

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

December 1, 1980

MEMORANDUM

TO: All NASD Members and Registered Persons

RE: Reminder of Obligations Under the Private Securities
Transactions Interpretation

The Board of Governors has reason to believe, based upon its experience in recent disciplinary cases and in a recent study of private placements, that some members may not understand the full extent of the Private Securities Transactions Interpretation of the Association's Rules of Fair Practice. (See Para. 2177 of the NASD Manual) This notice explains the necessity for all associated persons to become aware of the requirements contained in the Private Securities Transactions Interpretation. The fact that a registered person is an independent contractor, rather than an employee, does not affect his obligations under the Interpretation. It also explains the concurrent responsibilities of members when they become aware of their employees' or independent contractors' private securities transactions.

The Board issued its Private Securities Transactions Interpretation to emphasize to associated persons their obligations to exercise good faith to the member and to their customers and to explain to members their continuing responsibility to exercise appropriate supervision over associated persons. The term "private" is meant to connote those securities transactions engaged in by the individual outside his regular course of employment with the member or other investment transactions which may mislead customers or participants into believing the transactions are sponsored by the member.

The Interpretation's purpose is at least twofold. First, it serves to protect the member from being involved in unknown activities of its personnel since it provides for notice to the member of such securities activities. This is important because there is a potential for civil liability whether the member is aware of the activities or not. Thus, the member can decide whether it is in its best interests to permit the individual to continue being employed by it while he engages in these other activities. Secondly, it serves to protect the individual by requiring him to consult with his employer on such matters where he may not be as well informed, for example, as to what qualifies as an exempt security.

The Interpretation requires associated persons (independent contractors as well as employees) to notify the member with whom they are registered in

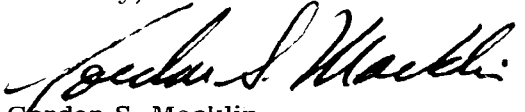
writing of their intent to "engage in private securities transactions outside the regular course or scope of his association or employment." When so notified, the member should take appropriate action under the circumstances of each situation and cannot satisfy its duty to supervise by ignoring the written notice of proposed outside activities furnished by an associated person.

Although it is difficult to fully define a member's responsibility in the abstract without being faced with the facts of an individual case, some general principles are readily apparent from the Board's Interpretation. The first of these is that a member cannot ignore his registered representative's private securities transactions. The member should review the proposed transactions with a view to fostering compliance by its associated persons with applicable requirements. A second principle is that the 1934 Act requires individuals selling securities to be either registered broker-dealers or affiliated with a broker-dealer or exempt from registration as a broker-dealer. Thus, if a registered representative is selling privately and not affiliated with another member, there should be cause for concern. The fact that he classifies himself as an independent contractor has no bearing on this requirement.

It has been the Board's experience that a number of respondents in disciplinary proceedings have argued that if they were engaged in selling private placements exempt from registration under the 1933 Act, they had no responsibility to inform the member with whom they are registered of their activities or to become associated with another broker-dealer. This is not necessarily the case in that such activity must be reported to the member. Depending upon the circumstances, such activity may cause violations of both state and federal securities laws and the Association's Rules of Fair Practice. As previously emphasized in Notice to Members 78-44 (November 6, 1978), extreme caution should be exercised by members and associated persons in determining whether a sales activity involves a security and whether that security should be registered prior to sale. No one should rely exclusively on issuers or their affiliates or issuers' counsel in determining the status of an investment instrument under securities laws. If any questions arise, independent, knowledgeable securities attorneys should be consulted. Thus, not only is it in the best interest of each member, but also, under the Interpretation, associated personnel are required to inform the member with whom they are registered of any private transactions contemplated by them that involve products that potentially could be considered securities.

The Private Securities Transactions Interpretation is intended to remind members and associated persons of their respective responsibilities in connection with private securities transactions. When there is any doubt whatsoever about these responsibilities, such doubt should be discussed with the staff of the Association. Each member is encouraged to reproduce this notice and make it available to all registered personnel for their future reference.

Sincerely,


Gordon S. Macklin
President

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

December 4, 1980

TO: Members of the National Association
of Securities Dealers, Inc.

RE: Effective Date of New Rule Concerning
Advertising and Sales Literature

Enclosed herewith is the text of Article III, Section 35 of the Rules of Fair Practice. Section 35 has previously been approved by the membership and was approved by the Securities and Exchange Commission on November 13, 1980. This new rule, which consolidates previously separate standards for member advertising and sales literature, and which revises filing requirements as well as provisions related to the content of public communications, is hereby declared effective immediately, except for paragraph (c) (3) thereof which shall become effective on January 2, 1981.

Summary of Revisions

Explanations of the specific changes accomplished by this new rule are contained in Notices to Members 78-46, 79-24 and 80-40, and in previous notices published when member comments on the proposed rule were solicited. In all of these previous notices, the rule was designated as Section 37. It has been renumbered as Section 35 because that number is next in the sequence of Association Rules of Fair Practice, other proposed rules not having been effectuated. In summary, the new rule:

- Incorporates the basic provisions of the Board of Governors' "Advertising Interpretation" of Article III, Section 1 of the Rules of Fair Practice, and other provisions which were printed in separate sections of the NASD Manual. The "Advertising Interpretation" has therefore been repealed.
- Incorporates certain new provisions, and amends existing provisions, to make the Association's rules more consistent with the rules of exchanges.
- Eliminates the general requirement that members file "advertising" with the Association within five days of use and substitutes a requirement that members submit advertising ten days in advance for a period of one year, and a procedure

for "spot-check" of members' advertising and sales literature on a periodic basis. Authority is also given to District Business Conduct Committees to require advance filing by individual members under specified circumstances.

- Eliminates the requirement that independent broker-dealers file advertising and sales literature concerning investment company securities, and extends the time period for filing of such material by principal underwriters from 3 days to 10 days.

The rule also incorporates certain limited provisions relating to options communications, however a separate filing is being made with the Securities and Exchange Commission which would incorporate into Section 35 the basic options advertising provisions now in effect pursuant to Section 24 of Appendix E to Article III, Section 33 of the Rules of Fair Practice, as well as substantive additions to these provisions designed to make the rule more comparable to those of the options exchanges. Upon incorporation of these provisions into Section 35, they will be deleted from Appendix E to Section 33. These options-related provisions have been approved by the membership and they will be incorporated into Section 35 upon approval by the Commission. In the meantime, the provisions of Section 24 of Appendix E remain in effect.

Revisions to Filing Requirements

To assist the membership in understanding the impact of new Section 35 regarding requirements to file advertising with the Association, following is a summary of the requirements by major category of security. Note that "advertisement" and "sales literature" have separate definitions in the rule and that certain requirements apply only to an "advertisement" as defined.

Type of Security

Summary of Requirements

Investment Company Securities (including mutual funds, unit investment trusts and variable contracts)

Principal underwriters must file copies of advertising and sales literature within 10 days of use. Members who are not principal underwriters need not file (unless subject to one-year initial requirement) but their advertising and sales literature is subject to the periodic spot-check procedure.

Options

Advertisements must be filed 10 days prior to use unless approved by an exchange having similar standards. Options sales literature is subject to the periodic spot-check procedure.

Direct Participation Programs

No specific filing requirement - advertisements and sales literature subject to periodic spot-check procedure and advertisements only subject to initial one-year filing requirement.

Municipal Securities

No specific filing requirement - advertisements and sales literature subject to periodic spot-check procedure and advertisements only subject to initial one-year filing requirement. Material is reviewed for compliance with applicable SEC and MSRB rules, however, and not Section 35.

All other securities, including member services, personnel recruiting, among others

No specific filing requirement - advertisements and sales literature subject to periodic spot-check procedure and advertisements only subject to initial one-year filing requirement.

The effect of the new rule is that the Association's filing requirements and spot-check procedures are now generally consistent with the requirements of the registered securities exchanges, and, with respect to investment company advertising and sales literature, the requirements of the Commission under Section 24b of the Investment Company Act of 1940. The Association's Advertising Department will also continue to review member advertisements which are voluntarily submitted for comment.

Initial One-Year Advance Filing Requirement

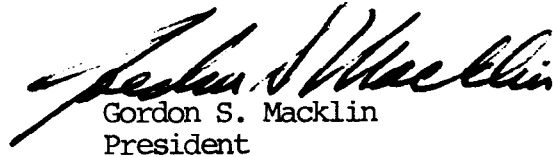
Effective January 2, 1981, paragraph (c) (3) of Section 35 will require all members to file advertising with the Association, ten days in advance of use or publication, for a period of one year. For members who have previously filed advertising for one year or longer with the Association, or with an exchange having comparable standards, this requirement has been met and has no effect. For members who have been filing advertising for a period of less than one year, this requirement will apply until the expiration of one year from the date of filing of the first advertisement. For members who have not previously advertised, or who have not filed advertising, the requirement will come into effect with the first advertisement scheduled for publication on or after January 2, 1981 and will last until the expiration of one year from the filing of the first advertisement.

The initial one-year requirement is in lieu of, and not in addition to, the other filing requirements. For example, a new member who is an investment company principal underwriter would be required to file advertisements (as defined) in advance for one year but could file sales literature up to ten days after use. At the expiration of the one-year period, both advertising and sales literature could be filed after use. It is not required that advertisements filed in advance pursuant to the initial one-year requirement be again filed after use pursuant to the requirement of paragraph (c) (1).

The Association will attempt to notify each member, based upon the Association's records, of its status under the initial one-year requirement. The mechanics of this process, however, combined with the heavy increase in the use of the mails during the remainder of the year, may not permit individual notification of every member prior to the January 2 effective date of this requirement. The responsibility for compliance with this requirement rests solely with the member, notwithstanding the Association's intentions to assist members through individual notification.

The text of the rule follows. Questions about the rule or this notice should be directed to Robert L. Butler at the Association's Washington Office, Telephone No. (202) 833-7270.

Sincerely,


Gordon S. Macklin
President

Article III, Section 35
of
Rules of Fair Practice

COMMUNICATIONS WITH THE PUBLIC

(a) Definitions

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

(2) Sales Literature - For purposes of this section and any interpretation thereof, "sales literature" means any written communication distributed or made generally available to customers or the public, which communication does not meet the foregoing definition of "advertisement". Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, standard forms of options worksheets, seminar texts, and reprints or excerpts of any other advertisement, sales literature or published article.

(b) Approval and Recordkeeping

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

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

(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) shall be filed with the Association's Advertising Department, within 10 days of first use or publication, by any member who has prepared or distributed such material in connection with the offer or sale of securities issued by companies for which such member is a principal underwriter. Filing in advance of use is optional.

(2) (This paragraph reserved for options filing requirements.)

(3) (A) Each member of the Association which has not previously filed advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this section) shall file its initial advertisement with the Association's Advertising Department at least ten days prior to use and shall continue to file its advertisements at least ten days prior to use for a period of one year.

(B) Each member which, on the effective date of this section, had been filing advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this section) for a period of less than one year shall continue to file its advertisements, at least ten days prior to use, until the completion of one year from the date the first advertisement was filed with the Association or such exchange.

(C) Except for advertisements related to municipal securities, direct participation programs or investment company securities, members subject to the requirements of subparagraphs (c) (3) (A) or (c) (3) (B) of this section may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in those subparagraphs, with any registered securities exchange having standards comparable to those contained in this section.

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

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

(5) In addition to the foregoing requirements, every member's advertising and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Association's Advertising Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and, except for material related to municipal securities or investment company securities, the procedure will not be applied to members who have been, within the

preceding calendar year, subjected to a spot-check by a registered securities exchange or other self-regulatory organization utilizing comparable procedures.

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

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

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

(C) Advertisements or sales literature which do no more than identify the member and/or offer a specific security at a stated price;

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

(E) Prospectuses, preliminary prospectuses, offering circulars and similar documents used in connection with an offering of securities which has been registered or filed with the Securities and Exchange Commission or any state, or which is exempt from such registration, except that an investment company prospectus published pursuant to Rule 434d under the Securities Act of 1933 shall not be considered a prospectus for purposes of this exclusion;

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

(7) Material which refers to investment company securities or options solely as part of a listing of products and/or services offered by the member, is excluded from the requirements of paragraphs (c)(1) and (c)(2) of this section.

(d) Standards Applicable to Communications With the Public

(1) General Standards

(A) All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or

securities or type of security, industry discussed, or service offered. No material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause the advertising or sales literature to be misleading.

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

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

(2) Specific Standards

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

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

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

(i) that the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, and/or that the member or associated persons will sell to or buy from customers on a principal basis;

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

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

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

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

Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in the previous paragraph. Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

(C) Claims and Opinions: Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts.

(D) Testimonials: Testimonial material concerning the member or concerning any advice, analysis, report or other investment or related service rendered by the member must make clear that such experience is not necessarily indicative of future performance or results obtained by others. Testimonials must also disclose that compensation has been paid to the maker directly or indirectly, if applicable, and if they imply an experienced or specialized opinion, the qualifications of the maker of the testimonial should be given.

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

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

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

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

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

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

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

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

(e) Standards Applicable to Investment Company-Related Communications

In addition to the provisions of paragraph (d) of this section, members' public communications concerning investment company securities shall conform to all applicable rules of the SEC, as in effect at the time the material is used.

NOTICE TO MEMBERS: 80-64
Notices to Members should be
retained for future reference.

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

December 12, 1980

M E M O R A N D U M

TO: All NASD Members and Municipal Securities Bank Dealers
ATTN: All Operations Personnel
RE: Holiday Settlement Schedule

Securities markets and the NASDAQ System will be closed on Christmas Day, Thursday, December 25, 1980, and New Year's Day, Thursday, January 1, 1981. "Regular-way" transactions made on the business days immediately preceding these days will be subject to the schedule below.

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

<u>Trade Date</u>	<u>Settlement Date</u>	<u>*Regulation T Date</u>
December 18	December 26	December 30
19	29	31
22	30	January 2, 1981
23	31	5
24	January 2, 1981	6
25	Securities Markets Closed	—
26	5	7
29	6	8
30	7	9
31	8	12
January 1, 1981	Securities Markets Closed	—
2	9	13

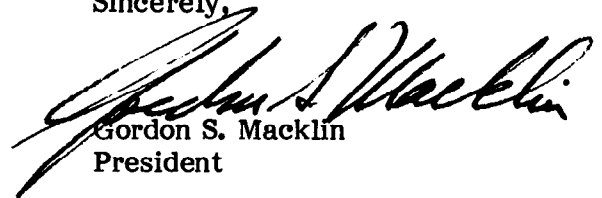
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* Pursuant to Section 4(c)(2) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within seven (7) days of the date 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 foregoing 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 Rule G-12 on Uniform Practice.

Questions concerning the application of this Notice may be directed to the Uniform Practice Department of the NASD at (212) 938-1177.

Sincerely,



Gordon S. Macklin
President

NOTICE TO MEMBERS: 80-65
Notices to members should be
retained for future reference.

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1735 K STREET NORTHWEST • WASHINGTON D. C. 20006

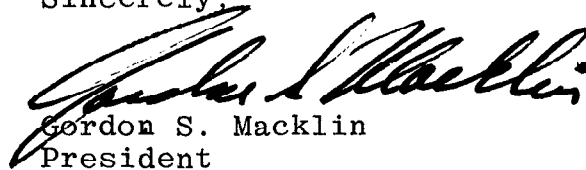
December 12, 1980

TO: All NASD Members
RE: 1981 Schedule of Holidays

Listed below is the NASD 1981 Schedule of Holidays.

January 1, Thursday	New Year's Day
February 16, Monday	Washington's Birthday
April 17, Friday	Good Friday
May 25, Monday	Memorial Day
July 3, Friday	Independence Day
September 7, Monday	Labor Day
November 26, Thursday	Thanksgiving Day
December 25, Friday	Christmas Day

Sincerely,


Gordon S. Macklin
President

NASD

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

December 24, 1980

Officers * Partners * Proprietors

TO: All NASD Members
ATTN: Legal and Compliance Personnel
RE: SEC Approves Association Rules Package
on Fixed Price Offerings (Papilsky Rules)

On December 12, 1980, the Securities and Exchange Commission approved a package of rules proposed by the Association relating to the fixed price system of distributing offerings of securities. This package of rules, the so called Papilsky rules, was originally filed with the Commission on May 31, 1978. Amendments to the proposals were filed on September 4, 1980 in response to the Commission's comments on the proposal. The purpose of the proposals was to eliminate perceived imperfections in the application of certain of the Association's rules to the fixed price distribution system as it exists today. These filings and the Commission's approval were the culmination of a long effort by the Association commencing in the summer of 1976. This effort was spearheaded by an Ad Hoc Committee established by the Association's Board of Governors to study the situation created by the so-called Papilsky decision, Papilsky v. Berndt, [1976-77] Fed. Sec. L. Rep. (CCH) ¶95,627 (S.D.N.Y. 1976), which cast doubt on the application of certain Association rules, particularly Section 24 of Article III of the Rules of Fair Practice, to member participation in the distribution of new offerings of securities.

The net effect of the Commission's approval of the Papilsky rules package is the preservation of the fixed price distribution system in its

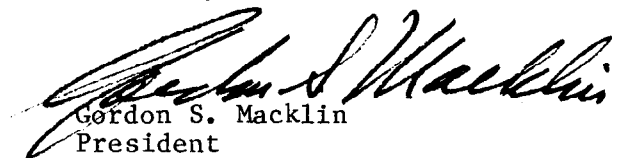
present format. This result is most gratifying and comes about only as a result of long and hard work by many industry volunteers.

The purpose of this notice is to alert the membership to the Commission's approval and to inform it of the Association's plans concerning the new rules and the membership's obligations which flow therefrom.

In this connection, the Association plans to declare these rules effective March 1, 1981. This will enable the Association to prepare and disseminate a detailed release during January 1981, outlining members' obligations under the new rules sufficiently in advance of the effective date to permit compliance in a timely fashion.

Questions concerning this Notice or the Papilsky rules should be directed to Frank J. Wilson, Senior Vice President Regulatory Policy and General Counsel, at (202) 833-4830 or Robert E. Aber, Assistant General Counsel at (202) 833-7259.

Sincerely,


Gordon S. Macklin
President