NOTICE TO MEMBERS: 77-28
Notices to Members ~~should be~~ retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

September 15, 1977

TO: All NASD Members

RE: Adoption of Amendments to Schedule G Under Article XVIII of the By-Laws -- Reporting Transactions to the Consolidated Tape

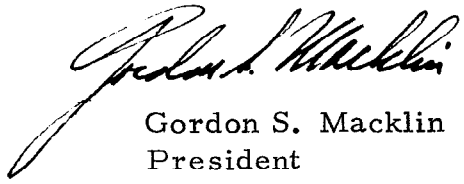
Enclosed herewith is an amendment to Section 1(a) of Schedule G under Article XVIII of the Association's By-Laws which is effective immediately. Schedule G contains the rules and procedures for reporting transactions in eligible listed securities to the Consolidated Tape. The amendment was adopted by the Association's Board of Governors and submitted to and approved by the Securities and Exchange Commission.

The amendment provides that any member of the Association may become a "Designated Reporting Member" upon request. A "Designated Reporting Member" is required to report all his purchases and sales in eligible listed securities executed over-the-counter. Members not so designated are only required to report purchases and sales with persons other than Designated Reporting Members. The only requirements for receiving such designation are that the member execute over-the-counter transactions in listed securities required to be reported on the Consolidated Tape and that it maintain transaction reporting capability through the NASDAQ Transaction Reporting System. Amended Section 1(a) retains the Association's authority to designate any member who effects a substantial number of over-the-counter transactions in eligible listed securities as a Designated Reporting Member.

Association members desiring to become Designated Reporting Members must file a written request with the NASDAQ Department,

Suite 400, 1735 K Street, N.W., Washington, D.C. 20006. A current list of authorized Designated Reporting Members will be published in the NASD Manual.

Sincerely,



Gordon S. Macklin
President

Enclosure

Text of Amendment

New language is underlined; deleted language is in brackets.

Section 1 - Transaction Reporting

(a) Designated Reporting Members--The reporting requirements of this paragraph (a) shall be applicable to Designated Reporting Members. A list of such members shall be published by the Association and shall consist of any member of the Association requesting to be designated as such who executes over-the-counter transactions in listed securities required to be reported on the Consolidated Tape (eligible securities) and who maintains transaction reporting capability through the NASDAQ Transaction Reporting System. The list shall also include any member which the Association has determined effects a substantial number of over-the-counter transactions in eligible securities.

[(a) Designated Reporting Members--The members appearing in the attached list shall be referred to as "Designated Reporting Members." Such list consists of those members which the Association has determined effect a substantial portion of over-the-counter transactions in listed securities required by the plan to be reported on the Consolidated Tape (eligible securities). Such members shall be subject to the reporting requirements of this paragraph (a). Such list shall be amended from time to time as the Association deems it appropriate.]

NOTICE TO MEMBERS: 77-29
Notices to Members should be retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

September 16, 1977

TO: All NASD Members

RE: The Crystal Securities Corporation
Linden Lane
P.O. Box 531
Mendham, New Jersey 07945

ATTN: Operations Officer, Cashier, Fail-Control Dept.

On Friday, September 16, 1977, a SIPC trustee was appointed for the above captioned firm. 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 OTC contracts.

Accordingly, questions regarding the firm should be directed to:

SIPC Trustee

Bernard Hellring
Hellring, Lindeman, Landau & Siegal
1180 Raymond Blvd.
Newark, New Jersey 07102

Telephone: (201) 621-9020

* * * * *

NOTICE TO MEMBERS: 77-30
Notices to Members should be be retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

September 19, 1977

TO: All NASD Members

Transactions made on Monday, October 10, 1977 (Columbus Day Observance) and transactions on the business days immediately preceding October 10, will be subject to the schedule of settlement dates below (for "regular-way" transactions). No settlements will be made on October 10, but securities markets and the NASDAQ system will be in operation for trading.

Deliveries and payments ordinarily due on October 10, shall be due on October 11.

Settlement dates for "regular-way"
Transactions and Regulation T dates

Trade Date	Settlement Date	7th Business Day*
October 3	October 11	October 12
4	12	13
5	13	14
6	14	17
7	17	18
10	17	19
11	18	20
12	19	21
13	20	24
14	21	25

October 10 shall not be considered a business day in determining the day for settlement of a transaction or in computing interest on bonds or as an ex-dividend or ex-right date. Further, marks to the market, reclamations, buy-ins and sell-outs, as provided in the Uniform Practice Code, shall not be exercised. Members of NSCC will receive instructions in a separate notice.

*Date for determining the close out provisions under Section 4(c)(2) of Regulation T of the Federal Reserve Board.

Questions regarding this notice may be directed to the Uniform Practice Division, 17 Battery Place, New York, N.Y. 10004, Telephone (212) 422-8841.

NOTICE TO MEMBERS: 77-31
Notices to Members should be retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

September 23, 1977

IMPORTANT NOTICE

PROPOSED RULE CHANGES AND INTERPRETATIONS
CONCERNING SECURITIES DISTRIBUTION PRACTICES

TO: All NASD Members and Interested Persons

RE: Proposed Changes in and Interpretations of the Rules of Fair Practice, Consisting of:

1. A New Paragraph (m) of Section 1 of Article II;

2. An Amendment to Section 8 of Article III and a New Interpretation Thereof;

3. A New Paragraph (b) of Section 24 of Article III and a New Interpretation Thereof;

4. An Amendment to Paragraph (c) of Section 25 of Article III; and

5. A New Section 36 of Article III.

Enclosed herewith are proposed changes and interpretations to the Association's Rules of Fair Practice relating to fixed price offerings of securities and the granting of selling concessions, discounts or allowances in connection therewith. The proposals include: (1) a new definition of the term "fixed price offering"; (2) further specification as to when securities "taken in trade" are purchased at the fair market price of such securities and a requirement that where the securities are taken in trade on an agency basis a "normal commission" be charged and that adequate records be kept; (3) a requirement that members obtain written agreements to make a bona fide public offering from persons receiving a selling concession, discount or allowance; (4) an interpretation with respect to designated orders and certain methods of soft dollar compensation that may constitute the granting of a selling concession,

concession, discount or allowance; (5) a requirement that the written agreement to be obtained from a foreign dealer who receives a selling concession, discount or allowance extend to sales anywhere and to compliance with Sections 8 and 24, and proposed new Section 36, as well as Section 25 of Article III; and (6) a prohibition against sales to "related persons", defined as persons who own, are owned by, or are under common ownership with, the member. These proposed changes and interpretations adopt substantially the recommendations to the Board of Governors of its Ad Hoc Committee on Section 24.

These proposals are being published by the Board at this time to provide members and other interested persons an opportunity to comment thereon. Comments must be submitted in writing and be received by the Association no later than November 4, 1977, in order to receive consideration. After the comment period has expired, the proposals and the comments will be reviewed by the Ad Hoc Committee on Section 24 and by the Board itself at its regular meeting on November 18, 1977. If the proposals, or a revised version thereof, are at that time adopted by the Board, they will then be submitted to the members for approval as required by Article VII of the By-Laws of the Association and to the Securities and Exchange Commission for approval pursuant to Section 19(b) of the Securities Exchange Act of 1934, as amended, prior to becoming effective.

Beginning in the early 1970's investment advisers of registered investment companies and others were subject to litigation under various theories of fiduciary responsibility for their failure to devise means by which fixed brokerage commissions could be recaptured for the benefit of the shareholders of the investment companies they managed. The judicial decisions in this area discuss the various brokerage recapture devices available, including their legality under various circumstances and at various times, and the obligation of an investment company adviser effectively to inform independent directors of the investment company of the possibility of recapture in order that they be in a position to exercise their business judgment concerning the matter.

Although the judicial decisions discussing recapture focus primarily on the methods of recapturing brokerage commissions, two decisions have addressed the question of recapturing selling concessions available to dealers and underwriters participating in public offerings. The District Court in Moses v. Bergin, 316 F. Supp. 31 (D. Mass. 1970) essentially concluded that such recapture was prohibited by Article III of the NASD's Rules of Fair Practice. While that decision was reversed on appeal, the question of underwriting recapture was not before the Court of Appeals and was not, therefore, disturbed.

The Federal District Court for the Southern District of New York, in Papilsky v. Berndt, CCH Fed. Sec. L. Rept., ¶95,627 (S.D.N.Y. 1976), recently had occasion to consider the question of recapture generally,

as well as its applicability to selling concessions in underwritten offerings. Plaintiffs in Papilsky argued that the investment adviser to a registered investment company could be a member of the NASD, participate in underwritings as a syndicate member or selling group member, and credit against the advisory fee any sales concessions received from sales by it to the fund with which it was affiliated. Defendants argued that the suggestion advanced by plaintiff violates various laws, including provisions of the NASD's Rules of Fair Practice. Thus, the defendants argued, among other things, that the recapture of selling concessions and credit against the advisory fee would result in a violation of Sections 23 and 24 of Article III of the NASD's Rules of Fair Practice and in a violation of the NASD's interpretation under Section 1 of that Article concerning the practice of free-riding and withholding.

Without any meaningful discussion, the court rejected defendants' argument and concluded that it would not be a violation of Sections 23 or 24 of the NASD's Rules or of the free-riding and withholding interpretation if an investment company were indirectly permitted to receive a selling concession through the utilization of a recapture device in underwritings. The court did, however, express some reservation in that regard when it stated that ". . . in the absence of a ruling from either NASD or the SEC that they would have treated underwriting recapture as somehow different, it must be concluded that recapture of underwriting fees was available and legal."

Shortly following the Papilsky decision a number of investment advisers inquired of the NASD whether its Rules of Fair Practice indeed did permit an investment company to devise a method by which it could recapture selling concessions in underwritten offerings. Particular emphasis was placed on Sections 23 and 24 of Article III and on the free-riding and withholding interpretation under Section 1 of that Article.

The Board of Governors in September 1976 was advised by the Association staff of several letters requesting clarification of the applicability of NASD Rules to the recapturing of selling concessions by investment companies. As a result of this information, the Chairman of the Association appointed an Ad Hoc Committee on Section 24 to study and advise the Board of Governors with respect to the questions raised by Papilsky and the inquiries that had been received.

In letters, dated November 23 and December 3 and 6, 1976, the Association, through its General Counsel, responded to these letters and it was the Association's view that recapturing selling concessions by an investment company would be a violation of Section 24, stating that:

> ". . . the payment of concessions or commissions to a mutual fund in the form of a reduction in its management or advisory fee, as distinguished from a

> direct purchase with a reduction of the public offering price in the amount of the concession, does not change the sub stance of the transaction. The net effect of such is the receipt of underwriting discounts by the mutual fund. Such flies directly into the face of Section 24."

The Association also advised that such a recapture device would result in discrimination among customers and would be inconsistent with disclosure generally found in offering documents.

> ". . . To permit such would unfairly and improperly discriminate against customers generally; in particular, small investors . . . .Such is not only inconsistent with the public interest, but in the opinion of the Association's Board of Governors, it constitutes unfair discrimination a fortiori, in a situation where no disclosure has been made in the prospectus that preferential treatment of the type suggested would take place or be permitted."

With respect to questions raised under Section 23 and the free-riding and withholding interpretation under Section 1, the Association indicated that those provisions do not directly prohibit recapturing selling concessions. In effect, it was stated that Section 23 applied only to secondary trading and that the free-riding and withholding interpretation was only directed at so-called "hot issues" and does not have any direct bearing on the permissibility of underwriting recapture.

After responding to various inquiries on this subject, the Securities and Exchange Commission communicated with the Association concerning its interpretation as contained in the General Counsel's letters. In addition, the Commission advised that it had received a request to issue an order declaring that recapture of underwriting fees would not involve fraudulent or manipulative acts or practices or would not involve a failure to observe just and equitable principles of trade. The Commission also noted that it had pending applications for exemptions under Section 17(a) of the Investment Company Act of 1940 to permit investment companies to engage in underwriting recapture.

With respect to the General Counsel's letters which conclude that underwriting recapture would violate Section 24, the Commission expressed concern that such an approach raised important policy questions of general application, including questions pertaining to the public interest and unnecessary burdens on competition. Moreover, the Commission questioned the Association's authority to adopt a rule which has the effect given to it in the General Counsel's letters.

Based on the foregoing, the Commission requested that the General Counsel's letters be filed as a proposed rule change under Section 19(b)(2)(B) of the Securities Exchange Act to enable public review and consideration of all the relevant issues.

The Association considered the matter and in a letter to the Commission, dated April 1, 1977, explained that its recently expressed views on Section 24 did not represent a new position on the subject and did not, therefore, require consideration as a rule proposal under Section 19(b)(2) (B) of the Exchange Act. In an effort to resolve the matter, the Association requested a meeting with the Commission.

The Commission agreed to meet with the Association to discuss this matter and, on May 26, 1977, such a meeting occurred. At this meeting the Association's representatives urged the Commission to accept the Association's position that the statements in the General Counsel's letters concerning Section 24 represented no new position and that it was unnecessary and undesirable to question at that time the overall validity of Section 24.

In the course of the meeting with the Commission, two general concerns emerged. First, certain of the Commissioners expressed concern that Section 24 effectively permits certain customers to receive selling concessions, discounts or allowances in their purchasing of securities from public offerings. It was suggested, for example, that this might occur if a customer satisfied soft dollar obligations with purchases from an underwriting or if a member of a selling syndicate or selling group agreed to engage in so-called "overtrading" and purchase the securities taken in trade at a price higher than the then prevailing market price. Moreover, the apparent widespread practice of designated sales suggested that certain dealers were not rendering distribution services in connection with public offering and were nevertheless being granted a selling concession by the syndicate manager agreeing to the designation. The second area of concern focused generally on the NASD's authority to adopt or retain Section 24 in light of prior Commission decisions and recent amendments to Section 15A of the Securities Exchange Act of 1934.

As a result of the meeting with the Commission, the Association agreed to undertake to review current underwriting practices and formulate specific policy positions. An explanation and analysis of the proposals, which are in furtherance of that undertaking, follows.

All comments should be addressed to Mr. Christopher R. Franke, Secretary, National Association of Securities Dealers, Inc., and received by the Association by November 4, 1977 in order to receive consideration. All comments will be available for inspection. Questions should be addressed to Robert E. Aber (202) 833-7259.

Because of the complexity of these proposals and the intent of the

Board to take formal action in regard to them at its meeting on November 18, without extension of the comment period, there will be a series of meetings at which there will be a presentation and explanation of the proposals by officers of the Association. These meetings will be held on the following dates and at the following places:

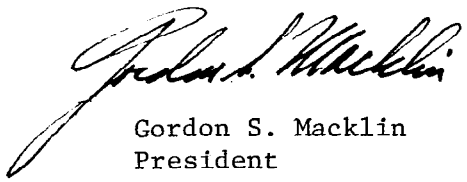
October 25, 1977
Los Angeles, California

October 26, 1977
Chicago, Illinois

October 27, 1977
New York, New York

The exact times and places of these meetings will be announced. A question and answer period will follow each presentation.

Sincerely,



Gordon S. Macklin
President

EXPLANATION OF PROPOSALS

I. Introduction

The proposals are intended to apply to "fixed price offerings", that is, to situations where members have agreed among themselves (or a member when acting alone has determined) to offer securities at a fixed price to the public and have held out that the securities will be offered to the public at that price. A definition of "fixed price offering" is proposed as new paragraph (m) of Section 1 of Article II of the Rules of Fair Practice. The proposals, if adopted, would not prohibit members from selling securities to anyone at any fair price so long as they have not represented that there is a fixed public offering price. Thus, the proposals are designed to assure that members who agree to sell securities to the public at a fixed price which is stated as a public offering price, or otherwise is held out as a price to be paid by customers, abide by this representation.

The Board believes that, in the absence of rules such as those recommended herein, there is a substantial likelihood that public investors will suffer from deception and unfair discrimination when purchasing from offerings made at what purports to be a fixed public offering price.*

Certain of the proposals simply serve to identify practices which, if engaged in, result in the member sharing its selling concession, discount or allowance with another person. If the offering is at a stated fixed public offering price and the other person sharing the concession is not a broker-dealer engaged in the investment banking or securities business and rendering services in distribution, the sharing of the concession will be a violation of Section 24 and may result in a violation of the disclosure requirements of the Securities Act of 1933.

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* The practices addressed by these proposals also tend to produce confirmations and billings that do not reflect the true cost to the purchaser, thus contributing to inaccurate records and reports. Moreover, while not necessary to support the need for, or otherwise justify, the proposals, the Committee believes that they are in the public interest by serving to complement the Commission's own rules on stabilizing public offerings and by facilitating an efficient method of raising capital for domestic and foreign industry and other enterprises.

Some of the proposals are more prophylactic and prohibit activity which is likely to result in the granting of a selling concession, discount or allowance to someone who did not render any service in distribution or did not make a bona fide public offering and, therefore, is not among the class of persons who, in a fixed price offering, are entitled to receive a selling concession, discount or allowance, as disclosed in the prospectus and other documents.

In its deliberations and in this notice the Board has not undertaken to reexamine and justify the fixed price offering system which has been recognized and accepted by the Congress, the courts, and the Commission. The Board's proposals are predicated on the premise that the contracts establishing a fixed price offering are valid and in the public interest.

The specific proposals and their purpose and effect are described in more detail below.

II. Summary of Recommendations

Set forth below is a summary of the Board's recommendations. The proposed text of the necessary amendments to the Rules of Fair Practice and interpretations thereof appear in the appendix hereto.

A. Recommendations Concerning Eligibility to Receive or Retain Selling Concessions, Discounts or Allowances and to Receive Credit for Designated Sales

1. Only persons who are engaged in the investment banking or securities business and who render services in distribution may receive a selling concession discount or allowance. Any person may sell securities at any fair price if the offering is not held out to be at a fixed price to the public.

2. Syndicate managers may not accept designated orders on behalf of (i) underwriters in excess of their underwriting commitment or (ii) dealers not in the underwriting group.

3. Syndicate members may retain the full underwriters' compensation for all securities they underwrite unless, and except to the extent that, a selling concession is granted to a selling group member for selling all or some of those securities. Syndicate members may also receive a selling concession on securities in excess of those securities it underwrites but only on the same basis and under the same circumstances that a selling group member receives selling concessions. The total designated sales for which a syndicate member may retain a selling concession may not exceed the amount of that syndicate member's underwriting commitment.

4. Dealers who are not members of the selling syndicate are eligible to receive selling concessions as selling group members upon acceptance by the syndicate manager or to receive the reallowance ("reallowance dealer") upon the purchase from a selling group member or from another reallowance dealer if the selling group member or reallowance dealer (i) is a member of the NASD or (ii) is a nonmember broker or dealer in a foreign country who is not eligible for membership in the NASD and who agrees to comply with Sections 8, 24, 25 and 36 of Article III of the NASD's Rules of Fair Practice and, in either case, (iii) affirms its intent in a written agreement to make a bona fide public offering of the securities being issued. The person granting the concession or reallowance is responsible for obtaining the written agreement.

5. Sales by a syndicate member in excess of its underwriting commitment and by selling group members may not be confirmed or billed to the customer directly by the syndicate manager.

B. Recommendations Concerning Indirect Concessions in the Form of Soft Dollar Payments

A member who (i) supplies another person or its affiliate with services or products, including research, which are commercially available or are provided by the member to that person or other persons for cash or for some other agreed upon consideration, including brokerage commissions, and (ii) also retains or receives selling concessions, discounts, or allowances from purchases by that person or its affiliate of securities from a fixed price offering, is offering a discount, concession or allowance in violation of Section 24, unless the member has been, or has arranged and reasonably expects to be, fully compensated for such services or products from sources other than the selling concession, discount, or allowance retained or received on the sale.

C. Recommendations Concerning Indirect Concessions and Other Potential Abuses in Swap Transactions

1. A member engaged in a fixed price offering of securities must pay the prevailing fair market price for securities it purchases from a customer, as principal, if such purchase is pursuant to an agreement or understanding that the customer will purchase securities from the member out of the offering. If the member acts as agent in such a transaction, it must charge the customer a normal commission.

2. Fair market price means a price which is no lower than the highest independent bid and no higher than the lowest independent offer at the time of the transaction.

3. Necessary quotations for equity securities which are traded on a national securities exchange or for which quotations are entered in an automated quotation system must be obtained from the exchange or system.

4. Necessary quotations for debt securities and equity securities not included in number (3) above must be obtained from two independent dealers. Such quotations may be obtained by the member or by an independent agent of the member.

5. If quotations for the securities being purchased are not readily available, fair market price may be determined by comparing such securities with other similar securities for which such quotations are readily available.

6. A normal commission will mean an amount of commission which the member would normally charge that customer or a similarly situated customer for transactions having similar characteristics but not involving a swap transaction.

7. Members will be required to maintain adequate records to demonstrate that they did not purchase securities in a swap transaction at other than fair market price. A safe harbor will exist if they keep records of the time and date quotations were received, the identity of the security and the dealers supplying quotations and the quotations supplied. If quotations are obtained through an agent, the member must request the agent to keep such records and the member should keep records indicating the time and date it received quotations from the agent, the identity of the security and the agent and the quotations transmitted by the agent.

D. Recommendations Concerning Transactions With Related Persons

1. A member, when engaged in a fixed price offering, may not sell securities to a related person unless the member has made a bona fide public offering of the securities.

2. The term related person will mean any person or account which owns, is owned by, or is under common ownership with, a member.

3. A person will be presumed to own another person if the person (i) directly or indirectly has the right to participate in more than 25% of the profits of the other person or (ii) owns beneficially more than 25% of the outstanding voting securities of the person.

4. A person will be permitted to retain securities or sell such securities to a related person only if the person or the related person makes a bona fide public offering. A person will be presumed not to have made a bona fide public offering if the securities offered immediately trade in the secondary market at prices which are at or above the price the member paid for such securities.

III. Determinations Concerning Underwriting Practices and the Effects of Proposed Rules and Interpretations

A. Standards for Eligibility to Receive Selling Concessions in Fixed Price Offerings.

After its review of securities underwriting techniques and practices, the Committee concluded, and the Board agrees, that Section 24 serves a vital function in promoting fairness in the securities distribution process as it is known today. The section serves to assure that the "trade preference" offered to professionals to facilitate the distribution to investors, and represented both to the issuer and to the public as granted for that purpose, is not in fact given to persons who have not earned it, and is not used as a vehicle for the surreptitious and unfairly discriminatory granting of a discount to selected investors who are in a position to exploit various recapture devices. The Board recognizes, however, that the provisions of Section 24 and other sections related to the distribution process, deserve clarification, particularly that standards of eligibility for concessions, discounts or allowances as contained in that Section should be delineated more clearly.

B. Distribution Services.

The threshold question under Section 24 in determining if a selling concession, discount or allowance may be paid to another person is whether that person rendered services in distribution. In effect, the approach recommended by the Board recognizes that there are two types of services which may constitute services in distribution. A person renders a service in distribution to the extent that he underwrites an offering of securities on a firm commitment basis, thereby supplying the issuer with needed cash and risking his capital in the hope of reselling the securities to the public at a profit. A person also renders a service in distribution to the extent that he engages in some selling effort with respect to the securities being sold. This analysis perhaps will be made clearer with a brief discussion of the legal relationship of the parties in a typical firm commitment underwriting.

C. Underwriting Relationships.

In a typical firm commitment, fixed price offering, each underwriter undertakes to buy the securities from the issuer at an agreed price and to make or cause to be made an offering of the securities to the public at the initial public offering price. The difference between the two prices represents underwriter's compensation. Non-managing underwriters each contribute a portion of their compensation to the managers in consideration for, among other things, the manager's efforts in coordinating the distribution.

When the underwriting agreement is signed, which is generally coincident with the effective date of the registration statement, underwriters are bound to purchase and publicly offer the issuer's securities. If the underwriter, alone or with the assistance of others, fails to distribute its commitment at the public offering price, it will be forced to hold the securities or sell at a lower price and possibly at a loss. It is the Board's view that these services and the risk assumed by the underwriter constitute distribution services. Because all underwriters render this service in firm commitment underwritings, under Section 24, underwriters always should be eligible to receive a selling concession, discount or allowance on the securities they underwrite. As discussed below, however, this does not mean that an underwriter can directly or indirectly share that selling concession, discount or allowance with others who are not eligible to receive them.

Syndicate managers, acting as representatives of the members of the syndicate, generally determine the amount of securities which each member of the syndicate can retain for reoffering and the amount which will be sold with the assistance of other dealers, who generally will comprise the selling group. In addition, syndicate managers reserve a certain amount of securities to fill orders of institutional customers who may buy from the syndicate as a group or request that particular syndicate members, selling group members, or other dealers receive credit for the sale. An order which is placed directly with a syndicate manager with such a request is known as a "designated order".

To the extent that an underwriter's retention is less than its commitment to underwrite, the underwriter pays a selling concession to another dealer who actually sells the securities. The underwriter thus receives the full underwriting compensation, less the selling concession (and the manager's fee), on such securities, as compensation for its obligation to underwrite and distribute. The selling concession compensates sates the selling dealer only for its sales effort since it is not providing underwriting services, does not share in management expenses, and assumes limited risk which is largely in its control. In effect, the underwriter simply has allowed part of its distribution compensation to another dealer to induce and reward selling effort for part of its allocation of securities.

On the basis of the foregoing, for purposes of Section 24, an underwriter may render services in distribution either through its underwriting a portion of the offering or engaging in a selling effort with respect to the offering. A selling group member, however, may render such services only by engaging in a selling effort with respect to the securities being sold. Similarly, to the extent that an underwriter sells securities in excess of its underwriting commitment, it may render services in distribution only by engaging in a selling effort under the same circumstances as a selling group member.

D. Designated Orders.

The practice of accepting designated orders raises peculiar problems for a syndicate manager under Section 24, particularly if a person is designated who is not a member of the underwriting syndicate. As indicated above, unlike an underwriter, a selling group member may render services in distribution only by engaging in some selling effort. If an institution contacts a syndicate manager and designates a dealer who is not a syndicate member, the syndicate manager has no way of knowing, or even reasonably presuming, that the designated dealer exercised any selling effort on the order. In contrast, if the party designated is a syndicate member, the syndicate manager knows that the member rendered some service in distribution.

Rather than imposing on syndicate managers the impossible task of determining whether the designated dealer rendered a service in the distribution of the securities subject to the order, the Board decided upon a prophylactic approach which would permit only members of the underwriting syndicate to receive designated orders, but not in an amount which exceeds their respective underwriting commitments. Thus, in addition to securities sold otherwise than by designation, underwriters may be recipients of designated orders in amounts equivalent to their underwriting commitments. By the same token, a syndicate manager, if contacted by a dealer requesting securities, may presume that the dealer has engaged in sufficient selling effort to satisfy the conditions of Section 24.

Although members of the underwriting syndicate are permitted to receive designated orders, the onus is on the underwriter to assure that the selling concession, discount or allowance it retains does not serve as an indirect granting thereof to the customer. The indirect granting of concessions is discussed in more detail below.

E. Bill and Deliver.

Another practice which facilitates, or creates the appearance of, permitting persons to receive a selling concession, discount, or allowance on the sale of securities without rendering any service in distribution

is the practice popularly called "bill and deliver". This practice may occur when an institution is purchasing a block of securities and the sales are to be credited to several dealers, whether or not members of the syndicate, and the manager sends the institution one bill and one certificate. The sales are credited to the appropriate dealers through the settlement of their accounts, if they are syndicate members, or sending them a check for the selling concession, if they are not. To the extent that designated orders are involved, the policy discussed above would apply.

Whether or not the request to bill and deliver comes in the form of a designated order, the Board believes that the practice creates the appearance that the credited dealer did little or nothing in the sale. Accordingly, the Board proposes that such requests be treated like designated orders and syndicate members be permitted to receive credit for such orders only to the extent of their underwriting commitment. Selling group members and underwriters, with respect to securities in excess of the underwriting commitment, could not receive credit for such sales.

F. Dealer's Agreement.

The securities statutes, SEC rules, and NASD rules presently envision that offerings of securities may be made at a fixed price to the public. Those statutes and rules also suggest that persons engaged in such an offering are required to make a bona fide effort at effecting a public offering of securities. To permit members to act as dealers in a fixed price offering and purchase securities at below the stated public offering price without imposing an obligation to make a bona fide public offering is a the very least, contrary to the implied representations in the prospectus or other offering documents. The notion of retaining securities without making a bona fide offering has for many years been recognized by the NASD as a practice which is not consistent with fair and equitable principles of trade. To avoid these problems, persons properly receiving any discount from the stated public offering price while that price is in effect must be prepared to reoffer the securities to the public. Thus, the Board proposes that dealers, in instances where underwriters agree to offer securities to the public at a fixed public price, be obliged to execute a dealer's agreement (which may be a master agreement) requiring the dealer to make a bona fide public offering at the public offering price. It would be the responsibility of any member granting a selling concession, discount or allowance to another member in such a circumstance to obtain such an agreement.

G. Syndicate Operations Abroad.

In some distributions foreign commercial banks, merchant banks, central banks and other financial institutions participate in the offering as dealers; also, selling group dealers may grant the reallowance to such foreign institutions. Under the present rules, underwriters generally may sell to non-member foreign dealers at the public offering price,

less the concession or reallowance, if such foreign dealer agrees to abide by Section 25 of Article III of the NASD's Rules of Practice with respect to sales in the United States. Some managers require agreements to abide by all NASD rules under such circumstances. In some situations it appears that managers or U.S. dealers have failed to obtain such agreements or the agreements have been made but violated.

If, in a fixed price offering, foreign dealers are not restricted to the same extent as U.S. dealers in granting selling concessions, discounts or allowances, the concerns of unfair discrimination and inadequate disclosure have not been satisfactorily resolved. Moreover, foreign dealers' sales both to foreign and U.S. customers may have a direct adverse effect on U.S. syndicate operations. This would be so, for example, if the foreign dealers discount the public offering price to certain investors who in turn promptly resell the securities in the domestic market and, perhaps, into the syndicate stabilizing bid. In light of the foregoing, some effort must be made to control foreign selling practices. The Committee, therefore, recommends that the requirement concerning execution of dealers' agreements extend to foreign dealers, that Section 25 require that members not offer non-member foreign dealers a selling concession, discount or allowance unless those dealers agree in writing to comply with Sections 8 and 24 as well as 25 of the Association's Rules of Fair Practice, and with the proposed new Section 36 prohibiting sales to related persons. Such agreements would cover sales by the foreign dealer of securities acquired from an offering registered under the Securities Act of 1933 or distributed in the United States.

A foreign dealer abiding by such an agreement will be obligated: (1) to make a bona fide public offering, (2) to allow selling concessions only to persons rendering services in distribution, (3) not to supply services or products in consideration for the receipt of selling concessions, (4) not to allow selling concessions through overtrading, and (5) not to distribute securities to persons or accounts related by ownership to the dealer. The Board concluded that these obligations will serve to protect the issuers and customers of, and the domestic markets for, securities either registered or distributed in the U.S. While the Board recognizes that enforcing such agreements may present difficulties, it does not believe that foreseeable frustration in enforcement is an adequate reason not to require the agreements.

H. Indirect Concessions, Discounts or Allowances.

1. Background

Indirectly allowing selling concessions to persons not otherwise eligible to receive them under Section 24 would result in improper disclosure, unfair discrimination against public customers who have purchased securities at a purported uniform public offering price, and

abuses with respect to the stabilization process. Therefore, for public offerings where syndicate members agree to engage in a fixed price offering and thereby limit the eligibility to receive selling concessions, the Board proposes to prohibit underwriting practices which result in indirect concessions to persons ineligible to receive them under Section 24.

2. Securities Taken in Trade

Section 8 of Article III of the NASD's Rules of Fair Practice presently provides that:

> A member, when a member of a selling syndicate or a selling group, shall purchase securities taken in trade at a fair market price at the time of purchase, or shall act as agent in the sale of such securities.

In effect, this permits a member when participating in a fixed price offering to agree with a customer to buy securities from the customer at a fair market price, or to act in the transaction as agent. If such a transaction occurs in compliance with the Section, it popularly is referred to as a "swap" or "swap transaction." If more than fair market price is paid, however, the transaction is generally referred to as "overtrading."

In considering the merits of swap transactions, the Board generally agrees that such transactions represent a reasonable business practice and are important to the process of distributing securities. Among other things, the practice serves to increase liquidity for institutions who may wish to own the securities being distributed but who do not have available sufficient cash to make the acquisition.

The Board recognizes, however, that overtrading results in a customer receiving the security being distributed at a price which is effectively below the public offering price; in effect, the customer would indirectly share in the selling concession retained or received by the dealer. Similarly, swap transactions effected as agent, where less than a normal commission is charged, also confer a benefit on the customer, again tantamount to a discount from the public offering price of the securities being distributed. The Board, therefore, proposes rules and interpretations which require that a normal commission be charged in connection with swap transactions effected as agent. When referring to overtrading in this report, therefore, the Board proposes to include transactions effected as agent where less than a normal commission is charged.

While the Board believes that swapping, as opposed to overtrading, should not be prohibited or even discouraged, it recognizes that the existing overtrading prohibition in Section 8, poses at least two problems. First, the efficacy of the Section is dependent on being able to determine

what, for its purposes, constitutes "fair market price". This is particularly difficult with respect to debt securities where there is not an established market place or quotation system which provides a ready, reliable source of market quotations. Second, the Section does not, on its face, impose any restrictions on the amount of commission to be charged for a swap effected on an agency basis. To correct these deficiencies, the Board proposes that Section 8 be amended to cover expressly those two problem areas and to impose certain recordkeeping obligations designed to facilitate enforcement of the Section.

a. Fair Market Price.

Various general approaches relating to determining fair market price were considered, including simple guidelines, a safe harbor, or an absolute minimum/maximum price which would function much like a safe harbor but would not permit deviations from the range for any reason. The last approach was determined to be the best. Setting a lower limit, while not directly related to prohibiting improper concessions, is designed to prohibit a member from taking a security in trade at a price below its fair market price under circumstances, for example, where the member is distributing a "hot issue" and wishes to sell at a price which is effectively above the stated public offering price. Thus, concerns with respect to discrimination and proper disclosure, while not precisely the same, are equally relevant under such circumstances and should be corrected.

The Board proposes an amendment to Section 8 which essentially provides that fair market price is any price not lower than the highest independent bid or higher than the lowest independent offer. Permitting sales at a price as high as the lowest independent offer may appear to allow dealers to engage in swap transactions and pay a customer more for the securities taken in trade than the customer could obtain in an outright sale. The Board believes, however, that it is not unusual for institutional size sell orders to be executed at the offer side of the market.

The Board also recognizes that establishing fair market price, for purposes of Section 8, as a price which is anywhere between and including the market bid and offer may result in prohibiting swap transactions at prices which, indeed, are fair market prices for the security, considering the size of the transaction and other circumstances. Obtaining quotations in size under present market practices, however, is not an available alternative. Also, the Board believes that a precise formulation of fair market price for these purposes is not reasonably obtainable and is not necessary, since the proposed approach would serve to curb the serious abuses without imposing any undue hardships.

With respect to equity securities which are traded on a national securities exchange or for which quotations are entered in an automated quotation system, the necessary bid and offer quotations must be obtained from the exchange or the system under the proposed amendment to Section 8.

The Board's proposal will also require that, in determining fair market price for debt securities and securities not quoted in an automated quotation system or traded on an exchange, quotations be obtained from two or more independent dealers. If dealer quotations for the securities taken in trade are not readily available, the member may determine fair market price by comparing those securities with securities having similar characteristics and of similar quality for which quotations are readily available. If the member wishes to protect its anonymity, it can use an independent agent to receive the necessary quotations on its behalf.

To assist in the enforcement of Section 8, the Board proposes a record-keeping and record maintenance requirement which imposes an obligation on members to maintain records which will demonstrate compliance with Section 8. If an independent agent is used to obtain quotations, the member must request the agent to identify the dealer from whom it obtained quotations and the time and date it obtained them. Alternatively the member must request the agent to maintain records containing such information.

In a proposed interpretation to Section 8, a member will be offered a guideline specifying what records will be adequate to satisfy its obligation. Generally, a member will have kept adequate records if it records the time and date quotations were received, the identity of the security to which the quotations pertain, the identity of the dealer from whom they were obtained, and the quotations supplied. If an independent agent is used and the member requested the agent to keep adequate records, the member will have kept adequate records under Section 8 if it records the time and date it received the quotations from the agent, the identity of the agent, and the quotations transmitted by the agent.

b. Normal Commission.

Section 8, in its present form, appears to permit swap transactions at any price when effected on an agency basis without any requirement that a brokerage commission be charged on the trade. Prior to the unfixing of commission rates on exchange transactions, this aspect of Section 8, at least with respect to equity securities, did not result in any serious abuse. Today, a member is permitted to effect exchange transactions at any commission rate agreed upon with the customers, and it is possible to grant an indirect selling concession, discount or allowance to a customer by agreeing to swap securities for it as agent and charging a lower than normal commission or no commission at all.

To remedy this problem the Board proposes an amendment to Section 8 which effectively requires that, in swap transactions effected as agent, the member charge a normal commission. Normal commission would be defined generally as an amount of commission which the member would normally charge to the customer or a similarly situated customer in a transaction having similar characteristics but not involving a swap transaction.

3. Soft Dollar and Related Payments

a. General.

A person may be viewed as sharing a selling concession or receiving securities in a distribution for a price lower than the public offering price if his entering the order with a particular dealer results in the discharge of some hard dollar obligation owed to that dealer. Similarly, it is possible to take the position that a customer shares in a selling concession or receives a discount from the public offering price if he receives anything of value, at no direct cost or at a cost which is below fair market value, from a broker-dealer from whom he has purchased or will purchase securities in a fixed price offering. The selling concession or discount is measured by the value of the other goods or services provided at no charge or the extent by which the charge is below market. The Board recognizes that a rule embodying this latter proposition, while perhaps theoretically valid, would be quite unrealistic; it would attempt to reach putative abuses which may be more illusory than real, and it would unnecessarily intrude upon normal business relationships and practices. Nevertheless, the Board is not willing to conclude that, absent the discharge of a hard dollar obligation, the concerns regarding undisclosed concessions, discounts or allowances do not exist.

If selling concessions may serve to offset, for example, cash or brokerage obligations of customers, the practice discriminates against that class of customers who do not generate sufficient business to receive the product or service giving rise to the obligation. This form of discrimination is particularly offensive when accompanied by statements in the prospectus or other offering document that the securities are being offered to the public at a fixed public offering price. If underwriters and issuers intend to permit selling group members and syndicate members effectively to share their selling concessions with customers, they should not purport to have established a fixed price to the public. No amount of general disclosure would cure the misrepresentation that there is an initial public offering price.

It is recognized that there are two overriding concerns in fashioning a policy or rule in this area. First, an effort must be made to eliminate the potential abuses. Second, whatever policy or rule is adopted must not be so vague or so all encompassing that it is not susceptible of reasonable enforcement. Accordingly, the Board has attempted to balance these countervailing policy objectives to reach a practical but effective result. To do this, the Board believes that it is necessary to attempt to identify those types of services and products which a dealer or underwriter likely would not furnish without some agreement, promise or understanding of being compensated in some fashion and probably in some determinable amount.

It is the Board's view that the serious potential abuses do not exist simply because of the existence of some informal obligation or desire to continue a business relationship. Rather, it is the existence of an obligation (whether or not legally binding) and the discharge of that obligation through the retention or receipt of selling concessions by underwriters and dealers which must be reached.

While the Board does not believe that the Association can develop a workable policy which reaches every possible situation in which a selling concession might offset some "moral" obligation, it does believe that its recommended approach reaches the areas of primary concern -- those situations where the suppliers, at least, know the dollar market value of services or projects furnished and are likely to have a specific agreement or understanding that they will be compensated therefor. Thus, the Board proposes that a member be viewed as having granted a selling concession, discount or allowance to a person if the member (i) supplies that person or its affiliate with services or products which are commercially available or are provided by the member to others for cash or some other agreed upon consideration, and (ii) retains or receives selling concessions, discounts or allowances from purchases by that person or its affiliate of securities from fixed price offerings unless the person or its affiliate has fully compensated, or reasonably will fully compensate, the member for those products and services with consideration other than the selling concession, discount or allowance.

The effect of the proposal can be better understood with a brief discussion of the intended meaning of certain of the key terms used. In part, this is accomplished in the proposed interpretation to Section 24 appearing in Proposal No. 3.

(i) Commercially available

The term "commercially available" is intended to encompass any product or service which the customer could have purchased on the market for cash. For example, it would include such things as quotation equipment, computer time, airline tickets, third party research sold to others, brokerage services and other items. The fact that the member supplying such services or products does not make it available for cash or other agreed upon consideration would not change the "commercially available" character of the product as long as the service or product, or a substantially identical service or product, is available from others on such terms. By the same token, if a member purchases research from a third party which is not available to others and distributes it to its customers under circumstances where it is not to be paid for by cash or agreed upon consideration, that research will be accorded the same treatment as internally generated research.

The proposed interpretation would also inform members that commercially available products or services which are not of substantial value, such as incidental business gifts, food and entertainment, will not raise problems under Section 24.

(ii) Other agreed upon consideration

The proposal is intended to reach products and services which, although not commercially available, are made available by the member to anyone for some agreed upon consideration. Thus, if the member, for example, developed a software package and sold it for cash or a specified amount of brokerage commissions to one customer, that product would be viewed as the type of product which would not likely be offered to another customer unless there was some understanding regarding compensation. If the member supplied the product to a customer who also purchased securities from the member out of fixed price offerings, the selling concessions received by the member could not serve as compensation for the product. In effect, the member supplying such products would find it necessary to arrange for other methods of compensation and specifically not accept any selling concessions for that purpose. One way to do this would be to maintain records which clearly identify the method of payment.

(iii) Fully compensated

There is no intention to prohibit members from continuing to supply services and products to customers for cash or other agreed upon consideration and also sell securities to them from fixed price offerings. What is prohibited is providing such services or products to a person and receiving compensation therefor in the form of selling concessions, discounts or allowances on purchases of securities from fixed price public offerings. This practice causes a deviation from the public offering price stated in the prospectus. Compensation for such services and products must come from other sources such as cash or brokerage commissions.

On the other hand, in the Board's opinion, except with respect to transactions involving securities taken in trade, dealers should not be required to demonstrate that the cash, brokerage commissions or other compensation received or to be received represents fair market value for the service or products. Rather, unless the facts are clearly suspect, a dealer who has established a price, in, say, cash or brokerage commissions, and has records which reflect its collection process, will not be questioned further to determine whether selling concessions are taken into consideration when establishing a price for the product or service. But records reflecting that a customer, who is supplied such products or services, is credited with having generated selling concessions will be viewed as evidencing the granting of a concession, discount or allowance to that customer.

The proposed interpretation concerning this matter also makes it clear that a member will not be required or expected to charge the same price to all customers for the same product or service. As long as the varying prices charged for services and products are not predicated on the receipt of selling concessions, such a pricing procedure will not be questioned under Section 24.

b. Effect of Policy

The policy will permit dealers and underwriters to continue to supply standard research which is not offered to anyone for cash or for an agreed upon consideration. The practice, if it exists, of furnishing customers with commercially available products, such as quotation equipment, office space, airline tickets, and computer time will be eliminated, at least insofar as fiduciaries are concerned. While a non-fiduciary might be able to demonstrate that it has directed, or continues to have an open obligation to direct, a specified amount of brokerage as full consideration for such products, a fiduciary might find it difficult to reconcile his fiduciary obligations with the practice of receiving such products for brokerage.

If the product or service meets the test for research under Section 28(e) of the Exchange Act and it is offered to others for cash or for some other agreed upon consideration, the dealer or underwriter can easily demonstrate, even as to a fiduciary customer, that it was not compensated for that research with selling concessions. Thus, if the research were furnished for an agreed upon amount of brokerage at an agreed upon rate, the dealer or underwriter could simply maintain a record reflecting the obligations and the corresponding brokerage commission as consideration.

As indicated above, it is expected that, in the absence of peculiar facts, the price charged to the recipient of the product or service in cash, brokerage commissions, or other consideration will represent full consideration due. If the supplying member has no agreement with the recipient, but the product or service is commercially available or is available to other customers of the member for an agreed upon consideration, the commercially available price or the price charged to such other customer or customers will represent the general amount of consideration that the member must receive from such recipient independent of selling concessions. As a practical matter, members supplying the types of products or services covered by the interpretation should, by virtue of the interpretation, be encouraged to obtain agreements from recipients and to keep records which identify that the member was not compensated for the service or product with selling concessions. For example, if brokerage commissions are the source of consideration, the member should be in a position to show the amount of brokerage agreed to, the amount collected and the amount due.

While the price set for a particular product or service generally will not be questioned, if it appears that the price is unreasonably low or that it is expressly understood that the price set is based on the expectation of receiving selling concessions, the simple brokerage or cash payment will not go unquestioned. Thus, it will not be possible to credit sales concessions against any other fee or fee schedule.

IV. Sales to Related Parties

The Board proposes a new rule, Section 36 of Article III of the Rules of Fair Practice, which prohibits a member from selling securities from a fixed price public offering to a "related person." A related person, for this purpose, is someone who owns, is owned by, or under common ownership with, the member, and ownership exists if a person is able to participate in 25% or more of the profits of another person or owns 25% equity of another person. This prohibition would not, however, apply if the related person is itself a member engaged in the fixed price offering and is otherwise subject to Section 36.

The proposal, however, would permit sales to related parties if the dealer made a bona fide public offering, the fixed price offering was terminated, and it was unable to sell the securities to the public without incurring a loss. Thus, in effect, the proposal would require a sale to an unrelated party if the sale could be made at a price which is at or above the dealer's cost.

An interpretation to the proposed rule states that it is not intended to prohibit a member from accumulating securities for later deposit in a unit investment trust if there was, at the time of the accumulation, a good faith intent to deposit the securities in such a trust and an intent to make a public offering of participations in the trust. Members, however, will also be advised that, while such an accumulation is not intended to be covered by the proposed rule, the Free-Riding and Withholding Interpretation under Section 1 of Article III of the Rules of Fair Practice may apply.

NEW MATERIAL IS INDICATED BY UNDERLINING
DELETED MATERIAL IS INDICATED BY STRIKING OUT

Proposal No. 1

PROPOSED AMENDMENT TO ARTICLE II, SECTION 1
OF THE RULES OF FAIR PRACTICE

Section 1 is proposed to be amended by the addition of a new subparagraph (m). All other subparagraphs to Section 1 remain unchanged.

"Fixed price offering"

(m) The term "fixed price offering" means the public offering of securities by a broker, dealer or underwriter at a stated public offering price, whether or not such offering is registered under the Securities Act of 1933, except that the term does not include offerings of "exempted securities" or "municipal securities" as those terms are defined in Section 3(a)(12) and 3(a)(29) of the Securities Exchange Act of 1934.

Proposal No. 2

PROPOSED AMENDMENT TO ARTICLE III, SECTION 8
OF THE RULES OF FAIR PRACTICE AND
NEW INTERPRETATION

Sec. 8

(a) A member~~, when a member of a selling syndicate or a selling group, shall purchase~~ engaged in a fixed price offering who purchases or arranges the purchase of securities taken in trade shall purchase the securities at a fair market price at the time of purchase~~,~~ or shall act as agent in the sale of such securities~~.~~ and charge a normal commission therefor.

(b) When used in this section,

(1) the term "taken in trade" means the purchase by a member as principal, or as agent for the account of another, of a security from a customer pursuant to an agreement or understanding that the customer purchase securities from the member which are part of a fixed price offering;

(2) the term "fair market price" means a price which is not lower than the highest independent bid and not higher than the lowest independent offer for the securities at the time of purchase, if bid and offer quotations for the securities are readily available; if such quotations are not readily available, the fair market price may be determined by comparing the security taken in trade with other securities having similar characteristics and of similar quality and for which bid and offer quotations are readily available.

(3) the term "normal commission" means an amount of commission which the member would normally charge to that customer or a similarly situated customer in transactions having similar characteristics but not involving a security taken in trade.

(c) A member, in determining fair market price for purposes of this Section, shall with respect to:

(1) equity securities which are traded on a national securities exchange or for which quotations

are entered in an automated quotation system, obtain the necessary quotation from the national securities exchange or from the automated quotation system; and

(2) debt securities, and equity securities not included in subparagraph (1), obtain directly or with the assistance of an independent agent necessary quotations from two or more independent dealers.

(d) A member who purchases a security taken in trade shall keep or cause to be kept adequate records to demonstrate compliance herewith and shall preserve the records for at least 24 months after the transaction. If an independent agent is used for the purpose of determining fair market price, the member must request the agent to identify the dealers from whom the quotations were obtained and the time and date they were obtained or request the agent to keep a record containing such information.

- - - INTERPRETATION OF THE BOARD OF GOVERNORS - - -

Adequate Records

If fair market price for a security taken in trade is determined by obtaining quotations from two or more independent dealers, the member will have kept adequate records if it records the time and date the quotations were received, the identity of the security to which the quotations pertain, the identity of the dealer from whom the quotations were obtained, and the quotations they supplied. If a member uses the services of an independent agent to obtain the quotations and the agent does not disclose the identity of the dealers from whom quotations were obtained, the member will have kept adequate records if it otherwise complies with subparagraph (d) of Section 8 hereof and it records the time and date it received the quotations from the agent, the identity of the securities to which the quotations pertain, the identity of the agent, and the quotations transmitted by the agent.

Proposal No. 3

PROPOSED AMENDMENT TO ARTICLE III, SECTION 24
OF THE RULES OF FAIR PRACTICE AND
NEW INTERPRETATION

Sec. 24

(a) Selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration fc services rendered in distribution and in no event shall b allowed to anyone other than a broker or dealer actually engaged in the investment banking or securities business; provided, however, that nothing in this rule shall preven any member from selling any security owned by him to any person at any net price which may be fixed by him unless prevented therefrom by agreement.

(b) A member who grants a selling concession, discount or allowance to another person in connection with a sale of securities which are part of a fixed price offering must obtain a written agreement from that person that he will make a bona fide public offering of such securities.

- - - INTERPRETATION OF THE BOARD OF GOVERNORS - - -

Introduction

The proper application of Section 24 requires that selling concessions, allowances, or discounts be paid only to persons who render services in distribution and only as consideration for such services. Services in distribution generally can tak two forms. A person renders a service in distribution to the extent that he agrees to underwrite securities, on a firm commitment basis, pursuant to an agreement to make a public offering of the securities either directly or with the assistance of others. A person also renders services in distributi to the extent that he performs a selling effort with respect the securities being distributed.

Managers of selling syndicates, acting as agent for the members of the syndicate, generally determine the amount of securities which may be retained by the syndicate members for sales directly by them and the amount which are to be sold with the assistance of a selling group. In addition, syndicate managers reserve a certain amount of securities to fill orders of institutional customers who may buy from the selling syndicate ("group sale") or who may request that particular brokers or dealers receive credit for the sale. An order which is placed directly with a syndicate manager with a request that a particular broker or dealer receive credit for the sale is known as a "designated order".

If a purchaser designates particular brokers or dealers who are not members of the selling syndicate to receive credit for the sale, the syndicate manager cannot reasonably know whether the person or persons so designated performed any selling effort and, thus, whether they rendered services in distribution with respect to that sale. On the other hand, if the person or persons so designated are members of the selling syndicate and have agreed to underwrite the securities on a firm commitment basis, the syndicate manager knows that the person rendered services in distribution with respect to the amount of the underwritten securities whether or not any selling effort is performed.

Services in Distribution

A member of a selling syndicate may retain its full

underwriting compensation for securities it both underwrites and sells, and the manager of a selling syndicate may properly accept designated orders from a purchaser on behalf of a syndicate member and credit it with the sale, but only up to the aggregate amount of the syndicate member's underwriting commitment. A syndicate member may receive selling concessions for the securities it sells in excess of its underwriting commitment in the same manner and under the same circumstances as a selling group member.

A dealer who is included in a selling group by a syndicate manager may receive selling concessions for securities it sells. The syndicate manager may not accept designated orders on behalf of a selling group member or any dealer other than a syndicate member. Such selling group member or other dealer must place their orders with the manager directly. A dealer who, as reallowance dealer, purchases securities in distribution from a syndicate member, a selling group member, or another reallowance dealer is eligible to receive a reallowance for shares it sells. Sales by syndicate members in excess of their underwriting commitment and by selling group members may not be confirmed and billed to the customer directly by the syndicate manager whether or not the order is a designated order.

Selling Concessions, Discounts or Allowances

General

A member who (i) supplies another person or its affiliate with services or products, including research, which are com-

mercially available or are provided by the member to others for cash or for some other agreed upon consideration, including brokerage commissions, and (ii) also retains or receives selling concessions, discounts, or allowances from purchases by that person or its affiliate of securities from a fixed price offering, is offering a discount, concession or allowance in violation of Section 24, unless the member has been, or has arranged and reasonably expects to be, fully compensated for such services or products from sources other than the selling concession, discount, or allowance retained or received on the sale.

Commercially Available

As used in this interpretation, a product or service is "commercially available" if it is generally available on a commercial basis. It would include such things as office space, secretarial services, quotation equipment, news periodicals, certain research products, airline tickets, and other items which could be purchased directly or indirectly by the recipient from a third party.

The term includes products or services which a member receives from a third party for redistribution if the same service or product, or a service or product which is substantially an identical service or product, is offered to others on a commercial basis. Thus, a service or product may be commercially available even though the member engaged in redistributing it does not itself make the service or product commercially available.

This interpretation is not intended to prohibit members from providing products or services which are commercially available but which are not of a substantial value. No question arises under Section 24 if a member furnishes such things as incidental business gifts, food, entertainment, or other items not having a substantial value.

Cash or Other Agreed Upon Consideration

A member will be deemed to be offering services or products for cash or other agreed upon consideration if the service or product, or a substantially identical service or product, is offered to any person for cash or for some other agreed upon consideration. A service or product will be deemed to be provided for an agreed upon consideration if there is a written or oral agreement between the member and the recipient providing for the member to be compensated for supplying the services or products and specifying the source or sources and general amount of compensation to be paid. For example, if a member offers a service or product to anyone and it is agreed that the recipient shall compensate the member with a specified dollar amount of brokerage or a scale of brokerage depending on the brokerage rate charged, that service or product will be deemed to be offered for an agreed upon consideration.

A member will not be viewed as offering a service or product for an agreed upon consideration where there is only some general awareness between all of the recipients and the member that the member expects to receive some consideration which is undefined as to amount.

Full Consideration

A member may show that it received or reasonably expects to receive full consideration, independent of selling concessions, discounts or allowances, for providing certain services and products, by identifying the arrangement for the consideration (including its source and amount), and, if appropriate, the collection process for obtaining it.

In order to demonstrate that the cash, brokerage commissions or other consideration serve as full consideration, records of account should be kept which identify the recipient of the services or products, the amount of cash, brokerage commissions or other consideration owed and the amount of cash, brokerage commission or other consideration paid and to be paid by such person or its affiliate.

Unless the amount of cash, brokerage commissions or other consideration agreed upon appears on its face to be unreasonably low, it will not be necessary for the member to demonstrate that the agreed upon price represented fair market price. Likewise, as long as price differentials are based on factors other than the customers' willingness to, or practice of, purchasing securities from the member out of public offerings, it is not necessary, for purposes of Section 24, that the member charge the same amount to each person to whom it provides the same or similar services or products.

Proposal No. 4

PROPOSED AMENDMENT TO ARTICLE III, SECTION 25
OF THE RULES OF FAIR PRACTICE

Sec. 25

(a) No member shall deal with any non-member broker or dealer except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.

(b) Without limiting the generality of the foregoing, no member shall:

(1) in any transaction with any non-member broker or dealer, allow or grant to such non-member broker or dealer any selling concession, discount or other allowance allowed by such member to a member of a registered securities association and not allowed to a member of the general public;

(2) join with any non-member broker or dealer in any syndicate or group contemplating the distribution to the public of any issue of securities or any part thereof; or

(3) sell any security to or buy any security from any non-member broker or dealer except at the same price at which at the time of such transaction such member would buy or sell such security, as the case may be, from or to a person who is a member of the general public not engaged in the investment banking or securities business.

Transaction with foreign non-members

(c) The provisions of paragraphs (a) and (b) of this rule shall not apply to any non-member broker or dealer in a foreign country who is not eligible for membership in a registered securities association, but in any transaction with any such foreign non-member broker or dealer~~,-where~~ involving securities that are part of an offering which is registered or distributed in the United States and with respect to which a selling concession, discount, or other allowance is allowed, a member shall ~~as-a-condition-of such-transaction~~ secure from such foreign broker or dealer an written agreement that, in making any sales ~~to-purchasers within-the-United-States~~ of such securities ~~acquired-as-a~~

~~result of such transactions, he will conform to the provisions of paragraphs (a) and (b) of this rule~~, it will conform to the provisions of Sections 8, 24, 25 and 36 of this Article to the same extent as though ~~he~~ it were a member of the Corporation.

"Non-member broker or dealer"

(d) For the purpose of this rule, the term "non-member broker or dealer" shall include any broker or dealer who makes use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security, otherwise than on a national securities exchange, who is not a member of any securities association, registered with the Commission pursuant to Section 15A of the Act, except a broker or dealer who deals exclusively in commercial paper, bankers' acceptances or commercial bills.

(e) Nothing in this rule shall be so construed or applied as to prevent any member of the Corporation from granting to any other member of any registered securities association any dealer's discount, allowance, commission, or special terms.

Proposal No. 5

PROPOSED NEW SECTION 36 OF ARTICLE III AND
AND INTERPRETATION THEREOF OF
THE RULES OF FAIR PRACTICE

Sec. 36

(a) Except as otherwise provided in subsection (d) of this Section, no member engaged in a fixed price offering of securities shall sell the securities to, or place the securities with, any person or account which is a related person of the member unless such related person is itself subject to this Section.

(b) For purposes of this Section 36, a "related person" of a member includes any person or account which directly or indirectly owns, is owned by or is under common ownership with the member.

(c) A person owns another person for purposes of this Section if the person directly or indirectly:

(i) has the right to participate to the extent of more than 25 percent in the profits of the other person; or

(ii) owns beneficially more than 25 percent of the outstanding voting securities of the person.

(d) The prohibition contained in subsection (a) does not apply to the sale of securities to, or the placement of securities in a trading or investment account of, a member or a related person of a member after termination of the fixed price offering if the member has made a bona fide public offering of the securities. A member is presumed not to have made a bona fide public offering for the purpose of this subparagraph if the securities being offered immediately trade in the secondary market at a price or prices which are at or above the price paid by the member for such securities.

- - - INTERPRETATION OF THE BOARD OF GOVERNORS - - -

A member who is acting, or plans to act, as sponsor of a unit investment trust will not violate Section 36 if it accumu-

lates securities with respect to which the member has acted as a syndicate member, selling group member or reallowance dealer in an account of the member or related person of the member if, at the time of accumulation, the member in good faith intends to deposit the securities into the unit investment trust and intends to make a bona fide public offering of the participation units of that trust. Members engaged in such activity, however, will continue to be subject to Section 1 of Article III and the Board of Governor's Interpretations thereunder concerning free-riding and withholding.

NOTICE TO MEMBERS: 77-32
Notices to Members should be retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

September 23, 1977

IMPORTANT NOTICE
LOST OR STOLEN SECURITIES

TO: All NASD Members

Recently, Putnam Fund Distributors, Inc., the general distributors for the Putnam Group of Funds, notified the Association that certain certificates were either lost or stolen from Putnam Administrative Services Company, Inc., the transfer agent for the Putnam Funds, on or about September 12, 1977.

The certificates which are missing are not genuine securities. At the time they were lost or stolen, they did not contain any certificate or serial numbers, account numbers, names of registered holders, share denominations or issue dates. They did, however, contain control numbers which are imprinted in red on the reverse left-hand side of each certificate. These certificates and their control numbers are as follows:

The George Putnam Fund of Boston - Shares of Beneficial Interest, Mass. Trust:
Nos.: B56979; B56982; B56988; B56991

The Putnam Growth Fund - Shares of Beneficial Interest, Mass. Trust:
Nos.: G91001; G91015; G91022; G91023; G91024; G91025

The Putnam Income Fund, Inc. - Common Stock:
Nos.: I52001-I52465 series; I52474; I52480; I52482; I52484; I52488; I52489; I52492-I53000 series

Putnam Investors Fund, Inc. - Common Stock:
Nos.: V89983; V89989; V89990; V89995; V89996; V89997; V89998; V89999

Putnam Vista Fund, Inc. - Common Stock:
Nos.: V35475; V35476; V35480; V35484; V35486; V35498

The Putnam Companies have specifically requested that members examine the control numbers of any of the above certificates now in their possession or those which may come into their possession in the future. The Putnam Companies greatly appreciate your cooperation in this matter.

If any NASD member comes into possession of any of the above-cited certificates or receives any information in regard to this matter, he should contact local law enforcement authorities, the Federal Bureau of Investigation or write or call:

Mr. L. Edward Sibley, Senior Vice President
Putnam Administrative Services Company, Inc.
265 Franklin Street
Boston, Massachusetts 02110

Telephone: (617)423-4960, extension 531

Kindly distribute this Notice to appropriate staff personnel in your organization. This Notice may be duplicated in quantities sufficient to satisfy your needs.

Sincerely,

Frank J. Wilson
Senior Vice President
Regulatory Policy and
General Counsel

NOTICE TO MEMBERS: 77- 33
Notices to Members should be retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

September 29, 1977

NOTICE

TO: All NASD Members, Registered Principals, Registered Representatives and Other Interested Persons

RE: Proposed Amendment to Section 6 of the Association's Code of Procedure for Handling Trade Practice Complaints Which Would Provide Employers with a Copy of District Business Conduct Committee Complaints Filed Against Employees

The Board of Governors of the Association has proposed an amendment to Section 6 of the Association's Code of Procedure for Handling Trade Practice Complaints, the effect of which would require providing an employer with a copy of a District Business Conduct Committee Complaint filed against an employee. This proposal is being published by the Board at this time to enable members, registered principals, registered representatives and other interested persons to comment thereon. Comments on the proposal must be submitted in writing and be received by the Association by October 31, 1977 in order to receive consideration. After the comment period has expired, the proposal will again be reviewed by the Board. If approved, the amendment must be submitted to the Securities and Exchange Commission which will again publish the proposed amendment for public comment. The proposed amendment must be approved by the Securities and Exchange Commission prior to it becoming effective.

Explanation of Proposal

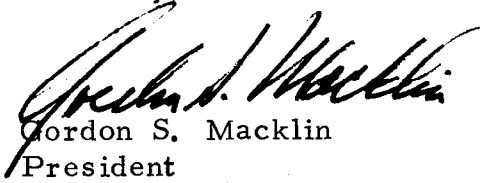
This proposal results from the Board of Governor's belief that under current procedures an employer-member is not put on sufficient notice to be able to fully carry out its duty to adequately supervise its employees, thereby unnecessarily exposing public customers to potential harm and employer-members to the charge

of inadequate supervision. Under current procedures, an employer-member is not formally advised of a Complaint against an employee filed by the District Business Conduct Committee. In particular, this has been a problem where the employee has changed employers after the alleged transgression but before a formal Complaint has been filed since there would then be no practical way in which the new employer would have actual or constructive knowledge of the pending action. Neither the employee's Form U-4 (Uniform Agent Application Form) nor activities of the Association's examining staff would signal any potential problems. The Board of Governors feels that an employer-member has the duty to adequately supervise its employees and, therefore, should be advised of pending actions so that it might adjust its supervision accordingly.

Also, the Board is concerned that its procedures faithfully comply with the statutory mandate to be fair to those accused of violating the Association's rules. While the Board recognizes the decision to terminate an employment relationship is normally between the employer and the employee, it believes that until a matter has been properly adjudicated and becomes final, allegations in a complaint should not in any way affect the continuation of the employment relationship. Rather, depending on the nature and seriousness of the charge, the employer should increase his supervision of that particular employee in an appropriate manner. It should also be pointed out that the term "employee" as used in this context is not limited to registered representatives but also refers to registered principals and persons associated with members.

Considering the importance of the issues involved and policy goals sought, the Board of Governors decided to first publish this proposed amendment for comment from all interested persons. All comments should be addressed to Mr. Christopher R. Franke, Secretary, National Association of Securities Dealers, Inc., 1735 K Street, N. W., Washington, D. C. 20006, on or before October 31, 1977. All communications will be available for inspection.

Sincerely,



Gordon S. Macklin
President

PROPOSED AMENDMENT TO SECTION 6 OF THE CODE OF PROCEDURE FOR HANDLING TRADE PRACTICE COMPLAINTS

New Material Indicated by Underlining

"Section 6. If the complaint is filed with the District Business Conduct Committee entitled to hear such complaint, as provided in Section 3, or the complaint is forwarded to such Committee by another District Business Conduct Committee, as provided in Section 5, such Committee shall, on the form to be supplied by the Board of Governors, forthwith send notice in writing of the receipt of such complaint together with a copy of such complaint to the Respondent and shall require the respondent to answer thereto. A copy of said complaint shall also be sent to the present employer of the Respondent if the employer is a member of the Association."