

NASD

National Association of Securities Dealers, Inc.
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notice to members 83-31

July 7, 1983

TO: All NASD Members

RE: Adoption of Revised and Simplified Regulation T of the Federal Reserve Board

The Board of Governors of the Federal Reserve System has adopted a number of important revisions to Regulation T. These amendments are effective on November 21, 1983; however, at their option, members may elect to operate under the revised provisions after June 20, 1983. A detailed summary of the major revisions and the text of the amended rule follows.

These changes to Regulation T are part of an extensive program undertaken by the Federal Reserve Board over the last several years to simplify, update and revise all of its credit regulations.

As part of this program, the Board published for comment several drafts of a revised version of Regulation T, the latest being March 30, 1982. Subsequent to the publication of the March revisions, several amendments including new eligibility criteria for OTC margin securities and the permissible use of certain irrevocable letters of credit in securing stock borrowed were adopted by the Board. These amendments have been incorporated into the final text.

The major revisions which are summarized below include a consolidation of the number of accounts required to be maintained by members from the current number of 11 to 7 accounts along functional lines. In addition, the revisions will also facilitate options writing by institutions and will simplify the process of depositing required margin in the options area in general. The terminology throughout the new regulation has also been changed to conform to that of common industry usage.

The Association has closely monitored all of the Board's proposals and has offered numerous recommendations with respect to revising Regulation T. Many of these comments have been adopted in the final regulations. For example, the revised regulations with respect to "good faith" credit for OTC market makers and third market makers as well as the expanded use of letters of credit for margin purposes were favored by the Association.

MAJOR REVISIONS

The revised Regulation T includes the following significant changes.

With Respect to Options Margin:

- Margin levels for new products, i.e., options on stock indices, CD's, foreign currencies, etc., have been set as those amounts specified by the rules of the exchange where the option is traded provided that all such rules have been approved by the Securities and Exchange Commission. (Section 220.5(c)(1), .18(8), .18(h) and .18(i))
- As a "cover" for call options written in a cash account the creditor may now accept convertible or exchangeable securities as a substitution for the related security. (Section 220.8(a)(3))
- For writing put options, a creditor may now accept as a substitute for cash, securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, banker's acceptances issued by United States banks and payable in the U.S., provided that their market value at the time the put is written equals or is greater than the exercise price of the option. (Section 220.8(a)(3))
- For writing put or call options in a cash account, a creditor may accept an escrow receipt in lieu of cash or securities provided such receipt is delivered promptly by the bank. (Section 220.8(a), .8(b))
- Permission for option clearing agencies to accept any underlying securities for which options are issued by such clearing agency as allowable deposits under Regulation T. (Section 220.14(b))

Other Areas:

- Several definitions and terms used within the rule have been revised to more closely conform to terminology commonly used in the industry. (Section 220.2)
- The convertible bond account, corporate and government bond account and general account have been consolidated into one margin account. (Section 220.4(a))
- Under certain circumstances, a creditor is permitted to maintain more than one margin account for a customer who is introduced by different brokers. In addition, separate accounts may also be established for the same person if the broker and dealer or a third party investment advisor has discretionary authority over the account. (Section 220.4(a))


- Members are permitted to clear or finance on a "good faith" basis, the market making transactions of "OTC market makers" and "third market makers." (Section 220.12(d))*
- Margin credit is now authorized on over-the-counter corporate debt securities with at least \$25 million principal outstanding at the time of the original issue rather than at the time of the extension of credit. (Section 220.12(r))
- Expansion of the rule to permit members of the Association to extend credit that is not for more than one day if it is incidental to the clearance of securities transactions between members. Previously this provision was only available to exchange members. (Section 220.14(a))

Notwithstanding these revisions, the NASD believes that the Federal Reserve Board should continue to consider the recommendations of the Association in two specific areas, namely, the adoption of the NASDAQ National List as constituting the OTC Margin List and exempting from the rule publicly offered direct participation programs sold on an installment basis. Adoption by the Federal Reserve of the NASDAQ National list would substantially simplify the question of margin eligibility of over-the-counter securities for NASDAQ companies, Association members and the public in general.

Adoption of the second proposal would eliminate burdensome regulation and would encourage the federal registration of offerings which would otherwise be sold via a private offering exemption. The Association will continue to work closely with the Board with respect to these areas.

Please direct any questions concerning these amendments to James M. Cangiano, Assistant Director, Department of Policy Research at (202) 728-8273.

Sincerely,


Gordon S. Macklin
President

Attachment

* Although not specifically mentioned in the text of the rule, the staff of the Federal Reserve Board has advised that this section is also applicable to "block positioners" as such term is defined in SEC Rule 240.17a-17 and proposed Rule 240.3b-8.

federal register

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FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R-0389]

Credit by Brokers and Dealers; Complete Revision and Simplification of Regulation T

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a completely revised and simplified Regulation T, credit by brokers and dealers. The new Regulation incorporates changes made in response to comments received on the complete revision of Regulation T as well as proposals previously published and adopted. The 11 accounts currently required to be maintained by brokers and dealers will be consolidated into 7 accounts along functional lines. In addition, the new regulation will facilitate options writing by institutions and permit options clearing agencies to accept, under specified conditions, any underlying security as the required Regulation T deposit. Terminology throughout the new regulation has been conformed to that of modern-day industry usage so that the regulation will henceforth refer to "equity/margin requirement" instead of "maximum loan value/adjusted debit balance."

In response to comments received, the revised Regulation T will permit brokers to maintain more than one account for a customer in two situations. Under the old regulation, a customer's transactions had to be consolidated into a single margin account. Under the new regulation, a clearing broker will be permitted to maintain separate margin accounts for a single person who is introduced by different brokers. Introducing brokers will also be permitted to maintain separate accounts for the same person if the accounts are cleared by different clearing brokers. A separate margin account may also be established for the same person if it is controlled by an investment adviser with discretionary authority.

The new regulation establishes a separate account for arbitrage transactions. This differs in form from the proposed revision, under which arbitrage transactions were to be

recorded in the Market Functions Account.

Another difference between the proposed revision and the regulation adopted today is the elimination of the requirement in the Specialists' provision (§ 220.12) that exchanges file monthly reports with the Board disclosing the use of specialist credit. Regulation T currently requires a 25% margin on long and short positions in underlying stock serving as permitted offsets. The new regulation provides for a "good faith" margin in those situations. Specialists will have 7 days to deposit margin instead of the present 5 days in an effort to provide specialists with treatment parallel to that given public customers.

The regulation also takes cognizance of new instruments—securities-exchange-traded options on foreign currency, and options on certificates of deposit and equity stock indices—which were defined to be "securities" for purposes of the Securities Exchange Act of 1934 by Pub. L. 97-303. As has been previously announced (47 FR 47464 Oct. 26, 1982), Board staff is in the process of conducting a special study of the effectiveness, scope and structure of federal regulation of margin requirements. Accordingly, for the present time, the Board has set the margin level of these instruments as the amount specified by the rules of the national securities exchange on which the option is traded, provided that all such rules have been approved by the SEC. This is comparable to action taken in 1981 by the Board with respect to options on exempted debt securities (48 FR 49827 Oct. 8, 1981).

Other changes adopted today that are different from the proposed revision are as follows: (1) Permission to use a convertible or exchangeable security instead of the present 50% margin when the underlying security is sold short in a margin account; (2) permission for the use of convertible or exchangeable securities as proxies for the related security when call options are written in the cash account; (3) in connection with the writing of put options, permission to use the following instruments as substitutes for cash, provided their current market value at the time the put is written equals or exceeds the exercise price of the option and provided further that they mature in one year or less: securities issued or guaranteed by the

United States or its agencies, negotiable bank certificates of deposit, or bankers acceptances issued by banking institutions in the United States and payable in the United States; (4) one of the conditions under which an over-the-counter margin bond will be marginable has been changed to make the \$25 million size criterion applicable only at time of issuance, rather than at the time of the extension of credit, as was formerly the case and (5) minor refining language changes to the definitional section which will have no substantive effect on the regulation, but which were made to conform to industry usage.

EFFECTIVE DATE: November 21, 1983 but may be implemented after June 20, 1983, at the option of the creditor.

FOR FURTHER INFORMATION CONTACT:

At the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, contact: Laura Homer, Securities Credit Officer, or Robert Lord, Attorney, Division of Banking Supervision and Regulation (202) 452-2781. At the Federal Reserve Bank of New York, contact: Mindy Silverman, Assistant Counsel, (212) 791-5032.

SUPPLEMENTARY INFORMATION:

I. History of the Proposed Revision of Regulation T

As part of its Regulatory Improvement Project, and after an extensive study conducted by the Federal Reserve Bank of New York on the margin regulations, the Board, on March 30, 1982 published for public comment a completely revised and simplified Regulation T, which governs credit extended by securities brokers and dealers. (FR 13376). The proposed simplification incorporated amendments to Regulation T adopted by the Board earlier in the year, as well as two proposed amendments issued for public comment prior to publication of the proposed simplification. The amendments already adopted by the Board and incorporated into the proposed complete revision expanded the permissible arranging activities of brokers and dealers and removed the automatic equity building features in the Regulation. (47 FR 2981, Jan. 21, 1982). The two amendments that were still in the proposal stage at the time of publication of the complete revision were adopted, with certain

modifications, as final rules in May, 1982. They amended Regulation T (1) to permit letters of credit, CD's government securities and banker's acceptances to be used, in addition to cash, as collateral in broker/dealer securities borrowing and lending transactions (47 FR 21238, May 18, 1982), and (2) to specify new criteria for eligibility on the Board's List of OTC Margin Stocks (47 FR 21756, May 20, 1982).

Another amendment to Regulation T, proposed and adopted by the Board after publication of the complete revision, has been incorporated into the final rule. The amendment permits brokers and dealers to extend credit on the collateral of private mortgage pass-through securities meeting specified issue-size and reporting requirements (47 FR 55912, December 14, 1982).

A proposal to amend Regulation T by providing a framework for the regulation of credit extended in connection with transactions in stock index futures contracts has not been incorporated into the final rule adopted today. (47 FR 8788, March 2, 1982). This proposal is still under consideration by the Board.

II. Summary of Comments

There were thirty-eight (38) respondents to the Board's proposal to revise Regulation T. The respondents consisted of nine Federal Reserve Banks, sixteen broker/dealers, four self-regulatory organizations and exchanges, three trade associations, one clearing corporation, two law firms, two individuals and one State agency (North Carolina State Treasurer).

The majority of respondents supported the Board's efforts to simplify and reduce the language of Regulation T and to facilitate compliance with it. While the majority of the respondents requested both technical and language modifications, most felt that the proposed simplification would greatly reduce the burdens of recordkeeping and margin calculations for broker/dealers while not interfering with the Board's ability to regulate the extension of credit for the purchase of securities. Respondents such as the National Association of Securities Dealers, Merrill Lynch Pierce Fenner & Smith, and the Credit Division of the Securities Industry Association stated that the proposed regulation was responsive to changes taking place within the securities industry.

Several respondents, however, including the New York Stock Exchange (NYSE), repeated earlier positions that they have expressed to the Board and its staff that Regulation T should be eliminated and replaced by uniform margin regulations established by the

self-regulatory organizations with or without oversight authority by the Federal Reserve Board. Seven of the thirty-eight respondents argued in support of this position. Most of these respondents suggested technical and language changes to the proposed revised regulation in the event Regulation T was not eliminated. The NYSE acknowledged that some of its proposals to amend Regulation T may first require amendments to the Securities Exchange Act of 1934.

The continued role of the Board in the area of margin regulation is now being reviewed by Board staff in cooperation with the staffs of the Securities and Exchange Commission and the Commodity Futures Trading Commission (47 FR 47464, October 26, 1982). The study will consider possible recommendations for legislative change.

Many of the commenters requested that the Board provide an adequate implementation period to give firms time to adapt existing computer programs to changes required by the proposed revision. The implementation period requested ranged from two to six months. Several commenters also requested that the Board allow an additional comment period before the proposed regulation changes become mandatory. In view of the nature of the comments received, the Board does not believe that an additional comment period is necessary and that implementation of the revised regulation at an early date outweighs any further technical changes that may be necessary. The new regulation will go into effect on November 21, 1983, but creditors may at their option, begin to operate under its terms as early as June 20, 1983.

Many commenters requested that specific requirements, the imposition of which is currently left up to exchanges of firms, be mandated by the Board. For example, a request was made that the Board establish mandatory procedures for transferring accounts between brokers and fixed time periods for completion. The commenter making this request believes that such Board-imposed requirements would better serve the public than the system where each self-regulator designs its own requirements. The Board believes that granting such a request would be inconsistent with its efforts to simplify the Regulation and, therefore, has not adopted such requirements.

III. Detailed Explanation of Changes

1. General Applicability

(a) The titles of the accounts have been changed to titles that are more

descriptive of the contents of each account or simply to remove the term "special."

(b) The change in terminology from "adjusted debit balance/maximum loan value" to "margin/equity" is reflected in three sections of the regulation: Definitions (§ 220.2(a), (d), (f), (1), (m), and (n)), Margin Account (§ 220.4), and the Supplement (section 220.18).

2. Definitions, § 220.2

(a) The definition of "creditor" has been changed to conform the language to section 7 of the Securities Exchange Act of 1934 ("the Act") (15 U.S.C. section 78g) and to identify specific categories of persons coming within the definition.

(b) Language that is presently contained in paragraph (3) of the definition of "registered security" has been eliminated from the definition. That language is not necessary in light of the Board's authority, since 1968, to designate any security as marginable, *i.e.*, as having loan value in a margin account.

(c) The definition of "exempted security" has been removed from the regulation. The definition in section 3(a)(12) of the Act is sufficient because the only additional language presently in the regulatory definition is no longer necessary for the reason described in paragraph (b) above.

(d) In the definition of "OTC Margin Stock", the word "stock" has been replaced with the words "equity security" to clarify that the term includes convertible bonds and other instruments that are often not considered "stock." The criteria for inclusion on the list of OTC margin stocks has been moved from the Supplement to the body of the regulation, because it is not the type of requirement that the Board may need to change quickly, as are the margin levels.

(e) In response to several comments, the terms "equity deficiency" and "equity excess" have been changed to "margin deficiency" and "margin excess" in the definition section and throughout the regulation, as the terms in the proposal had a different meaning in the industry.

(f) A definition of "good faith margin" has been added because such a definition was added to the proposed revisions of Regulations G and U and is useful in simplifying language.

(g) A more descriptive definition of "short call or short put" (§ 220.2(w)) has been substituted for the definition contained in the original proposed revision. The new definitions will also refer to securities exchange-traded options on foreign currency, and options

on certificates of deposit and stock indices as these new instruments came within the Board's margin setting authority as a result of a legislative amendment (Pub. L. 97-303, amending 15 U.S.C. 78c(a)(10)) defining them as "securities" for purposes of the Securities Exchange Act of 1934.

(h) The definition of "OTC margin bond" has been changed to make the issue-size criterion applicable at time of issuance only. This will make the circumstances under which an OTC margin bond may be marginable consistent with the marginability of private mortgage pass-through securities (adopted by the Board in December 1982, 47 FR 55912, December 14, 1982).

3. General Provisions, § 220.3

(a) Separation of accounts, § 220.3(b).

(i) The term "segregation" has been replaced with "separation." A statement has been added to require written entries to be made when cash or securities are used to meet requirements in another account, if withdrawals of cash or securities are permitted under the regulation.

(b) *Receipt of Funds or Securities, § 220.3(e)*. (i) The language that a creditor may "at his option" treat the various types of noncash payment as receipt of payment was removed as unnecessary.

(ii) Certain language was removed from the existing regulation describing a check, draft or order as drawn on a bank or a savings bank, which in the ordinary course of business is payable on presentation, as unnecessary. As long as the instrument is, by its terms or usage, payable on presentation and is accepted by the creditor in good faith, it may be considered receipt of payment, whether it is drawn on a "bank" or on one of the other types of depository institutions that may issue such payment instruments.

(iii) The reference to "telegraphic" notice was also removed; since the creditor has the right to obtain hard copy of a telegraphic notice, it may be considered to be included in the term "written notice."

(c) Exchange of Securities, § 220.3(f).

The subsection entitled "Reorganizations" and certain language of that section was changed. Staff has received inquiries from time to time on the meaning of "reorganization" and "recapitalization," and there has not been a clear understanding of the scope of the section. The new language is intended to clarify that the section covers any exchange offer that is made to all holders of an issue of securities. The new language also clarifies the requirement that the consideration

received in the exchange must be deposited in the account.

(d) *Variable Annuity Contracts Issued by Insurance Companies, § 220.3(i)*. Most of the language from the present § 220.7(f) was eliminated as unnecessary.

(e) *Valuing Securities, § 220.3(g)(1)*. Language has been added specifying that the computation of the total cost of a purchase or the net proceeds of a sale must include any commission charged. This is a formal statement of the accepted practice of including the cost of a commission when determining the cost of a transaction. Because the treatment of commissions has been addressed in this section, the reference to commissions in the section on service charges (present § 220.6(g)) has been deleted. (See new § 220.4(f).)

(f) *Innocent mistakes, § 220.3(h)*. In response to comments the word "mechanical" was deleted so as to avoid any inference that violations may be excused for only "non-human" errors.

4. Margin Account, § 220.4(a)

In contrast to the proposed revision, this section permits separate margin accounts to be established for the same person by creditors that: (1) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors or (2) clear transactions through other creditors if the transactions are effected by separate creditors. Separate accounts may also be established for the same person by a creditor to provide one or more accounts over which the creditor or a third party investment advisor has investment discretion.

5. Transfer of Account, § 220.5(f)

(a) The description of the statement to be obtained by the transferee in present § 220.6(d) was rephrased to state simply that any margin call issued under Regulation T has been satisfied.

(b) In subsection (2), the term "*bona fide*" was removed as unnecessary. Since the transaction must be one that is not undertaken to avoid Regulation T and the creditor is required to accept in good faith the statement describing the circumstances giving rise to the transfer, the creditor may not accept a statement that indicates that the transfer was not a legitimate incident to the transaction.

6. Cash Account, § 220.8

(a) The statement that *bona fide* cash transactions may be effected in the cash account has been removed as unnecessary. The description of permissible transactions includes only those that are *bona fide* cash transactions. Use of the term "*bona*

fide" is redundant since permissible transactions must be done in good faith. The reference in the present § 220.4(c)(6) to "*bona fide* cash transactions" was removed for the same reason.

(b) A substantive change has been added in paragraph (a)(3)(i) concerning the issuance of a call option before payment is made for the purchase of a security. This will permit customers who cannot or do not maintain a margin account to take advantage of the investment strategy of taking a position in an option at the same time that they take a position in the underlying security or a security immediately convertible into the underlying security without the payment of money. It is anticipated that creditors permitting customers to write options on an underlying security using a convertible or exchangeable security as the proxy will require the customer to give written authorization for the conversion in the event an option exercise notice is received. Banks issuing escrow agreements against convertible securities should also have such written authorization.

(c) In response to comments received, securities issued by the United States or its agencies, negotiable certificates of deposit and bankers acceptances will be permitted as substitutes for cash in connection with the writing of put options, provided these instruments have a maturity of one year or less and their current market value at the time the put is written is equal to or greater than the put exercise price.

(d) Language has been added in § 220.8(b)(2) to clarify that the extension of time in a delivery against payment transaction is permitted if delivery of the security is delayed due to market conditions. See ¶ 5-501 in Securities Credit Transactions Handbook. The phrase "delivery against payment" is defined in the Definitions Section (see § 220.2(e)) rather than in the Cash Account Section.

(e) The 90-day freeze provision has been modified, as a clarifying measure, to apply only to transactions in *non-exempted* securities.

7. The Special Memorandum Account, § 220.6

As described in the proposal (46 FR 37517), the account is a renamed version of section 6 of the Special Miscellaneous Account. The types of deposit permitted in the Special Memorandum Account are now listed in the regulation.

**8. Broker Dealer Credit Account,
§ 220.11**

(a) As noted in the proposal (46 FR 37517 (1981)), this account contains the provisions that are presently in sections 1, 2 and 3 of the Special Miscellaneous Account and adds a provision to cover jointly owned clearing firms.

(b) There is new language that approval for emergency credit, credit for capital contributions and subordinated credit for capital purposes should be obtained from the appropriate Examining Authority, rather than from a committee of a national securities exchange. This reflects the fact that all creditors may not be members of a national securities exchange; it does not change the requirement for members of exchanges for whom the appropriate Examining Authority would be the exchange.

**9. The Non-Securities Credit Account,
§ 220.9**

(a) As described in the proposal (46 FR 37517 (1981)), this account contains provisions that are presently in the Special Commodity Account and sections 7 and 8 of the Special Miscellaneous Account.

(b) In the language comparable to present § 220.7(c) the phrase "on a margin security (other than an exempted security)" has been removed. The revised language will clarify that the required nonpurpose statement applies to unsecured credit as well as secured credit.

(c) Specific reference to form F.R. T-4 has been deleted from the Nonsecurities Credit Account (§ 220.9), but creditors must obtain such forms when extending nonpurpose credit.

**10. The Market Functions Account,
§ 220.12**

This account combines the Specialist Account and two sections of the Special Miscellaneous Account for credit to odd-lot dealers and to finance the underwriting or distribution of securities. There is a substantive addition, which provides for credit to OTC marketmakers and third-marketmakers similar to the provisions for bank loans to such marketmakers in present § 221.3(w) and (y) of Regulation U. Under the new regulation, exchanges will no longer have to file monthly reports (Form 2020) on the use of specialist credit. The required margin on long and short positions in underlying stock that serve as permitted offsets has been changed from a proposed 25% requirement to a "good faith" requirement. In addition, like public customers, specialists will have 7 days

in which to deposit margin. The original proposal would have imposed a 5 day requirement.

11. The Arbitrage Account, § 220.7

Under the Board's March 30, 1982 proposal (47 FR 13376) this account would have been folded into the Market Functions Account. Due to comments received, a separate account for arbitrage transactions has been established.

**12. Arranging for Loans by Others,
§ 220.13**

The arranging provision has been clarified to indicate that sales of all non-margin securities (not just non-margin securities with installment or other deferred payment provisions) are excluded from the arranging prohibitions if such sales are exempt from registration under sections 4(2) or 4(6) of the Securities Act of 1933 (§ 220.13(b)).

13. Borrowing By Creditors, § 220.15

(a) The statutory prohibition in section 8 of the Act was rephrased to make it clear that borrowing "on" a security means using that security as collateral for a loan.

(b) The last sentence of present § 220.5(b) was removed as unnecessary. Blank forms and information regarding filing or termination of agreements are available at any Federal Reserve Bank.

(c) The provisions for loans from other creditors has been shortened considerably. The substance of present §§ 220.15(a)(3) and (c) are contained in § 220.5(a)(3) of the revised version. The revised version does not specifically refer to loans from other creditors to meet emergency needs or to the fact that credit from another creditor would be subject to any other applicable provisions of law. The former provision is included in the list of permissible loans by creditors under a provision of the Broker Dealer Credit Account (§ 220.11(a)); the latter provision applies to all activities of a creditor, *i.e.*, a creditor is always subject to any other applicable provisions of law in addition to those provisions contained in Regulation T.

**14. Credit for Clearance of Securities,
§ 220.14**

(a) The terminology was changed from a "fraction of a day" to "not for more than one day" because it is simpler and does not actually expand the permissible time period from that defined in present § 220.6(i). Since § 220.6(i) places no limit on the fraction of a day during which the credit may be extended, it could apply to credit

outstanding for an entire day (minus one minute, for example). Recognizing that that is the case, it is less confusing to simply permit the credit for no more than one day. Also, the term "association" (referring to a national securities association) was added in recognition of the fact that creditors may be members of a national securities exchange or association.

(b) A provision was added to permit a clearing broker to acquire an option position from an option clearing agency, such as the Options Clearing Corporation, by depositing securities other than the particular securities underlying the option. Under the present provisions, only cash, government securities, letters of credit or the particular securities may be used for the required deposit.

15. Supplement, § 220.18

In view of a pending SEC rule change (Release No. 34-19162 October 20, 1982), the language of the section describing margin required for OTC options on exempted debt securities has been modified to exclude any options on exempt securities that the SEC determines are themselves exempt securities.

16. Reports

The subsection entitled "Reports" (§ 220.7(d)) in the present Regulation was removed as unnecessary; section 17 of the Securities Exchange Act of 1934 (15 U.S.C. § 78q) requires persons subject to the margin regulations to file reports required by the Board.

17. Miscellaneous

(a) As under the present regulation, convertible or exchangeable securities may be used instead of the present 50% margin when the related security is sold short.

(b) Other requests for modification of the proposed revision have not been adopted because of insufficient supporting data or because they are inappropriate in light of the Board's statutory responsibilities.

Final Regulatory Flexibility Analysis

The **Federal Register** documents published in June and July of 1981 (46 FR 32592 and 46 FR 37516) by the Board contained an Initial Regulatory Flexibility Analysis for the complete revision of Regulation T. Comments received on the proposal appear to agree with the Board's analysis.

List of Subjects 12 CFR Part 220

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin

requirements, Investments, Reporting requirements, Securities.

Accordingly, pursuant to sections 3, 7, 8 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, g, h and w) the Board completely revises Regulation T as follows:

PART 220—CREDIT BY BROKERS AND DEALERS

Sec.

- 220.1 Authority, purpose, and scope.
- 220.2 Definitions.
- 220.3 General provisions.
- 220.4 Margin account.
- 220.5 Margin account exceptions and special provisions.
- 220.6 Special memorandum account.
- 220.7 Arbitrage account.
- 220.8 Cash account.
- 220.9 Nonsecurities credit account.
- 220.10 Omnibus account.
- 220.11 Broker-dealer credit account.
- 220.12 Market functions account.
- 220.13 Arranging for loans by others.
- 220.14 Clearance of securities.
- 220.15 Borrowing by creditors.
- 220.16 Borrowing and lending securities.
- 220.17 Requirements for list of OTC margin stocks.
- 220.18 Supplement to Regulation T.

§ 220.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation T (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a et seq.). Its principal purpose is to regulate extensions of credit by and to brokers and dealers; it also covers related transactions within the Board's authority under the Act. It imposes, among other obligations, initial margin requirements and payment rules on securities transactions.

(b) *Scope.* (1) This part provides a margin account and seven special purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special account shall be recorded in a margin account.

(2) This part does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.

§ 220.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

(a) "Credit balance" means the cash amount due the customer in a margin account after debiting amounts transferred to the special memorandum account.

(b) "Creditor" means any broker or dealer (as defined in sections 3(a)(4) and

3(a)(5) of the Act), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the Act), except for business entities controlling or under common control with the creditor.

(c) "Customer" includes: (1) Any person or persons acting jointly: (i) to or for whom a creditor extends, arranges, or maintains any credit; or (ii) who would be considered a customer of the creditor according to the ordinary usage of the trade;

(2) any partner in a firm who would be considered a customer of the firm absent the partnership relationship; and

(3) any joint venture in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

(d) "Debit balance" means the cash amount owed to the creditor in a margin account after debiting amounts transferred to the special memorandum account.

(e) "Delivery against payment," "Payment against delivery," or a "C.O.D. transaction" refers to an arrangement under which a creditor and a customer agree that the creditor will deliver to, or accept from, the customer, or the customer's agent, a security against full payment of the purchase price.

(f) "Equity" means the total current market value of security positions held in the margin account plus any credit balance less the debit balance in the margin account.

(g) "Escrow agreement" means any agreement issued in connection with a call or put option under which a bank, holding the underlying security, foreign currency, certificate of deposit, or required cash, is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying security, foreign currency, or certificate of deposit against payment of the exercise price upon exercise of the call or put.

(h) "Examining authority" means: (1) The national securities exchange or other self-regulatory organization of which a creditor is a member; or

(2) if not a member of any such self-regulatory organization, the Regional Office of the Securities and Exchange Commission (SEC) where the creditor has its principal place of business; or

(3) if a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

(i) "Good faith margin" means the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a specified

security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

(j) "In or at the money" means the current market price of the underlying security is not more than one standard exercise interval below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

(k) "In the money" means the current market price of the underlying security is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

(l) "Margin call" means a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.

(m) "Margin deficiency" means the amount by which the required margin exceeds the equity in the margin account.

(n) "Margin excess" means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in § 220.18 (the Supplement).

(o) "Margin security" means any registered security, OTC margin stock, OTC margin bond, or any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

(p) "Nonexempted security" means any security other than an exempted security (as defined in section 3(a)(12) of the Act).

(q) "Nonmember bank" means a bank that is not a member of the Federal Reserve System.

(r) "OTC margin bond" means: (1) A debt security not traded on a national securities exchange which meets all of the following requirements:

(i) At the time of the original issue, a principal amount of not less than \$25,000,000 of the issue was outstanding;

(ii) The issue was registered under section 5 of the Securities Act of 1933 (15 U.S.C. 77e) and the issuer either files periodic reports pursuant to section 13(a) or 15(d) of the Act or is an insurance company which meets all of the conditions specified in section 12(g)(2)(G) of the Act; and

(iii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not

in default on interest or principal payments; or

(2) A private mortgage pass-through security (not guaranteed by an agency of the U.S. government) meeting all of the following requirements:

(i) An aggregate principal amount of not less than \$25,000,000 (which may be issued in series) was issued pursuant to a registration statement filed with the SEC under section 5 of the Securities Act of 1933;

(ii) Current reports relating to the issue have been filed with the SEC; and

(iii) At the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering.

(s) "OTC margin stock" means any equity security not traded on a national securities exchange that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an "OTC margin stock" until it appears on the Board's periodically published list of OTC margin stocks.

(t) "Overlying option" means: (1) A put option purchased or a call option written against a long position in an underlying security in the specialist record in § 220.12(b); or

(2) a call option purchased or a put option written against a short position in an underlying security in the specialist record in § 220.12(b).

(u) "Purpose credit" means credit for the purpose of: (1) Buying, carrying, or trading in securities; or

(2) buying or carrying any part of an investment contract security which shall be deemed credit for the purpose of buying or carrying the entire security.

(v) "Registered security" means any security that: (1) Is registered on a national securities exchange; or

(2) Has unlisted trading privileges on a national securities exchange.

(w) "Short call or short put" means a call option or a put option that is issued, endorsed, or guaranteed in or for an account.

(1) A short call obligates the customer to sell the underlying security, foreign currency, or certificate of deposit at the exercise price upon receipt of an exercise notice at any time prior to the expiration date of the option.

(2) A short put obligates the customer to purchase the underlying security, foreign currency, or certificate of deposit at the exercise price upon receipt of an exercise notice at any time prior to the expiration date of the option.

(3) A short call or a short put on stock index options obligates the customer to pay the holder of an "in the money" long put or call who has exercised the option the cash difference between the exercise price and the current assigned value of the index as established by the option contract.

(x) "Specialist joint account" means an account which, by written agreement, provides for the commingling of the security positions of the participants and a sharing of profits and losses from the account on some predetermined ratio.

(y) "Underlying security" means the security that will be delivered upon exercise of an option.

§ 220.3 General provisions.

(a) *Records.* The creditor shall maintain a record for each account showing the full details of all transactions.

(b) *Separation of accounts.* Except as provided for in the margin account and the special memorandum account, the requirements of an account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under the regulation, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(c) *Maintenance of credit.* Except as prohibited by this part, any credit initially extended in compliance with this part may be maintained regardless of: (1) Reductions in the customer's equity resulting from changes in market prices;

(2) any security in an account ceasing to be margin or exempted; or

(3) any change in the margin requirements prescribed under this part.

(d) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of this part.

(e) *Receipt of funds or securities.* (1) A creditor, acting in good faith, may accept as immediate payment:

(i) Cash or any check, draft, or order payable on presentation; or

(ii) Any security with sight draft attached.

(2) A creditor may treat a security, check or draft as received upon written notification from another creditor that the specified security, check, or draft has been sent.

(3) Upon notification that a check, draft, or order has been dishonored or when securities have not been received within a reasonable time, the creditor shall take the action required by this part when payment or securities are not received on time.

(f) *Exchange of securities.* (1) To enable a customer to participate in an offer to exchange securities which is made to all holders of an issue of securities, a creditor may submit for exchange any securities held in a margin account, without regard to the other provisions of this part, provided the consideration received is deposited into the account.

(2) If a nonmargin, nonexempted security is acquired in exchange for a margin security, its retention, withdrawal, or sale within 60 days following its acquisition shall be treated as if the security is a margin security.

(g) *Valuing securities.* The current market value of a security shall be determined as follows:

(1) Throughout the day of the purchase or sale of a security, the creditor shall use the security's total cost of purchase or the net proceeds of its sale including any commissions charged.

(2) At any other time, the creditor shall use the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

(i) *Variable annuity contracts issued by insurance companies.* Any insurance company that issues or sells variable annuity contracts or engages in a general securities business as a broker or dealer shall be subject to this part only for transactions in connection with those activities. Extensions of credit associated with conventional lending practices of insurance companies are subject to Part 207 of this Chapter.

§ 220.4 Margin account.

(a) *Margin transactions.* (1) All transactions not specifically authorized for inclusion in another account shall be recorded in the margin account.

(2) A creditor may establish separate margin accounts for the same person to:

- (i) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors; or
- (ii) Clear transactions through other creditors if the transactions are effected by separate creditors; or
- (iii) Provided one or more accounts over which the creditor or a third party investment adviser has investment discretion.

(b) *Required margin.* The required margin for each position in securities is set forth in section 220.18 (the Supplement) and is subject to the exceptions and special provisions contained in section 220.5 (Margin Account Exceptions and Special Provisions).

(c) *When additional margin is required.* (1) *Computing deficiency.* All transactions on the same day shall be combined to determine whether additional margin is required by the creditor. For the purpose of computing equity in an account, security positions are established or eliminated and a credit or debit created on the trade date of a security transaction. Additional margin is required on any day when the day's transactions create or increase a margin deficiency in the account and shall be for the amount of the margin deficiency so created or increased.

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

(3) *Time limits.* (i) A margin call shall be satisfied within 7 business days after the margin deficiency was created or increased.

(ii) The 7 day period may be extended for one or more limited periods upon application by the creditor to a self-regulatory organization or national securities association unless the organization or association believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the 7 day period or the expiration of any subsequent extension. However, applications filed by firms having no direct electronic access to the organization or association may be accepted as timely filed if postmarked by midnight of the last day of the 7 day period or any subsequent extension.

(4) *Satisfaction restriction.* Any transaction, position, or deposit that is used to satisfy one requirement under

this part shall be unavailable to satisfy any other requirement.

(d) *Liquidation in lieu of deposit.* If any margin call is not met in full within the required time, the creditor shall liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less. If the margin deficiency created or increased is \$500 or less, no action need be taken by the creditor.

(e) *Withdrawals of cash or securities.* (1) Cash or securities may be withdrawn from an account, except if:

(i) Additional cash or securities are required to be deposited into the account for a transaction on the same or a previous day; or

(ii) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency.

(2) Margin excess may be withdrawn or may be transferred to the special memorandum account (§ 220.6) by making a single entry to that account which will represent a debit to the margin account and a credit to the special memorandum account.

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin account on the day it is payable and withdrawal would not be permitted under this paragraph, a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

(f) *Interest, service charges, etc.* (1) Without regard to the other provisions of this section, the creditor, in its usual practice, may debit the following items to a margin account if they are considered in calculating the balance of such account:

(i) Interest charged on credit maintained in the margin account;

(ii) Premiums on securities borrowed in connection with short sales or to effect delivery;

(iii) Dividends, interest, or other distributions due on borrowed securities;

(iv) Communication or shipping charges with respect to transactions in the margin account; and

(v) Any other service charges which the creditor may impose.

(2) A creditor may permit interest, dividends, or other distributions credited to a margin account to be withdrawn from the account if:

(i) The withdrawal does not create or increase a margin deficiency in the account; or

(ii) The current market value of any securities withdrawn does not exceed 10 percent of the current market value of

the security with respect to which they were distributed.

§ 220.5 Margin account exceptions and special provisions.

(a) *Unissued securities.* (1) The required margin on a net long or net short commitment in an unissued security is the margin that would be required if the security were an issued margin security, plus any unrealized loss on the commitment or less any unrealized gain.

(2) Margin is not required on a net short commitment in unissued securities when the account contains the related issued securities, nor for any net short or net long position in unissued exempted securities.

(b) *Short Sales.* (1) The required margin for the short sale of a security shall be the amount set forth in § 220.18 (the Supplement).

(2) A short sale "against the box" shall be treated as a long sale for the purpose of computing the equity and the required margin.

(c) *Options.* (1) *Margin or cover for options on exempted debt securities, certificates of deposit, stock indices, or securities exchange traded options on foreign currencies.* The required margin for each transaction involving any short put or short call on an exempted debt security, certificate of deposit, stock index, or foreign currency (if the option is traded on a securities exchange), shall be the amount or positions in lieu of margin set forth in § 220.18 (the Supplement).

(2) *Margin for options on equity securities.* The required margin for each transaction involving any short put or short call on an equity security shall be the amount set forth in § 220.18 (the Supplement), plus any unrealized loss on the commitment or minus any unrealized gain. However, the required margin may not exceed the current market value of the underlying security in the case of a call, or the exercise price in the case of a put.

(3) *Cover or positions in lieu of margin.* No margin is required for an option written on an equity security position when the account holds any of the following:

(i) the underlying security in the case of a short call, or a short position in the underlying security in the case of a short put;

(ii) securities immediately convertible into or exchangeable for the underlying security without the payment of money in the case of a short call, if the right to convert or exchange does not expire on or before the expiration date of the short call;

(iii) an escrow agreement for the underlying security or foreign exchange (in the case of a short call) or cash (in the case of a short put);

(iv) a long call on the same number of shares of the same underlying security if the long call does not expire before the expiration date of the short call, and if the amount (if any), by which the exercise price of the long call exceeds the exercise price of the short call is deposited in the account;

(v) a long put on the same number of shares of the same underlying security if the long put does not expire before the expiration date of the short put, and if the amount (if any), by which the exercise price of the short put exceeds the exercise price of the long put is deposited in the account;

(vi) a warrant to purchase the underlying security, in the case of a short call, if the warrant does not expire on or before the expiration date of the short call, and if the amount (if any), by which the exercise price of the warrant exceeds the exercise price of the short call is deposited in the account. A warrant used in lieu of the required margin under this provision shall contribute no equity to the account.

(4) *Adjustments.* (i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (c)(2) of this section as the amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued at no greater than the exercise prices of the short call.

(5) *Straddles.* When both a short put and a short call are in a margin account on the same number of shares of the same underlying security, the required margin shall be the margin on either the short put or the short call, whichever is greater, plus any unrealized loss on the other option.

(6) *Exclusive designation.* The customer may designate at the time the option order is entered which security position held in the account is to serve in lieu of the required margin, if such service is offered by the creditor; or the customer may have a standing agreement with the creditor as to the method to be used for determining on any given day which security position will be used in lieu of the margin to support an option transaction. Only security held in the account which serves in lieu of the required margin for a short put or a short call shall be unavailable to support any other option transaction in the account.

(d) *Accounts of partners.* If a partner of the creditor has a margin account with the creditor, the creditor shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of the partner's margin account.

(e) *Contribution to joint venture.* If a margin account is the account of a joint venture in which the creditor participates, any interest of the creditor in the joint account in excess of the interest which the creditor would have on the basis of its right to share in the profits shall be treated as an extension of credit to the joint account and shall be margined as such.

(f) *Transfer of accounts.* (1) A margin account that is transferred from one creditor to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this part has been satisfied.

(2) A margin account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this part, may be treated as if it had been maintained for the transferee from the date of its origin, if the creditor accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

§ 220.6 Special memorandum account.

(a) A special memorandum account (SMA) may be maintained in conjunction with a margin account. A single entry amount may be used to represent both a credit to the SMA and a debit to the margin account. A transfer between the two accounts may be effected by an increase or reduction in the entry. When computing the equity in a margin account, the single entry amount shall be considered as a debit in the margin account. A payment to the customer or on the customer's behalf or a transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

- (1) dividend and interest payments;
- (2) Cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;
- (3) Proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may

be withdrawn under § 220.4(e) of this part; and

(4) Margin excess transferred from the margin account under § 220.4(e)(2) of this part.

§ 220.7 Arbitrage account.

In an arbitrage account a creditor may effect and finance for any customer *bona fide* arbitrage transactions. For the purpose of this section, the term "*bona fide* arbitrage" means:

(1) A purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets, or

(2) A purchase of a security which is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.

§ 220.8 Cash account

(a) *Permissible transactions.* In a cash account, a creditor, may:

(1) Buy for or sell to any customer any security if: (i) There are sufficient funds in the accounts; or (ii) the creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security before selling it and does not contemplate selling it prior to making such payment;

(2) Buy from or sell for any customer any security if: (i) The security is held in the account; or (ii) the creditor accepts in good faith the customer's statement that the security is owned by the customer or the customer's principal, and that it will be promptly deposited in the account;

(3) Issue, endorse, or guarantee an option for any customer if:

(i) In the case of a call option, the underlying security (or a security immediately convertible into the underlying security, without the payment of money) is held in or purchased for the account on the same day, and the option premium is held in the account until cash payment for the underlying or convertible security is received; or

(ii) In the case of a put option, the creditor obtains cash in an amount equal to the exercise price or holds in the account any of the following instruments with a current market value at least equal to the exercise price and

with one year or less to maturity: securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, or bankers acceptances issued by banking institutions in the United States and payable in the United States.

(4) Use an escrow agreement in lieu of the cash or underlying security position if:

(i) In the case of a call or a put, the creditor is advised by the customer that the required securities or cash are held by a bank and the creditor independently verifies that an appropriate escrow agreement will be delivered by the bank promptly; or

(ii) In the case of a call issued, endorsed, or guaranteed on the same day the underlying security is purchased in the account and the underlying security is to be delivered to a bank, the creditor verifies that an appropriate escrow agreement will be delivered by the bank promptly.

(b) *Time periods for payment; cancellation or liquidation.* (1) *Full cash payment.* A creditor shall obtain full cash payment for customer purchases within 7 business days of the date:

(i) Any nonexempted security was purchased;

(ii) Any unissued security was made available by the issuer for delivery to purchasers;

(iii) Any "when distributed" security was distributed under a published plan;

(iv) A security owned by the customer has matured or has been redeemed and a new refunding security of the same issuer has been purchased by the customer, provided:

(A) The customer purchased the new security no more than 35 calendar days prior to the date of maturity or redemption of the old security;

(B) The customer is entitled to the proceeds of the redemption; and

(C) The delayed payment does not exceed 103 percent of the proceeds of the old security.

(2) *Delivery against payment.* If a creditor purchases for or sells to a customer a security in a delivery against payment transaction, the creditor shall have up to 35 calendar days to obtain payment if delivery of the security is delayed due to the mechanics of the transaction and is not related to the customer's willingness or ability to pay.

(3) *Shipment of securities, extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the 7 business day period by the number of days required for shipment, but not by more than 7 business days.

(4) *Cancellation; liquidation; minimum amount.* A creditor shall

promptly cancel or otherwise liquidate a transaction or any part of a transaction for which the customer has not made full cash payment within the required time. A creditor may, at its option, disregard any sum due from the customer not exceeding \$500.

(c) *90 day freeze.* (1) If a nonexempted security in the account is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of sale of the security. Cancellation of the transaction other than to correct an error shall constitute a sale.

(2) The 90 day freeze shall not apply if: (i) Within 7 business days of the trade date, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or (ii) the purchased security was delivered to another broker or dealer for deposit in a cash account which holds sufficient funds to pay for the security. The creditor may rely on a written statement accepted in good faith from the other broker or dealer that sufficient funds are held in the other cash account.

(d) *Extension of time periods; transfers.* (1) Unless a self-regulatory organization or association believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may, upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) Grant a waiver from the 90 day freeze.

(2) Applications shall be filed and acted upon prior to the end of the 7 day period or the expiration of any subsequent extension. However, an application filed from firms having no direct electronic access to the exchange or association may be accepted as timely filed if it is postmarked no later than midnight of the last day of the 7 day period or any subsequent extension.

§ 220.9 Nonsecurities credit account.

(a) In a nonsecurities credit account a creditor may:

(1) Effect and carry transactions in commodities;

(2) Effect and carry transactions in foreign exchange;

(3) Extend and maintain secured or unsecured nonpurpose credit, subject to

the requirements of paragraph (b) of this section.

(b) Every extension of credit, except as provided in paragraphs (a) (1) and (2) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall conform to the requirements established by the Board. To accept the customer's statement in good faith, the creditor shall be aware of the circumstances surrounding the extension of credit and shall be satisfied that the statement is truthful.

§ 220.10 Omnibus account.

(a) In an omnibus account, a creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the Act and who gives the creditor written notice that:

(1) all securities will be for the account of customers of the broker or dealer; and

(2) any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(b) The written notice required by paragraph (a) shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

§ 220.11 Broker-dealer credit account.

(a) *Permissible transactions.* In a broker-dealer credit account, a creditor may:

(1) Purchase any security from or sell any security to another creditor under a good faith agreement to promptly deliver the security against full payment of the purchase price.

(2) Effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors.

(3) Extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation or another creditor.

(4) Extend and maintain, with the approval of the appropriate examining authority:

(i) Credit to meet the emergency needs of any creditor; or

(ii) Subordinated credit to another creditor for capital purposes, if the other creditor:

(A) Is an affiliated corporation; or

(B) Will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the creditor,

its firm or corporation or an affiliated corporation.

(b) For purposes of paragraphs (a) (3) and (4) of this section "affiliated corporation" means a corporation all the common stock of which is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation and the affiliation has been approved by the creditor's examining authority.

§ 220.12 Market functions account.

(a) *Requirements.* In a market functions account, a creditor may effect or finance the transactions of market participants in accordance with the following provisions. A separate record shall be kept for the transactions specified for each category described in paragraphs (b) through (f) of this section. Any position in a separate record shall not be used to meet the requirements of any other category.

(b) *Specialists.* (1) *Applicability.* A creditor may clear or finance specialist transactions for any specialist, or any specialist joint account, in which all participants, or all participants other than the creditor, are registered as specialists on a national securities exchange that requires regular reports on the use of specialist credit from the registered specialists.

(2) *Permitted offset positions.* A specialist in options may establish, on a share-for-share basis, a long or short position in the securities underlying the options in which the specialist makes a market, and a specialist in securities other than options may purchase or write options overlying the securities in which the specialist makes a market, if the account holds the following permitted offset positions:

(i) A short option position which is "in or at the money" and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is "in the money";

(ii) A long option position which is "in or at the money" and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is "in the money";

(iii) A short option position against which an exercise notice was tendered;

(iv) A long option position which was exercised;

(v) A net long position in a security (other than an option) in which the specialist makes a market; or

(vi) A net short position in a security (other than an option) in which the specialist makes a market.

(3) *Required Margin.* The required margin for a specialist's transactions shall be:

(i) Good faith margin for any long or short position in a security in which the specialist makes a market;

(ii) Good faith margin for any wholly-owned margin security or exempted security;

(iii) The margin prescribed by section 220.18 (the Supplement) when a security purchased or sold short in the account does not qualify as a specialist or permitted offset position.

(4) *Additional margin; restriction on "free-riding."* (i) Except as required by paragraph (b)(6) of this section, the creditor shall issue a margin call on any day when additional margin is required as a result of specialist transactions. The creditor may allow the specialist a maximum of 7 business days to satisfy a margin call.

(ii) If a specialist fails to satisfy a margin call within the period specified in this paragraph (and the creditor is required to liquidate securities to satisfy the call), the creditor shall be prohibited for a 15 calendar day period from extending any further credit to the specialist to finance transactions in nonspecialty securities.

(iii) The restriction on "free-riding" shall not apply to:

(A) Any specialist on a national securities exchange that has an SEC-approved rule on "free-riding" by specialists; or (B) the acquisition or liquidation of a permitted offset position.

(5) *Deficit status.* On any day when a specialist's separate record would liquidate to a deficit, the creditor shall not extend any further specialist credit in the account and shall issue a margin call at least as large as the deficit. If the call is not met by noon of the following business day, the creditor shall liquidate positions in the specialist's account.

(6) *Withdrawals.* Withdrawals may be permitted to the extent that the equity exceeds the margin requirements specified in paragraph (b)(4) of this section.

(c) *Underwritings and distributions.* A creditor may effect or finance for any dealer or group of dealers transactions for the purpose of facilitating the underwriting or distribution of all or a part of an issue of securities with a good faith margin.

(d) *OTC Marketmakers and Third Marketmakers.* (1) A creditor may clear or finance with a good faith margin, marketmaking transactions for an OTC marketmaker or a third marketmaker who:

(i) Is in compliance with any applicable SEC rule, including minimum net capital rules;

(ii) Regularly submits *bona fide* competitive bid and offer quotations to a recognized inter-dealer quotation system;

(iii) Is ready, willing, and able to effect transactions in reasonable amounts with other brokers and dealers at the quoted prices; and

(iv) Has a reasonable average rate of inventory turnover.

(2) If the credit extended to a marketmaker ceases to be for the purpose of marketmaking, or the dealer ceases to be a marketmaker for an issue of securities for which credit was extended, the credit shall be subject to the margin specified in section 220.18 (the Supplement).

(e) *Odd-lot dealers.* A creditor may clear and finance odd-lot transactions for any creditor who is registered as an odd-lot dealer on a national securities exchange with a good faith margin.

§ 220.13 Arranging for loans by others.

A creditor may not arrange for the extension or maintenance of credit to or for any customer by any person upon terms and conditions other than those upon which the creditor may itself extend or maintain credit under the provisions of this part, except that this limitation shall not apply to credit arranged for a customer which does not violate Parts 207 and 221 of this Chapter and results solely from:

(a) Investment banking services, provided by the creditor to the customer, including, but not limited to, underwritings, private placements, and advice and other services in connection with exchange offers, mergers or acquisitions, except for underwritings that involve the public distribution of an equity security with installment or other deferred payment provisions; or

(b) The sale of nonmargin securities (including securities with installment or other deferred payment provisions) if the sale is exempted from the registration requirements of the Securities Act of 1933 under section 4(2) or section 4(6) of the Act.

§ 220.14 Clearance of Securities.

(a) *Credit for clearance of securities.* The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities directly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

(b) *Deposit of securities with options clearing agency.* The provisions of this part shall not apply to the deposit of securities with an options clearing agency for the purpose of meeting its deposit requirements if:

- (1) The clearing agency issues options on securities;
- (2) The clearing agency is registered with the SEC;
- (3) The deposit consists of any underlying securities for classes of option contracts outstanding at the time of the deposit; and
- (4) The deposit complies with the rules of the clearing agency which have been approved by the SEC.

§ 220.15 Borrowing by Creditors.

(a) *Restrictions on borrowing.* A creditor may not borrow in the ordinary course of business as a broker or dealer using as collateral any registered nonexempted security, except:

- (1) From or through a member bank of the Federal Reserve System; or
- (2) From any nonmember bank that has filed with the Board an agreement as prescribed in paragraph (b) of this section, which agreement is still in effect; or
- (3) From another creditor if the loan is permissible under this part.

(b) *Agreements of nonmember banks.*

(1) A nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the Act (See Form F.R. T-2) if:

- (i) Its principal place of business is in a territory or insular possession of the United States; or
- (ii) It has an office or agency in the United States and its principal place of business is outside the United States.

(2) Any other nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the Act (See Form F.R. T-1).

(3) Any nonmember bank may terminate its agreement if it obtains the written consent of the Board.

§ 220.16 Borrowing and Lending Securities.

Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. Each borrowing shall be secured by a deposit of one or more of the following: cash, securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit and bankers acceptances issued by banking institutions in the United States and payable in the United States,

or irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation or a foreign bank that has filed an agreement with the Board on Form F.R. T-2. Such deposit made with the lender of the securities shall have at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

§ 220.17 Requirements for list of OTC margin stocks.

(a) *Requirements for inclusion on the list.* Except as provided in paragraph (d) of this section, OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least \$5 per share.

(3) The stock is registered under section 12 of the Act, or is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of a foreign issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least \$4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board, is at least 500 shares; and

(9) The issuer has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list.* Except as provided in paragraph (d) of this section, OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated

quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least \$2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The issuer has at least \$1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Removal from the list.* The Board shall periodically remove from the list any stock that:

(1) Ceases to exist or of which the issuer ceases to exist, or

(2) No longer substantially meets the provisions of paragraph (b) of this section or § 220.2(s).

(d) *Discretionary authority of Board.* Without regard to the other paragraphs of this section, the Board may add to, or omit or remove from the OTC margin stock list, any equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(e) *Unlawful Representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of OTC margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the list or stocks on that list shall be an unlawful representation.

§ 220.18 Supplement to Regulation T. Margin Requirements

The required margin for each security position held in a margin account shall be as follows:

(a) *Margin security except for (b) below:* 50 percent of the current market value of the security.

(b) *Exempted security, registered non-*

convertible debt security or OTC margin bond: the margin required by the creditor in good faith.

(c) *Short put or short call on an equity security:* 30 percent of the current market value of the underlying security, but not less than \$250, adjusted or waived in accordance with section 220.5(c).

(d) *Short sale of nonexempted security:* 150 percent of the current market value of the security or 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account.

(e) *Short sale of an exempted security:* 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(f) *Nonmargin, nonexempted security or a long position in any option:* 100 percent of the current market value.

(g) *Short put or short call on an exempted debt security or certificate of deposit:* (1) The amount or other position specified by the rules of the national securities exchange on which the option is traded, provided that all such rules have been approved or amended by the SEC; or

(2) In the case of an over-the-counter option on an exempted debt security that the SEC has not determined to be an exempted security, an amount or other position which the creditor in good faith deems to be equivalent to the margin or cover on comparable exchange-traded options.

(h) *Short put or short call (securities exchange traded) on foreign currency:* The amount, other option position, or foreign currency position specified by the rules of the national securities exchange on which the option is traded, provided that all such rules have been approved or amended by the SEC.

(i) *Short put or short call on a stock index:* The amount or other security positions specified by the rules of the national securities exchange on which the option is traded, provided that all such rules have been approved or amended by the SEC.

By order of the Board of Governors of the Federal Reserve System, May 16, 1983.

William W. Wiles,
Secretary of the Board.

[FR Doc. 83-13708 Filed 5-23-83; 8:45 am]
BILLING CODE 6210-01-M



National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-32

July 12, 1983

TO: All NASD Members and NASDAQ Level 2 and Level 3 Subscribers

RE: 50 Securities Scheduled to Join NMS on July 19

An additional 50 issues will voluntarily join NASDAQ's National Market System on July 19, bringing the total number of NMS securities to 378. These 50 securities meet the SEC's criteria for voluntary designation, which include average monthly trading volume of 100,000 shares and a minimum bid price of \$5.

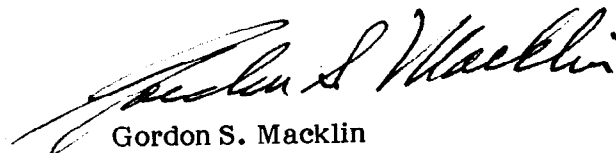
The 50 securities scheduled to join NMS on Tuesday, July 19, are:

BOST	Boston Digital Corporation	Hopkinton, MA
COLC	Colorado National Bankshares, Inc.	Denver, CO
COMU	Commerce Union Corporation	Nashville, TN
CMIN	Computer Memories Incorporated	Chatsworth, CA
CTON	Computone Systems, Incorporated	Atlanta, GA
CISY	Continental Information Systems Corporation	Syracuse, NY
CFBI	Cullen/Frost Bankers, Inc	San Antonio, TX
DENL	Denelcor, Inc.	Aurora, CO
DPCZ	Diagnostic Products Corporation	Los Angeles, CA
DILO	Digilog, Inc.	Montgomeryville, PA
DOLR	Dollar General Corporation	Scottsville, KY
DUFM	Durr-Fillauer Medical, Inc.	Montgomery, AL
DYTC	Dynatech Corporation	Burlington, MA
ENUC	Electro-Nucleonics, Inc.	Fairfield, NJ
ENER	Energy Conversion Devices, Inc.	Troy, MI
FABC	First Alabama Bancshares, Inc.	Montgomery, AL
FFBK	First Florida Banks, Inc.	Tampa, FL
FCBN	Fluorocarbon Company (The)	Laguna Niguel, CA
GBAYA	Greate Bay Casino Corporation (Class A)	Atlantic City, NJ
HARG	Harper Group (The)	San Francisco, CA
HTIG	Hungry Tiger Inc.	Van Nuys, CA

IMPL	Impell Corporation	San Francisco, CA
INAT	Indiana National Corporation	Indianapolis, IN
KAMNA	Kaman Corporation (Class A)	Bloomfield, CT
KEVX	Kevox Corporation	Foster City, CA
LYND	Lynden Incorporated	Seattle, WA
MDNT	Maryland National Corporation	Baltimore, MD
MCFE	McFarland Energy, Inc.	Santa Fe Springs, CA
MCRO	Micro Mask, Inc.	Sunnyvale, CA
MOGN	Molecular Genetics, Inc.	Minnetonka, MN
MONU	Monumental Corporation	Baltimore, MD
NWPH	Newport Pharmaceuticals International, Inc.	Newport Beach, CA
OSTNN	Old Stone Corporation (Series C. Pfd.)	Providence, RI
OMNI	Omnimedical	Anaheim, CA
OCLI	Optical Coating Laboratory, Inc.	Santa Rosa, CA
POSL	Posi-Seal International, Inc.	North Stonington, CT
REUT	Reuter, Inc.	Hopkins, MN
SBAR	San/Bar Corporation	Irvine, CA
SLTC	Siltec Corporation	Menlo Park, CA
STNA	Stanadyne, Inc.	Windsor, CT
SCOR	Syncor International Corporation	Sylmar, CA
SYSM	System Industries, Inc.	Milpitas, CA
TXTN	Textone, Inc.	La Mirada, CA
TNEL	Thomas Nelson, Inc.	Nashville, TN
UPCM	Union Planters Corporation	Memphis, TN
UFGI	United Financial Group, Inc.	Houston, TX
VICA	Video Corporation of America	New York, NY
VNAT	Virginia National Bankshares, Inc.	Norfolk, VA
VOYG	Voyager Group, Inc.	Jacksonville, FL
WCAS	Western Casualty and Surety Company (The)	Kansas City, MO

Any questions regarding this notice should be directed to Donald Bosic, Assistant Director, NASDAQ Operations at (202) 728-8043. Questions pertaining to trade reporting rules should be directed to Leon Bastien at (202) 728-8202.

Sincerely,



Gordon S. Macklin
President

NASD

National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-33

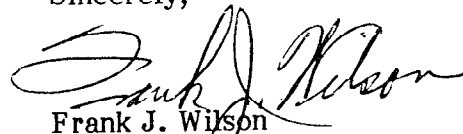
July 12, 1983

TO: All NASD Members and Interested Persons
Attention: Compliance and Registration Personnel

RE: Compliance With State Registration Requirements

This notice is intended to remind members of the importance of compliance with state registration requirements. A number of state securities administrators have been vigorously enforcing state registration requirements with respect to broker-dealer registration, individual salesmen registration, and the registration of securities. In many instances, state securities administrators have examined the principal offices of members and forwarded information to other state securities administrators for action by those respective states. In recent months, such actions have resulted in the denial of registration in some instances and other sanctions. Thus, members should carefully review the requirements of states in which they do business and ensure that they are in compliance with appropriate state registration requirements.

Sincerely,



Frank J. Wilson
Executive Vice President
Legal and Compliance

NASD

National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-34

July 12, 1983

TO: All NASD Members

RE: Western Pacific Securities, Inc.
1880 Century Park East
Los Angeles, California

ATTN: Operations Officer, Cashier, Fail-Control Department

On Monday, July 11, 1983, the United States District Court for the Central District of California appointed a SIPC Trustee for the above-captioned firm. Previously, a temporary receiver had been appointed for the firm on July 1, 1983.

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 procedures to close out transactions in municipal securities.

Questions regarding the firm should be directed to:

SIPC Trustee

Richard M. Neiter, Esquire
Stutman, Treister & Glatt
3701 Wilshire Boulevard
Los Angeles, California 90010

Telephone (213) 380-1360

* * * *

NASD

National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-35

July 12, 1983

TO: All NASD Members

RE: Adoption of Section 9 of Article III, Schedule A of the Association's By-Laws; Fee on Cleared Transactions

The Association is announcing the adoption and implementation of a new Section 9 of Schedule A to Article III of the By-Laws. This section, which is effective July 1, 1983, provides for the continuation of the fee now assessed by the National Securities Clearing Corporation (NSCC) as a regulatory fee with a reduction of that fee from 12 cents per side for round lot, over-the-counter transactions to 10 cents per side. In addition the applicability of the fee is being extended to over-the-counter transactions cleared through any registered clearing agency. Section 9 provides for a fee not to exceed 12 cents per side but the Board of Governors has determined to reduce the fee to 10 cents per side.

When their respective clearing facilities were consolidated in 1977, the NASD, NYSE and AMEX executed a shareholder's agreement which provided that the NASD, NYSE and AMEX would be paid 12 cents a side for each round lot transaction executed in their respective markets and cleared through NSCC. This aspect of the NSCC shareholder's agreement expired on June 30, 1983, and will be replaced for purposes of over-the-counter transactions by the fee described herein. As previously noted, the fee has been extended to over-the-counter transactions which are cleared through the facilities of any registered clearing agency and therefore will not be limited to NSCC cleared transactions. The fee will apply to a broader membership base and will therefore be more equitably allocated among NASD members.

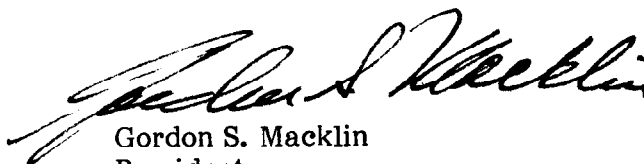
The Board of Governors has asked NSCC and the other clearing organizations to collect the fee for the convenience and accommodation of Association members.

NSCC will automatically collect the fee through its daily settlement process and it is anticipated that the regional clearing corporations will make similar arrangements.

Appropriate charges will be made to the accounts of members on a monthly basis with the first billings anticipated for the month ending July 29, 1983. The text of Section 9 follows.

Please direct any questions concerning the fee and/or the collection process to James Allen, Controller, NASD, at (202) 728-8181.

Sincerely,



Gordon S. Macklin
President

* * * *

SECTION 9 - FEE ON CLEARED TRANSACTIONS

Each member shall be assessed a charge not to exceed 12 cents per side for each over-the-counter transaction with another member of the Association cleared through a registered clearing agency in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.

* * * *



National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-36

July 20, 1983

TO: NASDAQ Subscribers and NASD Members

FROM: Molly G. Bayley
Vice President, NASDAQ Operations

RE: Subscriptions to Monthly Statistical Reports of NASDAQ Issues

NASDAQ market makers and NASD Members have expressed an interest in receiving copies of the Monthly Statistical Report to Issuers (MSR) on a regular basis. This Report has been compiled and sent on a monthly basis to NASDAQ company executives for several years. Each Report contains daily, weekly and monthly price and volume data on a particular security, the market makers in the issue, as well as NASDAQ Index and volume statistics, as shown on page 3 in slightly reduced form (the actual Report measures 8-1/2" by 11").

In response to the interest expressed, we are exploring the feasibility of instituting a paid subscription service for Monthly Statistical Reports. Since developmental costs could be substantial, we need to determine how much interest there is in either of two alternative approaches to a subscription service before proceeding.

In order to receive the widest possible indication of potential interest, this Notice and the enclosed reply card have been sent to all NASD Members and NASDAQ Subscribers. Please feel free to duplicate this Notice and distribute it to other individuals or departments within your firm who might find the Monthly Statistical Report useful. It has been suggested that Corporate Finance, Research, and Compliance Departments may be particularly interested. Indications of interest may be combined or returned separately by individuals and Departments within the firm.

The first alternative involves providing subscribers with approximately 17 microfiche each month containing the Monthly Statistical Reports for all NASDAQ and NASDAQ/NMS issues. A single subscription would cost approximately \$50 per year. A set of microfiche for a single month would cost approximately \$10.00.

There are several distinct advantages to this approach. First, it is significantly less expensive for potential subscribers.

Second, since the microfiche would cover all NASDAQ and NASDAQ/NMS issues each month, the subscriber would accumulate a complete historical file on all NASDAQ issues. In addition, general NASDAQ and NMS statistics are shown on the Reports, so subscribers to this service would build their own historical files of overall System volume and index data.

Finally, the microfiche could be mailed within two weeks of the end of the month and could be easily stored, as each monthly set of Reports would be contained on 17 microfiche measuring 4" by 6".

The disadvantage to this approach is that it requires the subscriber to have access to a microfiche reader. Also, if hard copies of the filmed Reports are desired, a microfiche reader/printer would need to be purchased or rented. There is a wide variety of readers or reader/printers available from, among other manufacturers: Canon, Micro Design, Minolta, National Micrographics Systems, Northwest Microfilm, Realist Micrographics Systems and 3M. Purchase prices for readers range from about \$220 - \$350; reader/printers are available from \$1,000 - \$2,000.

The second alternative involves providing subscribers with hard copies of those Reports they desire. This is a flexible option, but it is considerably more expensive. Subscribers would be able to order single or multiple hard copies of any number of Reports. For example, 10 copies of ABC Corp.'s Report for April could be ordered; or Reports for all National Market System stocks could be ordered on a continuing (monthly) basis; or a selected group of Reports on either a one-time or monthly basis could be requested. The cost for this type of service would be \$10 per Report.

The distinct advantage to this approach is its flexibility. Rather than receiving all NASDAQ and NMS Reports, subscribers could tailor their orders to receive only the Reports for companies in which they are interested. In addition, multiple copies of a single Report could be ordered. However, all orders for Reports would have to be received by NASDAQ prior to the monthly running of the Reports.

The distinct disadvantage to this alternative is the high per Report cost. The anticipated cost of this alternative is considerably higher than the microfiche. Depending upon the number of Reports received each month, filing space needed for storing paper copies could be considerably greater than that for the microfiche. Additionally, back issues of the Reports would not be available; subscribers would have to anticipate and pre-order Reports. Finally, it is estimated that, because of the considerable amount of manual sorting and packaging required for hard-copy Reports, it would probably take about 3 weeks following the end of the month to mail Reports to subscribers.

We would appreciate your taking a few minutes to indicate your interest and make any additional comments you may have on the enclosed postage-paid survey card, and dropping it in the mail.

Questions with respect to this survey, or requests for additional copies may be directed to Celia Kramer at (202) 728-8026 or to David Bowman at (202) 728-8028.

MONTHLY STATISTICAL REPORT
FOR MONTH ENDING 31 MAY 83



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

NASDAQ SYSTEM STATISTICS

COMPOSITE INDEX	ASSIGNED INDEX (FINANCE)	OTHER FINANCE
HIGH 312.18	271.57	
LOW 288.56	260.30	
CLOSE 308.73	269.39	
PREVIOUS CLOSE 293.06	263.24	
% CHANGE +5.34	+2.56	

TOTAL NASDAQ VOLUME: 1,492,081,600
 AVERAGE DAILY VOLUME: 71,051,504
 TOTAL MARKET VALUE: \$220,635,747,000

SUMMARY FOR THIS SECURITY

- QUOTE RANGE: HIGH BID 20 1/2 LOW BID 18 3/4
 HIGH ASK 21 LOW ASK 19 1/4
- CLOSING BID: (APR) 19 PERCENT CHANGE: +7.89
 (MAY) 20 1/2
- VOLUME FOR MONTH: 81,645

NASDAQ SYMBOL: XYZ
 SECURITY DESCRIPTION: COMMON STOCK (\$2.00 PAR VALUE)
 TOTAL SHARES OUTSTANDING: 1,000,000
 PLEASE NOTIFY NASD OF ANY CHANGE IN COMPANY CONTACT OR ADDRESS

Mr. John W. Doe
 President
 XYZ Corporation
 1234 Main Street
 Waterbridge, VA 22300

DATE	HIGH BID		LOW ASK		CLOSE BID		DAILY STATISTICAL REPORT		CHANGE (BID)	VOLUME	NASDAQ VOLUME	COMPOSITE CLOSE
	ASK	BID	ASK	BID	ASK	BID	HIGH ASK	LOW ASK				
MON 2	19 1/4	19 1/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	+	3,700	62,386,300	290.54
TUE 3	19 1/4	19 1/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	0	4,400	55,271,300	289.65
WED 4	19 1/4	19 1/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	0	3,685	64,346,700	293.21
THU 5	19 1/2	19 1/2	19 3/4	19 1/2	19 1/2	19 1/2	19 3/4	19 3/4	+	2,000	72,182,900	297.32
FRI 6	19 1/2	19 1/2	19 3/4	19 1/2	19 1/2	19 1/2	19 3/4	19 3/4	+	17,685	82,020,800	301.64
WEEK											386,208,000	301.64
MON 9	19 1/2	19 1/2	19 3/4	19 1/2	19 1/2	19 1/2	19 3/4	19 3/4	0	2,918	67,322,400	302.65
TUE 10	19 1/2	19 1/2	19 3/4	19 1/2	19 1/2	19 1/2	19 3/4	19 3/4	0	2,700	76,832,000	304.34
WED 11	19 1/2	19 1/2	19 3/4	19 1/2	19 1/2	19 1/2	19 3/4	19 3/4	0	3,500	77,560,200	302.89
THU 12	19 1/4	19 1/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	-	11,370	70,814,600	302.15
FRI 13	19 1/4	19 1/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	0	4,232	78,070,600	303.94
WEEK										24,820	370,699,800	303.94
MON 16	19 1/4	19 1/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	-	6,427	62,175,000	299.60
TUE 17	19 1/4	19 1/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	0	4,564	62,184,600	301.02
WED 18	19 3/4	19 3/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	-	5	77,215,000	303.51
THU 19	19 3/4	19 3/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	0	1,908	68,132,700	302.82
FRI 20	19 1/4	19 1/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	-	1,400	69,582,000	303.56
WEEK										13,304	339,289,300	303.56
MON 23	18 7/8	18 7/8	19 1/4	18 7/8	18 7/8	18 7/8	19 1/4	19 1/4	-	1,150	59,437,300	303.86
TUE 24	19 1/4	19 1/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	+	3,890	72,101,600	307.36
WED 25	19 1/4	19 1/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	0	1,260	80,568,100	309.16
THU 26	19 1/4	19 1/4	19 3/4	19 1/4	19 1/4	19 1/4	19 3/4	19 3/4	0	1,300	83,935,400	311.39
FRI 27 XD	19 1/2	19 1/2	19 3/4	19 1/2	19 1/2	19 1/2	19 3/4	19 3/4	A	8,000	79,747,400	312.05
WEEK										14,600	375,789,800	312.05
MON 30	HOLIDAY									0		
TUE 31	20 1/2	20 1/2	21	20 1/2	20 1/2	20 1/2	21	21	+	11,236	70,094,700	308.73
WEEK									+	11,236	70,094,700	308.73

AS OF 05/20/83

NASDAQ MARKET MAKERS IN THIS SECURITY

- | | | | |
|---------------------------|---------------------------------|-----------------------------|------------------------------|
| SMITH BARNY/HARRIS UPHAM | SHEARSON/AMERICAN EXPRESS, INC. | BEAR, STEARNS & CO. | STIFEL, NICOLAUS & CO., INC. |
| MERRILL LYNCH | KEEFE, BRUYETTE & WOODS, INC. | FIRST STATE FINANCIAL, INC. | |
| DEAN WITTER REYNOLDS INC. | ROTAN MOSLE INC. | BLUNT ELLIS & LOEWI INC. | |



National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-37

July 18, 1983

TO: All NASD Members and NASDAQ Level 2 and Level 3 Subscribers

RE: 44 Securities Scheduled to Join NMS on August 9

On Tuesday, August 9, 1983, 44 securities will join the 378 then trading in the NASDAQ National Market System. These securities have met the requirements for NMS mandatory designation, which include an average trading volume of 600,000 shares a month for six months through June and a bid price of \$10 on the last five days in June. As required by SEC Rule 11Aa2-1, all issues meeting the mandatory designation requirements at the end of each quarter automatically are added to the National Market System within 45 days of the quarter ending date.

The 44 securities joining the NASDAQ NMS on August 9 are:

ALWC	A. L. Williams Corporation (The)	Atlanta, GA
AMSWA	American Software, Inc. (ClassA)	Atlanta, GA
SRGY	American Surgery Centers Corporation	Scottsdale, AZ
BIOR	Bio-Response, Inc.	Wilton, CT
COAT	Burlington Coat Factory Warehouse Corporation	Burlington, NJ
CACI	CACI, Inc.	Arlington, VA
CALF	California Federal Savings and Loan Association	Los Angeles, CA
CRIC	Collaborative Research, Inc.	Lexington, MA
CMCSA	Comcast Corporation (Class A)	Bala Cynwyd, PA
CMTL	Comtech Telecommunications Corporation	Syosset, NY
DCAI	Digital Communications Associates, Inc.	Norcross, GA
DYNA	Dynasean Corporation	Chicago, IL
EGLC	Eagle Computer, Inc.	Los Gatos, CA
EXCA	Excalibur Technologies Corporation	Albuquerque, NM
FMIF	FMI Financial Corporation	Miami Beach, FL
FERO	Ferrofluidics Corporation	Nashua, NH
FRST	First Capital Financial Corporation	Coral Gables, FL

FLFE	Florida Federal Savings and Loan Association	St. Petersburg, FL
GENA	General Automation, Inc.	Anaheim, CA
GNLE	General Energy Corporation	Lexington, KY
GSTX	Gibraltar Savings Association	Houston, TX
HILX	Helionetics, Inc.	Irvine, CA
HOGN	Hogan Systems, Inc.	Dallas, TX
HFED	Home Federal Savings and Loan Association	San Diego, CA
KEJO	Kelly-Johnston Enterprises, Inc.	Oklahoma City, OK
LLSI	LSI Logic Corporation	Milpitas, CA
MSCO	MASSTOR Systems Corporation	Sunnyvale, CA
MSAI	Management Science America, Inc.	Atlanta, GA
NTWK	Network Security Corporation	Dallas, TX
PHAR	Pharmacontrol Corporation	Englewood Cliffs, NJ
PORX	Porex Technologies Corporation	Fairburn, GA
PRIA	Priam Corporation	San Jose, CA
QUCA	Quality Care, Inc.	New York, NY
RADC	Radice Corporation	Fort Lauderdale, FL
SUMA	Summa Medical Corporation	Albuquerque, NM
SYNE	Syntech International, Inc.	Dallas, TX
TCRD	Telecredit, Inc.	Los Angeles, CA
VFED	Valley Federal Savings and Loan Association	Van Nuys, CA
VICR	Victor Technologies, Inc.	Scotts Valley, CA
VSTA	Victoria Station Incorporated	Larkspur, CA
WAMU	Washington Mutual Savings Bank	Seattle, WA
WVTK	Wavetek Corporation	San Diego, CA
WDCL	Western Digital Corporation	Irvine, CA
XEBC	Xebec	Sunnyvale, CA

Any questions regarding the notice should be directed to Donald Botic, Assistant Director, NASDAQ Operations, at (202) 728-8043. Questions pertaining to trade reporting rules should be directed to Leon Bastien at (202) 728-8202.

Sincerely,


Gordon S. Macklin
President

NASD

National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-38

July 21, 1983

IMPORTANT

OFFICERS, PARTNERS AND PROPRIETORS

TO: All NASD Members

RE: SEC Adopts Amendments to Rule 10b-10; Confirmation Rule

BACKGROUND

On April 18, 1983, the Securities and Exchange Commission issued Release No. 34-19687 announcing the adoption of changes to Rule 10b-10 under the Securities Exchange Act of 1934 (17 CFR 240 10b-10), the "securities confirmation rule," (the "Rule"). Rule 10b-10 requires broker-dealers to send customers a written confirmation on or before the completion of a transaction. It also prescribes the type of information required to be displayed on securities confirmations. This information varies with the circumstances of the transaction and the type of security.

The amendments to Rule 10b-10 fall into two categories; the first concerns the confirmation requirements for shares of certain no-load, open-end registered investment companies and the second a requirement for disclosure of yield and call information for transactions in debt securities similar to those currently in effect for municipal securities.

INVESTMENT COMPANY CONFIRMATIONS

Since 1977, the Commission has granted exemptions to the requirement for immediate delivery of confirmations to allow broker-dealers having account

management plans* to send monthly confirmations of certain transactions in "money market" funds. In response to the comments of the Association and others to proposed changes in the Rule, the Commission determined to extend the confirmation exemption to all transactions in investment companies that attempt to maintain a constant net asset value per share, that hold themselves out to be "money market" funds, or have at least 80% of their assets in debt securities maturing in 13 months or less, and charge no sales load or redemption fee. This exemption will be available to all broker-dealers that effect transactions in such funds, whether or not the broker-dealer is affiliated with the fund.

Accordingly, for only this type of security, Rule 10b-10 will be amended to permit the use of monthly account statements where previously individual confirmations were required. The monthly account statements must be sent within 5 business days of the end of each monthly period and must include all information currently required in the quarterly confirmation requirements of Rule 10b-10 including:

- (1) All purchases, sales, dividends or distributions during the period.
- (2) The date of the transaction.
- (3) The identity, number and price of any securities purchased or sold.
- (4) The total number of shares of such securities in such customer's account.
- (5) Any remuneration received or to be received in connection with the transaction.

This requirement becomes effective July 25, 1983.

CONFIRMATION OF DEBT SECURITIES

The second part of the amendments to Rule 10b-10 requires the disclosure on confirmations of yield and call information for transactions in debt securities. "Debt securities" are defined in the rule as any instrument which evidences a liability of an issuer and includes bonds, debentures, notes or fractional or participation interests therein. The rule is also applicable to transactions in government securities (except U.S. Savings Bonds) and certain other debt instruments described below. This new disclosure requirement is structured as follows:

* Plans in which the customer may purchase shares of money market mutual funds as specified in the plan, with funds drawn from the customer's securities account, and redeem such shares also in accordance with the terms specified in the plan (e.g., to satisfy a debit balance created by the purchase of securities or by the exercise of a check, credit or debit card or similar withdrawal option provided in the plan).

- (1) As to trades in debt securities effected exclusively on a dollar price basis, the dollar price of the trade and the yield to maturity based on that dollar price must be displayed.
- (2) As to trades in debt securities effected on a yield basis:
 - (i) The dollar price calculated from the yield at which the transaction was effected must be displayed; and,
 - (ii) If the transaction is effected on a basis other than yield to maturity and yield to maturity is less than the represented yield, the confirmation should display yield to maturity as well as represented yield.

Transactions in debt securities having an interest rate or maturity date which is subject to change have been exempted from certain of the debt security confirmation requirements.* The Rule recognizes that under such circumstances, it is not possible to calculate a meaningful yield to maturity. If such transactions are effected on a yield basis, the confirmation must display that yield, including the dollar price calculated from the yield. The requirement to display yield to maturity is waived.

If the security may be called for redemption before maturity, a legend must be displayed to that effect. The legend must also disclose that redemption could affect the represented yield and that additional information is available on request.

The following chart summarizes the yield and call disclosure requirements.

Debt Securities


	Required Disclosure
Dollar Price Basis	<ul style="list-style-type: none">● Dollar price● Yield to maturity based on dollar price
Yield Price Basis	<ul style="list-style-type: none">● Yield● Type of yield; (yield to maturity, yield to call, or current)● Dollar price based on yield
Callable Security	<ul style="list-style-type: none">● Call legend

* For example, transactions in participation interests secured by liens upon real estate, continuously subject to prepayment, such as Government National Mortgage Association (GNMA) securities, are exempt from the yield to maturity disclosure requirements. Where the GNMA or similar security is sold on a special yield basis (e.g., yield to twelve year average life), that yield and related dollar price must be disclosed, and the significance of that special yield must be explained to the customer.

The new yield and call confirmation requirements of Rule 10b-10 become effective on January 1, 1984. The text of the rule follows.

Please direct any questions concerning Rule 10b-10 to Elizabeth Wollin at (202) 728-8266.

Sincerely,



Gordon S. Macklin
President

Attachment

federal register

Federal Register / Vol. 48, No. 80 / Monday, April 25, 1983 / Rules and Regulations

17583

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-19687, File No. S7-942]

Securities Confirmations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendments.

SUMMARY: The Commission is adopting amendments to Rule 10b-10 under the Securities Exchange Act of 1934 ("Act") which specifies disclosures to be made on confirmations delivered to customers by broker-dealers in connection with transactions in securities. The amendments provide an exception from the immediate delivery requirements of the rule for transactions in shares of certain investment companies that attempt to maintain a constant net asset value. The amendments also will require disclosure to investors of certain yield and call feature information in connection with transactions in debt securities other than municipal securities.

DATES: Paragraphs (c)(1)-(3), relating to the use of monthly confirmation statements, will become effective July 25, 1983. Paragraphs (a)(3)-(5) and (e)(4) of Rule 10b-10, requiring disclosure of yield and call feature information, will become effective January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Susan J. Walters, Esq., (202) 272-7494, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission today announced the adoption of amendments to its securities confirmation rule, Rule 10b-10 (17 CFR 240.10b-10) under the Act.¹ The

amendments were published for comment in August 1982.² As proposed, the amendments would have provided a limited exception to the immediate delivery requirements of the confirmation rule for pre-authorized or "automatic" transactions in shares of money market funds, tax-exempt bond funds or U.S. government funds in connection with certain plans defined as "account management plans." Upon its review of the proposals and consideration of the comments received, the Commission has determined to expand the exception to the immediate confirmation delivery requirements of Rule 10b-10 to allow the use of monthly statements in confirmations of all redemptions and purchases of shares of certain investment companies that attempt to maintain a constant net asset value.

The proposed amendments requiring disclosure of yield and call provisions have been adopted substantially as proposed. These amendments will require any broker or dealer that effects a transaction for or with a customer in any debt security, with certain exceptions, to include in the customer's written confirmation information on the yield and call provisions of the security.

II. Discussion

1. Use of Monthly Statements

Rule 10b-10 generally requires that broker-dealers send to customers a written confirmation of securities transactions on or before completion of the transaction. Since 1977, however, the Commission has granted exemptions from this immediate delivery requirement to allow broker-dealers, in connection with account management plans,³ to send monthly confirmations of certain transactions in shares of money market funds. The proposed

amendments would have codified these exemptions. The amendments would have drawn a distinction between pre-authorized ("automatic") and individually directed ("manual") transactions and between transactions in money market funds pursuant to account management plans and other fund transactions. Only automatic transactions in account management plans would have qualified for the exception as proposed.

The commentators unanimously supported the amendments as a deregulatory initiative that would result in substantial cost savings to the industry and the public without adversely affecting investors. Some commentators noted, however, that extension of the proposed exception to all transactions in investment companies that seek to maintain constant net asset value would provide even greater cost reduction without materially decreasing customer protection. Commentators suggested that where funds maintain a constant net asset value per share and no load is charged, monthly statements would be adequate to ensure investor protection. One commentator also noted that alternative means to immediate

³ The term "account management plan" was defined in the proposed amendments to include plans in which the customer may purchase shares of money market mutual funds as specified in the plan with funds drawn from the customer's account and redeem such shares also in accordance with the terms specified in the plan (e.g., to satisfy a debit balance created by the purchase of securities or by the exercise of a check, credit or debit card or similar withdrawal option provided in the plan). These transactions were considered to be "automatic" (pre-authorized by the customer) as opposed to "manual" (individually directed transactions).

¹ 15 U.S.C. 78 *et seq.*

² Securities Exchange Act Release No. 18908 (Aug. 20, 1982), 47 FR 37920 (Aug. 27, 1982) ("Proposing Release").

confirmations are frequently available to money market fund shareholders to determine whether a transaction has been effected correctly. For example, a number of funds provide shareholders with a toll free telephone number that they may use to obtain account information. A customer's account executive may also be able to provide account information.

The confirmation is designed to provide customers with information necessary for investment decisions. Where fund shares are priced at a constant net asset value per share and no load is charged, the need for investors to receive immediate confirmations does not appear to outweigh the cost to broker-dealers of providing the confirmation. Accordingly, the Commission has determined to extend the proposed exception to the confirmation delivery requirements of the rule to all transactions in investment companies that attempt to maintain a constant net asset value per share where no sales load or redemption fee is charged. The amendment will become effective July 25, 1983, in order to provide broker-dealers and transfer agents with sufficient time to review their internal controls and develop adequate systems to use the exception.

As adopted, the exception will permit broker-dealers to use monthly account statements in lieu of individual, immediate confirmations for all purchases and redemptions of shares of any no-load open-end investment company registered under the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share and that holds, itself out to be a "money market" fund or has an investment policy calling for at least 80% of its assets in debt securities maturing in 13 months or less. The exception will be available to all broker-dealers that effect transactions in such funds, regardless of whether the broker-dealer is affiliated with the fund.

The monthly account statement is required to be given or sent within five business days of the end of each monthly period and must include substantially all the information currently required in the quarterly confirmation provisions of paragraph (b) of Rule 10b-10.⁴ This information will include, among other things, purchases and redemptions of fund shares and the total number of fund shares held by the customer.

⁴ The amendment would not, of course, change the availability of other confirmation alternatives such as the use of quarterly statements now permitted by certain provisions of Rule 10b-10.

2. Disclosure of Yield and Call Information

The Commission believes that disclosure of yield and call feature information for transactions in debt securities will significantly benefit investors without unduly increasing industry costs. Yield has been characterized as the single most important piece of information to an investor in the context of a transaction in debt securities, and the securities industry has suggested that broker-dealers should be required to provide that information to customers.⁵ The confirmation rule of the Municipal Securities Rulemaking Board ("MSRB") currently requires disclosure of yield information for transactions in municipal securities.⁶

As adopted, the amendments will require broker-dealers to include in the written confirmation of transactions in debt securities with customers⁷ several additional items of information. Broker-dealers must disclose, in the case of a transaction in a debt security effected exclusively on a dollar price basis,⁸ the dollar price at which the transaction was effected and the yield to maturity calculated from the dollar price.

In the case of a transaction in a debt security effected on the basis of yield, the confirmation must disclose (1) the yield at which the transaction was effected, including the percentage amount and the characterization of the yield as, for example, yield to maturity or call or current yield, and, if effected at yield to call, the type of call (*e.g.*, whole or part-issue call), the call date and call price; (2) the dollar price calculated from the yield at which the transaction was effected; and (3) if the transaction is effected on a basis other than yield to maturity and yield to maturity is less than the represented yield, the yield to maturity as well as the represented yield.

In response to the commentators' concerns, the Commission has exempted from the yield to maturity disclosure requirements transactions in debt

⁵ See, *e.g.*, letter from the Corporate Bond Committee of the Securities Industry Association to Roger D. Blanc, Chief Counsel, Division of Market Regulation (July 2, 1979).

⁶ MSRB Rule G-15.

⁷ As defined in Rule 10b-10(d)(1), the term "customer" does not include a broker or dealer.

⁸ One commentator questioned the use of the term "basis" as used in the Rule. For purposes of the Rule, a transaction will be considered to have been effected on a dollar price basis only if a yield figure is not provided either orally or in writing to the customer before preparation of the confirmation. If transactions are in fact effected on a dollar price basis, the confirmations must show the yield to maturity calculated from the dollar price discussed with the customer.

securities where the interest rate or maturity date is subject to change. The Commission understands that under these circumstances it is not possible to calculate a meaningful yield to maturity. Therefore, in those instances where such securities trade on a dollar basis, the yield to maturity need not be disclosed. However, if the broker-dealer effects transactions in such securities on a yield basis, the confirmation must contain that yield, including the percentage amount and the characterization of the yield. The yield to maturity, however, is not required to be disclosed for such yield basis transactions.

Transactions in participation interests in notes secured by liens upon real estate continuously subject to prepayment, such as Government National Mortgage Association securities ("GNMA"), similarly are exempt from the yield to maturity disclosure requirements. Depending upon the level of the interest rates on the mortgages that comprise the pool, the mortgages may be prepaid within varying periods of time. The Commission understands that broker-dealers often quote investors the yield to twelve year average life for purposes of comparing different GNMA's, although that figure may be significantly different from the actual yield to investors. Where the GNMA or similar security is sold on a yield basis, as, for example, the yield to twelve year average life, that yield and the dollar price calculated from the yield must be disclosed. In addition, since some investors may not adequately understand the significance of the yield to twelve year average life, the broker-dealer should clearly explain the significance of that figure to their customers.

If the securities may be called for redemption before maturity, a legend must be included disclosing that fact, that redemption could affect the represented yield and that additional information is available upon request.⁹ As discussed in the Proposing Release, the Commission is concerned that investors often do not adequately understand the nature and effect of call provisions on debt securities.¹⁰ The rule does not set forth the particular language of the legend in order to afford flexibility to broker-dealers, particularly

⁹ Some commentators requested that the Commission clarify the kind of additional information that would be required to be supplied upon a customer request. Broker-dealers generally will satisfy this requirement by describing the call feature printed on the instrument.

¹⁰ See Proposing Release, 47 FR at 37922.

those that have devised a similar legend to comply with MSRB Rule G-15.¹¹

III. Certain Findings, Effective Date and Statutory Basis

Section 23(a)(2) of the Act¹² requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amendments to Rule 10b-10 in light of the standards cited in Section 23(a)(2) and believes that adoption of the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), interested persons were given an opportunity to submit written views on the proposed amendments to Rule 10b-10. After consideration of the relevant matters presented, the proposed amendments concerning yield and price disclosures are adopted substantially as proposed with some technical changes for clarity. In response to commentators' suggestions, the proposed amendments dealing with the exception from the immediate confirmation delivery requirements for certain transactions in shares of investment companies are extended to transactions in shares of investment companies that seek to maintain a constant net asset value. The issues with respect to the extension have been thoroughly considered during the comment period. Extended delay in adopting the amendments would be costly to investors and broker-dealers. Therefore, the Commission, for good cause, pursuant to 5 U.S.C. 553(b)(3)(B), finds that further notice and public procedure with respect to the amendments would be unnecessary, impracticable, and contrary to the public interest.

The amendments to Rule 10b-10 with respect to the use of monthly confirmations in lieu of immediate confirmations have been modified in response to commentators' suggestions. These amendments will become effective July 25, 1983.¹³ The

¹¹ While the rule requires use of the legend where debt securities are subject to call, it does not prohibit inclusion of the legend on confirmations of debt securities not subject to early redemption. Therefore, the rule permits the use of pre-printed confirmation forms.

¹² 15 U.S.C. 78w(a)(2).

¹³ In the Proposing Release, the Commission stated that the staff would not recommend enforcement action under Rule 10b-10 if broker-dealers conformed their customer confirmation delivery procedures for account management plans, as defined in the release, to the proposed

amendments to Rule 10b-10 with respect to disclosure of yield and call information will become effective January 1, 1984.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), the Chairman has certified that the amendments as adopted will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to the release.

Statutory Basis

The Securities and Exchange Commission hereby amends § 240.10b-10 in Chapter II, Title 17 of the Code of Federal Regulations, pursuant to its authority under the Act, and particularly Sections 3, 10, 11, 15, 17, and 23 thereof (15 U.S.C. 78c, 78j, 78k, 78o, 78q, and 78w).

List of Subjects in 17 CFR Part 240

Reporting requirements, Securities.

Text of Amendments to Rule 10b-10

Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

By amending § 240.10b-10 by adding new paragraphs (a)(3), (a)(4), and (a)(5); by adding new paragraphs (c), (c)(1), (c)(2) and (c)(3); by adding new paragraph (e)(4); by revising the reference to paragraph (a)(4)(ii) in paragraph (a)(3) to read "paragraph (a)(7)(ii)"; by revising the reference to five days in paragraph (b)(2) to read "five business days"; by redesignating existing paragraphs (a)(3), (a)(4), and (a)(5) to be paragraphs (a)(6), (a)(7), and (a)(8), respectively; by redesignating existing paragraph (c) to be paragraph (d); by redesignating existing paragraphs (d), (d)(1), (d)(2), (d)(3), (d)(4), and (d)(5) to be paragraphs (e), (e)(1), (e)(2), (e)(3), (e)(5), and (e)(6), respectively; and by redesignating existing paragraph (e) to be paragraph (f), to read as follows: § 240.10b-10 Confirmation of Transactions.

§ 240.10b-10 [Amended]

(a) * * *

(3) In the case of any transaction in a debt security subject to redemption before maturity, a statement to the effect that such debt security may be

amendments. Broker-dealers may continue to rely on this position in connection with these account management plans pending the effective date of the amendments with respect to monthly confirmations.

redeemed in whole or in part before maturity, that such a redemption could affect the yield represented and that additional information is available upon request; and

(4) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price

(i) The dollar price at which the transaction was effected, and

(ii) The yield to maturity calculated from the dollar price; *Provided, however,* that this paragraph (ii) shall not apply to a transaction in a debt security with a maturity date that may be extended by the issuer thereof, with a variable interest rate payable thereon, or a participation interest in notes secured by liens upon real estate continuously subject to prepayment; and

(5) In the case of a transaction in a debt security effected on the basis of yield.

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type to call, the call date and call price;

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; *Provided, however,* that this paragraph (iii) shall not apply to a transaction in a debt security with a maturity date that may be extended by the issuer thereof, with a variable interest rate payable thereon, or a participation interest in notes secured by liens upon real estate continuously subject to prepayment; and

* * * * *

(c) A broker or dealer may effect transactions for or with the account of a customer without giving or sending to such customer the written notification described in paragraph (a) of this section if

(1) Such transactions are effected in shares of any no-load open-end investment company registered under the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share and that holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less; and

(2) Such broker or dealer gives or sends to such customer within five business days after the end of each monthly period a written statement

disclosing each purchase or redemption, effected for or with, and each dividend or distribution credited to, or reinvested for, the account of such customer during the month; the date of each such transaction; the identity, number and price of any securities purchased or redeemed by such customer in each such transaction; the total number of shares of such securities in such customer's account; and remuneration received or to be received by the broker or dealer in connection therewith; and that any other information required by paragraph (a) will be furnished upon written request; and

(3) Such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in paragraph (c)(1) on a monthly basis in lieu of an immediate confirmation.

* * * * *

(e) * * *

(4) "Debt security" as used in paragraphs (a)(3), (a)(4), and (a)(5) only, means any security, such as a bond, debenture, note, or any other similar instrument which evidences a liability of the issuer (including any such security that is convertible into stock or a similar security) and fractional or participation interests in one or more of any of the foregoing: *Provided, however*, that securities issued by an investment company registered under the Investment Company Act of 1940 shall not be included in this definition;

* * * * *

By the Commission.

Dated: April 18, 1983.

George A. Fitzsimmons,
Secretary.

Regulatory Flexibility Act Certification

I, John Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Rule 10b-10 set forth in Securities Exchange Act Release No. 18988, if promulgated, will not have a significant economic impact on a substantial number of small broker-dealers. The Commission received thirteen comment letters which were generally supportive. The amendments requiring yield and call disclosures have been revised to clarify technical questions raised by commentators. In addition, the limited number of small broker-dealers that trade corporate debt securities frequently clear through larger broker-dealers that process the confirmation. Finally, the extension of the exception to permit broker-dealers to use monthly account statements in connection with transactions in shares of certain investment companies will reduce confirmation costs to all broker-dealers engaged in such transactions.

John S. R. Shad,
Chairman.

[FR Doc. 83-10845 Filed 4-22-83; 8:45 am]
BILLING CODE 8010-01-M