

# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
1735 K STREET NORTHWEST • WASHINGTON D. C. 20006

October 6, 1977

TO: All NASD Members and Interested Persons

RE: Proposed New Rule Regarding Content of Member  
Advertising and Sales Literature and Amendments  
to Filing Requirements

1. Proposed Section 37 of Article III  
of Rules of Fair Practice
2. Proposed Repeal of Interpretations  
of the Board of Governors Concern-  
ing Advertising and Sales Literature

The Board of Governors of the Association has authorized the publication of a new proposed rule concerning the content of member advertising and sales literature and related requirements regarding member approval, recordkeeping and filing with the Association. This publication is specifically for the purpose of soliciting comments from members and other interested persons. After the close of the public comment period, the proposed amendments must again be reviewed by the Board taking into consideration the comments received. Thereafter, the proposed rule must be submitted to the membership for a vote and, if approved, must be submitted for approval to the Securities and Exchange Commission.

The primary authority for these proposals is contained in Section 15A(b)(6) of the Securities Exchange Act of 1934, as amended (15 USC 780-3(b)(6)), and Article VII of the Association's By-Laws.

## Background and Explanation of Proposed Rule

As explained in Notice to Members No. 77-10, dated March 31, 1977, the Association has been reviewing the action taken by the New York and American Stock Exchanges to eliminate their requirements for prior approval of member advertising. After careful

consideration, the Board of Governors has decided to recommend the elimination of its general after-the-fact filing requirement and the adoption of a new spot-check procedure similar to that used by some of the exchanges. In addition, however, the Board believes that the separate requirements for investment company material should be retained and that new advance approval requirements should be instituted in certain limited areas. The Board has also taken this opportunity to codify some of its existing interpretations into rule form, to propose new requirements for options, and to consolidate various requirements into one place which are now contained in different sections of the NASD Manual. Of course, if the subject proposal is ultimately adopted, the existing Board Interpretations would be repealed.

It is proposed that advance approval requirements be applied to options advertising to bring the Association's requirements into line with the various options exchanges. It is also proposed that advance approval requirements be applied to all new members for one year and that, in addition, District Business Conduct Committees be specifically authorized to direct a member to file advertising for advance approval for a period not exceeding one year. This latter provision is designed to provide District Committees with added flexibility to deal with situations where a member appears to be having difficulty in designing advertising or sales literature in accordance with applicable standards but the Committee does not feel that the situation warrants formal disciplinary proceedings. The procedure would not displace the Formal Complaint procedure or the Admission, Waiver and Consent Procedure and District Committees could still utilize these procedures where appropriate. A member who desired further consideration of the requirement imposed by the District Committee could request a hearing on the matter.

Both of these latter two new provisions result from the Association's belief that, except for the special product areas mentioned, difficulties experienced with the content of members' advertising tend to be concentrated in a relatively small number of firms. Often the members experiencing difficulties are new members or members who haven't advertised in the past. Occasionally, however, problems are experienced by other than new members, due to a change in personnel or other factors. These two new provisions are intended to focus the Association's regulatory effort on the likely problem areas, while lifting a substantial compliance burden from the majority of members. This consideration has also resulted in a significant expansion of the types of material exempted from our filing requirements and spot-check procedures. The Association will, of course, continue to review and comment upon members' material which is voluntarily submitted.

Summary of Changes in Filing Requirements by Type of Product

For the convenience of the membership, the following summarizes the proposed changes in filing requirements by type of security:

<u>Type of Security</u>	<u>Change in Requirement</u>
Investment Company Securities (including mutual funds and variable contracts)	No substantive change
Direct Participation Programs (Oil and Gas, Real Estate, etc.)	Elimination of advance approval requirement - New spot-check procedure to be implemented
Options*	New 10 day prior filing requirement
All other advertising*	Elimination of require- ment for filing within five days of use - New spot-check procedure to be implemented

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\* As is currently the case, material in these categories would not be subject to filing or spot-check procedures if reviewed by an exchange having substantially the same standards as the Association. There are also broad categories of material exempted from these procedures.

Section-by-Section Analysis

The following is an analysis of each section of the proposed rule which would be different from the current provisions in any significant respect. Of course, the consolidation of various provisions has caused minor changes in wording, sequence or designation.

Section A(1)            This definition of "advertisement" is essentially the same as that contained in the Board's Advertising Interpretation (paragraph 2151.01 NASD Manual) except for the addition of a few specific types of advertising which have become more popular and which weren't previously specified.

- Section A(2) This definition of "sales literature" is basically the same as that in the Board's Advertising Interpretation except that it includes a new definition of "form letter" which will hopefully resolve some confusion in this respect. This new definition is based primarily on the definition contained in SEC Rule 24b-1 under the Investment Company Act of 1940. As is currently the case, "sales literature" is defined separately from "advertisement" primarily to distinguish material subject to different filing and spot-check requirements. As specified later, some requirements apply only to advertising while others also apply to sales literature.
- Section B(1) This requirement for approval of advertising by a registered principal or his designee is a substitute for the current requirement that such approval be by "an officer, partner or official of the member designated to supervise such matters." The requirement that options advertising be approved by the senior registered options principal is new but it is comparable to the requirements of the options exchanges.
- Section B(2) This recordkeeping requirement is similar to that contained in the Board's Advertising Interpretation except that it eliminates a requirement that the material be readily accessible for two years since this seems redundant in terms of current SEC recordkeeping requirements.
- Section C(1) This filing requirement for investment company related literature is essentially the same as that currently in effect (Page 5011 NASD Manual).
- Section C(2) This new advance approval requirement for options material is almost identical to that of the options exchanges. Consistent with the Board's current Advertising Interpretation, it includes, however, an exemption for material approved by an exchange having similar rules. Thus, members who receive approval of options ads from one of these exchanges need not file them with the Association.
- Section C(3) This is a proposed requirement for advance filing of advertising by members for one year. This

Section C(3)  
(cont.)

provision also contains an exemption for material filed with an exchange having comparable standards; however, the exemption would not apply to material concerning investment companies or direct participation programs. While primarily aimed at new members, this advance approval requirement would be applicable to existing members for one year from the date of filing of the first advertisement. Thus, a member who had been filing advertisements for nine months on the effective date of the rule would be subject to a three-month requirement. An existing member who had been filing advertising with the Association or with an exchange for at least one year prior to the effective date of the rule would not be subject to this requirement.

Section C(4)

As explained earlier in this notice, this new provision would give District Business Conduct Committees added flexibility to require that a member submit one or more types of material for advance approval, for periods up to one year, without the necessity of utilizing more formal disciplinary processes. The member could request a hearing if further consideration of the requirement imposed by the District Committee was desired.

Section C(5)

This provision outlines the spot-check procedure to be used by the Association with respect to material not previously reviewed. It includes an exemption for members of any exchange which utilizes a comparable spot-check procedure. It does not, of course, preclude on-site inspections of such material.

While it may not be necessary to outline this procedure in the rule, the Board believes it may be helpful to members to do so.

Section C(6)

This provision continues the pattern, established in the Board's Advertising Interpretation, of excluding certain types of material from the filing requirements. As a direct result of trying to focus on the potential sources of problems, however, the list of exclusions has been broadened.

Sections C(6)  
(a) and (b)

These provisions broaden the list of routine announcements excluded from the filing requirements.

- Section C(6)(c) This provision extends an existing exemption, for straightforward offers, to sales literature as well as advertising.
- Section C(6)(d) This provision continues an existing exemption for internal communications.
- Section C(6)(e) This provision continues an existing exemption for prospectuses and offering circulars on registered offerings. The exemption would cover prospectuses for securities registered under the Securities Act of 1933 or exempt therefrom, regardless of whether registration with a state is required.
- Section C(6)(f) This provision exempts so-called "tombstone" ads concerning securities registered with the SEC under the Securities Act of 1933, except for ads concerning options, investment company securities and direct participation programs.
- Section D This provision restates the general standards of accuracy and fairness contained in the Board's Advertising Interpretation.
- It contains an additional provision dealing with seminars, public speaking, etc., which is intended to clarify that the Association's standards apply to such activities. The Board recognizes that often interviews or speaking engagements do not always lend themselves to prepared texts or formalized responses; however, members should apply the same high standards of accuracy, fairness and responsibility in such situations as would apply to more formal communications. Except as noted below, the specific standards have not otherwise been changed.
- Section D(2) This provision is essentially the same as the current requirements of the Board's Advertising Interpretation except that it deletes an existing requirement that a member's intention to act as principal be disclosed. The Board feels that such a requirement duplicates confirmation disclosure of capacity, is often duplicative of market making disclosures and may be too subjective to be of major value.

- Section D(2)(c) This is a new provision comparable to exchange rules requiring disclosure that the member managed a recent public offering of the recommended issuer.
- Section D(8) This provision continues the prohibition against exaggerated claims about employment opportunities in the securities business but adds a new prohibition regarding specific earnings figures which are unreasonable.
- Section D(9) This is a new provision dealing with disclosures regarding periodic investment plans. This standard is comparable to the SEC's Statement of Policy and existing exchange rules.
- Section D(10) This new provision prohibits misleading references to SEC, NASD or other regulatory organizations. It essentially incorporates two provisions recently approved by the membership in connection with direct participation program literature. Inclusion in this rule would make these standards applicable to all advertising and sales literature.
- Section D(11) This new provision also comes from the recently-approved standards for direct participation programs and it generally requires disclosure of the source of statistical material.
- Section E This section essentially incorporates into the rule the Securities and Exchange Commission's Statement of Policy on investment company advertising and sales literature.
- Section F These new provisions are applicable to options advertising and sales literature. These standards are comparable to the existing standards of the options exchanges except that they are not limited to options traded in any specific market and certain provisions have been clarified by minor language changes. Sections F(1) and F(2) are applicable to all options advertising while Section F(3) is applicable to advertising concerning options issued by the Options Clearing Corporation. Framing the rules this way recognizes that members may not identify any particular market in options advertising. It also eliminates the need for amendment of the rule as new options programs are implemented.

Section G

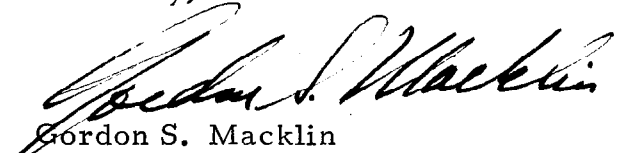
This provision refers to requirements of the Municipal Securities Rulemaking Board and is essentially included to remind members of these additionally standards.

While the recently-proposed standards for advertising and sales literature regarding direct participation programs (Appendix F to Article III, Section 35 of the Rules of Fair Practice) have not been incorporated into this rule, appropriate cross-references would be made regarding these and any other relevant standards contained elsewhere in the NASD Manual.

\* \* \*

Comments on these proposals should be in writing and addressed to Christopher R. Franke, Secretary, NASD, 1735 K Street, N. W., Washington, D. C. 20006. Comments must be received by the Association by November 7, 1977, in order to receive consideration. All comments will be available for inspection. Questions regarding this Notice should be directed to Mr. Robert L. Butler, (202) 833-7270.

Sincerely,



Gordon S. Macklin  
President



Text of Proposed Article III, Section 37, Rules of Fair Practice  
(Substantive additions to current requirements are underlined)

Advertising and Sales Literature

A. Definitions

(1) Advertisement - For purposes of this Section 37 and any interpretation thereof, the term "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, telephone directories (other than routine listings), or other public media.

(2) Sales Literature - For purposes of this Section 37 and any interpretation thereof, sales literature means any notice, circular, report (including research reports), newsletter (including market letters), form letter, or reprint or excerpt of the foregoing or of any published article, or any other promotional literature designed for use with the public, which material does not meet the foregoing definition of "advertisement." For purposes of this subsection, a form letter shall include one of a series of identical letters, or individually typed or prepared letters which contain essentially identical statements or repeat the same basic theme and which are sent to 25 or more persons.

B. Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use, by a registered principal (or his designee) of the member. In the case of advertising or sales literature pertaining to options, the approval must be by the senior registered options principal or his designee.

(2) A separate File of all advertisements and sales literature, including the name(s) of the person(s) who prepared them and/or approved their use shall be maintained for a period of three years from the date of each use.

C. Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) shall be filed with the Association's Advertising Department by any member preparing it, or who has such material prepared, within three business days after first use or publication. Dealers need not file material prepared

and filed by sponsors or underwriters unless a change in content or format is contemplated. Filing of such material in advance of use is permitted and encouraged but is not required.

(2) Advertisements pertaining to options shall be submitted to the Association's Advertising Department for review at least ten days prior to use (or such shorter period as the Department may allow in exceptional circumstances), unless such advertisement is submitted to and approved by a registered securities exchange or other regulatory body having substantially the same standards with respect to options advertising as set forth in this Section 37.

(3) For a period of one year, each member of the Association shall file all advertisements with the Association's Advertising Department at least ten days prior to use. The one year period shall be measured from the date of filing of the first item of advertising or sales literature prepared by or for the member. This requirement shall not apply to advertisements which are submitted for clearance to a registered securities exchange or other regulatory organization having substantially the same standards as the Association, unless the material is related to direct participation programs or to investment company securities.

(4) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's advertising and/or sales literature and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this Section 37, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Association's Advertising Department and/or the District Committee, at least ten days prior to use.

The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure for Handling Trade Practice Complaints.

(5) In addition to the foregoing requirements, every member's advertising and sales literature shall be subject to a routine

spot-check procedure. Upon written request from the Association's Advertising Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and the procedure will not be applied to members who are also members of a registered securities exchange or other regulatory organization which utilizes comparable spot-check procedures.

Explanation

While the procedures may vary with experience, it is the Association's current intention to request a one month's sample of material from each member annually.

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

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

(b) advertisements or sales literature which does no more than identify the NASDAQ symbol of the member and/or of a security in which the member is a NASDAQ registered market maker;

(c) advertisements or sales literature which does no more than identify the member and/or offer a specific security-at a stated price;

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

(e) prospectuses, preliminary prospectuses, offering circulars and similar documents used in connection with an offering of securities which has been registered or filed with the Securities and Exchange Commission or any state, or which is exempt from such registration;

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

D. Standards Applicable to Advertising and Sales Literature

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

Exaggerated, unwarranted or misleading statements or claims are prohibited in all advertising and sales literature sponsored by members. In preparing such literature, members must bear in mind that inherent in investment are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no member shall, directly or indirectly, publish, circulate or distribute any advertisement, sales literature or market letter that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of this subsection 37 D.

In addition to the foregoing general standard, the following specific standards apply:

(1) Necessary Data: Advertisements and sales literature shall contain the name of the member, the person or firm preparing the material, if other than the member, and the date on which it is first published, circulated or distributed (except, that in advertisements, only the name of the member need be stated; and except also that in any so-called "blind" advertisement used for recruiting personnel, the name of the member may be omitted). If the information in the material is not current, this fact should be stated.

(2) Recommendations: In making a recommendation, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose the price at the time the recommendation is made, as well as any of the following situations which are applicable:

(a) that the member usually makes a market in the securities being recommended;

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

(c) that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last 3 years.

The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendations.

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

Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in the previous paragraph.

(3) Claims and Opinions: Advertisements or sales literature must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts. Nor may references to past specific recommendations state or imply that the recommendations were or would have been profitable to any person and that they are indicative of the general quality of a member's recommendations.

(4) Testimonials: Testimonial material concerning the member or concerning any advice, analysis, report or other investment or related service rendered by the member must make clear that such experience is not necessarily indicative of future per-

formance or results obtained by others. Testimonials must also disclose that compensation has been paid to the maker directly or indirectly, if applicable, and if they imply an experienced or specialized opinion, the qualifications of the maker of the testimonial should be given.

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

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

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

(8) Recruiting Advertising: Advertisements in connection with the recruitment of sales personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business and should not refer to specific earnings figures or ranges which are not reasonable under the circumstances.

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

(10) References to Regulatory Organizations: Advertising and sales literature of members shall not make any reference to membership in the Association or to registration or regulation of the securities being offered, or of the underwriter, sponsor, or any member or associated person, which reference could imply endorsement or approval by the Association or any federal or state regulatory body.

References to membership in the Association or Securities Investors Protection Corporation shall comply with all applicable By-Laws and Rules pertaining thereto.

(11) Identification of Sources: Statistical tables, charts, graphs or other illustrations used by members in advertising or sales literature should disclose the source of the information if not prepared entirely by the member.

E. Standards Applicable to Investment Company Related Advertising and Sales Literature

In addition to the provisions of Paragraph D of this Section, members' advertising and sales literature concerning investment company securities shall conform to all applicable rules of the SEC, including the Commission's Statement of Policy, as in effect at the time the material is used.

F. Standards Applicable to Options Advertising and Sales Literature

In addition to the provisions of Paragraph D of this Section, members' advertising and sales literature concerning options shall conform to the following provisions:

(1) As there may be special risks attendant to some options transactions and certain options transactions involve complex investment strategies, these factors should be reflected in any communication which includes any discussion of the uses or advantages of options. Therefore, any statement referring to the opportunities or advantages presented by options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as, "by purchasing options, an investor has an opportunity to earn profits while limiting his risk of loss," should be balanced by a statement such as, "Of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

(2) It should not be suggested that speculative option strategies are suitable for most investors, or for small investors.

(3) Options issued by the Options Clearing Corporation (OCC Options) are securities registered under the Securities Act of 1933, and they are the subject of a currently effective registration statement. Section 5 of the Securities Act prohibits the use of any written material or radio or television advertisements (or other material constituting a "prospectus" as defined

in the Act) relating to a registered security unless certain conditions are met. With respect to advertisements and sales literature covering OCC Options, the following rules must be observed:

(a) Except as provided in paragraph (b) below, no written material with respect to OCC Options may be sent to any person unless prior to or at the same time with the written material a current OCC Options Prospectus is sent to such person.

(b) Advertisements may be used (and copies of the advertisements may be sent to persons who have not received a Prospectus) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to OCC Options. Under Rule 134, advertisements are limited to general descriptions of the security being offered and of its issuer. In the case of OCC Options, advertisements under this Rule must have the following characteristics: (i) The advertisement should state the name and address of the person from whom a current OCC Options Prospectus may be obtained (this would usually be the member sponsoring the advertisement); (ii) The text of the advertisement may contain a brief description of OCC Options, including a statement that the issuer of every OCC Option is the Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the Options Clearing Corporation and/or a description of any of the options traded in different markets, including a discussion of how the price of an option is determined; (iii) The advertisement may include any statement or legend required by any state law or administrative authority; (iv) Advertising designs and devices including borders, scrolls, arrows, pointers, multiple combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

G. Standards Applicable to Advertising and Sales Literature Concerning Municipal Securities

Members' advertising and sales literature concerning municipal securities shall conform to the requirements of the Municipal Securities Rulemaking Board as in effect at the time the material is used.

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# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D. C. 20006

October 6, 1977

TO: All NASD Members and Interested Persons

RE: Amendment to Interpretation of Article III,  
Section 1 of the Rules of Fair Practice  
Concerning "Prompt Payment by Members for  
Shares of Investment Companies"

The Board of Governors of the Association has proposed an amendment to its existing Interpretation of Article III, Section 1 of the Rules of Fair Practice which is being published at this time to enable all interested persons an opportunity to comment thereon.

Under the provisions of Article VII, Section 3(a) of the By-Laws, the Board may issue Interpretations of the Rules of Fair Practice without recourse to the membership for a vote. After the expiration of the comment period, the Board will again review this proposal, giving due consideration to the comments received. If at that time the Board approves the proposal, or a revised version thereof, it must then be submitted to, and approved by, the Securities and Exchange Commission.

## Background and Explanation of the Proposed Amendment

The Board's Interpretation as currently in effect (Paragraph 5265 NASD Manual) requires, among other things, that members who serve as principal underwriters for registered investment companies notify the Association in writing if payment for an open transaction of more than \$100 is not received from the dealer member within ten (10) business days. In addition to alerting the Association to violations of the prompt payment requirements of the Interpretation, such notices can be very helpful to the Association in the early detection of potential financial problems of dealers.

The amendment proposed by the Board makes it clear that underwriter members must notify the appropriate District Office of the Association whenever a check submitted by a dealer is returned for insufficient funds or is uncollectable for any reason. The

Board believes that the Interpretation as currently in effect clearly requires underwriters to send notification to the Association when a dealer's payment is found to be uncollectable after the tenth business day, since in such instances payment has not been received within the prescribed time. The proposed amendment would remove whatever uncertainty may have existed on this point, however, and would, in addition, require that the Association be notified of any situation where a dealer's payment is returned as uncollectable prior to the tenth business day, even if satisfactory payment is ultimately received within such time. For example, if the underwriter member receives a check from a dealer on the fifth day, and on the eighth day learns that such check is not collectable, notification to the Association's District Office would be required regardless of whether the dealer was able to arrange for satisfactory payment by the tenth day.

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Comments on this proposal should be in writing and addressed to Christopher R. Franke, Secretary, NASD, 1735 K Street, N.W., Washington, D. C. 20006, and should be received by November 7, 1977. All comments will be available for inspection. Questions concerning this notice should be addressed to Robert L. Butler (202) 833-7270.

Sincerely,

  
Gordon S. Macklin  
President

Prompt Payment by Members for Shares  
of Investment Companies  
(Proposed New Language Underlined)

Failure by members to pay underwriters (who are also members) promptly, and failure by underwriters to insist upon such prompt payment by members, for investment company shares which members have sold to customers is contrary to the accepted standards of the business.

Members are required to transmit payment to underwriters (or custodians) promptly after the date of the transaction. Underwriters must pay issuers for shares acquired to fill dealers' orders promptly after the date of the transaction.

Members must maintain records, showing date of transaction, date upon which payment is received from customer, and date of payment to underwriter, as to all transactions in investment company shares.

In the event an underwriter does not receive payment from a member within ten (10) business days following the date of any transaction involving more than \$100, or if any check received from a dealer for payment of an open transaction is returned by a bank as uncollectable, regardless of when the check was originally received, the underwriter must immediately notify the district office of the Association in the district where the dealer's office is located. The notice to the Association shall state that the underwriter has communicated with the member and shall contain any explanation furnished by the member for the failure to make prompt payment. A copy of this notice must be furnished to the member involved.

Failure to comply with the procedures set forth herein may be considered a violation of Section 1 of Article III of the Rules of Fair Practice.

Transactions in investment company shares between customers and members are subject to Regulation T of the Federal Reserve Board. However, the Interpretation above is in no way related to Regulation T.

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Under the provisions of Article VII, Section 3(a) of the By-Laws, the Board may issue Interpretations of the Rules of Fair Practice without recourse to the membership for a vote. After the expiration of the comment period, the Board will again review this proposal, giving due consideration to the comments received. If at that time the Board approves the proposal, or a revised version thereof, it must then be submitted to, and approved by, the Securities and Exchange Commission.

## Background and Explanation of the Proposed Amendment

The Board's Interpretation as currently in effect (Paragraph 5265 NASD Manual) requires, among other things, that members who serve as principal underwriters for registered investment companies notify the Association in writing if payment for an open transaction of more than \$100 is not received from the dealer member within ten (10) business days. In addition to alerting the Association to violations of the prompt payment requirements of the Interpretation, such notices can be very helpful to the Association in the early detection of potential financial problems of dealers.

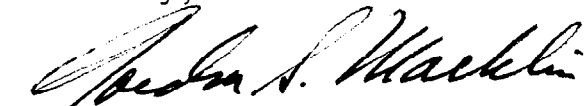
The amendment proposed by the Board makes it clear that underwriter members must notify the appropriate District Office of the Association whenever a check submitted by a dealer is returned for insufficient funds or is uncollectable for any reason. The

Board believes that the Interpretation as currently in effect clearly requires underwriters to send notification to the Association when a dealer's payment is found to be uncollectable after the tenth business day, since in such instances payment has not been received within the prescribed time. The proposed amendment would remove whatever uncertainty may have existed on this point, however, and would, in addition, require that the Association be notified of any situation where a dealer's payment is returned as uncollectable prior to the tenth business day, even if satisfactory payment is ultimately received within such time. For example, if the underwriter member receives a check from a dealer on the fifth day, and on the eighth day learns that such check is not collectable, notification to the Association's District Office would be required regardless of whether the dealer was able to arrange for satisfactory payment by the tenth day.

\* \* \* \*

Comments on this proposal should be in writing and addressed to Christopher R. Franke, Secretary, NASD, 1735 K Street, N.W., Washington, D. C. 20006, and should be received by November 7, 1977. All comments will be available for inspection. Questions concerning this notice should be addressed to Robert L. Butler (202) 833-7270.

Sincerely,

  
Gordon S. Macklin  
President

Prompt Payment by Members for Shares  
of Investment Companies  
(Proposed New Language Underlined)

Failure by members to pay underwriters (who are also members) promptly, and failure by underwriters to insist upon such prompt payment by members, for investment company shares which members have sold to customers is contrary to the accepted standards of the business.

Members are required to transmit payment to underwriters (or custodians) promptly after the date of the transaction. Underwriters must pay issuers for shares acquired to fill dealers' orders promptly after the date of the transaction.

Members must maintain records, showing date of transaction, date upon which payment is received from customer, and date of payment to underwriter, as to all transactions in investment company shares.

In the event an underwriter does not receive payment from a member within ten (10) business days following the date of any transaction involving more than \$100, or if any check received from a dealer for payment of an open transaction is returned by a bank as uncollectable, regardless of when the check was originally received, the underwriter must immediately notify the district office of the Association in the district where the dealer's office is located. The notice to the Association shall state that the underwriter has communicated with the member and shall contain any explanation furnished by the member for the failure to make prompt payment. A copy of this notice must be furnished to the member involved.

Failure to comply with the procedures set forth herein may be considered a violation of Section 1 of Article III of the Rules of Fair Practice.

Transactions in investment company shares between customers and members are subject to Regulation T of the Federal Reserve Board. However, the Interpretation above is in no way related to Regulation T.

# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

October 3, 1977

TO: All NASD Members

RE: The I.E.S. Management Group, Inc.  
50 Union Avenue  
Irvington, New Jersey 07111

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

On Monday, October 3, 1977, SIPC announced the appointment of a trustee effective September 27, 1977. 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:

Michael R. Griffinger  
Crummy, DelDeo, Dolan & Purcell  
Attorneys at Law  
Gateway I, Newark, New Jersey 07102  
201- 622 - 2235

\*\*\*\*\*

# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D. C. 20006

October 7, 1977

NOTICE OF TIME AND LOCATION FOR DISCUSSION FORUMS  
ON PROPOSED RULE CHANGES AND INTERPRETATIONS  
CONCERNING SECURITIES DISTRIBUTION PRACTICES

TO: All NASD Members and Interested Persons

RE: Consideration of Section 24 and Related Securities  
Distribution Practices

By Notice to Members 77-31, dated September 23, 1977, the Association requested comment from members and interested persons on proposed changes and interpretations to the Rules of Fair Practice relating to the granting of selling concessions, discounts or allowances in connection with fixed price offerings. Procedures in this respect are presently governed by Section 24 of Article III of the Association's Rules of Fair Practice. Section 8 thereof is also pertinent. As indicated in the notice, the Board, because of the complexity of the proposals, determined to hold informational discussion forums in Los Angeles, Chicago and New York during October. These forums will be designed to inform the membership of the rationale and background of the proposals so it will have a more complete understanding of the direction the Board is taking in the area of distribution practices. They will also enable the Board to obtain an insight into the views of members on the proposals. Accordingly, the Board requests that the rule proposals be carefully digested prior to the meeting dates and that all interested persons participate in the forum set forth below which is most convenient.

October 25, 1977 (1:30 - 3:30 p.m.)

The Exchange Club  
523 West 6th Street  
Los Angeles, California



October 26, 1977 (2:00 - 4:00 p.m.)

The Union League Club  
65 W. Jackson Boulevard  
Chicago, Illinois

October 27, 1977 (3:00 - 5:00 p.m.)

The Broad Street Club  
66 Beaver Street  
New York, New York

Notwithstanding these forums, all members are urged to submit written comment on the proposals. The comment period closes on November 4, 1977, and it will not be extended since the Board intends to take formal action on the proposals, giving due consideration to the comments received, on November 18, 1977. 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.

Sincerely,



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

# NASD

*John W. ...*

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D. C. 20006

October 4, 1977

TO: Select NASD Members

RE: Request for Information on Member's Assignments and  
Signature Guarantees on Certificates and Stock/Bond  
Powers

Over the course of the last year the Association staff has been studying arrangements to facilitate the acceptance by issuers and transfer agents of assignments and signature guarantees made by NASD members who do not have access to signature guarantee programs through stock exchange memberships. While exchange members' assignments and signature guarantees are recognized by transfer agents under programs established by the exchanges, NASD only members must have their own assignments and signature guarantees supported by an additional guarantee of an exchange member or a commercial bank or trust company.

The above situation, of course, applies only to NASD-only members (or members who may be members of an exchange which does not offer a signature guarantee program) who handle, assign and execute signature guarantees on certificates and not to those NASD only members or otherwise who, by the nature of the business they do or the clearing arrangements they have, would not need such a service. For example, introducing firms under k2B of SEC Rule 15c3-3 may have no need for the signature guarantee service.

It is for these reasons we have attempted to direct this request for information to only those select members who could possibly use the service.

Any signature guarantee program established would require the concurrence of the Stock Transfer Association (STA), a group consisting of a large number of transfer agents and issuers who transfer their own securities. It is the practice of the STA, to establish a signature guarantee program (in this case by the NASD for those select members) to have specimens of signatures filed with the NASD and thereafter by the NASD to transfer agents and to have any loss from a forged signature, etc., covered by an insurance policy held by the NASD.

Therefore, any NASD sponsored signature guarantee program would be accompanied by a number of expenses to be borne by the firms participating.

If the results of this survey show that a number of NASD-only members are interested in a signature guarantee program, and are willing to pay the costs involved, the Association's Board of Governors will be asked to consider implementation of the program.

Please complete the accompanying questionnaire and using the return envelope provided, respond by November 4, 1977. Questions may be directed to James R. Yore, Jr., Uniform Practice Division, (212) 422-8841.

NASD Inc. Information Questionnaire Relating to NASD-Only Members Who  
Execute Assignments and Signature Guarantees on Certificates and Powers.

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete the following:

1. Do you now participate in a signature guarantee program?      Yes      No
2. Do you clear transactions for yourself?      Yes      No  
If not, name your clearing agent. \_\_\_\_\_
3. Do you execute assignments or signature guarantees on certificates or powers?      Yes      No
4. If the answer to 3.) above is yes, name the bank, trust company or exchange member which  
supplies for you the additional guarantee needed to make a good transfer or good delivery.  
\_\_\_\_\_  
What is the cost per guarantee if any, and how is it calculated? \_\_\_\_\_  
What is your estimated total cost per year for signature guarantees? \_\_\_\_\_
5. Are you currently satisfied with the arrangement you now have for obtaining the additional  
guarantee?      Yes      No
6. Do you feel that an NASD sponsored signature guarantee program is needed for your firm?      Yes      No  
Explain. \_\_\_\_\_
7. Would you participate at a comparable or lower annual cost in an NASD sponsored signature  
guarantee program?      Yes      No
8. Comments especially on items 5.) 6.) and 7.) above. \_\_\_\_\_

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

Please return by November 4, 1977, using the enclosed envelope.  
Inquiries may be directed to James R. Yore, Jr., Uniform Practice Division (212) 422-8841.

# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

October 19, 1977

## IMPORTANT REMINDER

TO: All NASD Members and Interested Persons

RE: Discussion Forums on Rule Proposals Concerning Section 24  
and Related Securities Distribution Practices

By Notice to Members 77-31, dated September 23, 1977, and 77-37, dated October 7, 1977, the Board requested comment on proposed changes and interpretations to the Rules of Fair Practice and requested membership participation in discussion forums to be held on the proposals in Los Angeles, Chicago, and New York. The Association wishes to remind its members of the importance and necessity for understanding these proposals, and the time and location of the forums for their discussion and consideration.

October 25, 1977 (1:30 - 3:30 p.m.)

The Exchange Club  
523 West 6th Street  
Los Angeles, California

October 26, 1977 (2:00 - 4:00 p.m.)

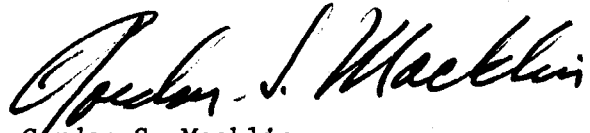
The Union League Club  
65 W. Jackson Boulevard  
Chicago, Illinois

October 27, 1977 (3:00 - 5:00 p.m.)

The Broad Street Club  
66 Beaver Street  
New York, New York

Members are reminded that the comment period closes on November 4, 1977, and will not be extended. 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.

Sincerely,



Gordon S. Macklin  
President

# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

October 21, 1977

TO: All NASD Members  
RE: Settlement Schedule

Transactions made on Tuesday, November 8, Election Day and Friday, November 11, when Veteran's Day will be observed, and on the business days immediately preceding such days will be subject to the schedule of settlement dates below. Securities markets and the NASDAQ System will be open on the above days and the adjustments to the usual settlement date schedule have been made to insure uniformity since the observance of public holidays and banking holidays differ from state to state.

Deliveries of securities ordinarily due on November 8, and November 11, shall be due on the business day following such days.

Transactions made on November 8, and November 11, will be combined for settlement with transactions made on the business day preceding these days.

November 8, and November 11, shall not be considered as business days in determining the day for settlement of a transaction or in computing interest on bonds or as an ex-dividend or ex-rights day. Marks to the market, reclamations, buy-ins and sell-outs, as provided in the Uniform Practice Code should not be exercised on these days.

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

<u>Trade Date</u>	<u>Settlement Date</u>	<u>7th Business Day*</u>
October 28	November 4	November 8
31	7	9
November 1	9	10
2	10	11
3	14	14
4	15	15
7 and 8	16	16 and 17
9	17	18
10 and 11	18	21 and 22
14	21	23

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

Questions regarding this notice may be directed to the Uniform Practice Dept. , Telephone (212) 422-8841.



NOTICE TO MEMBERS: 77-40  
Notices to Members should be  
retained for future reference.

# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D. C. 20006

October 25, 1977

TO: All NASD Members

RE: Price, Allen & Stevens Securities Corp.  
29525 Chagrin Blvd.  
Pepper Pike, Ohio 44122

ATTN: Operations Officer, Cashier, Fail-Control Department

A temporary receiver was appointed for the above captioned firm. Members may use the "immediate close-out" procedure 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:

Temporary Receiver

Anthony J. Celebrezze, Esquire  
Celebrezze & Marco  
4168 Rocky River Drive  
Cleveland, Ohio 44135  
Telephone: (216) 476-9030

\* \* \* \* \*

NOTICE TO MEMBERS: 77-41  
Notices to Members should be  
retained for future reference.

# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

November 3, 1977

TO: All NASD Members

RE: Quarterly Check List of Notices to Members (Third Quarter, 1977)

Topically indexed below are the Notices to Members which were issued during the third quarter of 1977.

The "Reference" column on the right gives the numbers of Notices to Members which were issued on the corresponding topic during the first two quarters of 1977.

<u>Topic</u>	<u>Serial No. and Summary Description</u>	<u>Date</u>	<u>Reference</u>
Check List of Notices	77-24 Quarterly Check List (Second Quarter, 1977)	7/21/77	77-1, 77-11
Lost or Stolen Securities	77-25 Lost 6¼ percent Treasury Notes	8/21/77	
	77-26 SEC Lost and Stolen Securities Program	8/24/77	
	77-32 Lost or Stolen Certi- ficates from Putnam Adminis- trative Services Company, Inc.		
Receivers & Trustees, Appointments of	77-29 Crystal Securities Corporation	9/16/77	77-4, 77-6, 77-9, 77-20, 77-22
Reporting Transactions to Consolidated Tape	77-28 Amendments to Schedule G, Article XVIII of the By-Laws	9/15/77	
Securities Distribution Practices	77-31 Proposed Rule Changes and Interpretations	9/23/77	
Settlement Dates	77-30 Columbus Day	9/19/77	77-8
SIPC Legislation	77-27 NASD Testimony on Proposed Amendments to Securities Investor Protection Act of 1970	8/30/77	

(over)

Trade Practice  
Complaints

77-33 Proposed Amendment to  
Association's Code of Procedure

9/29/77

Members should note that only one copy of each Notice to Members is mailed to every main office of every member. Copies are not mailed to branch offices or to additional personnel in the main office other than the Executive Representative. Therefore, we suggest that all members retain the original copy of each Notice to Members in a separate file in their main office, and that copies needed for internal or branch office distribution be duplicated from the original Notice.

If your main office file is missing any of the above notices, please write to the Office Services Administrator at the NASD Executive Office. Requests for copies should be accompanied by a self-addressed label.

# NASD

NOTICE TO MEMBERS: 77-42  
Notices to Members should be  
retained for future reference.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

November 4, 1977

TO: All NASD Members

RE: James A. Finan & Co., Inc.  
1 Exchange Place  
Jersey City, New Jersey 07302

ATTN: Operations Officer, Cashier, Fail-Control Department

On Wednesday, November 2, 1977 a SIPC Trustee was appointed for the above captioned SECO firm. Since the firm is not a member of the Association or the National Securities Clearing Corporation, please direct any questions regarding this firm to the trustee.

## SIPC Trustee

Bruce I. Goldstein, Esquire  
Saiber, Schlesinger, Satz & Goldstein  
11 Commerce Street  
Suite 2440  
Newark, New Jersey 07102  
Telephone: 201-622-3331

\* \* \* \* \*

# NASDAQ, INC.

1735 K STREET NORTHWEST • WASHINGTON, D. C. 20006

November 11, 1977

TO: NASDAQ Subscribers and Interested NASD Members

RE: Non-NASDAQ Terminal Access to the NASDAQ System

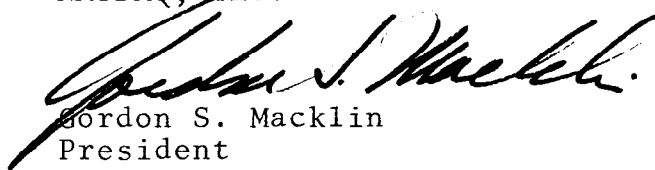
NASDAQ System services will shortly become more conveniently and widely available through a new system interface for non-NASDAQ terminals owned by market data vendors and broker/dealers. Thus, broker/dealers will be able to see and enter markets in the System and transmit last sale reports of Consolidated Tape securities through the System without having to use NASDAQ terminals. The technical specifications for this non-NASDAQ terminal access to the System have been released and are available to all interested parties.

The NASDAQ rates for System services on the non-NASDAQ terminals will be lower than that for NASDAQ terminals because communications lines, terminals and terminal maintenance will not be provided by the System but by the market data vendors or broker/dealer firms themselves. However, members may have to pay vendors for provision of terminals, maintenance and communication lines.

Subject to SEC approval of the forthcoming rate structure, non-NASDAQ terminal access to the System should be available during the first quarter of 1978, provided that interested market data vendors and broker/dealers have developed the necessary software.

Please address questions concerning this program to David P. Parina, NASDAQ Contracts Administrator, 1735 K Street, N. W., Washington, D. C. 20006, (202)833-7232.

For the Board of Directors of  
NASDAQ, Inc.

  
Gordon S. Macklin  
President

**NASD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D. C. 20006

November 16, 1977

TO: All NASD Members

RE: Amendment to Rule 17a-4: Statements to be Provided  
SEC by Broker-Dealer Service Bureaus

In Release No. 34-13962, dated September 15, 1977, the Securities and Exchange Commission amended Rule 17a-4 by adding to it a new paragraph - paragraph (i). The amendment, which becomes effective January 1, 1978, will affect all members who use or contemplate using a service bureau, depository, bank or other service organization ("service bureau") to prepare, maintain or preserve their books and records.

New paragraph (i) of Rule 17a-4 requires that service bureaus which prepare, maintain or preserve the books and records of a broker-dealer, file a written statement with the Commission concerning access to such records by the SEC and designated examining authorities. This requirement does not affect those banks which perform certain clearance functions for broker-dealers and which operate pursuant to Rule 17a-3(b)(2).

This written statement, which must be signed by a duly authorized person of the service bureau, must be in a form acceptable to the Commission. At a minimum, the statement must contain representations by the service bureau that the books and records preserved or maintained for a broker-dealer are the property of the broker-dealer and are to be surrendered promptly upon the broker-dealer's request. Although no specific form has been designed for this purpose, the Commission has directed that such statement contain the following language:

"With respect to any books and records maintained or preserved on behalf of \_\_\_\_\_, the undersigned hereby undertakes to permit examination of such books and records at any time or from

time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete and current hard copy of any or all or any part of such books and records."

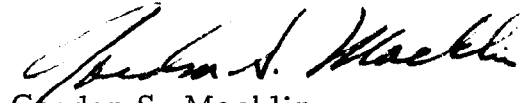
The last portion of the rule amendment clearly states that any agreement with an outside entity does not relieve a broker-dealer from insuring that such books and records as may be prepared by the service bureau meet the requirements of Rules 17a-3 and 17a-4.

It is, therefore, incumbent upon each member which uses a service bureau to insure that the service bureau has filed the required written statement with the Commission. In order to accomplish this end, members are advised that they should inform their service bureaus of the requirements of Rule 17a-4(i). It is also suggested that members request a copy of the written statement for their own records. This copy should be retained in the member's files.

Any member which is unable to obtain a copy of its service bureau's written statement or which finds that a service bureau is unwilling to submit an appropriate statement to the Commission should make this known to the appropriate District Office.

A copy of SEC Release No. 34-13962 is attached. Should you have any questions concerning the release or this notice, please contact John J. Cox at (202) 833-7320.

Sincerely,

  
Gordon S. Macklin  
President

Attachment

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 13962/September 15, 1977**

(File No. S7-676)

**Recordkeeping by Brokers and Dealers**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Rule amendment.

**SUMMARY:** The Commission today amended its rules to require outside service bureaus used by broker-dealers for the preparation or maintenance of records to file with the Commission an undertaking that broker-dealer records that they prepare or maintain are subject to examination by the Commission and acknowledging that such records are the property of the broker-dealer. The Commission has found that, in situations where a broker-dealer or its outside service bureau is experiencing financial difficulty, the records of the broker-dealer have not always been available to the broker-dealer or to the Commission. The amendment is intended to assure that such records are available for examination.

**EFFECTIVE DATE:** January 1, 1978.

**FOR FURTHER INFORMATION CONTACT:** Nelson S. Kibler, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549; (202) 755-1390.

**SUPPLEMENTARY INFORMATION:** In February 1977,<sup>1</sup> the Commission proposed an amendment to Section 240.17a-4 to add a new paragraph (i) which would require the filing with the Commission of a written agreement entered into between a broker-dealer and its outside service bureau, and a written undertaking by such service bureau, specifying that the records prepared or maintained for the broker-dealer are the property of such broker-dealer, that such records are subject to examination by the Commission or its designee, and that copies of such records shall be promptly furnished upon request to the Commission or its designee.

Comments received were carefully considered in the formulation of the final amendment.

Some commentators indicated a concern that the proposed rule could expose broker-dealers and service bureaus to additional costs over which they would have no control. Several of those commentators suggested that the Commission's right of examination of the records at the service bureau be conditioned on the unavailability of the records at the office of the broker-dealer.

or on prior notice to the broker-dealer. Another commentator suggested that the burden of supplying the records should be placed on the broker-dealer, who could "order" them from the service bureau.

The Commission intends generally to conduct examinations at service bureaus only under circumstances where it has been ascertained that the records of the broker-dealer are not otherwise available. Accordingly, the Commission expects that, in most instances, broker-dealers will be on notice prior to an examination of their records at the service bureau. Since it is not the Commission's policy to give advance notice of examinations to broker-dealers, however, the Commission does not consider it appropriate to "order" records from the service bureau through the broker-dealer.

Several commentators also stated that the service bureau should be required to provide the records to the broker-dealer or the Commission only upon payment of its fees and charges. The Commission notes that the proposed rule is intended to assure the accessibility of broker-dealer records in situations where, for example, a service bureau refuses to surrender the records due to nonpayment of fees. In such situations lack of access to the records of a broker-dealer would hinder the Commission and the broker-dealer's designated examining authority in the performance of their oversight responsibilities and could impede the activities of a SIPC trustee or a receiver appointed for the broker-dealer. The Commission recognizes the right of service bureaus to be paid for their services and expects broker-dealers to honor their obligations. In order to assure the protection of customers, however, the records of a broker-dealer must be available at all times for examination by the Commission or its designees. In light of that regulatory intent, the Commission believes that the suggested stipulation of payment would be inappropriate.

Several commentators suggested changes with regard to the proposed filing requirements. Suggestions made were that the broker-dealer file the undertaking for the service bureau, that the undertaking be included in the agreement as one filing, that the designated examining authority be a co-recipient of the filings, and that no filings be required. In considering those suggestions, the Commission has determined to revise the proposed rule to eliminate the requirement of a separate agreement between the broker-dealer and the service bureau and to incorporate the substance of the agreement in the written undertaking of the service bureau. The undertaking of the service bureau is expected to be made directly in favor of the Commission. Therefore, filing with the Commission of that undertaking by the service bureau is necessary.

<sup>1</sup>Securities Exchange Act Release No. 13273 (February 18, 1977) 42 FR 10698 (February 23, 1977).



A question of interpretation was raised by several commenting service bureaus who stated that they prepare but do not "maintain" broker-dealer records. One commentator opined that service bureaus that only prepare the records should not be required to file an undertaking with the Commission. The commentators indicated that once the records are prepared, hard copy is furnished to the broker-dealer, the service bureau retaining only the tapes or disks from which the hard copy is produced. Because the records of a broker-dealer may not always be available at his offices, the Commission considers it appropriate that an undertaking be filed by all service bureaus that prepare or maintain broker-dealer records, whether in hard copy, tape, disk, or other media. Such an undertaking will serve to assure that the records of the broker-dealer are available to the Commission for examination under all circumstances.

The Securities Investor Protection Corporation ("SIPC") suggested that the service bureau undertaking provide that a SIPC trustee appointed for the broker-dealer shall be permitted to examine, and shall be furnished with copies of, the records of the broker-dealer. The Commission recognizes that a SIPC trustee must have access to a broker-dealer's records in order to ascertain what is owed to customers. Circumstances may also dictate that other parties, such as a court-appointed receiver or a self-regulatory organization, examine a broker-dealer's records. The Commission considers it appropriate, however, that SIPC trustees and other interested parties be Commission designees rather than named parties in the rule. In that regard, the Commission notes that the examining authority for a broker-dealer and a trustee appointed for a broker-dealer pursuant to the Securities Investor Protection Act of 1970 shall be, with regard to such broker-dealer, designees of the Commission for purposes of section 240.17a-4(i).

#### **Statutory Basis, Competitive Considerations and Effective Date**

Pursuant to the Securities Exchange Act of 1934, particularly Sections 17(a) and 23(a) thereof, the Commission amends Section 240.17a-4 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below, effective January 1, 1978. The Commission finds that no burden is imposed on competition by the adoption of this amendment.

#### **Text of the Amendment**

Section 240.17a-4 is amended by adding new paragraph (i) as follows:

§240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.

(i) If the records required to be maintained and preserved pursuant to the provisions of §§240.17a-3 and 240.17a-4 are prepared or maintained by an outside service bureau, depository, bank which does not operate pursuant to §240.17a-3(b)(2), or other record-keeping service on behalf of the member, broker or dealer required to maintain and preserve such records, such outside entity shall file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the member, broker or dealer required to maintain and preserve such records and will be surrendered promptly on request of the member, broker or dealer and including the following provision:

With respect to any books and records maintained or preserved on behalf of [BD], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete and current hard copy of any or all or any part of such books and records.

Agreement with an outside entity shall not relieve such member, broker or dealer from the responsibility to prepare and maintain records as specified in this section or in Section 240.17a-3.

[Sec. 14, Pub. L. 94-29, 89 Stat. 137 (15 U.S.C. 78q); Sec. 18, Pub. L. 94-29, 89 Stat. 155 (15 U.S.C. 78w)]

By the Commission.

George A. Fitzsimmons  
Secretary

September 15, 1977