NOTICE TO MEMBERS: 78-14
Notices to Members should be retained for future reference.

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NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

April 7, 1978

IMPORTANT MAIL VOTE

Officers * Partners * Proprietors

TO: All NASD Members

RE: Mail Vote on Rules Package Concerning Securities Distribution Practices, Consisting of Changes in and Interpretations of the Rules of Fair Practice, as follows:

1) New Subsection (m) of Section 1 of Article II;
2) Amendment to Section 8 of Article III and New Interpretation thereof;
3) Amendment to Section 24 of Article III and New Interpretation thereof; and
4) New Section 36 of Article III and Interpretation thereof.

Last Voting Date is May 8, 1978.

Enclosed are proposed amendments and additions to the Association's Rules of Fair Practice and new interpretations relating to fixed price offerings of securities and the granting of selling concessions, discounts or allowances in connection with such offerings. The proposals must be approved

by the membership and must be submitted to and approved by the Securities and Exchange Commission prior to becoming effective.

On September 23, 1977, in Notice to Members: 77-31, the Board of Governors published for comment proposed rule changes and interpretations concerning securities distribution practices. Following the close of the comment period, the Board's Ad Hoc Committee on Section 24, and the Board itself, reviewed the written comments received as well as oral comments expressed at a series of public meetings held during the month of October, 1977. The Ad Hoc Committee, whose membership was expanded to include additional representatives of regional firms, responding to certain of the members' views, submitted revised proposals to the Board. Thereafter, the Board considered the Committee's proposals, as revised, and directed that they be published and that members and other interested persons be given another opportunity to comment upon them.

On January 24, 1978, in Notice to Members: 78-5, the proposals, as revised, were submitted to the membership for comment. The proposals consisted of a new Subsection (m) of Section 1 of Article II of the Rules of Fair Practice defining the phrase "fixed price offering"; an amendment to Section 8 of Article III and an interpretation thereof providing a definition of the phrase "fair market price" in swap transactions; an amendment to Section 24 of Article III and an interpretation thereof concerning the granting of concessions in fixed price offerings of securities; and a new Section 36 of Article III and an interpretation thereof prohibiting the selling of securities which are part of a fixed price offering to related persons, as defined, with certain exceptions. Following the close of the comment period, the Ad Hoc Committee and the Board of Governors again reviewed the proposals together with the comments that had been received. No changes were made as a result of that review. The Board has thus approved the proposals in the same form as published in Notice to Members: 78-5 for a mail vote by the membership. Because the rules and interpretations encompassed in this package of proposals are interrelated and pertain to a single area of interest--securities distribution practices--the vote by members will be on the package in its entirety rather than on its individual components. You are requested, therefore, to vote "approve" or "disapprove" as to the entire package.

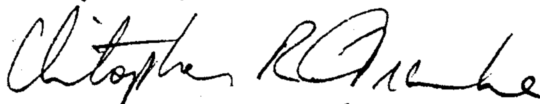
The Board wishes to emphasize the importance of these proposals to the continued viability of Section 24 of Article III of the Association's Rules of Fair Practice. That Section generally prohibits members from granting a selling concession, discount or other allowance to persons who are not in the investment banking or securities business and who do not render services in distribution.

The Securities and Exchange Commission has expressed concern that, in connection with the distribution of securities, practices may exist within the securities industry which may compromise the purpose and application of Section 24. For example, the Commission has expressed concern that certain

practices in the industry result in customers indirectly receiving a discount from the public offering price, suggesting that Section 24 is not followed or is not necessary or both. The practices which give rise to such criticism generally are the crediting of soft dollar obligations against selling concessions retained or received from the sale of securities, or taking securities in trade at prices in excess of the prevailing market price. Unless these practices can be corrected, justification for retaining Section 24 may be seriously undermined. The proposals were developed with the foregoing concerns in mind and, as they are reviewed, members are reminded that they are designed to prevent practices which are inimical to the United States securities distribution system, which are inconsistent with disclosures made in prospectuses accompanying securities in distribution, and the notion of a fixed public offering price as established by securities dealers in a typical public offeri g of securities.

The Board of Governors requests that the members give careful attention to this important rules package and vote their approval. Please mark your ballot according to your conviction and return it in the enclosed stamped envelope to "The Corporation Trust Company". Ballots must be postmarked no later than May 8, 1978.

Very truly yours,



Christopher R. Franke
Secretary

Explanation of Proposals

Section 1(m) of Article II of the Rules of Fair Practice

All of the proposals are intended to apply to "fixed price offerings" as proposed to be defined in subsection (m) of Section 1 of Article II of the Rules of Fair Practice. That definition specifies that included in the term are offerings of securities made at a stated public offering price or prices, all or part of which are publicly offered in the United States, or any territory thereof, except "exempted securities" or "municipal securities" as defined in the Securities Exchange Act of 1934, and certain offerings of redeemable securities of issuers registered as investment companies pursuant to the Investment Company Act of 1940. Wholly foreign offerings are not included within the scope of the definition or within the coverage of the Association's rules concerning fixed price offerings.

Section 8 of Article III and Interpretation Thereof

Section 8 presently requires that, where securities are taken in trade, either the member purchase the securities at a fair market price at the time of purchase or act as agent in their sale. These are known as "swap transactions". If more than the fair market price is paid, however, the practice is generally referred to as "overtrading". As stated in earlier Notices, the Board believes that swap transactions, as distinguished from overtrading, 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 desire to purchase the securities being distributed but who do not have available sufficient cash to make the acquisition. However, if more than the fair market price is paid for the securities being taken in trade for the security being distributed pursuant to a fixed price offering, the customer would indirectly be purchasing the security being distributed at a price which is below any stated public offering price and would, therefore, be sharing in the selling concession retained or received by the dealer. Similarly, swap transactions effected as agent where less than a normal commission is charged 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 an amendment to Section 8 which requires that a normal commission be charged in connection with swap transactions effected as agent.

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 the ability to make a determination as to what constitutes "fair market price". This is particularly difficult with respect to securities for which there is no established marketplace or quotation system which provide a ready, reliable source of market quotations. Second, the Section does not impose any restriction on

the amount of commission to be charged for a swap effected on an agency basis. In light of these problems, the Board proposed that Section 8 be amended to cover these two areas and to impose certain recordkeeping obligations to facilitate enforcement of the Section.

The proposed amendment in Subsection (b) defines "fair market price" as a price which is not higher than the lowest independent offer for the securities at the time of purchase, if 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 offer quotations are readily available. The definition is designed to lend some objectivity to the meaning of fair market price, facilitating effective enforcement of Section 8. While the Board recognizes that fair market price, particularly for debt securities, is not subject to precise determination, because of the limited purpose to which the definition in Section 8 applies and the flexibility afforded by permitting transactions to occur at prices as high as the lowest independent offer, it decided that the proposal should, to the extent possible, build in the objectivity afforded by reliance on quotations. Some commentators criticized the attempt to establish fair market price by objective standards.

While the Board believes that quotations are a satisfactory means of determining fair market price for most swap transactions, it has allowed for flexibility in the application of the Section by providing that, in an exceptional or unusual case, a member may undertake the burden of demonstrating that a swap transaction effected at a price above the lowest independent offer was appropriate, in view of all factors relevant to the transaction. In such situations, the member will be responsible for maintaining adequate records to substantiate its analysis of fair market price for the traded securities. As stated in the interpretation of Section 8, a member will have a heavy burden to demonstrate that the price paid in such a situation was fair market price. Thus, the proposal contains the advantages of objectivity yet affords some flexibility to accommodate special circumstances.

The types of factors or special circumstances which are contemplated by the rule are listed in Subparagraph (b)(2)b of Section 8. They include whether a customer of a member has given an indication of interest to purchase the securities taken in trade at a higher price; the member's pattern of trading in the securities or comparable securities at the time of the transaction; the member's position in and the availability of the securities taken in trade; the size of the transaction and the amount by which the price paid exceeds the lowest independent offer. The interpretation of Section 8 also discusses this subject. As stated in the interpretation, the presence of only one such factor or special circumstance may not necessarily be sufficient to meet the heavy burden. However, since all facts and circumstances must be considered, the existence of only one such factor in a given case may be sufficient.

While the above-described revision to Section 8 proposed by the Board and the interpretation will afford additional flexibility, it is expected that reliance on special circumstances will occur only in exceptional situations. The Association will carefully review records of all swap transactions with special emphasis on those transactions which occur at prices above the lowest independent offer.

Subsection 8(c) requires that quotations for common stock which are traded on an exchange or quoted in NASDAQ be obtained from the exchange or NASDAQ. Paragraphs (1) and (2) of that subsection make clear that this requirement would be applicable only to common stocks, hence recognizing that trading characteristics of preferred stocks more closely resemble the trading characteristics of debt securities than common stocks. Accordingly, the Board's proposal would not restrict a member, when determining fair market price for debt securities or preferred stocks taken in trade, to quotations obtainable on an exchange or in an automated quotations system. In such cases, and in the case of common stocks where exchange or NASDAQ quotations are not available, quotations shall be obtained from two or more independent dealers. If dealer quotations for the securities taken in trade are not readily available, the member would be permitted to 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 could use an independent agent to obtain the necessary quotations on its behalf.

As stated above, the Board has proposed the broadening of Section 8 to require, in subsection (a), the charging of a normal commission on swap transactions effected on an agency basis. Normal commission would be defined generally as the 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. Today, in the era of negotiated commission rates, a member is permitted to effect exchange transactions at any commission rate agreed upon with the customer. It is thus 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. The proposed amendment to Section 8 will remedy this problem.

In order to insure adequate enforcement of Section 8, the Board has proposed recordkeeping and record maintenance requirements which will impose an obligation on members to maintain records of all transactions subject to the provisions of Section 8. Subsection (d) and the interpretation of Section 8 address these requirements. Subsection (d) specifies that the records must be preserved for at least 24 months.

The interpretation states that adequate records will have been kept if they include the time and date quotations were received, the identity of the security to which the quotations pertain, the identity of the dealer from whom, or the exchange or quotation system from which, the quotations

were obtained, and the quotations furnished. The interpretation further specifies that if an independent agent is used to obtain the quotation and the agent does not disclose the identity of the dealers from whom quotations were obtained, adequate records will have been kept if the member requests the agent to identify the dealers from whom the quotations were obtained, and if the member itself records the time and date of receipt of quotations from the agent, the identity of the agent and the quotations transmitted by the agent. The Board recognizes that the recordkeeping and record maintenance requirements impose burdens on members, but it believes the proposed requirements are reasonable and necessary for developing an effective enforcement program.

Section 24 of Article III and Interpretation Thereof

Section 24 serves an important function in promoting fairness in the securities distribution process as it is known today. The section serves to assure that the "trade preference", that is the selling concession, discount or other allowance, offered to professional brokers and dealers to facilitate the distribution of securities to investors is given, consistent with the representation made to the public by the issuer in the prospectus only to persons who are entitled to it. Moreover, the section prohibits the surreptitious and unfair discriminatory granting of a discount to selected investors who are in a position to take advantage of various recapture devices. Hence, the proposals are designed to assure that members who decide to offer securities to the public at a fixed, stated public offering price conduct the offering in a manner consistent with their public representations made in the prospectuses.

Services in Distribution

Section 24 was adopted by the Association and approved by the Commission in 1939. It has since been unchanged and states in relevant part that "Selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and in no event shall be allowed to anyone other than a broker or dealer actually engaged in the investment banking or securities business...." As proposed to be amended, subsection (a) of Section 24 would continue to require that, in connection with fixed price offerings, selling concessions, discounts or other allowances may be paid only to brokers or dealers actually engaged in the investment banking or securities business and only as consideration for services rendered in distribution. Additional requirements covering agreements and recordkeeping are contained in subsections (b), (c) and (d).

The threshold question under Section 24 for determining if a selling concession, discount or other allowance may be paid to another person engaged in the investment banking and securities business is whether that person rendered services in distribution. This subject is discussed extensively in the proposed interpretation of Section 24. The proposed

interpretation recognizes that there are two types of services which may constitute services in distribution--underwriting services and selling effort.

A person renders a service in distribution to the extent that he underwrites an offering of securities on a firm commitment basis, thereby risking his capital and supplying the issuer with needed cash in the hope of reselling the securities to the public at a profit. 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 underwriters' 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, directly or with the assistance of others, fails to distribute its commitment at the public offering price, it will be forced to hold the securities and possibly incur 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; that is to say, on their participation in the total underwriting commitment.

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. Direct sales necessarily involve direct contact between the dealer and customer, giving rise, at least implicitly, to a presumption that a service in distribution has been rendered.

In connection with selling effort, the proposed interpretation recognizes that furnishing research services generally might aid a dealer in making a sale of specific securities or securities generally. Taken alone, however, the furnishing of research services would not constitute services in distribution. Some specific effort must be performed in connection with the sale on which the selling concession is granted.

A problem in this respect is encountered in connection with designated orders. In the absence of direct contact or selling effort by the designated dealer, such dealer would not be eligible to receive the selling concession, discount or other allowance. Thus a designated dealer would have to engage in some direct sales effort with respect to the particular offering in order to have met the requirement that services in distribution be rendered. There must be some communication or other evidence of selling

effort before the managing underwriter may honor, and the dealer receive, the designation from a customer.

The issue of whether a member is eligible to receive a selling concession, either as an underwriter or selling group member, should not be confused with the issue of whether a member may credit selling concessions, discounts or other allowances against hard and soft dollar obligations of customers. This latter issue is the subject of discussion in the section immediately below.

Selling Concessions

A member who is eligible to receive, and does receive, a selling concession (or discount or other allowance) in a fixed price offering may not grant the selling concession, or otherwise reallow a portion of it to a person not eligible to receive it under Section 24; that is to say, to a person who is not a broker or dealer engaged in the investment banking or securities business and who does not render services in distribution, as discussed above. Obviously this means that the member may not rebate to customers all or part of the concession in cash, or in credit against future services or products. Similarly, the amount of the concessions may not be credited against existing obligations of the customers of the member. If the customer owes money to the member--a legal debt for hard dollars--no part of the debt may be satisfied by selling concessions.

However, a member might furnish services or products, including research, to a customer, and members customarily do, in circumstances where no legal debt is created--at least in form--and repayment in cash is not contemplated. In these circumstances, the research (or other services or products) might be furnished as a general goodwill effort by the member, in the hope of stimulating business from the customer; or there might be an understanding between the member and the customer that the customer will give business to the member and in an understood or agreed upon amount. In other situations, the circumstances raise a strong inference of expected repayment in a definite amount, either because the goods or services are commercially available or because the member sells them to others. Depending on the facts, certain express or implied mutual business arrangements may result in a violation of Section 24 if the arrangement with the customer includes purchasing securities from a member from fixed price offerings. This is discussed in more detail immediately below.

The Board fashioned its proposal to reach all instances where selling concessions, discounts and other allowances were effectively being granted in some direct or indirect manner without developing a rule which would prohibit normal business practices and be so vague or so all-encompassing that it is not susceptible of reasonable enforcement. To do this the Board believed it was necessary 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.

The Board does not intend by the proposals to suggest that establishing business goodwill in the form of customer service be prohibited. 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 is reached. Thus, while the Board recognizes that the proposals developed may not reach every possible situation in which a selling concession might offset some moral obligation, it does believe that its approach reaches the areas of primary concern, namely those situations where the members, at least, are likely to know the dollar market value of services or products furnished and have an agreement or understanding that they will be compensated therefor.

The recommended interpretation of Section 24, therefore, would provide that a member has improperly granted a selling concession, discount or other allowance to a person if the member, itself or through an affiliate, (i) supplies another person with services or products which are "commercially available" or are provided by the member or its affiliate to such person or to others for cash or for some other "agreed upon consideration", including brokerage commissions, and (ii) also retains or receives selling concessions, discounts or other allowances from purchases by that person or its affiliate of securities from a fixed price offering, unless the member or its affiliate has been, or has arranged and reasonably expects to be, "fully compensated" for such services or products from sources other than the selling concessions, discounts or allowances retained or received on the sale.

Agreed Upon Consideration

In clarifying the types of arrangements which might result in a member indirectly granting a customer selling concessions, discounts or other allowances, the Board has determined, as evidenced in the interpretations of Section 24 that services or products will be considered to be provided for an "agreed upon consideration" if there is an express or implied agreement between the member providing the service or product and the customer calling for the member to be compensated with an agreed upon or mutually understood source and general amount of consideration. Thus, if a member provides a customer with a service or product and the customer agrees or represents, expressly or impliedly, that it will compensate the member with a specified amount of business, such as brokerage commissions or a range of brokerage commissions depending on the commission rate charged, or with a general minimum amount of brokerage commissions or other consideration, that service or product will be deemed to be offered for an agreed upon consideration. Under such circumstances a member or its affiliate providing such service or product would be required to demonstrate that it was fully compensated for the service or product with consideration other than selling concessions, discounts or other allowances received or retained on the sale of securities from fixed price offerings.

Commercially Available

A service or product would be construed as "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 or services, airline tickets, and other items which could be purchased directly or indirectly by the customer from a third party. The term would not include items of insignificant value, and 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. The term would include products or services which a member receives or purchases from another 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 person engaged in redistributing it does not itself make the service or product commercially available. However, 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 not be considered to be commercially available.

Full Consideration

In order for a member to show that it or its affiliate received or reasonably expects to receive "full consideration" for providing certain services and products, independent of selling concessions, discounts or other allowances, the member may identify the arrangement for the consideration including its source and amount and, if appropriate, the collection process for obtaining it. In order to demonstrate that cash, brokerage commissions or other consideration serves as full consideration, records of accounts should be kept which identify the customer receiving the services or products and the amount of cash, brokerage commissions or other consideration paid or to be paid by the customer or its affiliate.

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 services or products to a customer under such circumstances and receiving compensation in the form of selling concessions, discounts or other allowances on purchases of securities from fixed price public offerings. Compensation for services and products under such circumstances must come from other sources such as cash or brokerage commissions.

Unless the amount of cash, brokerage commissions or other consideration agreed upon appears on its face to be unreasonably low, dealers would not be required to demonstrate that the cash, brokerage commissions or other compensation received or to be received represents fair market value for the services or products. Likewise, as long as price differentials are based on factors other than the customer's willingness to, or

practice of, purchasing securities from the member out of fixed price offerings, it is not necessary for purposes of Section 24 that the member or its affiliates charge the same amount to each person to whom they provide the same or similar services or products. 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.

If the proposals are approved by the membership, members supplying the types of services or products described above should be encouraged to obtain agreements from customers 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. For additional background and rationale on the concepts discussed above, please consult Notice to Members: 77-31 and Notice to Members: 78-5. The proposed interpretation to Section 24 should also be carefully studied.

Records and Other Agreements

Subsection (b) of Section 24 would require members who grant selling concessions to other persons who are eligible to receive them to obtain a written agreement from such persons stating they will make a bona fide public offering of the offered securities and that they will otherwise comply with the provisions of Section 24, and if such person is a non-member broker or dealer in a foreign country, a written agreement that it will comply with Sections 8, 24, 25 and 36 of Article III. There is no restriction on the form such agreement may take. For example, the written agreements may be obtained in blanket form, covering all instances when a member grants a selling concession, discount or other allowance to the other party to the agreement or they may be incorporated in the agreement among underwriters' or selling dealers' agreements pertaining to particular offerings. The obligation to obtain written agreements are believed to be necessary to facilitate compliance with and enforcement of Section 24.

In addition to the foregoing agreements certain reports are required of members by operation of proposed subsections (c) and (d) of Section 24. Pursuant to subsection (c), members who are requested to designate other brokers or dealers for a sale, particularly syndicate managers, would be required to file reports with the Association within 30 days after the end of each calendar quarter. The reports would pertain to all fixed price offerings which terminated during the preceding quarter and would be required to contain the name of the person making the designation, the identity of the brokers or dealers designated, the identity and amount of securities for which each broker or dealer was designated and the date of the offering.

Pursuant to subsection (d), members who are designated for the sale of securities would be required to keep records of such designations. Such records would be required to be maintained for 24 months and would identify the customer making the designation, the amount of securities for which the member was designated, the manager or managers of the offering, and the date of the offering. The Board believes that these recordkeeping and reporting requirements are not unreasonably burdensome and that they will lend helpful assistance to the Association's staff in its enforcement of Section 24.

Section 36 of Article III and Interpretation Thereof

The proposal prohibits a member, in connection with securities which are part of a fixed price offering, from selling such securities to, or placing such securities with, any related person of a member. A related person is defined generally as a person in an ownership relationship with a member. Exempt from application of the Section, however, are sales of securities to related persons who are either members of the Association or non-member foreign brokers or dealers who agree to make a bona fide public offering, and otherwise comply with Sections 8, 24, 25 and 36 of Article III of the Rules of Fair Practice. The Section also does not apply to sales to, or placements in, investment or trading accounts of a member or a related person of a member after the termination of the fixed price offering if the member made a bona fide public offering of the securities. A member is presumed not to have made a bona fide public offering if the securities being offered immediately trade in a secondary market at or above the public offering price.

Since Section 24 is designed to reach the indirect as well as direct receipt of selling concessions, the Board recognized that certain ownership relationships between a broker or dealer and another person could result in such person indirectly benefiting from the receipt of a selling concession, discount or allowance by such broker or dealer even under circumstances where such broker or dealer may not itself have violated Section 24. Such a benefit would violate the principles behind Section 24 if the person in the ownership relationship with the broker or dealer purchased securities from such broker or dealer in fixed price offerings. Accordingly, the Board believes that prohibiting such transactions, except in the limited situations specified in Section 36, is necessary to avoid possible circumvention of Section 24.

PROPOSED CHANGES IN AND INTERPRETATIONS OF THE RULES OF FAIR PRACTICE, AS REVISED

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

Article II, Section 1 is proposed to be amended by the addition of a new subsection (m). All other subsections of Section 1 remain unchanged.

"Fixed Price Offering"

(m) The term "fixed price offering" means the offering of securities at a stated public offering price or prices, all or part of which securities are publicly offered in the United States or any territory thereof, whether or not 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), respectively, of the Securities Exchange Act of 1934 or offerings of redeemable securities of investment companies registered pursuant to the Investment Company Act of 1940 which are offered at prices determined by the net asset value of the securities.

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

Article III, Section 8 is proposed to be amended by adding the language indicated by underlining and by deleting the language indicated by striking out.

Section 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. a price which is not higher than the lowest independent offer for the securities at the time of purchase, if 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 offer quotations are readily available; or

b. in an exceptional or unusual case, a price higher than the lowest independent offer when all factors relevant to the transaction are taken into consideration, including, among other things, whether a customer of a member has given an indication of interest to purchase the securities taken in trade at a higher price; the member's pattern of trading in the securities or comparable securities at the time of the transaction; the member's position in and the availability of, the securities taken in trade; the size of the transaction; and the amount by which the price paid exceeds the lowest independent offer. In all such cases the burden for demonstrating justification that the higher price was the fair market price shall be on the member.

(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 pursuant to this Section, shall with respect to -

(1) common stocks, 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) other securities and common stocks not included in subparagraph (1) of this subsection (c) 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 with this Section and shall preserve the records for at least 24 months after the transaction. If an independent agent is used for the purpose of obtaining quotations, 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 and maintain for at least 24 months a record containing such information.

* * * * *

The following new interpretation of Section 8 is proposed.

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

Fair Market Price

A member who, in reliance on subparagraph (b)(2)b of Section 8 of this Article, pays a price for securities taken in trade which is higher than the lowest independent offer will have a heavy burden to demonstrate that the price paid was the fair market price. Subparagraph (b)(2)b lists factors which might be considered relevant to justify paying a price higher than the lowest offer. The existence of only one such factor, however, will not necessarily be sufficient to meet the heavy burden, though in a given case it may be sufficient. In any event, all facts and circumstances must be considered. For example, a member may be able to satisfy the burden of demonstrating that fair market price was paid by showing that the price paid did not exceed the price, less an amount equal to a normal commission on an agency transaction, at which a customer had given the member an indication of interest to purchase the securities, or that the member held a short position in the security purchased, that it desired to cover that short position, that the availability of the security was scarce and that the amount of securities taken in trade could not have been acquired at a lower price.

Adequate Records

If the member purchases securities taken in trade at a price which is no higher than the lowest independent offer as determined according to this Section, it 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, or the exchange or quotation system from which, the quotations were obtained, and the quotations furnished. 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 subsection (d) of Section 8 hereof and 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.

If a member, in reliance on subparagraph (b)(2)b. of this Section, pays more than the lowest independent offer, it will have kept adequate records if, in addition to the foregoing records, it keeps records of all relevant factors it considered important in concluding that the price paid for the securities was fair market price.

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

Article III, Section 24 is proposed to be amended by adding the language indicated by underlining and by deleting the language indicated by striking out.

Section 24

In connection with the sale of securities which are part of a fixed price offering --

(a) ~~Selling-concessions,-discounts,-or-other-allowances,-as-such,-shall-be-allowed-only-as-consideration-for-services-rendered-in-distribution-and-in-no-event-shall-be-allowed~~ a member may not grant or receive selling concessions, discounts, or other allowances except as consideration for services rendered in distribution and may not grant such concessions, discounts or other allowances 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 prevent 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 selling concessions, discounts or other allowances to another person shall obtain a written agreement from that person that he will make a bona fide public offering of such securities and will otherwise comply with the provisions of this Section, and a member who grants such selling concession, discount or other allowance to a nonmember broker or dealer in a foreign country shall also obtain from such broker or dealer a written agreement to comply with the provisions of Sections 8, 25 and 36 of this Article.

(c) a member who receives an order from any person designating another broker or dealer to receive credit for the sale shall, within 30 days after the end of each calendar quarter, file reports with the Association containing the following information with respect to each fixed price offering which terminated during that calendar quarter: the name of the person making the designation; the identity of the brokers or dealers designated; the identity and amount of securities for which each broker or dealer was designated; the date of the commencement and termination of the offering and such other information as the Association shall deem pertinent.

(d) a member who is designated by its customer for the sale of securities shall keep, and maintain for a period of 24 months, records in such form and manner to show the following information: name of customer making the designation; the identity and amount of securities for which the member was designated; the identity of the manager or managers of the offering, if any; the date of the commencement of the offering and such other information as the Association shall deem pertinent.

* * * * *

The following new interpretation of Section 24 is proposed.

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

Services in Distribution

The proper application of Section 24 requires that, in connection with fixed price offerings, selling concessions, discounts or other allowances be paid only to brokers or dealers actually engaged in the investment banking or securities business and only as consideration for services rendered in distribution.

A dealer has rendered services in distribution in connection with the sale of securities from a fixed price offering if the dealer is either an underwriter of a portion of that offering or has engaged in some selling effort with respect to the sale. While furnishing a customer with research or other services might aid a dealer in selling particular securities or securities generally to that customer, the furnishing of such research will not by itself constitute sufficient selling effort to satisfy the provisions of Section 24. Rather, some direct selling contact on a particular offering will be necessary. Even though the furnishing of research to a customer may aid a dealer in the sale of securities, the furnishing of such research under certain circumstances, as described below, could result in the dealer granting that customer a selling concession, discount or other allowance in violation of Section 24.

A broker or dealer who has received or retained a selling concession, discount or other allowance may not grant or otherwise reallow all or part of that concession, discount or allowance to anyone other than a broker or dealer engaged in the investment banking or securities business and only as consideration for services rendered in distribution. The improper grant or reallowance of a selling concession, discount or other allowance might occur directly or indirectly through such devices as transactions in violation of Section 8 of this Article, or other indirect means as described below.

A member granting a selling concession, discount or other allowance to another person is not responsible for determining whether such other person may be violating Section 24 by granting or reallowing that selling concession, discount or other allowance to another person, unless the member knew, or had reasonable cause to know, of the violation.

Selling Concessions, Discounts or Allowances

General

A member who, itself or through its affiliate, (i) supplies another person with services or products which are commercially available or are

provided by the member or its affiliate to such person or to others for cash or for some other agreed upon consideration, including brokerage commissions, and (ii) also retains or receives selling concessions, discounts or other allowances from purchases by that person or its affiliate of securities from a fixed price offering, is improperly granting a selling concession, discount or other allowance to that person unless the member or its affiliate 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 or services, 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 person receives from another 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 person 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 person will be deemed to be providing services or products for cash or other agreed upon consideration if the service or product, or a substantially identical service or product, is provided 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 an express or implied agreement between the person providing the service or product and the recipient thereof calling for the provider of the service or product to be compensated therefor with an agreed upon or mutually understood source and general amount of consideration. For example, if a person provides another with a service or product and the recipient thereof agrees or represents, expressly or impliedly, that it will compensate the provider of the service or product with a specified amount of consideration, such as brokerage commissions or a range of brokerage commissions depending on the commission rate charged, or with a general minimum amount of brokerage commissions or other consideration, that service or product will be deemed to be offered for an agreed upon

consideration. Thus, under such circumstances a member or its affiliate providing such service or product would be required to demonstrate that it was fully compensated for the service or product with consideration other than selling concessions, discounts or other allowances received or retained on the sale of securities from fixed price offerings.

Full Consideration

A member may show that it or its affiliate received or reasonably expects to receive full consideration, independent of selling concessions, discounts or other 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 serves 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 paid or 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 or its affiliate to demonstrate that the agreed upon price represented fair market price. Likewise, as long as price differentials are based on factors other than the customer's willingness to, or practice of, purchasing securities from the member out of fixed price offerings, it is not necessary, for purposes of Section 24, that the member or its affiliate charge the same amount to each person to whom they provide the same or similar services or products.

PROPOSED NEW SECTION 36 OF ARTICLE III AND INTERPRETATION THEREOF

Article III is proposed to be amended by the addition of a new Section 36 and an interpretation thereof.

Section 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 or is a nonmember foreign broker-dealer who has entered into the agreements required by Section 24(b) of this Article.

(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 or account for purposes of this Section if the person directly or indirectly:

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

(2) 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 or the related person of the member has made a bona fide public offering of the securities. A member or a related person of a member is presumed not to have made a bona fide public offering for the purpose of this subsection if the securities being offered immediately trade in the secondary market at a price or prices which are at or above the public offering price.

--- 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 accumulates 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 at the public offering price 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 the Board of Governors' Interpretation of Article III, Section 1 of the Rules of Fair Practice concerning Free-Riding and Withholding.

While subsection (d) of Section 36 provides that a person is presumed not to have made a bona fide public offering if, immediately following the termination of the fixed price offering, the securities trade at or above the public offering price, there is no presumption that a person has made a bona fide public offering if, at such time, the securities trade below the public offering price. Whether a person has made a bona fide public offering will be determined on the basis of all relevant facts and circumstances.

NASD NOTICE TO MEMBERS: 78-15
Notices to Members should be retained for future reference.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

April 17, 1978

TO: All NASD Members and Interested Persons

RE: Proposed Changes in Appendix C of the Fidelity Bonding Rule (Article III, Section 32 of the Rules of Fair Practice)

Upon the recommendation of its Fidelity Bonding Committee, the Board of Governors of the Association has proposed an amendment to Appendix C of Article III, Section 32 of the Association's Rules of Fair Practice.

The amendment would require members to base the calculation of their minimum required bonding coverage for an ensuing year on an average of their net capital requirement at the end of each of the twelve months of the preceding year. Currently, the Annual Review provision of the rule requires members to base the calculation of their bonding converage on the highest required net capital experienced during the previous twelve months.

The Board of Governors believes that the amendment will result in more equitable treatment for members since the amount of fidelity bonding coverage carried will be more directly related to a member's required minimum net capital during the course of a year than to a member's minimum net capital requirement at one point in time.

This proposal is being published by the Board at this time to enable members and other interested persons to comment thereon. Comments on the proposal must be submitted in writing and received by the Association by May 17, 1978, in order to receive consideration. After the comment period has expired, the proposal will again be reviewed by the Fidelity Bonding Committee taking into consideration the comments received. The proposal will then be reviewed and voted upon by the Board. If approved, the amendment must be submitted to the Securities and Exchange Commission which will publish it for public comment. The proposed amendment must be approved by the Securities and Exchange Commission prior to becoming effective.

Explanation of the Proposal

Subsection (c) of Appendix C presently requires a member to carry minimum bonding coverage equal to 120% of its

highest required net capital during the preceding twelve months. This has meant that a member who experiences an unusual temporary increase in aggregate indebtedness has been required to increase its bonding coverage and pay a much higher premium than was originally intended when the rule was adopted. For example, assume that a member, whose required net capital never exceeds $25,000 for eleven months of a year, experiences an unusual increase in aggregate indebtedness of $1,500,000 in the twelfth month because of an overnight loan caused by a bank's failure to redeliver securities. Under the present rule, taking into consideration the net capital rule's 15 to 1 ratio requirement, at the anniversary date of the fidelity bond the member would have to increase its bonding coverage from $30,000 to $120,000 ($1,500,000 ÷ 15 x 120%).

Under the proposed amendment the bond amount would increase to $37,500 (11 x $25,000 + $100,000 ÷ 12 x 120%). Although the member is required to increase its coverage, the amount of the bond more accurately reflects the member's minimum required net capital position under Rule 15c3-1 for most of the year and is not based upon an isolated and unusual situation.

Specifically, the proposed amendment accomplishes the following:

1) Subsections (a)(2),(3),(4) and (5) are deleted and replaced by new subsection (b);

2) New subsection (b) describes the minimum amounts of coverage required under the various insuring agreements and introduces the concept of the base amount which replaces the highest required net capital as the base upon which minimum fidelity bonding coverage is calculated;

3) New subsection (c) describes the calculation of the base amount for the three categories of members--new members, those who have been members for one year and those who have been members for two years or more. Paragraph (4) of this section includes the requirement for an annual review of fidelity bonding coverage, incorporates the modifications to subsection (c) discussed in Notice to Members 78-2 which was distributed for comment on January 20, 1978 and subsequently approved by the Board, and increases from 30 to 60 days the time allotted for a member to complete its annual bonding adjustment;

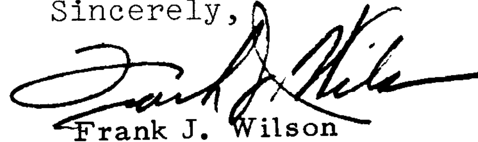
4) The terms of the deductible provision are unchanged but the subsection is changed from (b) to (d);

5) The Annual Review of Coverage provision (subsection (c)) is deleted because it now appears as a part of subsection (c) at paragraph 4; and

6) The substance of the Notification of Change provision is unchanged but the subsection is changed from (d) to (e).

All comments should be addressed to Christopher R. Franke, Secretary, National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D. C. 20006 on or before May , 1978. All communications will be available for inspection. Any inquiries should be directed to A. John Taylor at 202/833-7318.

Sincerely,



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

PROPOSED AMENDMENTS TO APPENDIX C OF ARTICLE III, SECTION 32 OF THE RULES OF FAIR PRACTICE

(Deleted material is indicated by striking out; new material is indicated by underlining.)

Coverage Required

(a) Each member required to join the Securities Investor Protection Corporation who has employees and who is not a member in good standing of the American Stock Exchange, Inc., the Boston Stock Exchange, the Midwest Stock Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc., or the Chicago Board Options Exchange shall:

1) Maintain a blanket fidelity bond, in a form substantially similar to the standard form of Brokers Blanket Bond promulgated by the Surety Association of America, covering officers and employees which provides against loss and has agreements covering at least the following:

a) Fidelity

b) On Premises

c) In Transit

d) Misplacement

e) Forgery and Alteration (including check forgery)

f) Securities Loss (including securities forgery)

g) Fraudulent Trading

h) Cancellation Rider providing that the insurance carrier will use its best efforts to promptly notify the National Association of Securities Dealers, Inc. in the event the bond is cancelled, terminated or substantially modified.

~~2)-Maintain-minimum-coverage-for-all-insuring-agreements required-in-this-subsection-(a)-of-not-less-than-$25,000.~~

~~3)-Maintain-required-minimum-coverage-for-Fidelity,-On Premises,-In-Transit,-Misplacement-and-Forgery-and-Alteration insuring-agreements-of-not-less-than-120%-of-its-required-net capital-under-Rule-15c3-1-up-to-$600,000.--Minimum-coverage for-required-net-capital-in-excess-of-$600,000-shall-be-determined-by-reference-to-the-following-table:-~~

~~Net-Capital-Requirement Under-Rule-15c3-1~~	~~Minimum-Coverage~~
~~$---600,001---1,000,000~~	~~$--750,000~~
~~1,000,001---2,000,000~~	~~1,000,000~~
~~2,000,001---3,000,000~~	~~1,500,000~~
~~3,000,001---4,000,000~~	~~2,000,000~~
~~4,000,001---6,000,000~~	~~3,000,000~~
~~6,000,001---12,000,000~~	~~4,000,000~~
~~12,000,001---and-above~~	~~5,000,000~~

~~4)-Maintain-Fraudulent-Trading-coverage-of-not-less-than $25,000-or-50%-of-the-coverage-required-in-subsection-(a)(3), whichever-is-greater,-up-to-$500,000.~~

~~5)-Maintain-Securities-Forgery-coverage-of-not-less-than-$25,000-or-25%-of-the-coverage-required-in-subsection-(a)(3), whichever-is-greater,-up-to-$250,000.~~

(b) Minimum Amounts of Coverage

1) The minimum amount of coverage a member shall maintain for the Fidelity, On Premises, In Transit, Misplacement and Forgery and Alteration insuring agreements shall be 120% of a base amount calculated as described in subsection (c) of this section for base amounts of $600,000 or less.

Members whose base amounts are in excess of $600,000 shall maintain minimum coverage determined by reference to the following table:

Base Amount	Minimum Coverage
$ 600,001 - 1,000,000	$ 750,000
1,000,001 - 2,000,000	1,000,000
2,000,001 - 3,000,000	1,500,000
3,000,001 - 4,000,000	2,000,000
4,000,001 - 6,000,000	3,000,000
6,000,001 - 12,000,000	4,000,000
12,000,001 - and above	5,000,000

2) The minimum amount of coverage a member shall maintain for the Fraudulent Trading insuring agreement shall be not less than 50% of the coverage required by subsection (b)(1), up to $500,000.

3) The minimum amount of coverage a member shall maintain for the Securities Forgery insuring agreement shall be not less than 25% of the coverage required by subsection (b)(1), up to $250,000.

4) In no event shall any member maintain less than $25,000 of coverage for any insuring agreement.

(c) Calculation of Base Amounts

1) The base amount for each new member on entry into membership shall be its required minimum net capital under SEC Rule 15c3-1.

2) The base amount for each member which has been in business for one year shall be calculated by computing the average of the aggregate indebtedness the member experienced at the end of each of the preceding twelve months and dividing such average by 15. No such member shall carry less bonding coverage in its second year than it carried in its first year in business.

3) The base amount for all members other than those described in subsections (c)(1) and (2) shall be calculated by computing the average of the net capital the member was required to maintain under SEC Rule 15c3-1 at the end of each of the preceding twelve months.

4) Base amounts shall be calculated once each year on the anniversary date of each member's fidelity bond, and bonding coverage shall be adjusted, if required, within 60 days after such anniversary date.

Deductible Provision

[Existing subsections (b)(1) and (2) are proposed to be redesignated (d)(1) and (2). In proposed subsection (d)(2) the subsection number in line 6 would be changed from (b)(1) to (d)(1). Otherwise no change.]

~~Annual-Review-of-Coverage~~

~~(e)---Each-member-shall-initially-determine-minimum-required coverage-of-the-bond-pursuant-to-subsections-(a)(2),-(3),(4) and-(5)-herein,-by-reference-to-the-highest-required-net capital-during-the-twelve-month-period-immediately-preceding issuance-of-the-bond.--Thereafter,-each-member-shall-annually review,-as-of-the-anniversary-date-of-the-issuance-of-the bond,-the-adequacy-thereof-by-reference-to-the-highest required-net-capital-during-the-immediately-preceding-twelve month-period,-which-amount-shall-be-used-to-determine-minimum required-coverage-for-the-succeeding-twelve-month-period. Each-member-shall-make-required-adjustments-not-more-than thirty-days-after-the-anniversary-date-of-the-issuance-of such-bond.~~

Notification of Change

[Subsection (d) is proposed to be redesignated subsection (e). Otherwise no change.]

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

May 5, 1978

TO: All NASD Members

RE: Baehne & Company
235 Montgomery Street
San Francisco, California 94104

ATTN: Operations Officer, Cashier, Fail-Control Department

On Friday, April 28, 1978, a temporary receiver 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. Also, MSRB Rule G-12 (h)(iv) provides that members may use the above procedure to close-out transactions in municipal securities.

Questions regarding the firm should be directed to:

<u>Temporary Receiver</u>
National Association of Securities Dealers, Inc.
c/o Edward R. Venit, Esquire
1735 K Street, N. W.
Washington, DC 20006
Telephone (202) 833-7370

Bradford M. Patterson
Financial Specialist

NOTICE TO MEMBERS: 78-17
Notices to Members should be retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

May 5, 1978

TO: All NASD Members and Municipal Securities Dealers
Attention: All Operations Personnel

RE: Holiday Trade Date - Settlement Date Schedule

Securities markets and the NASDAQ System will be closed on Monday, May 29, 1978, in observance of Memorial Day. On Tuesday, May 30, 1978, securities markets and the NASDAQ System will be open for trading. However, May 30, 1978, will not be a settlement date since banking institutions in several states will be closed. The following adjustments to the settlement date schedule have been made to insure uniformity since the observance of public holidays and banking holidays differs from state to state.

Trade Date-Settlement Date Schedule
For "Regular-Way" Transactions

Trade Date	Settlement Date	*Regulation T Date
May 18	May 25	May 30
19	26	31
22	31	June 1
23	June 1	2
24	2	5
25	5	6
26	6	7
29	Memorial Day Observed	-
30	6	8
31	7	9

*Pursuant to Section 4(c)(2) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within seven days of the date of purchase. The date upon which members must take such action for the trade dates indicated is shown in the column entitled "Regulation T Date."

The above settlement dates should be used by brokers, dealers and municipal securities dealers for purposes of clearing and settling transactions pursuant to the Association's Uniform Practice Code and Municipal Securities Rulemaking Board (MSRB) Rule G-12 on Uniform Practice.

On Tuesday, May 30, securities will not be quoted ex-dividend and buy-ins, sell-outs, reclamations and marks-to-the-market, as provided in the Uniform Practice Code and MSRB Rule G-12, will not be made and/or exercised.

Questions regarding this notice may be directed to the Uniform Practice Department at (212) 422-8841.

Sincerely,

Gordon S. Macklin
President

NASD

NOTICE TO MEMBERS: 78-18
Notices to Members should be retained for future reference

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

RECEIVED
MAY 26 1978
N.A.S.D.
REGULATORY POLICY AND PROCEDURES

May 24, 1978

I M P O R T A N T

MAIL VOTE

Officers * Partners * Proprietors

TO: All NASD Members

RE: Mail Vote on Proposed Amendment to Article I, Section 2 of the NASD By-Laws

LAST VOTING DATE IS JUNE 23, 1978

Enclosed herewith is proposed new subsection (d) of Article I, Section 2 of the Association's By-Laws concerning the disqualification of certain individuals who have been associated with a broker or dealer against whom proceedings have been instituted under the Securities Investor Protection Act of 1970 (SIPA). Earlier versions of the proposed amendment were submitted to and approved by the membership on May 27, 1974, and August 11, 1975, and filed with the Securities and Exchange Commission on January 26, 1976. The Commission did not approve either of these proposals, but the Commission staff recommended that the Association modify the hearing procedure contained in the proposed amendment to provide for a hearing before the summary action becomes effective. The proposal was amended in accordance with the Commission staff's recommendations and approved by the Board of Governors at its January 1978 meeting. The Board of Governors believes that the proposal has been sufficiently modified to warrant its resubmission to the membership for vote. If approved, the proposal must be submitted to and approved by the Securities and Exchange Commission before becoming effective. Since this proposal represents a substantial modification of earlier versions voted upon by the membership, the effect of a vote of approval of this proposal would be to replace the earlier versions. The previous filings with the Commission will be withdrawn and will be considered to have no effect.

The purpose of the proposed amendment to Article I, Section 2 is to permit the Association to determine in an expeditious manner whether certain individuals should be barred, suspended or restricted from association with NASD members in view of their previous association with a broker or dealer against whom SIPA proceedings have been instituted. The proposed amendment will establish the Association's right to examine on a timely basis the involvement of these individuals in, and their responsibility for, the activities which led to the demise of the broker or dealer and to determine whether they are qualified for association with NASD members. The Board believes that the procedures contained in the proposed amendment will enable the Association to effect a prompt review of these individuals' previous activities which is necessary and in the public interest.

The proposed amendment would redesignate existing subsection (d) of Article I, Section 2 as subsection (e) and add a new subsection (d) containing the new provision. An explanation of the proposal follows.

Paragraph (1) provides that no broker or dealer shall be admitted to or continued in membership in the Corporation if such broker or dealer has associated with it any person who has been barred or suspended from association with any member or who is associated with a member in contravention of any of the restrictions to association specified in subsection (d).

Paragraph (2) authorizes the Board of Governors to bar, suspend or restrict the association with a member of any person who, within six (6) months of the institution of SIPA proceedings against a broker or dealer, was an officer, director, general partner (including the Financial and Operations Principal), or owner of ten (10) per centum or more of the voting securities, or controlling person, of the broker or dealer, or any person performing similar functions for the broker or dealer. The proposed paragraph provides, however, that the Board's decision to bar, suspend or restrict association may be made only after appropriate notice and an opportunity for a hearing before a panel selected by the Board or its delegate. The panel will consider the individual's responsibility for, and contribution to, the financial and/or operational difficulties which led to the institution of SIPA proceedings against the broker or dealer and whether such bar, suspension or restriction of association is in the public interest.

Paragraph (3) authorizes the President of the Corporation, or his delegate, to notify any person enumerated in paragraph (2) hereof that the Corporation proposes to bar or suspend such person from association, or restrict such person's association with any member of the Corporation. The notice shall be sent by registered mail.

Paragraph (4) gives the recipient of the notice specified in paragraph (3) hereof the right to request a hearing before a panel designated by the Board of Governors within three (3) days after receipt of the notice.

Paragraph (5) provides that, if the recipient of the notice specified in paragraph (4) hereof does not request a hearing or waives a hearing, the matter shall be decided promptly on the basis of the existing record. If a hearing is requested, it shall be held promptly and may be held within three (3) days of the request for a hearing.

Paragraph (6) requires that the decision be in writing and that a copy be sent to the recipient by registered mail. The proposed paragraph also requires that the written decision contain a statement of the reasons supporting the decision. Where a hearing is requested, the decision shall be rendered by the hearing panel. Where no hearing is held, the decision shall be rendered by a person or persons designated by the Board of Governors.

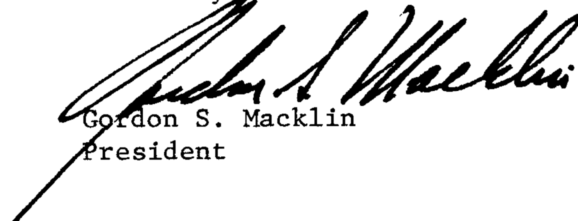
Paragraph (7) provides that the decision shall be subject to review by the Board of Governors on its own motion within thirty (30) days after the decision is issued. A decision may also be subject to review upon the application of any aggrieved person filed within fifteen (15) days after the decision is issued. The proposed paragraph stipulates that the institution of review proceedings, whether by application or upon the motion of the Board, shall not operate as a stay of the action taken.

Paragraph (8) authorizes the Board, upon consideration of the record and after such further hearings as the Board shall order, to modify, amend or abrogate a decision if the Board finds that the evidence in the record does not support the findings made in the decision. In all other cases, the Board shall affirm the decision.

Paragraph (9) provides that any person aggrieved by any action taken pursuant to this subsection may apply to the Securities and Exchange Commission for review of such action pursuant to Section 15A of the Securities Exchange Act of 1934.

The proposed By-Law amendment is important and merits your immediate attention. The Board of Governors believes the proposed amendment to Article I, Section 2 of the Association's By-Laws to be necessary and in the public interest and recommends that members vote their approval. Please mark your ballot according to your conviction and return it in the enclosed, stamped envelope to "The Corporation Trust Company." Ballots must be postmarked no later than June 23, 1978.

Sincerely,



Gordon S. Macklin
President

Enclosures

Amendment to Article I, Section 2 of the Association's By-Laws by the Addition of a New Subsection (d) and by Relettering Existing Subsection (d) as Subsection (e)

(d)(1) No broker or dealer shall be admitted to or continued in membership in the Corporation if it has associated with it any person barred or suspended from association with any member or in contravention of restrictions imposed pursuant to the authority granted by this subsection (d).

(2) The Board of Governors may bar, suspend or restrict the association with any member of any person who, within six (6) months of the institution of proceedings against a broker or dealer pursuant to the Securities Investor Protection Act of 1970, was an officer, director, general partner (including the Financial and Operations Principal), or owner of ten (10) per centum or more of the voting securities, or controlling person, of that broker or dealer, or a person performing similar functions for that broker or dealer if, after appropriate notice and opportunity for hearing before a panel selected by the Board of Governors, or its delegate, the Board of Governors finds such person to be unqualified for association with any member, taking into consideration such person's responsibility for and cause of the financial and/or operational difficulties that led to the institution of such proceedings and finding such bar, suspension or restriction to be in the public interest.

(3) The President of the Corporation, or his delegate, may notify any person enumerated in paragraph (2) hereof that the Corporation proposes to bar, or suspend such person from association, or restrict such person's association with any member of the Corporation. Such notice shall be sent by registered mail.

(4) The recipient of the notice provided in paragraph (3) hereof may request a hearing before a panel selected by the Board of Governors within three (3) days of the receipt of the notice.

(5) If the recipient does not request a hearing or waives a hearing, the matter shall be decided promptly on the basis of the existing record. If a hearing is requested, it shall be held promptly and may be held within three (3) days of the request.

(6) The decision shall be in writing and a copy sent by registered mail to the recipient. Where no hearing is held, the decision shall be rendered by a person or persons designated by the Board of Governors. Where a hearing is held, the decision shall be rendered by the hearing panel. The written decision shall contain the reasons supporting the decision.

(7) The decision shall be subject to review by the Board of Governors on its own motion within thirty (30) days after issuance. Any such decision shall also be subject to review upon application of any person aggrieved thereby, filed within fifteen (15) days after issuance. The institution of review, whether by application or by motion of the Board, shall not operate as a stay of the action taken.

(8) Upon consideration of the record, and after such further hearings as the Board of Governors shall order, if the Board finds that the evidence in the record does not support the findings made in the decision, the Board shall modify, amend, or abrogate such decision. Otherwise, the Board shall affirm the decision.

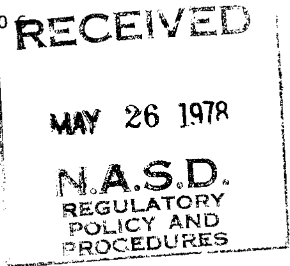
(9) Any person aggrieved by any action taken pursuant to this subsection (d) may make application for review to the Securities and Exchange Commission in accordance with the provisions of the Securities Exchange Act of 1934.

NASD

NOTICE TO MEMBERS: 78-19
Notices to Members should be retained for future reference.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 2000



May 25, 1978

M E M O R A N D U M

TO: All Members

RE: Filing Requirement for Securities Traded in California

On April 7, 1978, the Commissioner of Corporations for the State of California announced the adoption of regulations implementing amendments to Section 25101 of the state's Corporate Securities Law of 1968. These regulations require that a prescribed form be filed for most over-the-counter securities by July 1, 1978 in order for such securities to be qualified for trading in California. The Association has prepared the following summary of the new regulations so that members may become familiar with the provisions and take steps to assure that securities in which they deal are properly qualified.

By way of background, the California securities law sets forth general procedures to be followed in registering securities for trading within the state. The law also sets forth criteria under which certain securities may be exempted from such registration. Presently, securities generally are eligible for an exemption if they are registered under Section 12 of the Securities Exchange Act of 1934 (the "1934 Act")(or exempted from registration under Section 12 by Section 12(g)(2)(G) of the 1934 Act), are held by 500 or more persons and the issuer thereof has total assets in excess of $1,000,000; or if they are securities of an investment company registered under the Investment Company Act of 1940 (the "1940 Act"). The exemptions from this registration requirement are not available, however, to securities offered or sold pursuant to a registration under the Securities Act of 1933 or a Regulation A offering with an aggregate offering price in excess of $50,000.

As of July 1, 1978, the criteria for determining whether an exemption from registration is available under Section 25101 will be substantially changed. After that date, securities will be eligible for an exemption only if:

- the issuer, a California-licensed broker/dealer or a holder of the security has filed a notice with the Commissioner of Corporations on a prescribed form attesting to certain facts relative to the issuer; or

- the issuer has a security listed on the New York Stock Exchange or American Stock Exchange.

New procedures have been implemented for those issuers whose securities are subject to the registration requirement. Those issuers, including registered investment companies, must have the requisite notice filed on their behalf before their securities may be traded over-the-counter in California. For your convenience, a copy of the required form of notice is enclosed.

The notice requires, among other things, the following information:

- the issuer's name, date of its organization and the state or other jurisdiction in which it was incorporated or organized;

- the issuer's IRS employer identification number, and, if applicable, the issuer's SEC file number under the 1934 Act or the 1940 Act;

- affirmation that the issuer's securities are either registered under or exempt from registration under Section 12 of the 1934 Act or are registered under the 1940 Act;

- a statement that the issuer satisfies minimum shareholder and total asset requirements (*i.e.*, 500 shareholders and $1,000,000 in total assets);

- a description of each security for which an exemption is being requested and a statement that each share possesses voting rights equal to those of any other class of the issuer's common stock;

- an undertaking to file supplemental notices as necessary; and,

- the name, address and identity (*i.e.*, issuer, broker/dealer or shareholder) of the person filing the notice.

It should be noted that only securities specifically described in the notice will be eligible under the exemption. Other securities of an issuer are not eligible unless or until they are included in a notice filed with the Commissioner of Corporations.

The amendments provide for an indefinite exemption under Section 25101 only if the issuer of the securities files the notice. If the notice is filed by a California-licensed broker/dealer or holder of the securities, the exemption expires 13 months after filing. The Association has brought this filing requirement to the attention of all issuers whose securities are quoted in the NASDAQ system. Members should determine, however, whether the issuers of securities in which they deal in California have satisfied the requirement and, if not, may wish to urge issuers to do so. The person filing the original notice is responsible for filing supplements thereto should the information contained in the earlier notice cease to be true.

The amendments permit the Commissioner of Corporations to end any exemption should the information in a notice prove to be materially untrue. The Commissioner of Corporations can also terminate the exemption either when securities are no longer registered under Section 12 of the 1934 Act or when issuers no longer meet the rule's shareholder or total asset criteria.

To aid broker/dealers in determining which securities are eligible for exemption, the Department of Corporations presently publishes a weekly California Eligible Securities List which have been qualified for over-the-counter trading and issuers which, according to the Securities and Exchange Commission, have registered a security under Section 12(g) of the 1934 Act. Prior to the amendments, persons using the list had to verify from time to time that those securities and issuers appearing on the list did, indeed, qualify for exemption. Under the amendments, however, the obligation to ascertain whether a particular security is exempt under Section 25101 will fall upon the person who is filing the notice for that security. Also, after July 1, 1978 the only securities appearing on the list will be those for which notices have been filed.

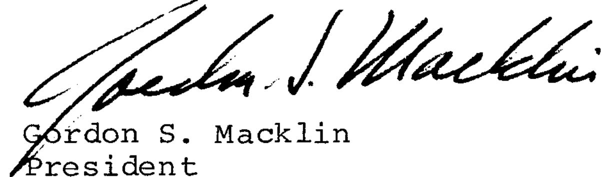
Prior to the amendments, one who effected transactions based on erroneous information contained in the Eligible Securities List faced civil liability for trading unqualified securities. To alleviate that liability, the amendments to Section 25101 provide an exemption for all transactions in securities appearing on the List from those provisions of the code which make it illegal to effect transactions in unqualified securities. This protection

is not available, however, if the person offering or selling the security is the one who filed the original notice nor is it available to the security's issuer or any control or affiliated persons thereof. Also, persons who know or should have known that the security was ineligible for an exemption, may not be relieved of liability.

The Eligible Securities List may prove beneficial to issuers and members particularly after July 1, 1978, when the amendments to Section 25101 become effective. In this connection, subscriptions to the list are available through Commerce Clearing House, Inc., Quail Hill, San Rafael, California 94903. Information as to whether a notice has been filed for a specified security may also be obtained by telephoning (213) 736-2761.

Questions concerning this notice should be directed to Dennis C. Hensley at (202) 833-7240.

Sincerely,



Gordon S. Macklin
President

Enclosure

Department of Corporations
State of California

NOTICE AS TO SECURITIES EXEMPTED
FOR NONISSUER TRANSACTIONS PURSUANT
TO CORPORATIONS CODE SECTION 25101(b)

1. A. Name of Issuer:

____

B. State or other jurisdiction in which incorporated or organized:

____

C. Date of incorporation or organization:

____

2. A. IRS Employer Identification Number:

____

B. If applicable, Issuer's file number under the Securities Exchange Act of 1934 or the Investment Company Act of 1940, as assigned by the Securities and Exchange Commission:

____

3. A. The Issuer has a currently effective registration under Section 12 of the Securities Exchange Act of 1934. ( )

Such registration is under the following subdivision of Section 12:

____

B. The Issuer has a currently effective registration under the Investment Company Act of 1940. ( )

C. The Issuer is exempted from registration under Section 12 of the Securities Exchange Act of 1934 by reason of Subdivision (g)(2)(G) of that section. ( )

4. A. The Issuer has a class of equity securities held of record by 500 or more persons.

B. The Issuer has total assets exceeding one million dollars ($1,000,000).

5. A. Stated below is the title of each security of the Issuer which is to be exempted pursuant to Subdivision (b) of Section 25101 of the California Corporations Code.

____

____

____

____

B. Attached is a description of each security specified in Item 5-A.

C. Each class of common stock described herein possesses full voting rights equal per share to the voting rights possessed by any other class of common stock of the Issuer.

6. The person identified in Item 7-A below hereby undertakes to file a supplemental notice if any of the facts stated in this notice shall, to the knowledge of such person, cease to be true.

7. A. Name of person filing this notice:

____

B. Address of person filing this notice:

____

C. The person named in Item 7-A hereof is:

(1) The Issuer. ( )

(2) A person licensed as a broker-dealer under the Corporate Securities Law of 1968. ( )

(3) A holder of record or beneficially of one or more of the securities covered by this notice. ( )

D. Verification: I certify under penalty of perjury that the statements herein are true to my best knowledge or belief.

Executed at ______________________ on ______________
City and State Date

____
Signature of Declarant

____
Typed or Printed Name of Declarant

____
Title

NOTICE

1. The exemption pursuant to Subdivision (b) of Section 25101 of the California Corporations Code does not apply to securities offered pursuant to a registration under the Securities Act of 1933 or pursuant to the exemption afforded by Regulation A under such act if the aggregate offering price of the securities offered pursuant to such exemption exceeds fifty thousand dollars ($50,000). (See Corp. Code Sec. 25101(c)(1).)

2. If the notice pursuant to Subdivision (b) of Section 25101 of the California Corporations Code is filed by a person licensed as a broker-dealer under the California Corporate Securities Law of 1968 or by a person who is a record or beneficial holder of any securities covered by the notice, the exemption provided by such subdivision lapses 13 months after the filing of the notice. (See Corp. Code Sec. 25101(b).)

3. The exemption for any security pursuant to Subdivision (b) of Section 25101 of the California Corporations Code may be terminated by the Commissioner pursuant to Subparagraphs (2) and (3) of Section 25101(c) of such code.

4. The Eligible Securities List published by the Commissioner through Commerce Clearing House identifies the securities which are eligible for trading pursuant to the exemption under Section 25101(b), and the exemption pursuant to Section 25104(h), of the California Corporations Code.

GENERAL INSTRUCTIONS

1. The notice must be completed by typewriter, and the signature thereto must be manual.

2. Except as specified below, every item and subitem of the notice must be completed.

3. While the notice may be filed at any office of the Department of Corporations, processing will be facilitated by mailing or delivering the notice to the following address:

Department of Corporations
CNA Building, 16th Floor
600 S. Commonwealth Avenue
Los Angeles, CA 90005

A supplemental notice pursuant to the provisions of Subdivision (b)(6) of Section 25101 of the Code shall be typewritten on 8 1/2" by 11" paper, it may be filed in any office of the Department of Corporations and it shall contain at least the following information:

(1) The name of the issuer, the date of its organization, and the jurisdiction under whose laws it is organized, as set forth in the original notice filed pursuant to Subdivision (b) of Section 25101 of the Code.

(2) A statement identifying the specific statements in the original notice filed pursuant to Subdivision (b) of Section 25101 of the Code which have ceased to be true, and stating the respects in which such statements have ceased to be true.

(3) The name and address of the person filing the supplemental notice.

(4) The original manual signature of the person filing such supplemental notice, or if the person is other than an individual, the original manual signature, name and title of the person executing such supplemental notice on behalf of such person.

Other securities: state the title of the security and outline briefly the rights evidenced thereby. If warrants, rights or options are being described, state the title and amount of securities called for, the period during which and the price at which the warrants, rights or options are exercisable.

Item 5-C — Before answering this item, review Subsection (d) of Section 260.101.1, Title 10, California Administrative Code.

Item 6 — See Subsections (e) and (f) of Section 260.101.1, Title 10, California Administrative Code, as to the requirements for a timely filing of a supplemental notice and as to the termination of the obligation to file a supplemental notice.

Item 7-A — Include the full legal name of the Issuer, broker-dealer or shareholder filing this notice.

Item 7-B — Show the mailing address of the person filing the notice.

Item 7-C — Complete Subitem (1), (2) or (3), as appropriate.

Item 7-D — The notice must be signed by the person filing the notice or by an authorized principal officer of such person.

For the definition of "principal officer", see Subsection (g) of Section 260.101.1, Title 10, California Administrative Code.

If the notice is executed in a jurisdiction which does not permit verification under penalty of perjury, attach a verification executed and sworn to before a notary public.

IT IS UNLAWFUL FOR ANY PERSON WILLFULLY TO MAKE ANY UNTRUE STATEMENT OF A MATERIAL FACT IN THE NOTICE, OR WILLFULLY TO OMIT TO STATE IN THE NOTICE ANY MATERIAL FACT WHICH IS REQUIRED TO BE STATED THEREIN.

INSTRUCTIONS AS TO INDIVIDUAL ITEMS OF THE NOTICE

Item 1-A — Include the full legal name of the Issuer.

Item 3 — Complete Subitem A, B or C, as appropriate.

Item 3-C — Before answering this item, review Section 260.101, Title 10, California Administrative Code.

Item 4-A — Before answering this item, review Subsection (a) of Section 260.101.1, Title 10, California Administrative Code.

Item 4-B — Before answering this item, review Subsection (b) of Section 260.101.1, Title 10, California Administrative Code.

Item 5-B (The information specified below may be furnished by attaching copies of the current information in Items 14, 15 or 16 of Form 10 or Item 7 of Form 10-K, as filed by the Issuer with the Securities and Exchange Commission.)

Set forth the following information, using a separate sheet if necessary, in a clear, concise, understandable fashion as relevant to investors in the securities:

Capital stock: state the title of the class and outline briefly (1) dividend rights, (2) voting rights, (3) liquidation rights, (4) preemptive rights, (5) conversion rights, (6) redemption provisions, (7) sinking fund provisions, and (8) liability to calls or assessments.

Debt securities: state the title of the security and outline briefly the provisions as to (1) interest, (2) conversion, (3) maturity, (4) redemption, (5) amortization, (6) sinking fund or retirement, (7) seniority, (8) securing liens, (9) the trustee (including the name of the trustee), (10) the percentage of securities of the class necessary to require the trustee to take action, (11) indemnification of the trustee, (12) events of default, and (13) a description of the security into which the debt security is convertible.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

May 26, 1978

TO: All NASD Members and Interested Persons

RE: Proposed Amendments to Schedule D under Article XVI

The Board of Governors of the Association has proposed amendments to the By-Laws of the Association and is publishing them at this time to provide all interested persons an opportunity to submit comments. The proposal involves amendments to Schedule D under Article XVI of the By-Laws.

Under the provisions of Article XVI, Section 3 of the By-Laws, the Board of Governors has the power to adopt, alter, amend, supplement, or modify the provisions of Schedule D without recourse to the membership for approval.

After the expiration of the comment period, the Board will again review the proposed amendments and give due consideration to the comments received. If at that time the Board approves the amendments, or revised versions thereof, they will be submitted to the Securities and Exchange Commission for approval.

EXPLANATION OF PROPOSALS

Proposed Amendment Requiring Registered NASDAQ Market Makers to Utilize Clearing Agency Facilities

The Association's Board of Governors has long favored the development of a nationwide system for the clearance and settlement of securities transactions. Positive steps have been taken to accomplish this result through participation in all stages of the development of a national clearing system and assistance in the design of its structure. This view of the Board is consistent with the mandate of Congress embodied in Section 17A of the Securities Exchange Act of 1934, as amended, to assure the

development of a modern nationwide system for the safe and efficient handling of securities transactions. Unfortunately, full participation of members in the clearing system has not been attained in a timely manner.

In view of the important role of the NASDAQ market maker in the over-the-counter market, and the importance of maximum effective utilization of the system for clearance and settlement, the Board has determined that NASDAQ market makers, who now clear their own trades, shall be required to clear and settle their transactions through a clearing facility if they are located in an area where clearing facilities are available. Generally speaking, a clearing facility will be considered available if located within a radius of twenty-five miles of the NASDAQ market maker. The Board believes that this requirement is an important step in the establishment of a system of efficient execution, clearance and settlement of transactions and will benefit members and the investing public.

Proposed Amendment Requiring NASDAQ Companies To Report to the NASD Material News Announcements Prior to Release

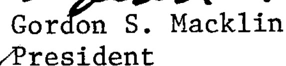
The Board proposes to require NASDAQ companies to report to the Association, prior to release, any material news which may affect the value of its securities or influence investor decisions. This requirement will enhance the ability of the Association's Market Surveillance Department to evaluate the circumstances of the news release and to consider whether a NASDAQ halt of quotations in the security would be appropriate. Such a halt would permit wide dissemination of the news to the marketplace and the investing public prior to the reinstitution of quotations.

Proposed Amendment Imposing Additional Fees for Late Payment of NASDAQ Service Charges

The vast majority of NASDAQ subscribers promptly remit payment for NASDAQ services. A small number of subscribers, however, fail to make payment in a timely manner. Such failure leads to additional costs for follow-up procedures and other collection efforts. The Board does not believe that the costs of such collection efforts should continue to be borne by all NASDAQ subscribers, but should be borne by those subscribers who cause them. Accordingly, the Board proposes to impose a 10% late fee on accounts past due 60 days or more. This late fee is intended to recover the costs of the collection efforts.

Comments on these proposals should be in writing and addressed to Christopher R. Franke, Secretary, National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006, and should be received by June 26 , 1978. All comments will be available for inspection. Questions concerning this notice should be addressed to Richard Peters (202) 833-7213.

Sincerely,



Gordon S. Macklin
President

TEXT OF PROPOSED AMENDMENTS TO SCHEDULE D
OF ARTICLE XVI OF THE BY-LAWS

(New material is underlined)

Part 1, Section C.3. is proposed to be amended by the addition of paragraph (b) as follows:

C. Level III Service

3. Continuing Qualifications

(b) Clearance and Settlement - A registered market maker shall clear and settle its transactions through the facilities of a registered clearing agency if clearing facilities are available in the area where the registered market maker is located (as defined by the Board of Governors from time to time).

Paragraphs (b) through (d) shall be redesignated (c) through (e).

Part II, Section B.3.b. is proposed to be amended as follows:

3. An eligible security shall not be authorized, and an authorized security shall be subject to suspension of authorization, if: . . .

b. There shall have been a failure by the issuer promptly to report to the Corporation prior to release and to disclose to the public through the press any material information which may affect the value of its securities or influence investors' decisions;

Part IV is amended by the addition of Section H as follows:

H. Late Fees

All NASDAQ Service Charges which are past due for 60 days or more shall be subject to a late fee of 10% of the amount past due.