



DIVISION OF
MARKET REGULATION

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Papitsky

May 8, 1981

Mr. Frank J. Wilson
Senior Vice President Regulatory Policy
and General Counsel
National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

Dear Frank:

In your letter of March 23, 1981, you inquired whether I had any objection to an interpretation that you wish to make known to members with respect to new Section 8 of Article III of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (the "NASD"). On the basis of your letter, our telephone conversation on that date, and my meeting on March 25, 1981 with you and other members of the NASD staff, I understand the facts to be as follows.

Section 8, as approved by the Commission on December 12, 1980, 1/ provides, in part, "A member, 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" There may be several reasons why securities are "taken in trade," or swapped, in connection with underwritten offerings, particularly debt offerings. For example, a swap may enable an institutional customer to purchase a security being distributed when the institution does not have available cash to pay for it or, for other reasons, does not wish to pay cash.

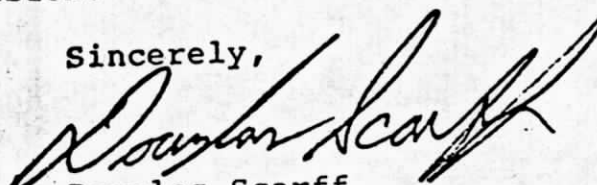
The NASD has received inquiries from its members as to what date would be considered "the time of purchase" for purposes of determining "fair market price" of a security taken in trade in the case of swaps where the price of the security to be taken in trade is determined at the time of pricing of the offered security but before the effective date of the offering. You state that the price of the security to be taken in trade is determined at the time of the pricing of the offering, usually around 4:00 p.m. on

1/ Securities Exchange Act Release No. 17371 (December 12, 1980).

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the day before the offering is planned to become effective. With respect to the securities to be taken in trade it is your view that "the time of purchase" is the time at which the price of those securities is determined. ^{2/} We do not have any objection to your advising your members of that interpretation. We do believe, however, that it should be filed with the Commission for immediate effectiveness under Section 19(b)(3)(A)(i) of the Act as a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of Article III, Section 8 of the NASD's Rules of Fair Practice. If you should have any questions about any of the foregoing, please consult Roger D. Blanc or Jeffrey L. Steele of this Division.

Sincerely,



Douglas Scarff
Director

^{2/} Although the price of the security to be swapped is set at the time of pricing of the underwritten security, the swap transaction, like the transaction in the underwritten security, "is not legally consummated until effectiveness of the offering."