

NASD

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

notice to members 87-20

April 1, 1987

TO: All NASD Members and Interested Persons

RE: Request for Comments on Proposed Amendment to Article V, Section 1 of the NASD Rules of Fair Practice

LAST DATE FOR COMMENT: MAY 1, 1987.

EXECUTIVE SUMMARY

The NASD requests comments on a proposed amendment to Article V, Section 1 of the NASD Rules of Fair Practice. The amendment would remove the current limitation of \$15,000 that a member or a person associated with a member could be fined for each violation of the Rules of Fair Practice.

The NASD Board of Governors believes this amendment is necessary in order to enhance the NASD's flexibility in imposing sanctions for serious misconduct.

The text of the proposed amendment is attached.

BACKGROUND

Article V, Section 1 of the NASD Rules of Fair Practice imposes a limitation on fines that may be assessed in NASD disciplinary proceedings. Currently, a fine of no more than \$15,000 per violation may be assessed against a member or a person associated with a member. The present ceiling on fines was the result of a 1984 amendment to the Rules of Fair Practice which raised the amount per violation from \$5,000 to \$15,000.

The NASD Board of Governors believes that the current limitation on fines may, in certain cases, inhibit the NASD's ability to adequately redress violations of the Rules of Fair Practice. There have been a few cases in which the

number of alleged violations was small but the underlying misconduct was egregious and/or involved substantial sums. In those instances, the NASD's ability to respond appropriately to the gravity of the misconduct was limited because of the current limitation on the amount of fines under Article V, Section 1. This restriction undermines the usefulness of fines as a deterrent to future misconduct.

To enhance the NASD's flexibility in imposing sanctions in instances of serious misconduct, the Board of Governors has determined it appropriate to publish this proposed amendment for comment.

PROPOSED AMENDMENT

The proposed amendment to Article V, Section 1 of the NASD Rules of Fair Practice would eliminate the \$15,000 ceiling placed on the amount of the fine that the NASD's District Business Conduct Committees (DBCCs) or Board of Governors may assess for each violation of the Rules of Fair Practice. The amendment would allow a DBCC or the Board to establish the amount of each fine based upon the nature of the violation and other relevant considerations.

* * * * *

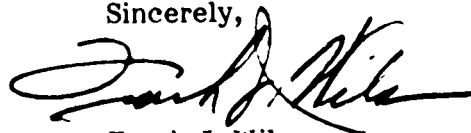
The NASD encourages all members and other interested persons to comment on the proposed amendment. Comments should be directed to:

Mr. Lynn Nellius
Secretary
National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1506

Comments must be received no later than May 1, 1987. Comments received by this date will be considered by the NASD's National Business Conduct Committee and the NASD Board of Governors. If the proposed amendment is approved by the Board, it will be submitted to the membership for a vote. If approved by the membership, the amendment must be filed with and approved by the Securities and Exchange Commission before becoming effective.

Questions concerning this notice may be directed to Norman Sue, Jr., Senior Attorney, NASD Office of General Counsel, at (202) 728-8117.

Sincerely,



Frank J. Wilson
Executive Vice President
and General Counsel

Attachment

PROPOSED AMENDMENT TO ARTICLE V OF THE NASD RULES OF FAIR PRACTICE*

Penalties

Penalties for Violation of the Rules

Sec. 1. Any District Business Conduct Committee, or the Board of Governors, in the administration and enforcement of these Rules, and after compliance with the Code of Procedure, may (1) censure any member or person associated with a member and/or (2) impose a fine [not in excess of Fifteen Thousand Dollars (\$15,000.00)] upon any member or person associated with a member and/or (3) suspend the membership of any member or suspend the registration of a person associated with a member, if any, for a definite period, and/or (4) expel any member or revoke the registration of any person associated with a member, if any, and/or (5) suspend or bar a member or person associated with a member from association with all members, or (6) impose any other fitting penalty deemed appropriate under the circumstances, for each or any violation of any of these Rules by a member or person associated with a member or for any neglect or refusal to comply with any orders, directions or decisions issued by any District Business Conduct Committee or by the Board of Governors in the enforcement of these Rules, including any interpretative ruling made by the Board of Governors, as any such Committee or Board, in its discretion, may deem to be just; provided, however, that no such penalty imposed by any District Business Conduct Committee shall take effect until the period for appeal therefrom or review has expired, as provided in Section 14 of the Code of Procedure; and provided, further, that all parties to any proceeding resulting in a penalty shall be deemed to have assented to or to have acquiesced in the imposition of such penalty unless any party aggrieved thereby shall have made application to the Board of Governors for review pursuant to the Code of Procedure, within fifteen (15) days after the date of such notice.

* Deleted text is bracketed.



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

notice to members 87-21

April 2, 1987

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

RE: NASDAQ National Market System Grows to 2,847 Securities With 37 Voluntary Additions on April 7, 1987

On Tuesday, April 7, 1987, 37 issues are scheduled to join the NASDAQ National Market System, bringing the total number of issues in NASDAQ/NMS to 2,847. These 37 issues, which will begin trading under real-time trade reporting, are entering NASDAQ/NMS pursuant to the Securities and Exchange Commission's criteria for voluntary designation.

The 37 issues scheduled to join NASDAQ/NMS on Tuesday, April 7, 1987, are:

Symbol*	Company	Location
ABGA	Allied Bankshares, Inc.	Thomson, GA
AMJX	American Federal Savings Bank of Duval County	Jacksonville, FL
AMTY	Amity Bancorp, Inc.	New Haven, CT
BBPI	Barry Blau & Partners, Inc.	Fairfield, CT
BITX	Biotherapeutics, Incorporated	Franklin, TN
BSBC	Branford Savings Bank	Branford, CT
CBTF	CB&T Financial Corp.	Fairmont, WV
CNSB	Centennial Savings Bank, F.S.B.	Durango, CO
CFNE	Circle Fine Art Corporation	Chicago, IL
CLSC	Clinical Sciences, Inc.	Whippany, NJ
CRFH	Craft House Corporation	Toledo, OH
DOMZ	Dominguez Water Corporation	Long Beach, CA

* NASDAQ symbols are proprietary to the National Association of Securities Dealers, Inc.

Symbol*	Company	Location
FBXC	FBX Corporation	Hauppauge, NY
FFOD	First Federal Savings Bank	Dickson, TN
FFAT	First Federal Savings & Loan Association of Austin	Austin, TX
GBAN	Gateway Bancorp, Inc.	Staten Island, NY
GBLD	General Building Products Corporation	Medford, NY
GSOF	Group 1 Software, Inc.	Washington, D.C.
HITK	HITK Corporation	Stamford, CT
HTHR	Hawthorne Financial Corporation	Hawthorne, CA
HIMGP	Health Images, Inc. (Pfd)	Atlanta, GA
IDEA	Invention, Design, Engineering Associates, Inc.	Torrance, CA
LEXB	Lexington Savings Bank	Lexington, MA
MAJV	Major Video Corp.	Las Vegas, NV
MAKL	Markel Corporation	Richmond, VA
MESL	Mesa Airlines, Inc.	Farmington, NM
MIDC	MidConn Bank	Kensington, CT
NMRC	NMR Centers, Inc.	Newport Beach, CA
NAVI	North American Ventures, Inc.	East Hartford, CT
NAVIW	North American Ventures, Inc. (Wts)	East Hartford, CT
RABT	Rabbit Software Corporation	Malvern, PA
SCHCP	R. P. Scherer Corporation (Pfd)	Troy, MI
SUND	Sound Advice, Inc.	Ft. Lauderdale, FL
CCCI	3CI Incorporated	Fort Collins, CO
TODD	Todd-AO Corporation (The)	San Francisco, CA
UNAM	Unico American Corporation	Los Angeles, CA
VLGEA	Village Super Market, Inc. (Cl A)	Springfield, NJ

The following issues may be included in NASDAQ/NMS prior to the next regularly scheduled phase-in date:

Pending Additions

Symbol*	Company	Location
AMEA	A.M.E., Inc.	Burbank, CA
DEER	Deerfield Federal Savings & Loan Association	Deerfield, IL
FFNS	First Financial Savings Association, F.A.	Cincinnati, OH
FSHG	Fisher Scientific Group, Inc. (WI)	La Jolla, CA

Symbol*	Company	Location
FRML	Freymler Trucking, Inc.	Bakersfield, CA
WFOR	Washington Federal Savings Bank	Hillsboro, OR

NASDAQ/NMS Interim Additions

Symbol*	Security	Date of Entry
PLAB	Photronic Labs, Inc.	3/10/87
AXXN	Action Auto Rental, Inc.	3/11/87
NBBS	New Bedford Institution for Savings	3/12/87
RHPOY	Rhone-Poulenc, S.A.	3/17/87
BRIK	Brinkmann Instruments, Inc.	3/18/87
MMRH	MMR Holding Corporation	3/19/87
NHER	National Heritage, Inc.	3/24/87
INTCZ	Intel Corporation (1992 Wts)	3/25/87
PXRE	Phoenix Re Corporation	3/25/87
XLGX	Xylogics, Inc.	3/25/87
APBI	Applied Bioscience International, Inc.	3/26/87
BFSB	Bristol Federal Savings Bank	3/26/87
CROP	Crop Genetics International NV	3/26/87
OFBS	Oriental Federal Savings Bank	3/26/87
CWTS	Country Wide Transport Services, Inc.	3/27/87
FIRF	First Financial Savings Association	3/27/87
PRXS	Praxis Biologics, Inc.	3/27/87

The following changes to the list of NASDAQ/NMS securities occurred since March 6, 1987:

NASDAQ/NMS Symbol* and/or Name Changes

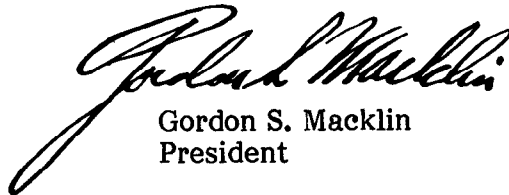
New/Old Symbol*	New/Old Security	Date of Change
BART/BART	Barton Industries, Inc./Barton Valve Company, Inc.	3/11/87
PAKS/PAKS	PAXAR Corporation/Packaging Systems Corporation	3/17/87
BRAN/BRAN	Brand Companies, Inc. (The)/Brand Insulations, Inc.	3/30/87

NASDAQ/NMS Deletions

Symbol*	Security	Date
UPCO	United Presidential Corporation	3/09/87
LIEB	Liebert Corporation	3/11/87
PPSI	Paco Pharmaceutical Services, Inc.	3/12/87
UNSB	United Bank	3/16/87
ASEC	American Security Corporation	3/17/87
COBAP	Commerce Bancorp, Inc. (Pfd)	3/17/87
LTCO	Landmark Technology Corporation	3/19/87
AARE	Adams-Russell Electronics Co., Inc.	3/20/87
NELR	Nelson Research & Development Company	3/24/87
VALT	Valtek, Incorporated	3/25/87
ATEC	AT & E Corporation	3/26/87
FAIR	Fair Lanes, Inc.	3/27/87
ACRA	Accuray Corporation	3/30/87
OLVRQ	Oliver's Stores, Inc.	3/30/87
SPARW	Spartan Motors, Inc. (Wts)	3/30/87
USPCW	U.S. Playing Card Corporation (Wts)	3/30/87

Any questions regarding this notice should be directed to Kit Milholland, Senior Analyst, NASDAQ Operations, at (202) 728-8281. Questions pertaining to trade reporting rules should be directed to Leon Bastien, Assistant Director, Market Surveillance, at (202) 728-8192.

Sincerely,



Gordon S. Macklin
President



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

notice to members 87-22

April 13, 1987

TO: All NASD Members and Other Interested Persons

RE: Amendments to Resolution of the Board of Governors Concerning Its Policy on Publication of Disciplinary Actions

EXECUTIVE SUMMARY

The NASD has amended its policy regarding the publication of disciplinary actions to provide that actions resulting in monetary sanctions of \$10,000 or more will be published in the same manner as actions resulting in suspensions, bars, expulsions and/or revocations. The new policy will be implemented with respect to District Business Conduct Committee, Market Surveillance Committee or Board of Governors decisions issued, and Offers of Settlement, Summary Complaints, and Acceptance, Waiver and Consent filings submitted, after April 24, 1987. Monetary sanctions, such as fines and orders of disgorgement, will be aggregated as to each respondent to determine whether the disciplinary action will be published as to that respondent.

The NASD believes that publishing a more complete description of sanctions imposed for serious misconduct will further the remedial purpose of publication of disciplinary actions.

The text of the amended resolution is attached.

SUMMARY

The Board of Governors of the National Association of Securities Dealers, Inc., has amended its resolution concerning "Notice to Membership and Press of Suspensions, Expulsions and Revocations" (Resolution), which is appended to Article V, Section 1 of the Rules of Fair Practice. The amendments were filed with the

Securities and Exchange Commission on January 29, 1987, to be effective immediately, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and SEC Rule 19b-4(e) thereunder.

ANALYSIS OF AMENDMENTS

The amended Resolution continues the NASD's policy of publishing suspensions, expulsions, revocations and bars and, in addition, provides for publication of disciplinary actions where monetary sanctions of \$10,000 or more are imposed. The amendments also authorize the inclusion in such publications of more detailed information regarding the nature of the conduct found to violate the rules. Also, where appropriate, the amendments allow for inclusion of the name of the member firm with which an individual was associated at the time such misconduct occurred. The amendments do not change existing provisions regarding the timing and manner of publication.

The amendments were adopted to provide for publication to members and to the press of significant disciplinary actions that do not result in suspensions, expulsions, revocations or bars, and to include for the membership's guidance a more complete description of the violative conduct. The \$10,000 threshold will further the remedial purposes of publication by providing for publication of only those actions involving the type of serious misconduct that warrants substantial monetary sanctions.

PLAN OF IMPLEMENTATION

In the interest of fairness and notwithstanding that the amended Resolution was effective upon filing with the Commission, the NASD plans to implement the amended publication policy as follows. Decisions of District Business Conduct Committees, the Market Surveillance Committee or the Board of Governors rendered after April 24, 1987, will be published in accordance with the provisions of the amended Resolution. Offers of Settlement, Summary Complaints and Acceptance, Waiver and Consent proceedings that are submitted to the District Business Conduct Committees after April 24, 1987, will be subject to the amended Resolution.

In determining whether the monetary sanctions imposed warrant publication under the terms of the amended Resolution, fines, orders of disgorgement and any other monetary sanctions will be aggregated as to each respondent individually. For example: If a matter results in a \$12,000 fine as to respondent A and fines of \$5,000 each as to respondents B and C, only the monetary sanction imposed on respondent A will be published. If a matter results in a \$12,000 fine as to respondent A, a \$5,000 fine and an order to disgorge \$7,500 as to respondent B and a \$5,000 fine as to respondent C, only the monetary sanctions imposed on respondents A and B would be published. Joint and several fines and/or orders of disgorgement in excess of \$10,000 will be published as to each affected party.

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Questions regarding this notice may be directed to Jacqueline D. Whelan,
NASD Office of the General Counsel, at (202) 728-8270.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Wilson". The signature is fluid and cursive, with a large initial "F" and "W".

Frank J. Wilson
Executive Vice President
and General Counsel

Attachment

AMENDMENTS* TO

●●● Resolution of the Board of Governors

Notice to Membership and Press of Suspensions, Expulsions, [and] Revocations, and Monetary Sanctions

The Association shall report to the membership and to the press pursuant to the procedures and at the times outlined herein any order of suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member.

If a decision of a District Business Conduct Committee is not appealed to or called for review by the Board of Governors, the order of the District Business Conduct Committee shall become effective on a date set by the Association but not before the expiration of 30 days after the date of decision. Notices of decisions imposing monetary sanctions of \$10,000 or more or penalties of expulsion, revocation, suspension and/or the barring of a person from being associated with all members shall promptly be transmitted to the membership and to the press, concurrently; provided, however, no such notice shall be sent prior to the expiration of 30 days from the date of the said decision.

If a decision of a District Business Conduct Committee is appealed to or called for review by the Board of Governors, the order of the District Business Conduct Committee is stayed pending a final determination and decision by the Board and notice of the action of the District Business Conduct Committee shall not be sent to the membership or the press during the pendency of proceedings before the Board of Governors.

If a decision of the Board of Governors is not appealed to the Securities and Exchange Commission, the decision shall become effective on a date established by the Association but not before the expiration of 30 days after the date of the decision. Notices of decisions imposing monetary sanctions of \$10,000 or more or penalties of expulsion, revocation, suspension and/or the barring of a person from being associated with all members shall promptly be transmitted to the membership and to the press, concurrently; provided, however, no such notice shall be sent prior to the expiration of 30 days from the date of the said decision.

If a decision of the Board of Governors imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member being associated with all members is appealed to the Securities and Exchange Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by the Association of notice from the Securities and Exchange Commission of such appeal and the Association's notice shall state whether the effectiveness of the Board's decision has or has not been

* New text is underlined; deleted text is bracketed.

stayed pending the outcome of proceedings before the Securities and Exchange Commission.

In the event an appeal to the courts is filed from a decision by the Securities and Exchange Commission in a case previously appealed to it from a decision of the Board of Governors, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members, notice thereof shall be given to the membership as soon as possible after receipt by the Association of a formal notice of appeal. Such notice shall include a statement that the order of the Commission has or has not been stayed.

Any order issued by the Securities and Exchange Commission of revocation or suspension of a member's broker/dealer registration with the Commission; or the suspension or expulsion of a member from the Association; or the suspension or barring of a member or person associated with a member from association with all broker/dealers or membership; or the imposition of monetary sanctions of \$10,000 or more shall be made known to the membership of the Association through a notice containing the effective date thereof sent as soon as possible after receipt by the Association of the order of the Securities and Exchange Commission.

Cancellations of membership or registration pursuant to the Association's By-Laws, Rules or Resolutions shall be sent to the membership and, when appropriate, to the press as soon after the effective date of the cancellation as possible.

Notices to the membership and releases to the press referred to above shall [briefly describe the violations found and/or] identify the section of the Association's Rules and By-Laws or the Securities and Exchange Commission Rules violated [.] and shall describe the conduct constituting such violation. Notices may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by the Association to be in the public interest. Notice of all orders and decisions referred to above shall be included in the supplement to the list of members next published.

NASD

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

notice to members 87-23

April 13, 1987

TO: All NASD Members and Other Interested Persons

ATTN: Syndicate Department

RE: Effectiveness of Amendment to Section 66 of the NASD Uniform Practice Code Regarding Prompt Settlement of Syndicate Accounts

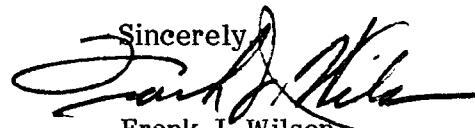
The NASD has adopted an amendment to Section 66 of its Uniform Practice Code that reduces the period required for final settlement of syndicate accounts from 120 days to 90 days. The text of the amendment, which will become effective May 1, 1987, is attached.

On October 1, 1985, the NASD adopted Section 66 to its Uniform Practice Code requiring syndicate managers to settle syndicate accounts within 120 days of the date securities are delivered by the issuer to, or for the account of, syndicate members. At that time, the NASD stated its intention to review members' experience under the 120-day requirement after one year with a view to reducing the settlement period to 90 days. The NASD Board of Governors and its Corporate Financing Committee have reviewed members' experience since adoption of Section 66 and have determined that a reduction in the period required to settle syndicate accounts is appropriate. The Board, therefore, has adopted an amendment to Section 66 reducing the period required for final settlement of syndicate accounts from 120 days to 90 days. Notice to Members 87-10, dated February 25, 1987, announced the Board's adoption of the reduced time period and gave the membership advance notice of the reduction in the settlement period.

The amendment to Section 66 will become effective May 1, 1987. Therefore, syndicate accounts are required to be settled within 90 days with respect to all corporate securities offerings effective on or after May 1, 1987.

All comments or questions pertaining to the amendment to Section 66 may be directed to the NASD Corporate Financing Department at (202) 728-8258.

Sincerely



Frank J. Wilson
Executive Vice President
Legal and Compliance

Attachment



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

notice to members 87-24

April 14, 1987

TO: All NASD Members and Other Interested Persons

RE: Request for Comments on Proposed Amendments to Article III, Section 35 of the NASD Rules of Fair Practice

LAST DATE FOR COMMENT: MAY 14, 1987.

EXECUTIVE SUMMARY

The NASD requests comments on proposed amendments to Article III, Section 35 of the NASD Rules of Fair Practice. The amendments provide that advertisements concerning government securities are to be filed by members with the NASD's Advertising Department within 10 days of first use or publication.

Under the authority granted by the Government Securities Act of 1986 and upon consideration by both the NASD's Ad Hoc Committee on Government Securities and the NASD Board of Governors, it was determined that it was appropriate to adopt requirements for government securities advertising similar to existing advertising requirements for investment company securities.

The text of the proposed amendments is attached.

BACKGROUND

Public Law 99-571 (the Government Securities Act of 1986), enacted by the Congress in October 1986, amended Section 15A(f) of the Securities Exchange Act of 1934 to permit registered securities associations to adopt and implement rules to prohibit fraudulent, misleading, deceptive and false advertising with respect to government securities. This requirement was considered by both the NASD's Ad Hoc Committee on Government Securities and the NASD Board of Governors. It was determined that it was not necessary to amend the NASD's

**PROPOSED AMENDMENT TO ARTICLE III, SECTION 35
OF THE
NASD RULES OF FAIR PRACTICE**

(New language is underscored)

Communications with the Public

Section 35.

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(c) Filing Requirements and Review Procedures

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(4) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Securities Exchange Act of 1934) shall be filed by members with the Association's Advertising Department for review within ten days of first use or publication.

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(5) Except for advertisements related to government securities, municipal securities, direct participation programs or investment company securities, members subject to the requirements of subparagraphs (c)(5)(A) or (c)(5)(B) of this section may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in those subparagraphs, with any registered securities exchange having standards comparable to those contained in this section.

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(7) In addition to the foregoing requirements, every member's advertising and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Association's Advertising Department, each member shall promptly submit the material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and, except for material related to government securities, direct participation programs, municipal securities, or investment company securities, the procedure will not be applied to members who have been within the preceding calendar year, subjected to a spot-check by a registered securities exchange or other self-regulatory organization utilizing comparable procedures.

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(9) Material which refers to investment company securities, options, government securities or direct participation programs solely, as a part of a listing of products and/or services offered by the member, is excluded from the requirements of paragraphs (c)(1), (c)(2), (c)(3) and (c)(4) of this section.

existing standards for advertising by NASD members. However, it was appropriate to adopt an approach similar to that existing for investment company securities by requiring that government securities advertising be filed by members for review by the NASD Advertising Department within 10 days of first use or publication. Further, advertising by government securities brokers and dealers that are new members of the NASD would be subject to the existing requirement that NASD members which have not previously filed advertising with the NASD must do so at least 10 days prior to use for a period of one year.

SUMMARY OF PROPOSED AMENDMENTS

The proposed amendments to Article III, Section 35 of the Rules of Fair Practice would add a new paragraph, (c)(4), to Section 35 requiring the filing of advertising relating to government securities within 10 days of first use, but would recommend the filing of such advertising in advance of use.

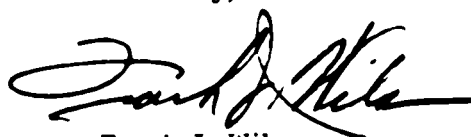
The NASD encourages all members and other interested persons to comment on the proposed amendments. Comments should be directed to:

Mr. Lynn Nellius
Secretary
National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1506

Comments must be received no later than May 14, 1987. All comments received by this date will be considered by the NASD National Business Conduct Committee and the NASD Board of Governors. If the proposed amendments are approved by the Board, they will be submitted to the membership for a vote. If approved by the membership, the amendments must be filed with and approved by the Securities and Exchange Commission before becoming effective.

Questions concerning this notice may be directed to either T. Grant Callery, NASD Associate General Counsel at (202) 728-8285, or R. Clark Hooper, Director, NASD Advertising Department at (202) 728-8330.

Sincerely,



Frank J. Wilson
Executive Vice President
and General Counsel

Attachment



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

notice to members 87-25

April 14, 1987

TO: All NASD Members and Other Interested Persons

RE: Request for Comments and Suggestions on Regulation of Market Making
By Affiliates of Issuers

LAST DATE FOR COMMENT: MAY 8, 1987.

EXECUTIVE SUMMARY

The NASD is requesting comments and suggestions on the concept of a rule that would restrict broker-dealers that are affiliated with issuers from making a market or trading in the securities of those issuers. The NASD invites comments on whether such practices should be restricted and, if so, the nature of affiliation that should trigger the restrictions and the types of restrictions that should apply.

This request for comments and suggestions on the need for regulation in this area is the result of concerns as to whether conflicts of interest may exist or rule violations are more likely when broker-dealers engage in making a market or trading in securities issued by affiliates.

BACKGROUND

Questions have arisen concerning conflicts of interest and rule violations that are possible when broker-dealers engage in market making or otherwise execute principal transactions in securities issued by affiliates. In today's changing market environment, broker-dealers frequently are components of larger corporate families, a growing number of broker-dealers' securities are publicly traded and there is a continued proliferation of proprietary products and other securities being issued by broker-dealer affiliates.

Numerous requirements under the Securities Acts of 1933, the Securities Exchange Act of 1934 and SEC rules must be satisfied before an affiliate of an issuer can engage in such transactions, especially on a continuous basis. ^{1/} Some self-regulatory organizations restrict member broker-dealers' activity in their own securities and those of affiliates. ^{2/} The NASD, however, currently does not have a rule that specifically prohibits or restricts trading by members in securities of their affiliates.

POSSIBLE APPROACHES TO REGULATION

The NASD has not formulated a specific approach to regulation of trading by issuer affiliates and is therefore soliciting comments or suggestions on approaches that should be considered. The Subcommittee on Market Making by Issuer Affiliates of the NASD National Business Conduct Committee has considered various possible approaches. For example, an NASD rule could parallel or complement similar rules for other markets.

It should be noted that any rule is likely to affect (1) broker-dealers whose own securities or whose holding company's securities are publicly traded, (2) broker-dealers that are part of a larger corporate structure that includes any company whose securities are publicly traded, and (3) broker-dealers whose subsidiaries or affiliates issue "proprietary" mutual funds, venture capital or other specialty investment funds, limited partnerships, asset-backed securitized vehicles or similar products.

There are a number of questions and issues members and their counsel should address before making comments and suggestions to the NASD. Some of these are:

- Should the NASD restrict market making or other principal transactions by affiliates of issuers?
- If so, what degree of affiliation is necessary between a broker-dealer and an issuer before restrictions should apply?
- Should different restrictions apply to trading in a broker-dealer's own securities as opposed to trading in an affiliate's securities? Should different restrictions apply to a holding company whose only subsidiary is a broker-dealer?
- Should different restrictions apply to different kinds of securities, i.e., debt versus equity, rated debt versus unrated, proprietary funds, securitized vehicles or limited partnerships issued by a broker-dealer's affiliate versus securities of that affiliate or of the broker-dealer.

^{1/} Firms engaging, or proposing to engage, in these transactions may wish to consult counsel regarding these requirements. An NASD memorandum analyzing these requirements is available from the Office of General Counsel.

^{2/} For example, New York Stock Exchange Rule 312(g) prohibits NYSE members from soliciting transactions in their own securities or from recommending transactions in their own or their affiliates' securities.

- Should trading activity be a factor in determining the extent of restrictions applied to a security? Should actively traded securities be subject to less restriction?
- Should special price and volume restrictions, such as those listed in SEC Rule 10b-18, for example, apply to trading in securities of affiliates?
- Should special disclosure requirements be imposed?
- Should market-making transactions be treated differently than other principal transactions? Should agency trades be treated differently than principal trades? Should solicited and unsolicited transactions be treated differently?

SOLICITATION OF COMMENTS

The NASD urges members and their counsel to provide comments and suggestions concerning these issues.

Additional background information is available from the NASD Office of General Counsel at (202) 728-8294.

Comments regarding this notice should be directed to:

Mr. Lynn Nellius
Secretary
National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1506

All comments and suggestions must be received no later than May 8, 1987. After a review of the information received, the NASD Board of Governors will determine whether to propose a rule on this subject. Any proposed rule would be published for comment prior to its adoption and submission to the Securities and Exchange Commission.

Questions concerning this notice may be directed to Dennis C. Hensley, NASD Vice President and Deputy General Counsel, at (202) 728-8245.

Sincerely,



Frank J. Wilson
Executive Vice President
and General Counsel



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

notice to members 87-26

April 14, 1987

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

RE: NASDAQ National Market System Grows to 2,850 Securities With 12 Voluntary Additions on April 21, 1987

On Tuesday, April 21, 1987, 12 issues are scheduled to join the NASDAQ National Market System, bringing the total number of issues in NASDAQ/NMS to 2,850. These 12 issues, which will begin trading under real-time trade reporting, are entering NASDAQ/NMS pursuant to the Securities and Exchange Commission's criteria for voluntary designation.

The 12 issues scheduled to join NASDAQ/NMS on Tuesday, April 21, 1987, are:

Symbol*	Company	Location
CECI	California Energy Company, Inc.	Santa Rosa, CA
CAII	Capital Associates, Inc.	Colorado Springs, CO
FNBR	FNB Rochester Corp.	Rochester, NY
FFHP	First Federal Savings & Loan Association of Harrisburg	Harrisburg, PA
INDB	Independent Bank Corp.	Rockland, MA
IFSL	Indiana Federal Savings & Loan Association	Valparaiso, IN
INFD	Infodata Systems, Inc.	Pittsford, NY
MFED	Maury Federal Savings Bank	Columbia, TN
PCOR	PSICOR, Inc.	San Diego, CA
SBTC	SBT Corp.	Old Saybrook, CT
VIVI	Vivigen, Inc.	Santa Fe, NM
XRIT	X-Rite, Incorporated	Grand Rapids, MI

* NASDAQ symbols are proprietary to the National Association of Securities Dealers, Inc.

The following issues may be included in NASDAQ/NMS prior to the next regularly scheduled phase-in date:

Pending Additions

Symbol*	Company	Location
CDNL	Cardinal Savings & Loan Association	Richmond, VA
CACOA	Cato Corporation (The) (CI A)	Charlotte, NC
DAVX	Davox Corporation	Billerica, MA
DNECZ	Denver Nuggets Entertainment Company L.P. (The)	Denver, CO
FFMA	Fidelity Federal Savings Bank	Marion, IN
FASB	First American Savings Bank	Canton, OH
FBNC	First Bancorp	Troy, NC
FTSI	Fisher Transportation Services, Inc.	Springdale, AR
GATW	Gateway Federal Savings & Loan Association	Cincinnati, OH
HCFI	Health Concepts IV, Inc.	Cedar Vale, KS
ITELM	Itel Corporation (Ser C, CI B Pfd)	Chicago, IL

NASDAQ/NMS Interim Additions

Symbol*	Security	Date of Entry
FSHG	Fisher Scientific Group, Inc.	3/30/87
AIRSY	Airship Industries, Ltd.	3/31/87
FURSA	Antonovich, Inc. (CI A)	3/31/87
SSBA	Seacoast Savings Bank	3/31/87
AMEA	A.M.E., Inc.	4/01/87
DEER	Deerfield Federal Savings & Loan Association	4/01/87
ABKR	Anchor Savings Bank, F.S.B.	4/07/87
YCSL	Yorkridge-Calvert Savings & Loan Association	4/10/87

The following changes to the list of NASDAQ/NMS securities occurred since March 30, 1987:

NASDAQ/NMS Symbol* and/or Name Changes

New/Old Symbol*	New/Old Security	Date of Change
BAYA/BAYA	Federal Savings Bank of Puerto Rico (The)/Bayamon Federal Savings & Loan Association	3/31/87
VIKG/VIKG	Viking Freight, Inc./Viking Freight Systems, Inc.	3/31/87

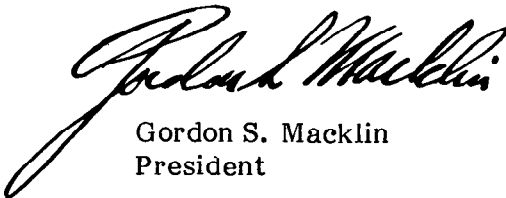
New/Old Symbol*	New/Old Security	Date of Change
BPAC/DOZEZ	Burnham Pacific Properties, Inc./ Burnham Sleepy Hollow Limited	4/01/87
TELE/TELE	TPI Enterprises, Inc./Telecom Plus International, Inc.	4/03/87
DJCO/DJCO	Daily Journal Corp./Daily Journal Company	4/08/87

NASDAQ/NMS Deletions

Symbol*	Security	Date
PBAN	Popular Bancshares Corporation	3/30/87
USVC	USLICO Corporation	3/30/87
OXEC	Oxford Energy Company (The)	3/31/87
EBCO	Ehrlich Bober Financial Corporation	4/01/87
GNVA	Genova, Inc.	4/01/87
SOVR	Sovereign Corporation	4/01/87
ARKR	Ark Restaurants Corp.	4/02/87
CSBK	Coastal Bancorp	4/02/87
TNDM	Tandem Computers Incorporated	4/07/87
HZIR	Horizon Air Industries, Inc.	4/10/87
UBCPP	Unibancorp, Inc. (Ser A Pfd)	4/10/87

Any questions regarding this notice should be directed to Kit Milholland, Senior Analyst, NASDAQ Operations, at (202) 728-8281. Questions pertaining to trade reporting rules should be directed to Leon Bastien, Assistant Director, Market Surveillance, at (202) 728-8192.

Sincerely,



Gordon S. Macklin
President



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

notice to members 87-27

April 30, 1987

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

RE: NASDAQ National Market System Grows to 2,873 Securities With 19 Voluntary Additions on May 5, 1987, and Four Mandatory Inclusions on May 12, 1987

On Tuesday, May 5, 1987, 19 issues are scheduled to join the NASDAQ National Market System, bringing the total number of issues in NASDAQ/NMS to 2,869. These 19 issues, which will begin trading under real-time trade reporting, are entering NASDAQ/NMS pursuant to the Securities and Exchange Commission's criteria for voluntary designation.

The 19 issues scheduled to join NASDAQ/NMS on Tuesday, May 5, 1987, are:

Symbol*	Company	Location
AMRF	Amerford International Corporation	Jamaica, NY
ATNN	American Telemedia Network, Inc.	Provo, UT
AMPI	Amplicon, Inc.	Santa Ana, CA
AILP	Automated Language Processing Systems, Inc.	Salt Lake City, UT
BIGI	Brougher Insurance Group, Inc.	Greenwood, IN
CPLS	Care Plus, Inc.	Miami, FL
CPLSZ	Care Plus, Inc. (Wts)	Miami, FL
DMCB	Data Measurement Corporation	Gaithersburg, MD
EACO	EA Engineering, Science & Technology, Inc.	Sparks, MD

* NASDAQ symbols are proprietary to the National Association of Securities Dealers, Inc.

Symbol*	Company	Location
FFWV	First Fidelity Bancorp, Inc.	Fairmont, WV
GRPI	Greenwich Pharmaceuticals Incorporated	Greenwich, CT
PNTAP	Pentair, Inc. (Pfd)	St. Paul, MN
QFCI	Quality Food Centers, Inc.	Bellevue, WA
SOMR	Somerset Group, Inc. (The)	Indianapolis, IN
PESO	Two Pesos, Inc.	Houston, TX
PESoz	Two Pesos, Inc. (Wts)	Houston, TX
USMX	U.S. Minerals Exploration Company	Lakewood, CO
VLANS	VMS Strategic Land Trust	Chicago, IL
VTEX	Vertex Communications Corporation	Kilgore, TX

The following issues may be included in NASDAQ/NMS prior to the next regularly scheduled phase-in date:

Pending Additions

Symbol*	Company	Location
BOYS	Boys Markets, Inc.	Los Angeles, CA
BGET	Budget Rent-A-Car Corporation	Chicago, IL
CFMC	COMFED Mortgage Company, Inc.	Lowell, MA
CBNCA	Century Bancorp, Inc. (Cl A)	Somerville, MA
ENVI	Envirosafe Services, Inc.	King of Prussia, PA
GRTR	Greater New York Savings Bank (The)	New York, NY
MFSL	Maryland Federal Savings & Loan Association	Hyattsville, MD
SQNT	Sequent Computer Systems, Inc.	Beaverton, OR
SPBC	St. Paul Bancorp, Inc.	Chicago, IL
WFSB	Washington Federal Savings Bank	Washington, D.C.

The following four securities will enter NASDAQ/NMS under mandatory Tier 1 criteria on May 12, 1987:

Symbol*	Company	Location
INMC	Inmac Corp.	Santa Clara, CA
OUCH	Occupational-Urgent Care Health Systems, Inc.	Sacramento, CA
TLHT	Total Health Systems, Inc.	Great Neck, NY
WTDI	WTD Industries, Inc.	Portland, OR

NASDAQ/NMS Interim Additions

Symbol*	Security	Date of Entry
CAFS	Cardinal Federal Savings Bank	4/13/87
FFMA	Fidelity Federal Savings Bank	4/15/87
FRML	Freymiller Trucking, Inc.	4/15/87
FTSI	Fisher Transportation Services, Inc.	4/16/87
ITELM	Itel Corporation (Ser C Pfd)	4/16/87
FSPG	First Savings & Loan Association of Penns Grove	4/21/87
CACOA	Cato Corporation (The) (C1 A)	4/22/87
FFNS	First Financial Savings Association, F.A.	4/22/87
SBFS	Southstate Bank for Savings	4/22/87
GSBK	Germantown Savings Bank	4/23/87
PPSA	Prospect Park Savings & Loan Association	4/24/87

The following changes to the list of NASDAQ/NMS securities occurred since April 10, 1987:

NASDAQ/NMS Symbol* and/or Name Changes

New/Old Symbol*	New/Old Security	Date of Change
SCOAP/SCOAP	Hills Stores Co. (Ser B Pfd)/SCOA Industries, Inc. (Ser B Pfd)	4/13/87
BLAU/BBPI	Barry Blau & Partners, Inc./Barry Blau & Partners, Inc.	4/14/87
PRBC/LABS	Premier Bancorp, Inc./Louisiana Bancshares, Inc.	4/16/87
IVAC/IVAC	IVACO Resources, Inc./Inland Vacuum Industries, Inc.	4/20/87
ALFA/FDGC	Alfa Corporation/Federated Guaranty Corporation	4/21/87
NWOR/NWOR	Newworld Bancorp, Inc./Newworld Bank for Savings	4/21/87
SCRP/SCRP	Scripps Howard Broadcasting Company/ Scripps-Howard Broadcasting Company	4/23/87

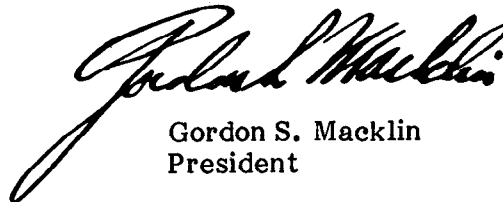
NASDAQ/NMS Deletions

Symbol*	Security	Date
DRCH	Data Architects, Inc.	4/10/87

Symbol*	Security	Date
ABPI	American Businessphones, Inc.	4/13/87
LANE	Lane Company Incorporated	4/14/87
PGLOY	Philips Gloeilampenfabrieken, N.V.	4/14/87
AGLS	Anchor Glass Container Corporation	4/16/87
ORBN	Orbanco Financial Services Corporation	4/16/87
CNFG	Conifer Group, Inc.	4/22/87
DWWS	Davis Water & Waste Industries, Inc.	4/22/87
CPAC	Chicago Pacific Corporation	4/23/87
PARP	Par Pharmaceuticals, Inc.	4/24/87

Any questions regarding this notice should be directed to Kit Milholland, Senior Analyst, NASDAQ Operations, at (202) 728-8281. Questions pertaining to trade reporting rules should be directed to Leon Bastien, Assistant Director, Market Surveillance, at (202) 728-8192.

Sincerely,



Gordon S. Macklin
President



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

notice to members 87-28

April 30, 1987

TO: All NASD Members and Municipal Securities Bank Dealers
 ATTN: All Operations Personnel
 RE: Memorial Day Trade Date-Settlement Date Schedule

Securities markets and the NASDAQ System will be closed on Monday, May 25, 1987, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule.

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

<u>Trade Date</u>		<u>Settlement Date</u>		<u>Regulation T Date*</u>	
May	15	May	22	May	27
	18		26		28
	19		27		29
	20		28	June	1
	21		29		2
	22	June	1		3
	25	MARKETS CLOSED			-
	26	June	2		4

* Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within seven (7) business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column entitled "Regulation T Date."

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

Questions regarding the application of these settlement dates to a particular situation may be directed to the NASD Uniform Practice Department, at (212) 839-6256.

NASD

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

notice to members 87-29

May 4, 1987

TO: All NASD Members
All Level 2 and Level 3 Subscribers
Other Interested Persons

RE: NASDAQ/MSE: Unlisted Trading Privileges

EXECUTIVE SUMMARY

On May 15, 1987, the Midwest Stock Exchange (MSE) will begin trading 25 NASDAQ National Market System (NASDAQ/NMS) securities under the SEC-approved National Association of Securities Dealers/Midwest Stock Exchange joint unlisted trading privileges (UTP) program. This notice explains the operation of the program, including which members are eligible to participate, how to contact MSE specialists in these 25 UTP stocks, how information on UTP securities will be displayed on NASDAQ terminals, and what the trade reporting obligations will be under the program.

On April 29, the SEC approved the NASD/MSE joint plan that gives the Midwest Stock Exchange unlisted trading privileges in 25 NASDAQ/NMS stocks. Trading under the plan will begin on Friday, May 15, 1987.

Which NASDAQ Market Makers May Contact MSE Specialists

The NASD/MSE joint UTP plan requires that MSE specialists provide for direct telephone access; this access, however, is **limited** to NASDAQ market makers in the **same stock**. Therefore, only a firm that is a NASDAQ market maker in the UTP stock may directly contact the MSE specialist in that stock to negotiate a trade.

The 25 NASDAQ/NMS issues that the SEC has approved to trade under the NASD/MSE UTP plan are listed below with the names and telephone numbers of the designated MSE specialists.

MIDWEST SPECIALIST ASSIGNMENTS FOR UTP NASDAQ/NMS ISSUES

BILLINGS & CO. 312-663-0320 or 800-443-8895

Larry Augustyn and Alexander Cimaglia	AGREA	American Greetings Corp., CI A
	KEMC	Kemper Corporation
	LMED	Lyphomed, Inc.
	SHON	Shoney's Inc.
	SMED	Shared Medical Systems Corp.

DEMPSEY & CO. 312-663-2634 or 800-344-8676

Roger Hendrick	APCI	Apollo Computer, Inc.
	DAZY	Daisy Systems Corp.
	MCIC	MCI Communications Corp.
	TATE	Ashton Tate
	TCOMA	Telecommunications Inc., CI A

Robert Kleiber	BMGC	Battle Mountain Gold Co.
	GENE	Genetech, Inc.
	HENG	Henley Group, Inc.
	LIZC	Liz Claiborne, Inc.
	PCLB	Price Co. (The)

Lisa Shoup	AAPL	Apple Computer, Inc.
	DIGI	DSC Communications Corp.
	LOTS	Lotus Development Corp.
	MAXI	Maxicare Health Plans Inc.
	SGAT	Seagate Technology

MESIROW WEB-MARSH 312-663-3025 or 800-824-0801

David Sullivan	COMB	C.O.M.B. Co.
	CTUS	Cetus Corp.
	CVGT	Convergent Technologies Inc.
	INTC	Intel Corporation
	INGR	Intergraph Corporation

NASDAQ market makers trading in UTP stocks who have any difficulty contacting specialists on the floor of the Midwest Stock Exchange should call NASDAQ Operations, New York, at 212-938-8300 or Nancy Leverette, MSE Operations, at 312-663-2111.

How Information on UTP Stocks Will Be Displayed on NASDAQ Level 2/3 Terminals

MSE specialists in the UTP stocks will be identified by "#MWSE" (signifying the Midwest Stock Exchange) on the far left of the screen, where market makers' symbols are ordinarily listed. The subscriber symbol of the specialist firm will be displayed to the right of the #MWSE quotation, as illustrated below.

#MWSE	BID PRICE	ASK PRICE	SIZE	SPECIALIST	MMID
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The subscriber symbol of Billings & Co. is BILL; of Dempsey & Co., DEMP; and of Mesirov Web-Marsh, MWMC.

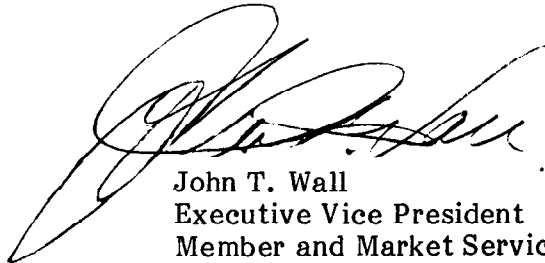
NASDAQ Level 1 displays will remain **unchanged**.

Transaction Reporting Obligations Under the NASD/MSE UTP Plan

Under the NASD/MSE joint UTP plan, specialists are treated as market makers for transaction reporting rules. NASDAQ's NMS transaction reporting rules will apply to trades involving MSE specialists in UTP stocks. That is, in a transaction between a market maker and a specialist, the sell side is required to report.

All transactions must be reported within 90 seconds of execution. A trade that is executed and is not reported within 90 seconds of execution must be reported as late [SLD].

MSE specialists will be governed by MSE rules concerning the entry of quotations that create locked and crossed markets. The exchange has stated that it will police locked and crossed markets and take appropriate action against any specialist who intentionally locks or crosses a market in a UTP security. Calls regarding locked or crossed markets should be directed to NASDAQ Operations in New York, at 212-938-8300.



John T. Wall
Executive Vice President
Member and Market Services



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

notice to members 87-30

May 14, 1987

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

RE: NASDAQ National Market System Grows to 2,893 Securities With 21 Voluntary Additions on May 19, 1987

On Tuesday, May 19, 1987, 21 issues are scheduled to join the NASDAQ National Market System, bringing the total number of issues in NASDAQ/NMS to 2,893. These 21 issues, which will begin trading under real-time trade reporting, are entering NASDAQ/NMS pursuant to the Securities and Exchange Commission's criteria for voluntary designation.

The 21 issues scheduled to join NASDAQ/NMS on Tuesday, May 19, 1987, are:

Symbol*	Company	Location
LUBE	AutoSpa Corporation	Woodside, NY
AVRY	Avery, Inc.	New York, NY
CAVH	Cavalier Homes, Inc.	Wichita Falls, TX
CHLN	Chalone, Inc.	San Francisco, CA
COES	Commodore Resources Corporation	New York, NY
DEVC	Devcon International Corp.	Pompano Beach, FL
DOSK	Doskocil Companies Inc.	Hutchinson, KS
EQTX	Equitex, Inc.	Englewood, CO
FFUT	First Federal Savings & Loan Association of Salt Lake City	Salt Lake City, UT
FFSW	First Federal Savings & Loan Association of Wooster	Wooster, OH

* NASDAQ symbols are proprietary to the National Association of Securities Dealers, Inc.

Symbol*	Company	Location
FSBG	First Federal Savings Bank of Georgia	Winder, GA
FSBC	First Savings Bank, F.S.B.	Clovis, NM
GAIN	Gainsco, Inc.	Fort Worth, TX
IBCA	International Broadcasting Corporation	Minneapolis, MN
MCCL	McClain Industries, Inc.	Utica, MI
MIDS	Mid-South Insurance Company	Fayetteville, NC
NWIB	Northwest Illinois Bancorp, Inc.	Freeport, IL
REXW	Reworks, Inc.	Milwaukee, WI
SHCO	Schult Homes Corporation	Elkhart, IN
SHCOW	Schult Homes Corporation (Wts)	Elkhart, IN
SHRP	Sharper Image Corporation	San Francisco, CA

The following issues may be included in NASDAQ/NMS prior to the next regularly scheduled phase-in date:

Pending Additions

Symbol*	Company	Location
ADDR	Addington Resources, Inc.	Ashland, KY
BMCC	Bando-McGlocklin Capital Corporation	Brookfield, WI
BEZRY	C.H. Beazer (Holdings) Plc.	Bath, England
BROD	Broderbond Software, Inc.	San Rafael, CA
CRBN	Calgon Carbon Corporation	Pittsburgh, PA
CRSY	Criticare Systems, Inc.	Waukesha, WI
CMBK	Cumberland Federal Savings & Loan Association (The)	Louisville, KY
DTCI	Data Technology Corporation	Santa Clara, CA
FFWP	First Federal of Western Pennsylvania	Sharon, PA
GPAK	Graphic Packaging Corporation	Paoli, PA
INGNP	Integrated Genetics, Inc. (Pfd)	Framingham, MA
IMMCO	International Mobile Machines Corporation (Pfd)	Philadelphia, PA
LITZ	Liposome Technology, Inc.	Menlo Park, CA
MNPI	Microcom, Inc.	Norwood, MA
MNSN	Munson Transportation, Inc.	Monmouth, NJ
NELL	Nelcor, Incorporated	Hayward, CA
NJST	New Jersey Steel Corporation	Sayreville, NJ
PSBX	Peoples Savings Bank, F.S.B.	Monroe, MI
RARB	Raritan Bancorp, Inc.	Raritan, NJ
SMNA	Sumna Corporation	Atlanta, GA

Symbol*	Company	Location
SSWC	Super Saver Warehouse Club, Inc.	Monroe, LA
TOPP	Topps Company, Inc. (The)	Brooklyn, NY
WBNC	Washington Bancorp, Inc.	Hoboken, NJ

NASDAQ/NMS Interim Additions

Symbol*	Security	Date of Entry
DAVX	Davox Corporation	4/28/87
SDSB	Southold Savings Bank (The)	4/28/87
FBNC	First Bancorp	4/30/87
SQNT	Sequent Computer Systems, Inc.	4/30/87
WFOR	Washington Federal Savings Bank	4/30/87
MIKL	Michael Foods, Inc.	5/01/87
ENVI	Envirosafe Services, Inc.	5/05/87
SODA	A & W Brands, Inc.	5/08/87

The following changes to the list of NASDAQ/NMS securities occurred since April 27, 1987:

NASDAQ/NMS Symbol* and/or Name Changes

New/Old Symbol*	New/Old Security	Date of Change
SOLI/REAS	Solitec, Inc./Reid-Ashman, Inc.	5/01/87
MNCF/MDNT	MNC Financial, Inc./Maryland National Corporation	5/04/87
VLAB/VLAB	Vipont Pharmaceutical, Inc./Vipont Laboratories, Inc.	5/04/87
VBAN/VBAN	V Band Corporation/V Band Systems, Inc.	5/11/87

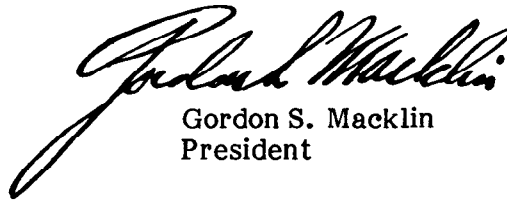
NASDAQ/NMS Deletions

Symbol*	Security	Date
ENDOQ	Endotronics, Inc.	4/28/87
ALCR	American Land Cruisers, Inc.	4/29/87
ALCRW	American Land Cruisers, Inc. (Wts)	4/29/87
WRIT	William E. Wright Company	4/30/87
INTW	IntraWest Financial Corporation	5/01/87
SWIX	Shelby Williams Industries, Inc.	5/04/87

Symbol*	Security	Date
CHEM	Chemlawn Corporation	5/07/87
RLIC	RLI Corporation	5/08/87
ZIAD	Ziyad, Inc.	5/11/87

Any questions regarding this notice should be directed to Kit Milholland, Senior Analyst, NASDAQ Operations, at (202) 728-8281. Questions pertaining to trade reporting rules should be directed to Leon Bastien, Assistant Director, NASD Market Surveillance, at (202) 728-8192.

Sincerely,



Gordon S. Macklin
President



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

notice to members 87-31

May 28, 1987

TO: All NASD Members and Other Interested Persons
RE: Mark-Ups and Mark-Downs on Zero-Coupon Securities

EXECUTIVE SUMMARY

The NASD wishes to apprise its members of the SEC's recent release relating to mark-ups on zero-coupon securities. The SEC has become aware of potential abuses in this area and emphasizes that applicable provisions of the federal securities laws, NASD rules, and MSRB rules apply equally to zero-coupon securities. The SEC cautions broker-dealers to establish mark-ups in these securities based upon their face value rather than taking into account the discount at which such securities are sold.

The text of the SEC's release, as reprinted in the Federal Register, is attached.

SUMMARY OF THE SEC'S RELEASE

In Release No. 34-24368, dated April 21, 1987, the SEC expressed concern about the mark-up or mark-down practices of broker-dealers in conjunction with secondary market transactions in zero-coupon securities. In the release, the SEC defines "zero-coupon securities" to include securities sold at original issue discounts, stripped coupon bonds, or coupons stripped from bonds and sold as separate instruments.

The SEC states that the anti-fraud provisions of the federal securities laws proscribe charging excessive mark-ups to retail customers without proper disclosure to the customers, and that rules of the self-regulatory organizations

proscribe excessive mark-ups on the sale of securities in a principal transaction, regardless of whether the mark-up is disclosed. The SEC further states that it has consistently held that mark-ups in excess of 10 percent above the prevailing market price are fraudulent in the sale of equity securities and that mark-ups in the sale of debt securities generally are expected to be lower than those on equities. The release also contains a detailed discussion of case law in the area of mark-ups, background and application of the NASD's Mark-Up Policy, and MSRB Rules G-17 and G-30 as they relate to mark-ups.

The SEC indicates that for zero-coupon securities, it is particularly difficult to ascertain the prevailing market price upon which to base a mark-up and that generally the best indication of the prevailing market is the broker-dealer's contemporaneous retail purchases adjusted to reflect mark-downs.

The SEC also believes that the market price for an "unstripped" security is not necessarily an appropriate indication of its zero-coupon components and that the market must be established for each stripped coupon and bond separately to ensure that the mark-up on each is not excessive.

Finally, the SEC states that basing mark-ups upon a percentage of a bond's face value may result in inappropriate mark-ups on securities trading at deep discounts.

For further information on the SEC's release, please contact either Alden Adkins, SEC Branch Chief, at (202) 272-2857, or Christine Sakach, SEC Attorney, at (202) 272-2418. Questions concerning this notice should be directed to the NASD Office of the General Counsel at (202) 728-8294.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Wilson", written in a cursive style.

Frank J. Wilson
Executive Vice President
and General Counsel

Attachment

SECURITIES AND EXCHANGE
COMMISSION

(Release No. 34-24366)

Zero-Coupon Securities

AGENCY: Securities and Exchange
Commission.ACTION: Notice to broker-dealers
concerning disclosure requirements for
mark-ups on zero-coupon securities.

SUMMARY: The Commission has become aware of potential abuses in the mark-up and mark-down practices of broker-dealers trading various zero-coupon securities. Because there is limited market information available concerning the secondary market for zero-coupon securities, and those securities generally are sold at a deep discount to the face amount, investors may not fully appreciate the size of the percentage mark-ups that sometimes have been charged by broker-dealers. Broker-dealers must recognize that sales of zero-coupon securities with mark-ups that are excessive and undisclosed violate the federal securities laws, and the rules and regulations of the Commission. Further, excessive mark-ups, whether or not disclosed, violate the rules of the National Association of Securities Dealers, Inc. ("NASD") and the Municipal Securities Rulemaking Board ("MSRB").

DATE: April 21, 1987.

FOR FURTHER INFORMATION CONTACT:
Alden Adkins, Branch Chief, (202) 272-2857, or Christine Sakach, Attorney, (202) 272-2418, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Zero-coupon securities are debt securities that do not pay interest to the holder periodically prior to maturity, and are sold, therefore, at a substantial discount from the face amount.¹ Most bonds can be issued in zero-coupon form or can be stripped; the discount from face value in effect represents the aggregate interest the holder receives if he holds the security to its stated term of maturity. Zero-coupon securities have become increasingly popular with retail

¹ As used in this release the term "zero-coupon security" includes: (1) Original issue discount bonds (bonds sold by the issuer without coupons attached); (2) stripped coupon bonds (bonds originally issued with coupons from which the coupons have been stripped); and (3) interest coupons stripped from bonds and sold as separate instruments.

customers for various reasons including the substantially lower price of these instruments relative to coupon bonds and the locked-in yields they produce if held to maturity.² While stripped United States Treasury securities initially were the most prevalent type of zero-coupon security,³ zero-coupon municipal securities also are now being issued.⁴

Dealers engaging in principal transactions with customers usually charge their customers a net price that, in lieu of or in addition to a commission or service charge, includes a mark-up or mark-down⁵ over the prevailing inter-dealer market price as compensation for effecting the trade. Rule 10b-10 under the Securities Exchange Act of 1934 ("Exchange Act")⁶ generally requires the customer's confirmation for transactions in debt securities to show the net dollar price and yield. It does not, however, require that the mark-up be separately stated. In addition to these confirmation requirements, Rule 10b-5 requires disclosure of excessive mark-ups⁷ and the rules of the NASD and MSRB prohibit excessive dealer mark-ups.⁸

² The holders of coupon bonds bear the risk that they may not be able to reinvest periodic interest payments at the same rate as that used to calculate their original yield to maturity.

³ More recently, an active secondary market has developed in "STRIPS," bonds that are directly issued by the U.S. Treasury in a format that allows dealers immediately to sell them as zero-coupon products and thus do not entail the repackaging steps that are necessary to transform straight Treasuries into zero-coupon instruments. Prior to Treasury's stripping program, stripped U.S. Treasury bonds were created as proprietary products of certain broker-dealers, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill") and Salomon Brothers Inc. ("Salomon"), for example, sold proprietary zero-coupon U.S. Treasury products called TIGRs (Treasury Investment Growth Receipts) and CATS (Certificates of Accrual on Treasury Securities), respectively. Also, several other firms issued zero-coupon instruments under the nonproprietary name "Treasury Receipts." All were created by stripping the coupons from Treasury securities and selling a certificate representing an interest in the stripped coupons or securities. Since implementation of the Treasury program, Merrill and Salomon have not issued new TIGRs or CATS.

⁴ Since enactment of the Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. ____ (1986), several broker-dealers have introduced stripped municipal bonds. See Monroe, "Stripped Municipal Bonds to Be Offered by Securities Firms Under New Tax Law," *Wall St. J.*, at 53, col. 2, October 21, 1986; "Morgan Stanley Joining Issuers of Stripped Munia," *Wall St. J.*, at 41, col. 1, October 29, 1986; and "More Zero-Coupons," *Daily Bond Buyer*, at 2, col. 4, November 5, 1986.

⁵ This release generally will discuss broker-dealer sales transactions involving mark-ups. The principles stated in the release, however, are equally applicable to broker-dealer purchase transactions involving mark-downs.

⁶ 17 CFR 240.10b-10 (1986). Rule 10b-10 applies to transactions by broker-dealers in U.S. Treasury securities and corporate bonds but not municipal securities. The rule applies to zero-coupon securities as well as other forms of debt. The NASD and

II. Discussion

A. Federal Securities Law

The antifraud provisions of the federal securities laws proscribe deceptive pricing practices by broker-dealers.⁹ Charging retail customers excessive mark-ups without proper disclosure constitutes such a deceptive practice or scheme.¹⁰ The fact that a broker-dealer is acting in a principal capacity does not diminish its obligation to deal fairly with public customers.¹¹ This duty of fair dealing includes the implied representation that the price a firm charges bears a reasonable relationship to the prevailing market price.¹² If a dealer's price to a customer includes an excessive mark-up over the prevailing market price, then, absent proper disclosure, the dealer has violated section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, and section 17(a) of the Securities Act of 1933 ("Securities Act").¹³ The Commission consistently

MSRB have substantially similar confirmation rules. See Disclosure on Confirmations, *NASD Manual (CCH)* ¶ 2162; and MSRB Rule G-12, *MSRB Manual (CCH)* ¶ 3571.

⁷ See, e.g., *Krome v. Merrill Lynch & Co.*, 637 F. Supp. 910 (S.D.N.Y. 1986). But see *Ettinger v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Fed. Sec. L. Rep. (CCH) ¶ 65,102 (E.D. Pa. Dec. 22, 1986), appeal pending, No. 87-1045 (3d Cir.). In *Ettinger*, the court held that Rule 10b-5 does not require that excessive mark-ups be disclosed. The court also held that the Commission's failure to promulgate a rule defining under what circumstances a mark-up is excessive precluded the court's finding Merrill's mark-up excessive. The Commission disagrees with the district court's holding and will file a brief, *amicus curiae*, in the court of appeals arguing that Rule 10b-5 imposes an obligation to disclose excessive mark-ups to customers and that decided cases and rules provide adequate guidance regarding what constitutes an excessive mark-up.

⁸ While disclosure is one of the factors to be considered in determining the reasonableness of a mark-up under self regulatory organization rules, *In re Herrick, Waddell & Co., Inc.*, 25 S.E.C. 437, 448 (1947), these rules are not antifraud rules, but rules reflecting just and equitable principles of trade, and thus prohibit mark-ups which are unfair in the light of all other relevant circumstances, even if disclosed. *In re Amabray, Allen & Morton, Inc.*, 42 S.E.C. 919, 922 (1966); *In re Thill Securities Corporation*, 42 S.E.C. 80, 85 (1964).

⁹ The Commission recently has announced settlement of a mark-up case involving zero-coupon securities. See *In re Sutro & Co. Incorporated*, Securities Exchange Act Release No. 23063, 36 S.E.C. Doc. 1199.

¹⁰ The previous cases and Commission decisions have not addressed what disclosure would have been sufficient under the facts and circumstances of those cases.

¹¹ *In re Duker & Duker*, 6 S.E.C. 366 (1939), cited in *In re Alstead, Dempsey & Co., Securities Exchange Act Release No. 20625* (April 5, 1964), 30 S.E.C. Doc. 259; and 3 L. Loss, *Securities Regulation* 1483 (1981).

¹² *Charles Hughes & Co., Inc. v. SEC*, 139 F.2d 434, (2d Cir.), cert. denied, 321 U.S. 786 (1943). See L. Loss, *Fundamentals of Securities Regulation* 946-50 (1983). Although some cases have not been couched in terms of disclosure, the Commission believes that the gravamen of a mark-up violation under the federal securities laws is charging excessive mark-

has held that, at the least, undisclosed mark-ups of more than 10% above the prevailing market price are fraudulent in the sale of equity securities.¹⁴ The Commission also consistently has taken the position that mark-ups on debt securities, including municipal securities, generally are expected to be lower than mark-ups on equity securities,¹⁵ and has upheld NASD decisions finding mark-ups as low as 5.1% to violate the rules of the MSRB.¹⁶

As a result of the Commission's ongoing oversight of the secondary markets, the Commission believes that as a general matter, common industry practice regarding mark-ups is to charge a mark-up over the prevailing inter-dealer market price of between ½% and 3¼% (including minimum charges) for principal sales to customers of conventional or "straight" Treasuries, depending on maturity, order size and availability. In light of this evidence, the Commission concludes that mark-ups on government securities, like mark-ups on corporate and municipal debt securities, usually are smaller than those on equity securities.

ups without disclosure.

¹³ See, e.g., *Ryan v. SEC*, Sec. Reg. & L. Rep. (BNA) No. 26 at 1273 (July 1, 1983) (9th Cir., May 23, 1983), *affg.* *In re James E. Ryan*, Securities Exchange Act Release No. 18617 (April 5, 1982), 24 S.E.C. Doc. 1859; *Barnett v. United States*, 319 F.2d 340 (8th Cir. 1961); *Samuel B. Franklin & Co. v. SEC*, 290 F.2d 719 (9th Cir.), *cert. denied*, 368 U.S. 809 (1961); and *Charles Hughes & Co. v. SEC*, 139 F.2d 434, 437 (2d Cir. 1943), *cert. denied*, 321 U.S. 706 (1944). If it needs repetition at this late date, dealers engaged in over-the-counter trading with their customers are held to a simple standard:

When nothing [is] said about market price, the natural implication in the untutored minds of the purchasers [is] that the price asked [is] close to the market. The law of fraud knows no difference between express representation on the one hand and implied misrepresentation or concealment on the other

Charles Hughes & Co., 139 F.2d at 437. The dealer's disclosure obligation reflects Congress' determination to regulate broker-dealers so as to require a "high standard of business ethics." *U.S. v. Naftalin*, 441 U.S. 768, 778 (1979). The disclosure obligation also may be justified by that feature of the normal functioning of the secondary over-the-counter market which affords each purchaser the ability to make a realistic assessment of the risk of profit or loss upon resale immediately or (after allowing for intervening market movements and accompanying changes in inter-dealer bid-asked spreads) at some subsequent time. Undisclosed excessive mark-ups distort that risk and frustrate that ability.

¹⁴ *In re Alstead, Dempsey & Co.*, *supra* note 11; *In re Peter J. Kisch*, Securities Exchange Act Release No. 19005 (August 24, 1982), 25 S.E.C. 1533, 1539; *In re Powell & Associates*, Securities Exchange Act Release No. 18577 (March 22, 1982), 24 S.E.C. Doc. 1871, 1873; *James E. Ryan*, *supra* note 12; *In re Sherman Gleason*, 15 S.E.C. 639, 651 (1944); and *Duker & Duker*, *supra* note 11, at 386-87.

¹⁵ *In re Crosby & Elkin, Inc.*, 22 S.E.C. Doc. 772, 775 (1981); *In re Edward J. Blumenfeld*, 18 S.E.C. Doc. 1,379, 1,381 (1980); and *SEC v. Charles A. Morris & Associates, Inc.*, 786 F. Supp. 1327, 1334 n.3 (W.D. Tenn. 1973). The Commission has observed

To determine the mark-up charged to the customer, the broker-dealer must determine the "prevailing market price."¹⁷ The dealer mark-up equals the price charged to the customer minus the prevailing market price. The proper method for determining the prevailing market price for a security, however, is often the major contested issue in mark-up cases.¹⁸

As a general matter, the best evidence of the prevailing market price for a broker-dealer who is not making a market in the security is that dealer's contemporaneous cost of acquiring a security.¹⁹ For integrated market makers (*i.e.*, dealers who both make a market in a security and sell it to retail customers), the best evidence of the prevailing market generally is contemporaneous sales by the firm (or by other market makers) to other dealers.²⁰ For actively traded securities, if ask quotations have been determined to be an accurate indication of the offer side of the market (*i.e.*, transactions generally occur at these quotations), they may be used instead of sales transactions. For inactively traded securities, inter-dealer sales transactions are of primary importance in calculating a firm's mark-ups because quotations for such securities frequently are the subject of negotiation.²¹ Thus, the quotations for the security may not accurately reflect the prevailing market price for the security.²²

B. NASD and MSRB Regulation

Since 1943 the NASD has enforced an interpretation of its Rules of Fair Practice that deems it inconsistent with

that it is the industry practice, in general, for broker-dealers in principal transactions to charge retail customers mark-ups on sales of debt securities that are measurably lower than those charged on sales of equity securities.

¹⁶ *In re Staten Securities Corporation*, Securities Exchange Act Release No. 18628 (April 9, 1982), 25 S.E.C. Doc. 2006.

¹⁷ See discussion, *infra* Section II C (1), on the method of determining the prevailing market price."

¹⁸ See N. Wolfson, R. Phillips & T. Russo, *Regulation of Brokers, Dealers and Securities Markets 2-46* (1977).

¹⁹ See, e.g., *In re Peter J. Kisch*, *supra* note 14, at 1539; and *In re Alstead, Dempsey & Co., Inc.*, *supra* note 11.

²⁰ See *id.*

²¹ Stated otherwise, the quotations are not firm and transactions often do not occur at or around the quotations.

²² See *In re Alstead, Dempsey & Co.*, Securities Exchange Act Release No. 20825 (April 8, 1984), 30 S.E.C. Doc. 259, *affg. and revg. in part*, *Alstead, Strangis & Dempsey, Incorporated*, Admin. Pro. File No. 3-6135 (December 20, 1982). *Cf.* B. Becker & H. Kramer, SEC Plays Proper Role in OTC Pricing Regulation, *Legal Times*, November 28, 1984, at 14.

In situations where the security is not only inactively traded, but a competitive market does not exist, the use of market maker sales or quotations may be impractical or misleading. Accordingly, the

just and equitable principles of trade for a member to enter into any transaction with a customer at a price not reasonably related to the current market price of the security.²³ Under the NASD's Mark-Up Policy, mark-ups for equity securities greater than 5% above the prevailing market price generally are considered to be unreasonable, and thus violative of NASD rules.²⁴

Similarly, excessive mark-ups involving municipal securities have been held to violate MSRB Rule G-17, which requires dealers to deal fairly with their customers,²⁵ and MSRB Rule G-30, which requires dealers to sell municipal securities to customers at a price which is "fair and reasonable, taking into consideration all relevant factors."²⁶ The NASD and MSRB rules cannot be satisfied by disclosure of the amount of the mark-up.²⁷

C. Applicability of Policies to Zero-Coupon Bonds

Mark-ups for corporate, municipal and government debt securities, including zero-coupon securities, are subject to the applicable rules and policies described above. Thus, charging an excessive, undisclosed mark-up on a transaction in a zero-coupon security violates section 10(b) and Rule 10b-5.²⁸ Similarly, excessive mark-ups on zero-coupon securities violate the NASD's and MSRB's rules within their respective jurisdictions.

(1) Prevailing Market Price ²⁹

As with other securities, the first step in calculating an appropriate mark-up

most reliable basis for determining the prevailing market in such a "dominated" market generally is the dealer's contemporaneous cost, which is either the price the market maker paid to other dealers or is the price paid to retail customers, adjusted for (*i.e.*, by adding back) the mark-down inherent in the transaction.

²³ Interpretation of the Board of Governors on the NASD Mark-Up Policy, *NASD Manual* (CCH) ¶ 2154.

²⁴ *Samuel B. Franklin & Co.*, *supra* note 13; and *In re Voss & Co., Inc.*, Securities Exchange Act Release No. 21301 (September 10, 1984), 31 S.E.C. Doc. 459.

As with the Commission's mark-up policy, the NASD's 5% threshold is only a guideline. The circumstances surrounding trading in a security may suggest that mark-ups less than 5% may be unreasonable, or that mark-ups greater than these figures may be reasonable. See, e.g., *In re Staten Securities Corporation*, *supra* note 16.

²⁵ *MSRB Manual* (CCH) ¶ 3581.

²⁶ *MSRB Manual* (CCH) ¶ 3646.

²⁷ *But cf.*, *supra* note 8.

²⁸ *SEC v. MV Securities, Inc.*, (S.D.N.Y., No. 84 Civ. 1164), Litigation Rel. No. 10289 (February 21, 1984), 29 S.E.C. Doc. 1454; and Litigation Rel. No. 10303 (March 5, 1984), 29 S.E.C. Doc. 1501 (describing consent order). In that case, the Commission's memorandum of law requesting a temporary restraining order alleged mark-ups on zero-coupon bonds that were excessive compared to the firm's contemporaneous cost. See Memorandum in Support of Application for an

for zero-coupon securities is to determine the prevailing market price. Ascertaining the prevailing market price is particularly difficult for zero-coupon securities because there usually is limited information regarding inter-dealer market transactions. Indeed, where the inter-dealer market is dominated by a single market maker (which may be the case where a zero-coupon security is a proprietary product of a broker-dealer), the best evidence of the prevailing market generally will be the broker-dealer's contemporaneous retail purchases, adjusted to reflect the mark-down inherent in such customer transactions.³⁰ Moreover, because both the stripped interest coupons and the bond are separate securities, it is not sufficient for a broker-dealer to assure itself that the aggregate mark-up for the unstripped security taken as a whole is not excessive. Instead, the broker-dealer must evaluate the mark-up for each stripped coupon and the stripped bond separately and ensure that each is not excessive.

(2) Amount of Mark-up

As noted above, the Commission, the NASD and the MSRB have indicated that the percentage mark-up for debt securities historically has been less than the amount charged for equity securities. It is expected, therefore, that percentage mark-ups on zero-coupon securities, as with other debt securities, usually will be smaller than those on equity securities. Therefore, broker-dealers should be advised when marking up debt securities, including zero-coupon securities, that what might be an appropriate mark-up for the sale of an equity security may be an excessive mark-up for a debt security transaction of the same size.³¹

The Commission has become aware of the practice of a number of broker-dealers of charging a percentage mark-up based on the face amount of a zero-coupon security for all maturities, a pricing practice often employed in the market for conventional coupon bonds. Although this percentage may be as low as 1% of the face amount, such pricing can result in a mark-up that is excessive relative to the prevailing market price because zero-coupon bonds trade at a

deep discount.³² This problem will be especially acute for securities with long maturities because the purchase price, net of the mark-up, that an investor will pay per \$1,000 face amount for a zero-coupon bond with a long maturity is significantly less than that for a zero-coupon with a short maturity.

III. Conclusion

The established mark-up rules and policies of the Commission, the NASD and the MSRB apply fully to transactions in zero-coupon securities. The Commission's rules prohibit excessive undisclosed mark-ups, and the NASD's and MSRB's rules and policies prohibit excessive mark-ups whether or not disclosed. The Commission expects that mark-ups on zero-coupon securities, as with other debt securities, usually will be less than those charged for equity securities. In this regard, mark-ups calculated based upon the face amount at maturity may be excessive in relation to the discounted price of the security.

The Commission urges broker-dealers to review their procedures and policies for marking up zero-coupon securities to ensure that they are consistent with the federal securities laws, the rules and regulations of the Commission, and the rules of the NASD and the MSRB.

Dated: April 21, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-9628 Filed 4-28-87; 8:45 am]

BILLING CODE 8010-01-M

³¹ Cf., e.g., "[A] higher percentage of mark-up customarily applies to a common stock transaction than to a bond transaction of the same size." See NASD Mark-Up Policy, *NASD Manual* (CCH) ¶ 2154.

Order to Show Cause, Temporary Restraining Order, and Motion for a Preliminary Injunction and Other Equitable Relief, at 23, in *SEC v. MV Securities, Inc.*, (S.D.N.Y., No. 84 Civ. 1164). See *In re Sutro & Co. Incorporated*, *supra* note 9.

³² See discussion, *supra* Section II A.

³⁰ *In re Alstead, Dempsey & Co.*, *supra* note 11. See *In re Manthos, Moes & Co.*, 40 S.E.C. 542, 543-44 (1961). See N. Wolfson, R. Phillips & T. Russo, *supra* note 15, at 2-47; and J. L. Loss, *Securities Regulation* 3688 (1961).



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

notice to members 87-32

May 28, 1987

TO: All NASD Members and Other Interested Persons

RE: Request for Comments on Shareholder Voting Rights Proposal For
NASDAQ Companies

LAST DATE FOR COMMENT: JUNE 30, 1987.

EXECUTIVE SUMMARY

The NASD requests comments on a proposed amendment to Schedule D to the NASD By-Laws that would make an issuer ineligible for initial or continued inclusion in the NASDAQ System if it issues securities or takes corporate action that would have the effect of nullifying, restricting, or disparately reducing voting rights of holders of an outstanding class or classes of common stock.

The text of the proposed amendment is attached.

BACKGROUND

During the fall of 1984 and the spring of 1985, the NASD Corporate Advisory Board, which is currently composed of chief executives of 16 NASDAQ issuers, and the NASD Board of Governors developed an initial set of corporate governance criteria to be applicable to NASDAQ National Market System issuers. This process included a survey of issuers ^{1/} and publication for comment of proposed rules. ^{2/} The criteria developed by the Board of Governors are currently

^{1/} This survey was mailed to all NASDAQ companies on May 13, 1985.

^{2/} Notice to Members 85-20 (March 28, 1985).

on file with the Securities and Exchange Commission ^{3/} and approval is anticipated in the near future.

One area in which the Corporate Advisory Board and the Board of Governors determined not to impose requirements during their initial consideration of the corporate governance issue had to do with allowing issuers to create either multiple classes of stock having unequal voting rights or voting and non-voting stock.

In July 1985, the NASD Board of Governors authorized the solicitation of public comment on the voting rights issue. ^{4/} At that time, the NASD proposed for consideration two possible concepts for limiting issuers' ability to create disparate voting rights. The NASD received approximately 100 comment letters. The NASD Board reviewed the comment letters at its September 1985 meeting and concluded that the issue of shareholder voting rights required further study. The Board retained an independent outside consultant to study a number of issues raised during the comment process. The NASD selected Professor Daniel R. Fischel of the University of Chicago's Center for Law and Economics to undertake the study.

In that study, ^{5/} Professor Fischel analyzed the status of multiple classes of common stock in the context of the "race to the bottom" thesis, the economics of shareholder voting, and the evidence developed by other studies of shareholder voting rights. In addition, the study analyzed the costs and the benefits inherent in the imposition of a prohibition on dual-class common stock. Among other conclusions, the Fischel study found that the vast majority of companies opt for a one-share, one-vote structure, but that in appropriate cases, multiple classes may fulfill legitimate business and economic functions.

The issue of voting rights was again brought to the fore by the filing of a proposed rule change by the New York Stock Exchange in September 1986 ^{6/} which would have eliminated the exchange's long-standing one-share, one-vote requirement. Using a procedure reserved for only the most critical of policy issues, in December 1986, the SEC held two days of public hearings on the proposal. Approximately 50 witnesses, including representatives of the NASD, testified. A common theme in those hearings was that some uniformity among the marketplaces is appropriate in this area, with some witnesses suggesting that there may be a need for federal legislation.

In March 1987, at the request of the NASD Corporate Advisory Board and the Board of Governors, the NASD suggested, in a letter to SEC Chairman John

^{3/} SEC File Nos. SR-NASD-85-20 and 86-27.

^{4/} Notice to Members 85-49 (July 19, 1985).

^{5/} D. Fischel, Organized Exchanges and the Regulation of Dual Class Common Stock (March 1986).

^{6/} SEC File No. SR-NYSE-86-17.

S. R. Shad, ^{7/} the framework of an approach to voting rights that would allow the creation of disparate voting or non-voting stock if it would be accomplished in a manner which would not disenfranchise existing securities holders. NASD President Gordon S. Macklin also stated in that letter that "the Association would like to suggest that all equity securities markets should have a uniform rule for domestic securities which would emphasize the principle of equal voting rights but allow for legitimate variations."

As a result of this initiative, the SEC convened several meetings among representatives of the New York and American stock exchanges and the NASD. Based upon discussions at these meetings, the Corporate Advisory Board recommended and the NASD Board of Governors authorized solicitation of comments on the rule proposal which accompanies this notice to members.

PROPOSED AMENDMENT

The rule proposal takes the form of an amendment to the provisions of Schedule D to the NASD By-Laws that sets qualification standards for domestic NASDAQ securities. The general premise of the proposal is to prohibit issuers of NASDAQ securities from issuing any class of securities or taking any other corporate action that would nullify, restrict, or disparately reduce the voting rights of holders of an outstanding class or classes of publicly traded securities of the issuer.

The proposed rule creates two sets of presumptions as to transactions which do, or do not, have the effect of restricting, nullifying, or disparately reducing voting rights. These are, however, only presumptions and the ultimate decision as to whether the issuance of a class of greater, lesser, or non-voting securities violates the rule must be based upon a determination of whether the action restricts, nullifies, or disparately reduces voting rights.

The following transactions are presumed not to restrict, nullify, or disparately reduce voting rights:

(1) Issuance of securities in an initial public offering. When securities with reduced or no voting rights are issued as part of an issuer's first public offering of securities, purchasers are aware of what they are purchasing and are able to factor the nature of the securities into their investment decisions. Nothing is being forced upon shareholders and pre-existing rights are in no way impacted.

(2) Issuance of securities in a public offering with voting rights not greater than those of any outstanding class of the issuer's common stock. This provision allows investors in a new class of securities to make the same investment decisions as investors in an initial public offering, but protects against the disenfranchisement of existing shareholders.

^{7/} Letter from NASD President Gordon S. Macklin to Chairman John S. R. Shad, dated March 13, 1987.

(3) Issuance of securities as approved by a shareholder vote pursuant to a proxy statement in a merger or acquisition or in a stock dividend transaction where the voting rights of the securities would not be greater than those of any outstanding class of the issuer's common stock. This provision allows the issuance of securities that would "participate" in the earnings or operations of the merged or acquired entity but still protects the voting rights of existing shareholders against a dilution of their voting power.

(4) Issuance of securities of a class which protect the relative voting rights of existing shareholders, which are freely transferable and whose issuance is not coupled with other present or future corporate actions designed to adversely impact or dilute the rights of existing shareholders. This provision would allow the declaration of stock dividends and other issuances of securities carrying differing (greater or lesser) voting rights than existing shares so long as no restrictions on transferability or other impediments are attached to the new shares. Some impediments could, for example, have the effect of inducing a certain group of shareholders to convert the new shares into a class of lesser voting securities, thereby disparately reducing the per-share voting rights of that group. To qualify for this presumption of compliance, the issuance of securities must not be coupled with any other corporate action which is designed to, or has the effect of, adversely impacting or diluting the per-share rights of existing shareholders. Such corporate action could include a determination to purchase, through an employee stock ownership plan or other corporate-controlled plan, large amounts of greater voting securities.

This provision (Subsection (2)(D)) is intended to clarify that companies are permitted to issue new classes of securities with greater or lesser voting rights so long as such issuance is not contrary to the prohibition of Section 3.o., but that any such issuance must meet the requirements of Subsection (2)(D) in order to enjoy a presumption of compliance. Any company deviating from the criteria of Subsection (2) would bear the burden of demonstrating compliance with Section 3.o.

The following transactions are presumed to restrict, nullify, or disparately reduce voting rights:

(1) Restrictions on voting power based upon the number of shares held which, for example, result in diminished voting power as the amount of shares held by any one shareholder increases.

(2) Restrictions on voting power based upon the length of time such shares have been held, such as voting structures that require securities to have been held for a stated period of time before full voting power accrues.

(3) Issuance of securities pursuant to an exchange offer where the securities being issued result in a nullification, restriction, or disparate reduction of voting rights of outstanding common stock.

The proposed rule would be prospective in its application and would "grandfather" issuers that currently have outstanding multiple classes of stock with disparate voting rights or that are in the process of implementing such a structure for which proxy materials have been filed with the SEC on or before May 15, 1987. Issuers that have had multiple class capitalizations authorized but that have not issued securities pursuant thereto before May 15, 1987 would not be grandfathered. However, if the issuer had on file with the SEC before May 15, 1987

a registration statement or offering circular for the issuance of securities of a previously authorized class, authorized securities of that class would be grandfathered. Subsequent offerings of new classes of securities of grandfathered issuers would have to comply with the rule.

REQUEST FOR COMMENTS

The NASD is requesting comments on the foregoing proposal, as well as other constructive alternatives and suggestions which commentators may offer. In particular, the NASD requests comments on the effect the proposal would have on the ability of issuers to adopt so-called "fair price" and other charter amendments that would operate in the context of a two-tier tender offer. An example is an amendment to a corporate charter that requires that shareholders in the second phase of a tender offer receive substantially the same form and amount of consideration as those in the first. These provisions are frequently adopted in conjunction with a super-majority provision requiring a vote of a higher percentage of shareholders to approve the second step of a tender offer where equivalent compensation is not going to be paid. The NASD understands that there are several variations of such provisions. Commentators are requested to identify and address these variations in the context of the proposed rule and its impact, if any, upon them.

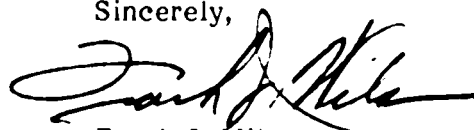
The NASD also requests comments with respect to any areas of the voting rights issue which have not been addressed in this notice, but which commentators feel are pertinent.

All comments received will be reviewed by the NASD Corporate Advisory Board and the Board of Governors. Comments should be addressed to:

Mr. Lynn Nellius
Secretary
National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1506

All comments must be received by June 30, 1987. Questions regarding this notice should be directed to either the undersigned, at (202) 728-8319, or John F. Guion, Senior Vice President, NASDAQ Company Services, at (202) 728-8379.

Sincerely,



Frank J. Wilson
Executive Vice President
and General Counsel

Attachment

PROPOSED AMENDMENT TO PART IIB, SCHEDULE D
OF THE NASD BY-LAWS*

II

QUALIFICATIONS FOR AUTHORIZED SECURITIES

* * * *

B. Rules for Authorized Domestic Securities

* * * *

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

* * * *

o. on or after May 15, 1987, the issuer of such security issues any class of securities or takes other corporate action that would have the effect of nullifying, restricting, or disparately reducing the per-share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934; provided, however, that this subsection (o) shall not apply to the issuance of any securities pursuant to a registration statement or offering circular, or the issuance of any security authorized by a shareholder vote solicited by proxy material, filed with the Commission on or before May 15, 1987.

(1) For purposes of this Subsection (o):

(A) the term "security" shall not include any class of securities, other than common stock, having a preference over the issuer's common stock as to dividends, interest payments, redemption, or payments in liquidation if the voting rights of such securities only become effective as a result of specified events, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities not relating to an acquisition of the issuer's common stock; and

(B) the term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however

* New language is underlined.

designated, which by its terms is a common stock (e.g., a security that entitles the holders thereof to vote on matters submitted to the issuer's security holders for a vote); however, nothing herein shall be construed to prevent a company from obtaining financing by issuing a class of securities (other than common stock) to institutional investors under an indenture or purchase agreement containing security arrangements (such as covenants not to merge, consolidate, or sell substantially all the company's assets without the consent of a percentage of the holders of the class of securities) reasonably related to the financing.

(2) For purposes of this Subsection (o), the following shall be presumed not to have the effect of "nullifying, restricting, or disparately reducing" voting rights:

(A) the issuance of securities pursuant to an initial public offering;

(B) the issuance of any class of securities, through a public offering, with voting rights not greater than the per-share voting rights of any outstanding class of the issuer's common stock;

(C) the issuance of any class of securities for which proxies were solicited to effect a merger or acquisition, or by way of a stock dividend to all holders of an outstanding class of the issuer's common stock, where the voting rights of these securities would not be greater than the per-share voting rights of any outstanding class of the issuer's common stock; or

(D) the issuance of a class of securities which protect the relative per-share voting rights of existing shareholders, are freely saleable and transferable without any impact upon or dilution of the voting rights or other property rights inherent in the ownership of the newly issued shares, and which issuance is not coupled with other present or future corporate action which is designed to, or has the effect of, adversely impacting or diluting the rights of existing shareholders.

(3) For purposes of Subsection (o), the following shall be presumed to have the effect of "restricting, nullifying, or disparately reducing" voting rights:

(A) any restriction on the voting power of shares of the issuer's common stock held by a beneficial or record holder based on the number of shares held by such beneficial or record holder;

(B) any restriction on the voting power of shares of the issuer's common stock held by a beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder; or

(C) any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the issuer's common stock where the securities issued have voting rights, whether greater than or lesser than the per-share voting rights of any outstanding class of the issuer's common stock, that have the effect of nullifying, restricting, or disparately reducing the per-share voting rights of holders of an outstanding class of the issuer's common stock.