules to be covered in the examination, and recommended revising the examination.

The revised Series 7 remains a single-grade, 250-question test. The revised examination covers all financial products areas covered in the existing examination, and the overall emphasis on investment products generally remains the same. Topical coverage of direct participation programs, particularly relative to taxation, has been reduced. Questions related to the basis book and interpolation, supply-side economics, and calculating margin on options have been deleted. Questions will be added on Sallie Mae securities and exchange-traded, yield-based options. The revised examination will include questions on collateralized mortgage obligations (CMOs), long-term equity options, and capped index options. The number of questions on CMOs has been increased. The revised test increases the emphasis on issues related to determining and monitoring suitability.

The self-regulatory organizations will join a committee to periodically determine any adjustments to the examination outline and specifications that may be required. The committee will represent a broad range of expertise and broker/dealer organizations. This committee will address any new information that RRs need to know, information currently specified in the examination that should be deleted, and adjustments in emphasis on various topics that need to be made.

Administration of the revised examination will start in on May 1, 1995, at the NASD PROCTOR® Certification Testing Centers. Credit card orders for the revised test, at $8.10 per copy (add 20 percent for first-class shipping), may be placed with the NASD Media Source℠ at (301) 590-6142. Orders by check should be sent to the NASD, Book Order Department, P.O. Box 9403, Gaithersburg, MD 20898-9403.

Questions on the general content of the revised test should be directed to David Uthe, NASD Qualifications and Examinations Department, at (301) 590-6695.

NASD NOTICE TO MEMBERS 95-15

Treasury Requests Comments On Large Position Recordkeeping And Reporting For Government Securities; **Comment Period Expires April 24, 1995**

Suggested Routing

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

Executive Summary

The Department of the Treasury (Treasury) recently issued an Advance Notice of Proposed Rulemaking (ANPR) under the Government Securities Act of 1986 (GSA). Treasury intends to implement rules to require persons holding, maintaining, or controling large positions in to-be-issued or recently issued Treasury securities to keep records and file reports of these large positions. In its ANPR, Treasury is requesting comment on how these large-position rules should be structured. **Comments are due on or before April 24, 1995.**

Background

Beginning in September 1991, Treasury, the Securities and Exchange Commission (SEC), and the Federal Reserve conducted a thorough examination and review of the government securities market. Their "Joint Report on the Government Securities Market" (Joint Report), published in January 1992, recommended several legislative and regulatory actions for strengthening oversight of the market. One recommendation was to expand Treasury's authority under the GSA to require reporting by all holders of large positions in Treasury securities.

The Government Securities Act Amendments of 1993 (GSAA) was signed into law on December 17, 1993. Section 104 of the GSAA, which amended Section 15C of the Securities Exchange Act of 1934, authorizes Treasury to adopt rules requiring specified persons holding, maintaining, or controling large positions in to-be-issued or recently issued Treasury securities to file reports regarding these positions. The legislation also authorizes Treasury to prescribe recordkeeping rules to ensure that holders of large positions can comply with the reporting requirements.

Unless otherwise specified by Treasury, the large position reports will be filed with the Federal Reserve Bank of New York (FRBNY), acting as Treasury's agent. The reports will be provided, in turn, to the SEC by the FRBNY. The legislation grants Treasury flexibility and discretion in determining the key requirements and features to be addressed in the rules, for example:

• defining which persons (individually or as a group) hold positions;

• the size and types of positions to be reported;

• the securities to be covered;

• the aggregation of positions and accounts; and

• the form, manner and timing of reporting.

Treasury is soliciting views and comments from market participants and other interested parties, and requesting answers to specific questions as to how large-position rules should be structured. Treasury suggests that commenters consider the following questions in developing their recommendations and suggestions.

Specific Questions For Consideration

A. Reporting Entities—Persons holding, maintaining, or controling large positions, as yet to be defined, are reporting entities. The questions in this section are directed toward determining which entities should be affected by the regulations. In particular, the questions focus on how affiliated entities are to be treated, what entities should be exempt, and whether classes of entities may warrant special treatment.

1. How should we define a "reporting entity?" Should it be similar to the definition of a bidder in Treasury's rules governing the sale and issue of Treasury bills, notes, and bonds (that is, Uniform Offering Circular at 31 CFR Part 356)?

2. What aggregation rules should apply for affiliated entities? Assuming there are aggregation rules, should there be an exception for affiliates that cannot or do not share information? For example, how should different funds within a mutual-fund family be treated? Should customer securities that are subject to a broker/dealer's investment discretion be included? Should any exception be the same as the exception provided for in Appendix A to the Uniform Offering Circular?

3. Should reporting entities that are foreign based be treated differently than domestic entities, given the potential enforcement difficulty and geographic separation? Are any exemptions needed for foreign-based entities regarding items such as affiliation rules, location of records, form of reporting, or reporting time frames? What would be the complications of requiring foreign-based entities to comply with such rules as if they were U.S. domestic entities?

4. What exemptions should be considered beyond any for foreign central banks, foreign governments, and official international financial institutions holding positions at the FRBNY?

B. What constitutes "control?" For this ANPR, "control" includes the statutory terms "holding" and "maintaining." The following questions are designed to provide guidance on when these three statutory conditions may be met.

1. Is control evidenced by beneficial ownership, investment discretion, custody, or any combination of the three? Is there the possibility of extensive double counting? If so, is it a problem?

2. Should custodial accounts for which the custodian has no investment discretion be the reporting responsibility of the custodian, the customer, or both? If the custodian is responsible for reporting, should all custody holdings in a specific security be aggregated, or should the threshold amount established for reporting be applied individually to each customer?

C. What securities should be covered and what size is "large?" The questions in this section seek guidance on the securities to which the rule should apply and how to determine the reporting threshold.

1. How long should a security be outstanding before it is no longer considered recently issued? Should the reopening date of notes and bonds that are reopened by the Treasury be the date from which "recent" is measured?

2. Should any securities be excluded, such as Treasury bills, due to the cost/complexity of calculating a position in them versus the expected benefits of reporting?

3. How should the "large" threshold be determined—a percentage of the issue? A standard dollar amount? Should different classes of securities—notes versus bonds, short-term notes versus intermediate notes—have different definitions of "large?" Should there be a different reporting threshold for pre- and post-issuance? Should there be a different reporting threshold for securities reopened by the Treasury?

D. What transactions should be included in a "position?"

1. Should the definition of "position" developed for this rulemaking be consistent with the definition of "net long position" in the Uniform Offering Circular? If they are generally consistent, the following questions should be considered as possible exceptions.

2. How should when-issued positions in outstanding securities with the same CUSIP number be treated (that is, reopenings)?

3. How should financing transactions, such as repurchase and reverse repurchase agreements, dollar rolls, and bonds borrowed, be treated in defining a position? Should more than one counterparty to the transaction be required to include the transaction in its position? Should contract terms, such as maturity, right to substitute, tri-party relationships, and termination notice, be considered?

4. Should large short positions be included in "position?" What amount of netting should be permitted or should gross long (short) positions be reported?

5. Should forward contracts, options, futures, and open fails be included? Should some of these items only be included under certain circumstances? For example, only include written (sold) options or only include fails to deliver but not fails to receive. If so, what might these circumstances be?

6. Should the various components of a large position, such as outright holdings, repos, forward contracts, etc., be separately identified in any required reports?

E. Recordkeeping

1. What records should be kept by a reporting entity? Should the recordkeeping requirement depend on whether the reporting entity is

regulated? Should the reporting entity keep copies only of any reports it has filed, or, in addition documents and other records sufficient to reconstruct the size of its position?

2. Should there be a requirement to maintain a calculation/worksheet supporting the determination of a large position by detailing the elements comprising any large positions?

3. How long should large-position calculations and supporting records be retained?

4. Should the records be kept in a standardized format? Would a requirement to maintain records in electronic form be feasible and practical?

5. Should unregulated entities be required to submit some form of independent verification, such as an accountant's letter?

F. Reporting

1. Should the reporting requirement be automatic, whereby the reporting entity would file a report any time it has reached the threshold for a particular issue?

2. If reports are periodic at the request of the Treasury, what mechanism should be used to communicate a request to the market? How can it be assured that a potential "reporting entity" receives notice of the request for a report? How much lead time would be necessary to assure that everyone who needs to get the notice will receive it?

3. Would it be reasonable for a reporting entity to comply with a request for a large-position report on the business day immediately following receipt of the request? If not, what would be a reasonable time period?

4. Should requests for reports follow a sequential process whereby dealers and custodians would be asked to report initially followed, where appropriate, by a more targeted follow-up as to specific customers? For example, an initial report indicates that custodian A has 75 percent of an issue. A subsequent request is made only to the custodian's customers to determine if any of them have large positions.

5. Is there a need for the reports to be filed using a standardized format? If so, should they be made in machine readable form?

6. Is there a reason for the Secretary to specify that reports would be submitted to parties other than the FRBNY?

7. Should a request for reports on a specific security be: (i) a one-time request (snapshot as of a given date); (ii) an initial report with a continuing obligation to report subsequent significant changes until further notice; or (iii) an individually specified request (that is, report on any large positions in a specific security for the next six business days)?

8. Should there be a responsibility for a broker/dealer to report the name of any customer whose trading activity in the specific security may indicate that the customer could be a holder of a large position even if the customer does not hold such a position at the broker/dealer?

G. Implementation

1. How much lead-time is necessary for market participants to be able to comply with such a new regulation?

* * *

NASD members that conduct a government securities business are urged to review Treasury's ANPR in its entirety. The ANPR was published in the January 24, 1995, *Federal Register*. Members that wish to comment on this ANPR should do so **by April 24, 1995**. Send comment letters to:

Government Securities
Regulations Staff
Bureau of the Public Debt
Kenneth R. Papaj, Director or
Donald Hammond, Assistant
Director
(202) 219-3632
Department of the Treasury
999 E Street, NW
Room 515
Washington, DC 20239-0001

Members are requested to send copies of their comment letters to:

Joan Conley
Corporate Secretary
National Association of Securities
Dealers, Inc.
1735 K Street, NW
Washington, DC 20006-1500.

Questions concerning this Notice may be directed to Erin Gilligan, Compliance Department, at (202) 728-8946.

NASD NOTICE TO MEMBERS 95-16

Predispute Arbitration Clauses In Customer Agreements

Suggested Routing

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

Executive Summary

The NASD is alerting its members that customer agreements used by some members contain predispute arbitration provisions that are contrary to Article III, Section 21 of the NASD Rules of Fair Practice and/or the NASD Code of Arbitration Procedure. Members are urged to take prompt steps to ensure that their customer agreements fully comply with these requirements.

Background

In 1989, the Securities and Exchange Commission (SEC) approved a number of amendments to the NASD Code of Arbitration Procedure in an effort to improve securities industry arbitration as a fair, expeditious, and economical means for the resolution of disputes. In addition, it approved an amendment to Article III, Section 21 of the NASD Rules of Fair Practice to impose important specific disclosures and other requirements for predispute arbitration clauses in customer agreements. (See *Notice to Members 89-58*.) Recently, it has come to the attention of the NASD and the SEC that customer agreements used by some NASD members contain provisions that are inconsistent with this NASD rule or that subvert its purposes. NASD members should take prompt steps to ensure that their customer agreements fully comply with this important rule and the NASD Code of Arbitration Procedure.

Specifically, Section 21(f)(4) of the NASD Rules of Fair Practice, as amended, prohibits the use in any customer agreement of any language that (a) limits or contradicts the rules of the NASD or any other self-regulatory organization; (b) limits the ability of a party to file a claim in arbitration; or (c) limits the ability of the arbitrators to make an award under the arbitration rules of a self-regulatory organization and applicable law. The NASD Code of Arbitration Procedure sets forth the applicable authority and procedures in these areas.

Hearing Location

Customer agreements used by some members attempt to dictate the location for the arbitration hearing. For example, some require that the hearing be held in New York or Denver regardless of where the customer resides. Any such provision is inconsistent with Section 26 of the NASD Code of Arbitration Procedure, which states that "the time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators." In 1989, the SEC noted that customer agreements "may not be used to restrict the situs of an arbitration hearing contrary to SRO rules." (See, Securities Exchange Act Release No. 26805.)

Arbitration Panel Composition

Compliance problems have also been raised by customer agreements which attempt to dictate the composition of an arbitration panel. Such provisions are contrary to Section 4 of the NASD Code of Arbitration Procedure, which states that the "Director of Arbitration shall compose and appoint panels of arbitrators." In addition, such provision is contrary to Section 19 of the NASD Code of Arbitration Procedure if it redefines who may serve as either a public or industry arbitrator.

Time Limitations

Section 15 of the NASD Code of Arbitration Procedure allows arbitration claims to be submitted unless six

years have elapsed from the occurrence or event giving rise to the claim or controversy. However, Section 15 does not "extend applicable statutes of limitations" under state law. Consequently, customer agreements may not be used to shorten applicable statutes of limitations or to require that a time limitations question be judicially determined instead of being submitted to a panel of arbitrators pursuant to a submission under the Code of Arbitration Procedure.

Claims and Awards

Some customer agreements attempt to directly limit the ability of a customer to file a claim or to limit the authority of the arbitrators to make an award, including an award of punitive damages. Others attempt to do so indirectly by the use of a so-called "governing law clause." For example, certain customer agreements simply state that New York law will govern any dispute in arbitration, but do not disclose that New York law prohibits an award of punitive damages in arbitration. Where the governing law clause is used to limit an award, it violates Section 21(f) of the NASD Rules of Fair Practice. Indeed, in 1989 the SEC said that:

> "customer agreements cannot be used to curtail any rights that a party may otherwise have had in a judicial forum. If punitive damages or attorneys fees would be available under applicable law, then the agreement cannot limit parties' rights to request them, nor arbitrators' rights to award them." (See Securities Exchange Act Release No. 26805.)

In a case recently decided by the United States Supreme Court, *Mastrobuono v. Shearson Lehman Hutton, Inc.*, the customer agreement in question stated that New York law governed the agreement, but it was signed by the customer *before* the adoption of Section 21(f) of the NASD Rules of Fair Practice. Nevertheless, the U.S. Solicitor General and the SEC asked the Court to "leave no confusion as to the operation of Rule 21(f)(4) with respect to agreements signed **after** the Rule's effective date." They argued to the Court that:

> "NASD Rule 21(f)(4) forbids the inclusion in broker-client arbitration agreements of provisions limiting the ability of arbitrators to award relief that would be available in a judicial forum. The Rule has an effective date of September 7, 1989; with respect to agreements executed after that date, the Rule has the force of federal law and precludes the enforcement of contractual provisions that are inconsistent with its terms."[1]

Other Problems

Similar compliance problems are raised by provisions that attempt to limit the courts before whom awards may be confirmed or limit the role of arbitrators. Indeed, the use of a governing law clause or other clause anywhere within a customer agreement that thwarts any NASD arbitration provision will be deemed violative.

NASD members having arbitration provisions in customer agreements that are inconsistent with NASD rules may be subject to disciplinary action. NASD staff, District Business Conduct Committee, and arbitration panels will view provisions in agreements that can be construed as limiting the ability of customers to file claims or of arbitrators to issue awards as being inconsistent with NASD rules. NASD members should promptly review their customer agreements to ensure that they fully comply with NASD rules.

Questions concerning this Notice may be directed to Deborah Masucci, Vice President and Director of Arbitration, at (212) 858-4400.

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[1] In its recent decision in this case, the Supreme Court declined to address customer agreements signed after the rule's effective date. However, the court held that, despite the limiting New York law clause in the customer agreement in issue, the arbitrators may impose punitive damages.

NASD NOTICE TO MEMBERS 95-17

Good Friday: Trade Date-Settlement Date Schedule

Suggested Routing

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

The Nasdaq Stock Market℠ and the securities exchanges will be closed on Good Friday, April 14, 1995. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Apr. 6	Apr. 13	Apr. 18
7	17	19
10	18	20
11	19	21
12	20	24
13	21	25
14	Markets Closed	—
17	24	26

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

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

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

NASD NOTICE TO MEMBERS 95-18

Nasdaq National Market Additions, Changes, And Deletions As Of February 23, 1995

Suggested Routing

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

As of February 23, 1995, the following 41 issues joined the Nasdaq National Market, bringing the total number of issues to 3,742:

Symbol	Company	Entry Date	SOES Execution Level
ATVI	Activision, Inc.	1/27/95	200
DZTK	Daisytek International Corporation	1/27/95	500
TYGN	Tylan General, Inc.	1/27/95	200
BRKS	Brooks Automation, Inc.	2/2/95	500
SMTL	Semitool, Inc.	2/2/95	200
ISSI	Integrated Silicon Solution, Inc.	2/3/95	200
LSBI	LSB Financial Corp.	2/3/95	500
CBVI	Coin Bill Validator, Inc.	2/7/95	200
CTRA	Concentra Corporation	2/7/95	200
EQUUS	Equus Gaming Company LP (Cl A Uts)	2/7/95	500
FSRPZ	Firstar Corporation (Dep Shrs)	2/7/95	500
SROM	Sirrom Capital Corporation	2/7/95	500
FUSC	First United Bancorporation	2/8/95	200
KOGC	Kelley Oil & Gas Corp.	2/8/95	500
KOGCP	Kelley Oil & Gas Corp. (Pfd)	2/8/95	500
SISB	Springfield Institution for Savings	2/8/95	200
ISDI	Information Storage Devices, Inc.	2/9/95	1000
PDGS	PDG Remediation, Inc.	2/9/95	500
PDGSW	PDG Remediation, Inc. (Wts)	2/9/95	500
GMGC	General Magic, Inc.	2/10/95	200
KRUGW	KRUG International Corp. (Wts 1/27/98)	2/10/95	200
AMES	Ames Department Stores, Inc.	2/13/95	200
AMESW	Ames Department Stores, Inc. (Wts 1/31/99)	2/13/95	200
CRTV	Creative Technologies Corp.	2/13/95	200
ADCO	Adco Technologies, Inc.	2/14/95	200
CNRG	Coastwide Energy Services, Inc.	2/14/95	200
DSTR	DualStar Technologies Corp.	2/14/95	200
DSTRW	DualStar Technologies Corp. (Cl A Wts)	2/14/95	200
GSTRF	Globalstar Telecommunications, Ltd.	2/14/95	1000
OAKT	Oak Technology, Inc.	2/14/95	200
STBI	STB Systems, Inc.	2/14/95	500
BUCS	BCT International Inc.	2/15/95	200
HTCC	Hungarian Telephone & Cable Corp.	2/15/95	200
MBBC	Monterey Bay Bancorp, Inc.	2/15/95	1000
OFIS	U.S. Office Products Company	2/15/95	1000
PACE	Ampace Corporation	2/17/95	200
SFFB	Southern Financial Federal Savings Bank	2/21/95	200
EDMK	Edmark Corporation	2/22/95	200
HCIA	HCIA, Inc.	2/22/95	1000

Symbol	Company	Entry Date	SOES Execution Level
MPTR	MedPartners, Inc.	2/22/95	500
STRTV	Strattec Security Corp. (WI)	2/23/95	500

Nasdaq National Market Symbol And/Or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since January 27, 1995:

New/Old Symbol	New/Old Security	Date Of Change
SUNL/SUNL	Sunrise Resources, Inc./ Sunrise Leasing Corp.	2/15/95
AIPNW/AIPNW	American Int'l Petroleum Corp. (Wts 3/1/96)/ American Int'l Petroleum Corp. (Wts 3/1/95)	2/16/95
ITSI/ITSI	Int'l Lottery & Totalizer Systems, Inc./ International Totalizer Systems, Inc.	2/16/95
NXTR/NXGN	NeXstar Pharmaceuticals, Inc./NeXagen, Inc.	2/22/95
USRX/USRX	U.S. Robotics Corp./U.S. Robotics, Inc.	2/23/95

Nasdaq National Market Deletions

Symbol	Security	Date
PDKL	PDK Labs, Inc.	1/27/95
PDKLP	PDK Labs, Inc. (Ser A Conv Pfd)	1/27/95
PDKLZ	PDK Labs, Inc. (Wts B 4/14/97)	1/27/95
PDKLM	PDK Labs, Inc. (Wts C 4/14/97)	1/27/95
PARS	Pharmos Corp.	1/27/95
WSTE	TransAmerican Waste Industries, Inc.	1/27/95
WSTEW	TransAmerican Waste Industries, Inc. (Wts A)	1/27/95
WSTEZ	TransAmerican Waste Industries, Inc. (Wts B)	1/27/95
EQCC	EquiCredit Corporation	1/30/95
WBLT	Welbilt Corporation	1/30/95
HFSB	Hamilton Bancorp, Inc.	1/31/95
ARBH	Arbor National Holdings, Inc.	2/1/95
DOLR	Dollar General Corp.	2/1/95
FDNY	Fidelity New York FSB	2/1/95
FCOLA	First Colonial Bankshares Corp. (Cl A)	2/1/95
FCOLZ	First Colonial Bankshares Corp. (Dep Shrs)	2/1/95
MTCL	First National Bank Corp.	2/1/95
IMNXW	Immunex Corp. (Wts 1/31/95)	2/1/95
PMCTS	PMC Commercial Trust	2/1/95
SAYTW	Sayett Group, Inc. (Wts 2/5/95)	2/6/95
MSADY	Mid-State PLC (ADR)	2/7/95
DREW	Drew Industries Inc.	2/8/95
KOIL	Kelley Oil Corp.	2/8/95
KOILP	Kelley Oil Corp. (Pfd)	2/8/95
CSOL	Convergent Solutions, Inc.	2/9/95
GLBC	TCF Financial Corp.	2/9/95

Symbol	Security	Date
ISMX	Isomedix Inc.	2/9/95
MRGN	Morgan Group, Inc. (Cl A)	2/9/95
RGEQ	Regency Equities Corp.	2/9/95
CECO	Communications & Entertainment Corp.	2/10/95
ZAPS	Cooper Life Sciences Inc.	2/10/95
HTXA	Hitox Corporation of America	2/10/95
PDGS	PDG Remediation, Inc.	2/10/95
PDGSW	PDG Remediation, Inc. (Wts)	2/10/95
PWRS	Powersoft Corp.	2/14/95
STBK	State Street Boston Corp.	2/14/95
QVCN	QVC, Inc.	2/16/95
SENVE	Security Environmental Systems, Inc.	2/16/95
GBSI	Gwinnett Bancshares, Inc.	2/17/95
TOYHD	T*HQ, Inc. (New)	2/17/95
HUNT	Huntco Inc.	2/21/95
TOMKY	Tomkins PLC (ADR)	2/21/95
USPC	United States Paging Corporation	2/21/95
VACIE	Value-Added Communications, Inc.	2/22/95
VSTR	Vestar, Inc.	2/22/95
MEGZ	Megahertz Holding Corporation	2/23/95

Questions regarding this Notice should be directed to Mark A. Esposito, Nasdaq Market Services Director, Issuer Services, at (202) 728-6966. Questions pertaining to trade-reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

NASD NOTICE TO MEMBERS 95-19

Fixed Income Pricing System Additions, Changes, And Deletions As Of February 28, 1995

Suggested Routing

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

As of February 28, 1995, the following bonds were added to the Fixed Income Pricing System (FIPS℠). These bonds are not subject to mandatory quotation:

Symbol	Name	Coupon	Maturity
HECH.GA	Hechinger Co.	9.450	11/15/12
GRDH.GA	Great Dane Holdings	12.750	8/1/01

As of February 28, 1995, the following bonds were deleted from FIPS:

Symbol	Name	Coupon	Maturity
E.GA	Transco Energy	9.625	6/15/00
E.GB	Transco Energy	9.500	12/1/95
E.GC	Transco Energy	9.875	6/15/20
E.GD	Transco Energy	9.125	5/1/98
E.GE*	Transco Energy	9.375	8/15/01
E.GF	Transco Energy	11.250	7/1/99

*A mandatory FIPS bond

As of February 28, 1995, the following changes to the list of FIPS symbols occurred:

New/Old Symbol	Name	Coupon	Maturity
ASD.GA/ASTD.GA	American Standard Companies	9.250	12/1/16
ASD.GB/ASTD.GB	American Standard Companies	14.250	6/30/03
ASD.GC/ASTD.GC	American Standard Companies	10.875	5/15/99
ASD.GD/ASTD.GD	American Standard Companies	11.375	5/15/04
ASD.GE*/ASTD.GE	American Standard Companies	9.875	6/1/01
ASD.GF/ASTD.GF	American Standard Companies	10.500	6/1/05
ASD.GG/ASTD.GG	American Standard Companies	12.750	2/31/03

*A mandatory FIPS bond

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

NASD DISCIPLINARY ACTIONS

Disciplinary Actions Reported For March

The NASD has taken disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice; securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions will begin with the opening of business on Monday, March 20, 1995. The information relating to matters contained in this Notice is current as of the fifth of this month. Information received subsequent to the fifth is not reflected in this edition.

Firms Expelled, Individuals Sanctioned

Orion Securities, Inc. (Englewood, Colorado) and **Douglas Nutt (Registered Principal, Greenwood Village, Colorado)** were fined $400,000, jointly and severally. The firm was expelled from NASD membership and Nutt was barred from association with any NASD member in any capacity. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of an April 1993 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm and Nutt engaged in improper practices relating to a loan transaction. Specifically, the firm and Nutt were involved in a scheme involving a $500,000 loan obtained by one of their investment banking clients. The principal collateral for the loan was supposed to be a Government National Mortgage Association (GNMA) bond, purportedly being held by another member firm that had been pledged by another of the firm's clients. Several months before this loan was obtained, Nutt, under mysterious circumstances, bought 372,000 shares of common stock, which was approximately one-third of the company's purported free-trading stock, from three shareholders at an average price of $.0006 per share. The firm then entered quotes in the NBQ Pink Sheets at $5 bid and $5.25 ask, effected several trades at these prices, while subsequently trading the stock at prices of $1.25 to $1.75 per share, thereby realizing a profit of almost $400,000. In addition, the firm and Nutt engaged in deceptive and fraudulent devices and contrivances in that they purchased shares of common stock that were effected with fraudulently excessive markdowns from the prevailing market price in violation of the NASD Mark-Up Policy.

Firms Suspended, Individuals Sanctioned

Chatmon Capital Group, Inc. (West Orange, New Jersey), Warren Peter Chatmon (Registered Principal, South Orange, New Jersey) and **Darryl Lloyd Johnson (Registered Principal, Lawrenceville, New Jersey)** submitted an Offer of Settlement pursuant to which the firm was fined $10,000 and suspended from conducting any securities business for 30 business days. Chatmon and Johnson were each fined $10,000 and must requalify by examination in all capacities requiring qualification within 90 days or they will be suspended until the requisite qualifications are complete. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Chatmon and Johnson, failed to demonstrate to the NASD that the firm maintained the minimum net capital required under Section 15(c) of the Securities Act and Rule 15c3-1 thereunder.

Firms Fined, Individuals Sanctioned

Beacon Securities, Inc. (New York,

New York), Gary Lewis Donahue (Registered Principal, New Rochelle, New York), Stephen William Schwartz (Registered Principal, New York, New York), Karen Sue Billings (Registered Principal, New York, New York), and **Edward Roderick Yaman (Associated Person, New York, New York)** submitted Offers of Settlement pursuant to which the firm was fined $10,000 and will undertake to hire a Series 24 registered principal to act as its principal and compliance director. Billings was fined $20,000 and suspended from association with any NASD member as a financial and operations principal for 60 days. Donahue was fined $100,000, barred from association with any NASD member as a general securities principal, and suspended from association with any NASD member as a general securities representative for 60 days. Yaman was fined $45,000 and barred from association with any NASD member in any capacity. Schwartz was fined $20,000, barred from association with any NASD member as a general securities principal, and suspended from association with any NASD member as a general securities representative for 60 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 Donahue, Schwartz, and Billings, arranged for and allowed Yaman to become associated with the firm and to engage in a securities business at the firm when he was subject to statutory disqualification and not properly registered as required by Schedule C of the NASD By-Laws. The findings also stated that Yaman acted as an associated person of the firm and engaged in a securities business when he was subject to a statutory disqualification and not properly registered as required by Schedule C of the NASD By-Laws. The NASD also found that the firm, acting through Donahue, Schwartz, and Billings, engaged in a scheme to conceal the fact that barred and/or unregistered persons were associated with and/or engaged in a securities business at the firm and failed to maintain accurate financial records reflecting compensation paid to Yaman. In addition, the NASD determined that the firm, acting through Donahue and Schwartz, failed to establish, maintain, and enforce written procedures that would have enabled them to supervise properly the activities of the firm's associated persons, including Yaman.

K&Y Securities Corp. (Los Angeles, California) and **Gary S. Kading (Registered Principal, Los Angeles, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $22,500, jointly and severally. In addition, Kading was ordered to requalify by examination as a direct participation programs principal within 90 days or be suspended until he requalifies. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kading, participated in a contingent offering of limited partnership interests and failed to return investor funds when the terms of the contingency were not met. The findings also stated that the firm, acting through Kading, received investor funds for the purchase of limited partnership interests and failed to transmit the funds to an escrow account. Instead, the NASD determined that the funds were transmitted directly to a bank checking account in each of the issuer's names and under the control of the firm's accountant.

Schembra Securities, Inc. (Hilton Head Island, South Carolina) and **Philip A. Schembra (Registered Representative, Hilton Head Island, South Carolina)** were fined $10,000, jointly and severally. Schembra was barred from association with any NASD member in any principal or supervisory capacity. The sanctions were based on findings that the firm, acting through Schembra, failed to file its annual audited financial reports in the prescribed time periods. The firm, acting through Schembra, also failed to file notice with the NASD when it engaged a new accountant to perform its audit and failed to have its annual financial reports audited by an independent public accountant. In addition, the firm, acting through Schembra, failed to amend promptly and keep current its Form BD and maintained a principal registration with the NASD for an individual when he was no longer active in the firm's investment banking or securities business, and was not functioning as a principal. Furthermore, Schembra functioned in a principal capacity without being so registered with the NASD. Also, the firm, acting through Schembra, failed to have a qualified registered principal and failed to amend its written supervisory procedures in a timely manner to reflect the replacement of its supervisory officer for compliance and to correct violations found in a previous Letter of Acceptance, Waiver and Consent.

Texas Capital Securities, Inc. (Houston, Texas), Patrick Joseph Smetek (Registered Principal, Houston, Texas), and **Thomas Francis Buckley (Registered Principal, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $52,000, jointly and severally. Buckley was suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm,

acting through Smetek, failed to buy securities from and/or sell securities to public customers of the firm at prices that were fair. The findings also stated that the firm, acting through Smetek, failed to disclose accurately the commission and/or markup/markdown in at least 56 transactions as required by Rule 10b-10 under the Securities Exchange Act of 1934, as amended, and Schedule D of the NASD By-Laws. Furthermore, the NASD found that the firm, acting through Smetek, sold shares of common stock to four investment partnerships in an initial public offering without obtaining the information for investment partnerships and corporation that is required by the Interpretation of the Board of Governors concerning Free-Riding and Withholding. In addition, the NASD determined that Buckley failed to respond to an NASD request for information.

Firms And Individuals Fined

Bluebonnet Securities, Inc. (Austin, Texas) and **Susan L. Henry (Registered Principal, Austin, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $21,422, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Henry, permitted up to five salesmen to be associated with it and to solicit customers or potential customers for the purchase of shares securities of investment companies, without having been registered with the NASD. Furthermore, the findings stated that the firm, acting through Henry, failed to maintain accurate books and records and filed an inaccurate FOCUS Part I report. In addition, the NASD found that the firm and Henry failed to establish and maintain written supervisory procedures to permit them to supervise adequately the securities activities in which the firm engaged.

Covato/Lipsitz, Inc. (Pittsburgh, Pennsylvania) and **Alfred I. Lipsitz (Registered Principal, Pittsburgh, Pennsylvania)** submitted an Offer of Settlement pursuant to which they were fined $12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Lipsitz, effected securities transactions while failing to maintain its minimum required net capital and failed to comply with a provision of its restriction agreement with the NASD in that it participated in a firm commitment distribution of securities. The findings also stated that the firm, acting through Lipsitz, filed inaccurate FOCUS Part I reports with the NASD, failed to comply with the books and records requirements, and filed an inaccurate assessment report. The NASD also determined that the firm, acting through Lipsitz, failed to comply with Section 15(f) of the Securities Exchange Act of 1934 in that it did not establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information. In addition, the NASD found that the firm, acting through Lipsitz, failed to establish, maintain, and enforce written supervisory procedures.

Geneva Securities, Inc. (Schaumburg, Illinois) and **Richard M. Eisenmenger (Registered Principal, McHenry, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally. In addition, the firm was required for one year to submit all advertising and sales literature to the NASD Advertising Department for approval before use. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Eisenmenger, permitted the distribution of advertisements and sales literature to the public without submitting them to the NASD Advertising Department for approval before use. The findings also stated that the firm, acting through Eisenmenger, failed to file a portion of the advertisements and sales literature with the NASD Advertising Department within 10 days of their first use or publication by the firm. Furthermore, the NASD determined that the firm, acting through Eisenmenger, permitted the distribution of the advertisements and sales literature that included exaggerated, unwarranted, or misleading statements or claims that appear promissory and failed to reflect the risks of fluctuating prices and the uncertainty of yield.

InterAmerican Securities Corporation (Houston, Texas) and **Catherine Kinsel Collins (Registered Principal, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $11,756, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Collins, permitted the firm to pay commissions to persons or entities, that were not registered with the NASD. The findings also stated that the firm, acting through Collins, used instrumentalities of interstate commerce to effect transactions in nonexempt securities while failing to maintain its minimum required net capital.

Palm State Equities, Inc. (Largo, Florida), James R. Tuberosa (Registered Principal, Largo, Florida) and **Holly Ann Schuck, f.k.a. Holly Ann Tuberosa**

(Registered Principal, Sarasota, Florida). The firm and Tuberosa were fined $20,000, jointly and severally. The firm was also fined $7,500 and Shuck was fined $10,000. The NBCC affirmed the sanctions following appeal and review of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Tuberosa, failed to comply with its restrictive agreement with the NASD by participating in a firm commitment underwriting. In addition, the firm, acting through Schuck, filed its annual audit report with the NASD 35 days late. Furthermore, the firm failed to reconcile its bank checking account statements and its clearing commission account and post necessary adjustments to its general ledger.

The firm and Tuberosa have appealed this action to the SEC, and their sanctions are not in effect pending consideration of the appeal.

Individuals Barred Or Suspended

Russell Bennett Alexander (Registered Representative, Newton, New Jersey) was fined $42,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Alexander received three checks totaling $3,104.55 issued by his member firm payable to insurance customers, endorsed the customers' names on two of the checks, and misappropriated and converted $2,990.35 of the funds to his own use without the customers' prior knowledge or consent. In addition, Alexander caused the address of one customer to be changed without the customer's knowledge or consent to conceal his misappropriation and conversion of the customer's funds. Alexander also failed to respond to NASD requests for information.

Kevin S. Allen (Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Allen consented to the described sanctions and to the entry of findings that he engaged in an illegal unregistered distribution of a control stock. In addition, the NASD found that Allen failed to keep accurate firm books and records in that he knew that a member firm was using nominee accounts as de facto trading accounts. The findings also stated that Allen failed to supervise adequately with respect to the aforementioned unregistered sales of stock.

James V. Anzalone (Registered Representative, Tonawanda, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Anzalone consented to the described sanction and to the entry of findings that he obtained two checks totaling $12,493.99 from his member firm payable to insurance customers, which represented a dividend withdrawal and the cash surrender value from the customers' insurance policies. According to the findings, the customers did not authorized the withdrawal of the funds and Anzalone used the monies for some purpose other than the benefit of the customers. The findings also stated that Anzalone obtained from an insurance customer a $500 check that was endorsed by the customer and was to be applied toward the customer's variable life insurance policy premium. The NASD found that Anzalone failed to apply the funds as directed and used them for some purpose other than for the benefit of the customer.

Roberto M. Argente (Registered Representative, Metuchen, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $58,468.62 in restitution to public customers. Without admitting or denying the allegations, Argente consented to the described sanctions and to the entry of findings that he caused 14 checks totaling $58,468.62 to be drawn against funds in the accounts of eight public customers, signed the customers' names to the checks in certain instances, and gave all the checks to another individual to satisfy his personal debts.

Rick Randall Blair (Registered Representative, Honolulu, Hawaii) was fined $30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blair exercised discretion in the account of a public customer without obtaining prior written authorization from the customer and approval of his member firm. In addition, Blair failed to respond to NASD requests for information.

Kevin Lee Butts (Registered Representative, South Holland, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegation, Butts consented to the described sanctions and to the entry of findings that he executed margin account agreements and the purchase of securities on margin in the accounts of two public customers without their knowledge or consent.

Paul McCulloch Byatt (Registered Principal, Irving, Texas) was suspended from association with any

NASD member in any capacity for 60 days and must requalify by examination in all capacities. The sanctions were based on findings that Byatt effected transactions in a public customer's account by means of manipulative, deceptive, or fraudulent devices or contrivances, thereby causing over $30,000 in losses to the customer.

Stanley E. Cameron (Registered Representative, Westlake Village, California) submitted an Offer of Settlement pursuant to which he was fined $45,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cameron consented to the described sanctions and to the entry of findings that he recommended purchase and sales transactions in a public customer's account without having reasonable grounds for believing that such transactions were suitable for the customer considering the securities involved; the frequency of the recommended transactions; and the customer's financial situation, objectives, circumstances, and needs. In connection with one of the recommendations, the NASD found that Cameron falsely represented to the customer that the customer had purchased $50,000 in stock, when, in fact the customer only purchased $47,000.94 worth of shares. This false representation was made to conceal the fact that the shares of stocks Cameron sold the customer were done so at a loss.

Furthermore, the NASD determined that Cameron participated in private securities transactions in that he sold to public customers shares of stock totaling $135,000, but failed to provide prompt, written notification to his member firm before participating in such transactions. In addition, the findings stated that Cameron opened an account at another member firm without notifying his member firm in writing that he intended to open the account and without notifying the other firm of his association with his member firm. The NASD also found that Cameron failed to respond to NASD requests for information.

Dominic G. Celli (Registered Representative, Chicago, Illinois) submitted an Offer of Settlement pursuant to which he was fined $2,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Celli consented to the described sanctions and to the entry of findings that he submitted a Uniform Application for Securities Industry Registration (Form U-4) application on which he failed to disclose that he had been charged with misdemeanor theft. The findings also stated that Celli failed to respond to NASD requests for information.

Daniel K. Cooper (Registered Representative, Belgrade Lakes, Maine) 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, Cooper consented to the described sanctions and to the entry of findings that he received from a public customer $1,578.86 intended for repayment of an insurance policy loan, and without the customer's knowledge or consent he misappropriated the funds for his own use and benefit.

John K. Coyne (Registered Representative, Westlake, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $45,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Coyne consented to the described sanctions and to the entry of findings that he misappropriated $9,000 from a securities customer.

Darrell Steven Dalton (Registered Representative, Las Vegas, Nevada) was fined $1,000 and suspended from association with any NASD member in any capacity for 90 days. The SEC affirmed the sanctions following the appeal of a January 1994 NBCC decision. The sanctions were based on findings that Dalton submitted to a member firm, and filed with the NASD, a Form U-4 that falsely represented that an individual had not been convicted of any felony.

Victor F. DiGiacomo (Registered Representative, Buffalo, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $45,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DiGiacomo consented to the described sanctions and to the entry of findings that he obtained from a public customer a $3,000 check that was to be applied to the common stock option of the customer's variable life policy. According to the findings, DiGiacomo failed to apply the funds as requested and used the monies for some purpose other than for the benefit of the customer. In addition, the NASD determined that DiGiacomo obtained a $6,000 check from a member firm payable to an insurance customer, which represented a withdrawal from the customer's insurance policy and intended to pay off a loan on another insurance policy of the customer. The NASD found that DiGiacomo failed to apply the check as requested and used the funds for some purpose other than the benefit of the customer.

James Vincent DiSanto (Registered Representative, Tualatin, Oregon) submitted an Offer of Settlement pursuant to which he was fined $5,750 and sus-

pended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, DiSanto consented to the described sanctions and to the entry of findings that, in connection with the sale of shares of securities to a public customer, he made material misrepresentations of fact to the customer. According to the findings, DiSanto made statements that he had inside information that the stock would be purchased by another company, that his boss controlled the stock, and that its price would climb.

John Wayne Ezell (Registered Representative, Arlington, Texas) submitted an Offer of Settlement pursuant to which he was fined $27,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Ezell consented to the described sanctions and to the entry of findings that he recommended the purchase and sale of securities to public customers and effected unauthorized, excessive, and unsuitable transactions in the accounts of public customers. The findings also stated that Ezell did this by means of manipulative, deceptive, or other fraudulent devices or contrivances, without having reasonable grounds for believing that such recommendations and transactions were suitable for the customers based on their other security holdings and financial situations and needs, and fraudulently induced the purchase and/or sale of securities by such public customers.

Louis Feldman (Registered Principal, Coral Springs, Florida) was fined $10,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination in any registered capacity that he might function within 90 days or he may not act in a registered capacity until he passes the examination. The SEC modified the sanctions following appeal of a January 1994 NBCC decision. The sanctions were based on findings that Feldman submitted letters on a member firm's letterhead but with his home address to six mutual fund companies. Feldman engaged in this activity for the purpose of changing the broker/dealer of record for customer accounts without having authority to approve bulk transfers of accounts and without obtaining prior authorization from the firm or from the customers.

Howard M. Fromson (Registered Representative, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $2,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Fromson consented to the described sanctions and to the entry of findings that he participated in outside business activities for which he received compensation while failing to provide prompt written notice to his member firm of these activities.

Bernard D. Gorniak (Registered Representative, Cape Coral, 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 Gorniak received from a public customer $1,000 in cash for the purchase of shares of an investment company and instead of investing these funds on the customer's behalf, he held them for an indeterminate period before returning them without making the investments as requested by the customer.

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

Jerome Joseph Hansmann (Registered Representative, San Antonio, Texas) submitted an Offer of Settlement pursuant to which he was fined $20,000, barred from association with any NASD member in any capacity, and required to pay $440,000 in restitution to a customer. Without admitting or denying the allegations, Hansmann consented to the described sanctions and to the entry of findings that he induced the purchase and sale of securities by means of manipulative, deceptive, or fraudulent devices and contrivances by selling units of securities to a public customers. Thereafter, the NASD found that Hansmann, by means of false and misleading statements, obtained from the same customer, without payment of just compensation, the transfer to himself of the same securities, which he converted to his own use and benefit. In addition, the NASD determined that, in connection with these activities, Hansmann engaged in private securities transactions.

Nazmi C. Hassanieh (Registered Representative, Memphis, Tennessee) was barred from association with any NASD member in any capacity. The SEC affirmed the sanction following appeal of an August 1993 NBCC decision. The sanction was based on findings that Hassanieh failed to respond to NASD requests for information.

Karen G. Hayes (Registered Representative, Rogersville, Tennessee) submitted an Offer of Settlement pursuant to which she was fined $30,000, barred from association with any NASD member in any capacity, and required to pay $361 in restitution to her member firm. Without admitting or denying the allegations, Hayes consented to the described sanctions and to the entry of findings that she received

from public customers $361 to purchase automobile insurance and she failed to submit it to her member firm. Instead, the NASD found that Hayes converted the funds to her own use and benefit without the customers' knowledge or consent. The findings also stated that Hayes failed to respond to NASD requests for information.

Donald M. Hogan, Jr. (Registered Representative, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the allegations, Hogan consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that Hogan executed transactions in a public customer's account that created a margin balance without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer based on the customer's financial situation, investment objectives, and needs. In addition, the NASD found that Hogan completed a new account form on behalf of a public customer, without having a reasonable basis for believing that the information regarding income and net worth, among other items, was correct.

Steven Paul Hologounis (Associated Person, Staten Island, New York) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hologounis, without having obtained permission to do so, removed from his member firm's offices sheets of microfiche that were the firm's property and sold them to two employees of another member firm.

Robert R. Houck (Registered Representative, Bradenton, Florida) was fined $8,121.97 and suspended from association with any NASD member in any capacity for five business days. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Houck prepared and provided to a public customer periodic securities portfolio valuations that contained overstated values for certain positions held by the customer in at least two separate accounts without having a factual basis for making such representations.

Robert F. Jackson (Registered Representative, Quincy, 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, Jackson consented to the described sanctions and to the entry of findings that he received a $9,500 check that was issued in error by his member firm and upon receipt of the check, he converted the funds to his own use and benefit.

Abdollah H. Jirvand (Registered Representative, Anaheim, California) 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, Jirvand consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he submitted a Disbursement Request Form on behalf of the customer seeking the withdrawal of accumulated dividends on the customer's life insurance policy in the amount of $800. According to the findings, Jirvand cashed an $800 check issued by his member firm payable to the customer, by forging the customer's signature on the check and then converted the proceeds to his own use and benefit.

James A. Keiderling (Registered Representative, Buena Park, California) was fined $120,000, barred from association with any NASD member in any capacity, and ordered to reimburse a member firm $85,884.99. The sanctions were based on findings that Keiderling received from two public customers $85,884.99 with instructions to purchase shares of securities and, contrary to their instructions, he converted the funds to his own use and benefit without the customers' knowledge or authorization. Keiderling also failed to respond to an NASD request for information.

Michael G. Keselica (Registered Representative, Gaithersburg, Maryland) was fined $30,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a January 1994 NBCC decision. The sanctions were based on findings that Keselica purchased shares of securities for the account of a public customer without the customer's authorization.

Steven D. Lamell (Registered Representative, Hampstead, New York) 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, Lamell consented to the described sanctions and to the entry of findings that, without authorization, he caused the issuance of 20 withdrawal checks from the insurance policies of a public customer totaling $10,512.47, and converted

the proceeds to his own use and benefit.

Richard J. Lanigan (Registered Representative, Laurel, Florida) was fined $2,500 and suspended from association with any NASD member in any capacity for five days. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Lanigan failed to pay a $4,500 arbitration award in a timely manner. Furthermore, Lanigan failed to amend his Form U-4 to reflect that the award included a finding of liability against him and that he had an unsatisfied judgment against him.

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

Richard A. Lavoie (Registered Representative, Ledyard, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lavoie consented to the described sanctions and to the entry of findings that he received from two insurance customers funds totaling $800 intended for insurance premium payments. The NASD found that Lavoie misappropriated the funds to his own use and benefit without the customers' knowledge or consent.

Robert S. Leben (Registered Representative, Plainview, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Leben consented to the described sanctions and to the entry of findings that he entered into an outside business arrangement without providing written notice of this activity to his member firm. The findings also stated that Leben failed to appear for an on-the-record interview in connection with the NASD's investigation of this matter.

David E. Lobel (Registered Representative, Ann Arbor, Michigan) 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, Lobel consented to the described sanctions and to the entry of findings that he purchased life insurance for public customers and signed their names to life insurance applications without their knowledge, consent, or authorization. The findings also stated that Lobel purchased life insurance for fictitious customers.

Rita H. Malm (Registered Principal, Jupiter, Florida) and **Robert W. Berg (Registered Representative, New York, New York)**. Malm was fined $15,000 and suspended from association with any NASD member in any principal capacity for 10 days. Berg was fined $20,412.50, suspended from association with any NASD member in any capacity for three months, and required to requalify by examination as a registered representative before associating with any NASD member firm. The SEC affirmed the sanctions following appeal of a March 1992 NBCC decision. The sanctions were based on findings that Berg refused and failed to execute orders for six public customers and executed transactions in customer accounts without the authorization or consent of the customers. The NASD found that Malm failed to establish and implement supervisory procedures to detect and prevent violations relating to fraudulent and excessive markups, unauthorized trading, and failure to execute customer orders.

Norman B. March, Jr. (Registered Representative, Olcott, New York) was fined $50,000, barred from association with any NASD member in any capacity, and ordered to pay $6,000 in restitution to his member firm. The sanctions were based on findings that March received from a public customer a $6,000 check with instructions to invest the funds in the customer's Individual Retirement Account. March failed to follow the customer's instruction and used the funds for some purpose other than for the benefit of the customer. March also failed to respond to NASD requests for information.

Jerry W. McClintic (Registered Representative, Irvine, California) was fined $100,000, barred from association with any NASD member in any capacity, and ordered to offer recision of $54,000 to all investors not otherwise reimbursed by his firm. The sanctions were based on findings that McClintic offered and sold limited partnership interests to investors and failed to return the investors' funds when the terms of the contingency were not met, but rather used the funds to conduct partnership operations. In addition, McClintic participated in private securities transactions while failing to provide prompt written notification of his participation to his member firm.

Robert Theodore Nelson (Registered Principal, Seattle, Washington) was fined $73,000 and barred from association with any NASD member in any capacity. However, five years after the bar was originally imposed, Nelson may apply for association in a non-proprietary, non-supervisory capacity, upon a satisfactory showing of adequate supervision. The SEC modified the sanctions following the appeal of an

April 1994 NBCC decision. The sanctions were based on findings that Nelson engaged in the sale of common stock to public investors for which no proper registration statement was filed with the SEC or for which no exemption from registration existed. Nelson also engaged in private securities transactions without providing prior written notice to his member firm. Furthermore, Nelson was delegated supervisory responsibility for the activities in his member firm's branch office and failed to discharge those responsibilities properly and adequately.

Manoochehr Nosratishamloo (Registered Representative, Bal Harbour, Florida) was fined $26,735 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nosratishamloo caused $13,000 to be wired from his personal bank account into the securities account of a public customer, thereby sharing in losses sustained by the customer. Nosratishamloo also effected, or caused to be effected, a series of transactions for the same customer's account without the knowledge or consent of the customer. In addition, Nosratishamloo stated to NASD staff that he had no knowledge of the origin of these wire transfers and that he did not deposit funds in a customer's securities account when in fact they came from his personal bank account.

Mark Allen Pap (Registered Representative, Riverside, California) was fined $70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pap submitted a Request for Insurance Benefits form that contained false information and a forged signature of the intended beneficiary of a life insurance policy in an attempt to convert customer funds. The benefits underlying the life insurance policy had become due and payable because the insured had died. Pap caused the falsified request form to be processed under the guise that it had been submitted by the intended beneficiary and obtained a $35,956.85 check payable to the benefactor. Pap attempted to cash this check by forging the benefactor's signature on the check but was unsuccessful when the bank refused to accept the check. In addition, Pap failed to respond to NASD requests for information.

Shine Thomas Philip (Registered Representative, Sugarland, Texas) submitted an Offer of Settlement pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Philip consented to the described sanctions and to the entry of findings that he made improper use of customer funds by forging their endorsements on refund checks made payable to the customers and by submitting a public customer's check accompanied by a forged application in the customer's name to his member firm to have an insurance policy issued.

Curtis R. Ponder (Registered Representative, Cranston, Rhode Island) 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, Ponder consented to the described sanctions and to the entry of findings that he falsified a mutual fund application by submitting the application in his name for business solicited by an individual barred from the securities industry.

Daniel P. Romeo (Registered Representative, Poland, Ohio) was fined $25,742 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Romeo misappropriated insurance customer funds totaling $5,158.40 when he intercepted and endorsed a check issued by his member firm to one customer and induced another customer to endorse another check issued by his member firm, which he then cashed.

Behzad D. Shirapour (Registered Representative, Northridge, California) was fined $30,000, barred from association with any NASD member in any capacity, and must reimburse a member firm $1,980 (the amount it repaid a customer). The sanctions were based on findings that Shirapour converted from a public customer $1,980 by forging, or causing to be forged, the customer's signature on three checks issued to the customer. These checks had constituted a refund to the customer by a member firm in connection with three life insurance policies cancelled by the customer. Shirapour also failed to respond to an NASD request for information.

Joel Silverstein (Registered Representative, City Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $52,500, barred from association with any NASD member in any capacity, and required to pay $10,500 in restitution to his member firm. Without admitting or denying the allegations, Silverstein consented to the described sanctions and to the entry of findings that, without the knowledge or permission of a public customer, he requested and received loan checks totaling $10,500 on the customer's life insurance policy, signed the customer's name to the checks, negotiated the checks, and converted the funds to his own use and personal benefit. The findings also stated that Silverstein caused the same customer's address to be that of his without the knowledge or permis-

sion of the customer.

Abilio V. Soares (Registered Representative, Fairhaven, Massachusetts) 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, Soares consented to the described sanctions and to the entry of findings that he purchased for his account at his member firm two stocks having a combined purchase price of $198,336.50, while knowingly having insufficient funds to pay for the transactions. The findings stated that Soares failed to make payment, resulting in liquidation by his member firm and a $12,183 deficit balance.

Mark A. Sonnino (Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sonnino consented to the described sanctions and to the entry of findings that he withdrew funds exceeding $10,000 from a customer's account. The findings also stated that Sonnino caused his member firm to issue altered account statements to a public customer that did not accurately reflect the value of the account. Furthermore, the NASD determined that Sonnino failed to submit to an on-the-record interview at the NASD's offices.

Charles John Sullivan (Registered Representative, Greenlawn, New York) was fined $2,500 and suspended from association with any NASD member in any capacity for 90 days, and thereafter until the arbitration award is satisfied. The sanctions were based on findings that Sullivan failed to pay a $2,203 NASD arbitration award.

Gerald R. Swirsky (Registered Representative, Sudbury, Massachusetts) submitted an Offer of Settlement pursuant to which he was fined $10,000, suspended from association with any NASD member in any capacity for 10 business days, and must requalify by examination as a general securities registered representative. Without admitting or denying the allegations, Swirsky consented to the described sanctions and to the entry of findings that he engaged in a course of conduct involving the recommendation, purchase, and sale of a security, a speculative investment, which was unsuitable in relation to the customers' investment objectives and financial situation and needs.

Lance L. Sylvester (Registered Representative, Northglenn, Colorado) was fined $35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sylvester falsified his former member firm's records by entering on a customer account form and two suitability questionnaires, information that he knew to be false and misleading. In addition, Sylvester effected purchase transactions in the same customer's account without the customer's prior authorization or consent and failed to respond to NASD requests for information.

Timothy B. Tarpening (Registered Representative, Redondo Beach, California) was fined $10,000 and suspended from association with any NASD member in any capacity for 30 days. Tarpening's fine will be reduced by any amount that he can demonstrate that he pays to the finance company as a result of the deficiency following the repossession and sale of his stepfather's leased car. The sanctions were based on findings that Tarpening falsified a customer's account statement. Specifically, he altered the account statement of one of his customers to make it appear as if the account belonged to his stepfather. This was done to induce a finance company to lease his stepfather a new automobile.

Mark Steven Warner (Registered Representative, Willoughby, Ohio) submitted an Offer of Settlement pursuant to which he was fined $80,000, required to submit proof of restitution of $15,522.90 to a member firm, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Warner consented to the described sanctions and to the entry of findings that he obtained $15,522.90 from 31 insurance customers with instructions to apply the funds to insurance policies they owned. The NASD found that, contrary to the customers' instructions and without their knowledge or consent, Warner deposited the funds in a bank account in which he had an interest or which he controlled, and retained the funds for his own use and benefit.

James Mitchell Warren (Registered Representative, Clarence, New York) was fined $5,000 and barred from association with any NASD member in any capacity with the right to reapply for association with a member after one year. In addition, Warren must requalify by examination in the appropriate capacity before again acting as a representative of a member firm. The sanctions were based on findings that Warren changed, or caused to be changed, the address for a public customer to his own home address without the knowledge or consent of the customer. In addition, Warren, altered the same customer's policy statements to conceal an $896.57 redemption charge that had been incurred and to reflect higher ending account values.

Edward Joseph Wells (Registered

Representative, Las Vegas, Nevada) was fined $15,000, barred from association with any NASD member in any capacity, and ordered to reimburse a member firm $3,005. The sanctions were based on findings that Wells received from three public customers $4,696 intended for the purchase of stock. Wells failed to purchase the stock and converted the funds.

Richard R. Whatley (Registered Representative, Rancho Palos Verdes, California) was fined $70,000, barred from association with any NASD member in any capacity, and ordered of offer recision to public customers totaling $188,000. The sanctions were based on findings that Whatley participated in private securities transactions but failed to provide prompt, written notification to his member firm before participating in such transactions. Whatley also failed to respond to NASD requests for information.

William I. Wilson (Associated Person, Lakewood, Colorado) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wilson failed to disclose on his Form U-4 that he had been charged with and convicted of various criminal offenses and provided a non-existent address as his principal residence.

Andrew Ross Zodin (Registered Representative, Houston, Texas) 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 ordered to disgorge $1,539 in net commissions. Without admitting or denying the allegations, Zodin consented to the described sanctions and to the entry of findings that he executed and caused to be executed in the account of a public customer unauthorized transactions in a common stock resulting in a $7,452 loss to the customer.

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 Article IV, Section 5 of the NASD Rules of Fair Practice and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after each entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Mayfair Planning Associates, Randolph, New Jersey (February 1, 1995)

Suspension Lifted

The NASD lifted a suspension from membership on the date shown for the following firm, because it has complied with formal written requests to submit financial information.

Jenkins Securities Corporation, Norcross, Georgia (February 13, 1995)

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

Paul B. Holmquist, Prior Lake, Minnesota

David J. Munton, Zephyrhills, Florida

Anthony J. Parisi, Chandler, Arizona

Lynn M. Rach, San Clemente, California

NASD Imposes Fines And Restitution Against Lew Lieberbaum & Co., Inc., For Market Manipulation

The NASD has taken a disciplinary action that ordered restitution and imposed fines totaling more than $1.1 million against Lew Lieberbaum & Co., Inc., (LLCO) of Garden City, New York; Mark I. Lew, Chairman and Chief Executive Officer; Leonard A. Neuhaus, Chief Financial Officer, Chief Operating Officer, and former Chief Compliance Officer and supervisor of the order room; Sheldon J. Lieberbaum, Director of Corporate Finance; and Michael J. Perdie, a trader.

Pursuant to the NASD's disciplinary action taken by its Market Surveillance Committee, LLCO and all of the named individuals neither admitted nor denied the allegations. Sanctions imposed required the firm, Lew, Neuhaus, and Lieberbaum to pay more than $320,000 in restitution to customers who were charged excessive prices due to the manipulation of the market of Kitchen Bazaar, Inc., warrants (KBAZW). Within three days of this decision, LLCO and respondents Lew, Neuhaus, and Lieberbaum are required to deposit these funds into an interest-bearing escrow account under the control of a law firm acting as escrow agent, to be paid out to customers identified by the NASD as having been harmed by respondents' misconduct. Most of the activity occurred in the Florida branch office of LLCO, and involved customers residing in 14 states including Florida, New York, Colorado, Pennsylvania, and New Jersey.

In addition to the order of restitution, LLCO and all of the named individuals have been censured and fined an aggregate of $790,000, which is required to be paid to the NASD within 10 days of this decision. The NASD also suspended Lew and Neuhaus in all capacities for three months, while Lieberbaum and Perdie were suspended for one month in all capacities.

"I am particularly pleased with the restitution aspects of our enforcement action because it ensures that funds will be set aside and available to pay identified harmed investors the amounts they were overcharged by the fraudulent activity. This is truly a victory for investors," said John E. Pinto, NASD Executive Vice President, Regulation.

LLCO, Lew, Neuhaus, Lieberbaum, and Perdie consented to findings of having engaged in conduct that constitutes manipulative, deceptive, or fraudulent behavior in violation of the NASD Rules of Fair Practice and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. The manipulation occurred on August 22 and 23, 1991, and involved the purchase and sale of KBAZW. The firm, Neuhaus, and Peride further consented to findings that while engaged in the manipulation of the market of KBAZW, they maintained the firm's books and records inaccurately, in that many of the order tickets for purchases and sales of the warrants were not time-stamped accurately. The firm and Neuhaus also consented to findings that they failed to establish and enforce written supervisory procedures and failed to supervise the activities of LLCO's order room and order room personnel.

Market Manipulation

The firm and the named individuals consented to findings that the firm, while acting as managing underwriter for an offering of Kitchen Bazaar, Inc. units that went effective on August 13, 1991, sold about 86 percent of the offering to its own retail customers. Each unit consisted of 100 shares of preferred stock and 4,000 warrants. On August 21, 1991, LLCO exercised its option to break up the units, and also solicited customers to sell their warrants to the firm while paying their brokers a gross commission of almost 50 percent of the sales price. As a result of the solicitation, the firm purchased from customers more than 2.7 million warrants that day at a price of about $.06 per warrant. Together with an additional 300,000 warrants purchased from other broker/dealers, LLCO's proprietary account had accumulated about 3 million warrants by the close of business on August 22, 1991.

On August 23, 1991, the firm's brokers solicited other retail customers of LLCO to buy KBAZW. Despite owning about 3 million warrants, the firm improperly directed customer purchase orders for 750,000 warrants to three market makers that displayed the best prices for the warrants. This conduct by the firm and the other respondents had the effect of artificially raising the price of the warrants by causing the market makers to raise quoted prices from $.09 (3/32) to $.125 (1/8) per warrant. Within five minutes, LLCO sold about 3.2 million warrants at the artificially high price of $.132 per warrant in 82 retail transactions. Within minutes after these sales to customers took place, the quoted price dropped and returned to the original price of $.09 per warrant. As a result of these trades at an artificially inflated price, LLCO's customers were overcharged about $218,000. As part of the settlement, these customers will be reimbursed more than $320,000, representing the amount that the customers were overcharged, including prejudgment interest dating back to the violative conduct.

Additional Sanctions And Undertakings

The NASD disciplinary action also calls for LLCO to engage in several undertakings. Among others, these include a limitation on LLCO's participation in underwritings; annual testing of all registered personnel regarding the firm's compliance procedures; and the separation of function between the trading department and the Chief Compliance Officer. LLCO has also agreed to retain an outside consultant which is acceptable to the NASD, for two years to review the firm's compliance policies and recommend appropriate changes. LLCO has agreed to implement all recommendations made by the consultant. The firm has also agreed that Neuhaus will neither be permitted to ever function in a compliance capacity, nor act in a supervisory capacity in the firm's trading room for two years.

"This enforcement action by the NASD is a further demonstration of the varied scope of our intensified initiatives to address manipulative activity and abusive sales practices in the securities industry," said Pinto. He also praised the cooperative efforts of the NASD Enforcement Department and the Division of Securities and Investor Protection of the State of Florida Department of Banking and Finance, stating that, "this was an extensive and comprehensive investigation which demonstrates the effectiveness of the combined efforts of the NASD and the State of Florida."

Comptroller Robert Milligan of Florida stated, "It is through cooperative efforts of this type that the consumers of Florida are better protected when investing in the securities markets. We appreciate the on-going cooperation of the NASD in this mat-

ter, as well as others. Working with them allows us to better meet our mandate of protecting the investing public."

This disciplinary action was taken by the NASD Market Surveillance Committee, which consists of professionals from securities firms across the country. The committee is responsible for maintaining the integrity of The Nasdaq Stock Market[SM] and over-the-counter mar-

FOR YOUR INFORMATION

Testing Center Changes

Effective immediately, two new automated testing centers have been added to the testing center locations:

• American College Testing
River Tree Court
701 N. Milwaukee Avenue
Vernon Hills, IL 60061
(708) 247-4218

• PROCTOR® Certification Testing
5540 Centerview Drive, Suite 307
Raleigh, NC 27606
(919) 859-2240

Effective immediately, the following PROCTOR Certification Testing Centers are closed:

• Norfolk, VA; and

• Roanoke, VA.

Please note the following changes to the schedule of paper and pencil domestic testing locations:

• The room number in Boise, ID, is 102A.

• The May session in Great Falls, MT, will be held on May 13.

• The July, September, and October sessions at all locations will be held on July 8, September 9, and October 14.

Please note the following changes to the schedule of paper and pencil foreign testing locations:

• Paris, France—April 1, June 24, October 14.

• Heidelberg, Germany—June 10, August 12, October 14.

• Geneva, Switzerland—April 8.

If you have any questions regarding these changes, please call NASD Member Services Phone Center at (301) 590-6500.

SEC Adopts Rule 11Ac1-3 And Amendments To Rule 10b-10

Effective April 3, 1995, the SEC is adopting new Rule 11Ac1-3 and amendments to Rule 10b-10 concerning payment-for-order-flow practices. These changes require:

• Broker/dealers to inform customers in writing, when a new account is opened, about its policies regarding the receipt of payment for order flow, including whether payment for order flow is received and a detailed description of the nature of the compensation received.

• Broker/dealers to provide information in account opening documents about order-routing decisions, including an explanation of the extent to which unpriced orders can be executed at prices superior to the national best bid or best offer (NBBO) at the time the order is received.

• Broker/dealers to update this information and to provide this information annually to all customers.

• Broker/dealers to indicate on confirmations whether the broker/dealer receives payment for order flow, and the availability of further information on request.

These changes apply to Nasdaq National Market® securities, The Nasdaq Small Cap Market℠ securities, and OTC Bulletin Board® securities. For additional information, members may refer to the November 2, 1994, *Federal Register*.

Appointment Of A SIPC Trustee

On February 27, 1995, the U.S. District Court for the Southern

District of New York appointed a Securities Investor Protection Corporation (SIPC) Trustee for:
Adler, Coleman Clearing Corporation
20 Broad Street, 16th Floor
New York, NY 10005
(212) 225-2000

Questions regarding the firm should be directed to SIPC Trustee:
Edwin B. Mishkin, Esq.
Cleary, Gottlieb, Steen & Hamilton
One Liberty Plaza
New York, NY 10006
(212) 225-2000

Members may use the "immediate close out" procedures as provided in Section 59(i) of the NASD's Uniform Practice Code to close out open over-the-counter contracts. Also, Municipal Securities Rulemaking Board Rule G-12(h) provides that members may use the above procedures to close out transactions in municipal securities.

NASD Spring Securities Conference

The NASD Spring Securities Conference is scheduled for May 17-19 at The Peabody Hotel in Orlando, Florida. As in the past, the Arbitrator Skills Training Program will be held May 17, just prior to the start of the conference. Watch your mail for more information about these important events.

SPECIAL NASD NOTICE TO MEMBERS 95-20

NASD Solicits Member Comment On Proposals For Comprehensive Improvements To The Regulation And Operation Of The Nasdaq Stock Market; **Comment Period Expires April 21, 1995**

Suggested Routing

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

Executive Summary

On March 17, 1995, the NASD Board of Governors approved the issuance of a *Notice to Members*, soliciting comment on a proposal for comprehensive structural changes in The Nasdaq Stock Market℠ through the development of a national limit-order facility that would provide investors market-wide price protection of their limit orders and the opportunity to seek price improvement in buying and selling Nasdaq® stocks. As described in more detail below, this fully automated facility, to be called Aqcess℠, would include:

•A facility for displaying and executing investor limit orders of 3,000 shares or less in Nasdaq National Market® securities (1,000 shares or less for The Nasdaq SmallCap Market℠ securities);

•The public dissemination of the best priced orders in the facility;

•A requirement that eligible-sized limit orders either be entered into the facility or be guaranteed executions equivalent to what they would receive if they were entered in the facility;

•Automated execution of market orders of 1,000 shares or less in Nasdaq National Market securities (500 shares or less for The Nasdaq SmallCap Market securities) against orders in the facility or market-maker quotes based upon price and time priority; and

•An exposure mechanism for market orders of 1,000 shares or less in Nasdaq National Market securities (500 shares or less for The Nasdaq SmallCap Market securities) to achieve price improvement.

The NASD is soliciting comment on these proposals described in more detail below. Further, the NASD seeks comment on any other issues that this proposal may raise for members or other interested parties. Comments received on or before April 21, 1995, will be considered by the Board at its next meeting.

Background

For over 24 years, The Nasdaq Stock Market[1] has provided investors with a growing, strong, and vibrant marketplace. Nasdaq has allowed investors to participate in the growth of new companies at the forefront of innovation in new and emerging industries and seasoned companies in well-established sectors of the American and global economies. With the growth and success of its listed companies, Nasdaq, as a marketplace, also has grown significantly and has continuously invested in technology and improved its regulatory effectiveness to better serve investors, issuers, and member firms. As a result, Nasdaq now constitutes the second largest equity market in the world.

This unprecedented growth has been achieved in the context of a quotation-driven dealer market structure that has provided effective sponsorship and coverage of listed companies while maintaining liquidity and continuity for investors' transactions. Over time, the marketplace and its participants have developed new trading systems that permit member firms and institutional investors to electronically discover, for customer or proprietary orders, buyers or sellers at prices between the best bid and offer. Similarly, continuous trading

[1] The National Association of Securities Dealers, Inc. (NASD) is a self-regulatory organization registered with the Securities and Exchange Commission as a national securities association that regulates The Nasdaq Stock Market. The Nasdaq Stock Market, Inc., owns and operates the facilities that make up The Nasdaq Stock Market.

offer. Similarly, continuous trading systems also have provided very significant opportunities for price improvement to member firms and institutional investors. The NASD strongly believes that in light of these structural developments, it is important that The Nasdaq Stock Market adjust to provide all investors greater opportunities to receive executions between the best bid and offer.

After consulting closely with investors, issuers, and member firms, the NASD is proposing to develop Aqcess, which will provide new levels of transparency and price protection for customer limit orders and new opportunities for price improvements for customer market orders.

Key Features Of Nasdaq's New National Limit-Order Facility And Companion Regulations

The National Limit-Order Facility

The NASD is proposing to develop a national limit-order facility in which customers,[2] through their brokers, may place orders of up to 3,000 shares in Nasdaq National Market securities and up to 1,000 shares in The Nasdaq SmallCap Market securities. There are several elements to this limit-order facility that will provide significant protection for investors and increase market transparency.

First, the entire limit-order facility will be displayed on Nasdaq Workstation® presentation devices of NASD members; thus, any member firm that is a Workstation subscriber will be able to see all limit orders in the facility. The NASD also proposes to make available for vendor dissemination the total number of shares and the price of limit orders at the best prices in the facility. Accordingly, subscribers to vendor services will be able to see not only the best bids and offers being quoted by Nasdaq market makers, but also the aggregated best limit orders to buy and sell.[3]

Matching limit orders in the facility would be automatically executed against each other. This automatic matching of limit orders provides instantaneous execution and greater opportunity for investors' limit orders to meet at prices better than those represented by the best bid and offer of the market makers in a stock.

For example, an investor places a limit order through a broker in Nasdaq's limit-order facility. The order is to buy 3,000 shares of a Nasdaq stock at 20 1/4. The best bid (the highest price at which a market maker is willing to buy) and the best offer (the lowest price at which a market maker is willing to sell) among all the competing market makers at the time is 20 1/8 - 20 3/8. The order is stored and displayed. Another investor places a limit order in the facility through a broker to sell 2,000 shares of the same stock at 20 1/4. The orders are automatically matched at 20 1/4 for 2,000 shares. The remaining portion of the buyer's order—1,000 shares—remains in the limit-order facility at 20 1/4 until executed or canceled.

Investor limit orders in the facility that are at prices better than the best current quotes of Nasdaq market makers (i.e., between the best bid and best offer) would be automatically executed against investor market orders of 1,000 shares or less that are entered into the facility. Market orders are orders to buy or sell at best current prices. These orders do not specify prices or "limits."

For example, an investor places a limit order to buy 1,000 shares of a Nasdaq stock at 20 1/4 through a broker in the limit-order facility. As in the last example, the current best bid and offer is 20 1/8 - 20 3/8. The investor limit order to buy at 20 1/4 is 1/8 of a point better (i.e., higher) than the best market-maker bid to buy at that time. Concurrently, an investor places a market order through a broker into the Nasdaq system to sell 1,000 shares of the stock at the best price in the market. The seller's market order is automatically matched and executed with the buyer's order.

Both investors get better prices. The buyer bought at 20 1/4 instead of at 20 3/8, the best market-maker offer to sell in the system at the time. The seller received 20 1/4 for his or her stock instead of 20 1/8, the best market-maker bid to buy on Nasdaq at the time.

Price Protection For Nasdaq Limit Orders Entered Into The Facility

Under the proposed revisions, investor limit orders entered into the facility would be protected throughout The Nasdaq Stock Market. No NASD member will be permitted to execute a trade at a price lower than a buy limit-order price, or higher than a sell limit-order price until the limit order is executed.[4]

For example, three investors place limit orders in the facility through their broker to buy a total of 5,000 shares of a Nasdaq stock (via separate orders of 2,500, 1,500, and 1,000 shares) at 20 1/4. The best bid and offer continue to be 20 1/8 - 20 3/8. A Nasdaq market maker sees on the Nasdaq computer screen that there are investor limit orders to buy 5,000

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[2] The term "customer" is defined to exclude broker/dealers. See NASD Rules of Fair Practice, Article II, Section 1(f).

[3] Limit orders in the facility will not be integrated into the Nasdaq dealer-quote display.

[4] A member firm will be obligated to place the order in the Nasdaq facility, if so requested by the customer.

shares at 20 1/4. The Nasdaq market maker wants to buy 10,000 shares at 20 1/8. The market maker must execute the investors' limit orders to buy 5,000 shares at 20 1/4 before buying any other shares at a price less than 20 1/4.

Member Obligations For Limit Orders Not Entered Into The Facility

The NASD's proposed revisions are intended to preserve and enhance the multiple dealer structure of the markets. Historically, Nasdaq's dealer structure has promoted competition, resulting in enhanced pricing efficiencies, innovation, and technological advances that have benefited investors and issuers. It is desirable that these benefits are maintained as changes are made in market structure. Thus, member firms may continue to operate their own automatic execution and continuous trading systems.

The implementation of a limit-order facility, however, will be accompanied by enhanced best-execution obligations for member firms that do not place a limit order in the Nasdaq facility. Specifically, the NASD would interpret member firms' best-execution obligations, pursuant to Article III, Sections 1 and 4 of the NASD Rules of Fair Practice, to require them to provide limit orders they hold with price protection equivalent to or better than that which the order would have received in the Nasdaq facility.

For example, an investor places a limit order with a member firm to buy shares of a Nasdaq stock at 20 1/4. The current best bid and best offer is 20 1/8 - 20 3/8. Firm XYZ may hold the customer's limit order rather than forward it to the Nasdaq limit-order facility. In doing so, it would be obligated to execute the customer's limit order at 20 1/4 when and if there were a reported transaction on Nasdaq below 20 1/4.[5]

Small Customer Market-Order Execution Enhancements

In addition to the development of a new limit-order facility, The Nasdaq Stock Market will develop a small customer market-order execution capability that provides new price-improvement opportunities for customer market orders of 1,000 shares or less in Nasdaq National Market securities (500 or less for The Nasdaq SmallCap Market securities). Customer market orders in the Nasdaq facility for 1,000 shares or less in Nasdaq National Market securities (500 or less for The Nasdaq SmallCap Market securities) will be automatically executed against limit orders that are priced better than market-maker quotes.

For example, the best market-maker bid to buy a Nasdaq stock is 20 1/8. There is also a 1,000 share limit order to buy in the facility priced at 20 3/16. If a customer sell order of 1,000 shares is entered into the facility, the customer market order to sell is executed against the customer limit order at 20 3/16.[6] The new facility also will provide small customer market orders the opportunity for price improvement when the best market-maker quotes are priced better than the best-priced limit orders. For example, the best market-maker bid to buy a Nasdaq stock is 20 1/8 and there are no limit orders to buy in the limit-order facility priced above 20 1/8. Sell market orders of 1,000 shares or less in Nasdaq National Market securities (500 or less in The Nasdaq SmallCap Market securities) entered into the facility are exposed to all market makers in the stock for 15 seconds to attract an execution that would be at a price at least 1/16 above the best bid (i.e., 20 3/16). If no market maker executes at a price above the best bid during the 15-second exposure, the order would be executed against the best price on Nasdaq, 20 1/8.

If the dealer quotes and the best limit-order price in the facility are equal in price, price improvement opportunities are also possible. In this case, the market order is exposed for 15 seconds to market makers at a price at least 1/16 better than the best quote or limit-order price. If the price is not improved during this 15-second period, then the market order is executed against either the quote or the order, depending on which has time priority.[7] In all cases where price improvement is sought, the market order is guaranteed execution at the best available price at the time the order is exposed for price improvement.

Summary Of Features, Requirements, And Implications

The Nasdaq Stock Market, Inc., proposes to take these steps in its contin-

[5] Illustrative examples contained herein are not intended to suggest any change in a member firm's continuing obligation not to trade in front of a customer's limit order that it holds.

[6] A market order executing against a limit order priced better than the quote has obtained price improvement over the quotes.

[7] The priority rules for orders placed in the Nasdaq facility are: (1) the limit order at the best price has priority over all other limit orders within the facility; (2) limit orders in the facility at the same price are afforded priority according to time, i.e., the order at that price entered first in time is entitled to priority in executions over an order placed later in the facility; and (3) as to limit orders in the facility priced at the same price as the inside dealer quotation, the order or quotation that is first in time has priority. This last rule regarding time priority between orders in the facility and dealer quotes has relevance only for market orders of 1,000 shares or less entered into the facility.

uing efforts to develop a marketplace that guarantees investor protection and fairness to all market participants. The NASD believes that the proposed changes will result in better prices to investors because it will provide true market-wide limit-order protection in The Nasdaq Stock Market. Enhanced price discovery features, market-order interaction with limit orders, and the price improvement features of the facility will only add to the liquidity, immediacy, and efficiency already provided by Nasdaq's competing dealer-market structure. While the Board's proposed changes maintain the ability of dealers to provide liquidity and competitive mechanisms for handling customer orders, individual investors can take comfort in the strong investor protection standards incorporated in the new approach.

Solicitation Of Comments

The Board is soliciting comments from members and interested parties so that it may better evaluate the implications, and address and refine issues raised by the regulatory and market structure changes proposed in this Notice. In particular, the Board seeks comment on the scope of the changes. In addition to any issues raised in the discussion above; commenters are asked to address the following issues:

• The Board's proposal extends these changes to Nasdaq National Market and The Nasdaq SmallCap Market securities. Should the changes be implemented for all such securities simultaneously or in a phased approach, progressing according to market capitalization or trading activity characteristics?

• As noted above, Nasdaq-facility information will be displayed separately from Nasdaq dealer quotations. Limit orders reflect more temporal buying and selling interest, whereas dealer quotations reflect more continuous information that is inherently less volatile in nature. The NASD solicits comment on the desirability of providing a separate display of these streams of information.

Comments must be received **no later than April 21, 1995**, and should be addressed to Joan C. Conley, Secretary, NASD, 1735 K Street, NW, Washington, DC 20006-1500.

Questions regarding this Notice should be directed to Robert E. Aber, General Counsel, at (202) 728-8290, or Eugene A. Lopez, Senior Attorney, at (202) 728-6998.