

# Notice To Members

National Association of Securities Dealers, Inc.

September 1988

**Number 88 - 62****Suggested Routing:\***

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**Subject: SEC Adopts Rule 10b-21 Prohibiting Shorting into Secondaries****EXECUTIVE SUMMARY**

In response to the NASD's request, the Securities and Exchange Commission (SEC) has adopted Rule 10b-21 to prohibit persons from purchasing securities out of a public offering to cover short sales executed after the registration statement is filed. The rule will be effective 30 days after publication in the Federal Register.

**BACKGROUND**

In 1974, the SEC first proposed for comment Rule 10b-21 to regulate the practice of short selling into secondary public offerings.<sup>1</sup> Different versions of the proposal were published in 1975 and, again, in 1976.<sup>2</sup> Since the SEC's first publication for comment of Rule 10b-21, the NASD has consistently maintained the position that the SEC should adopt a rule to regulate the practice of short selling into secondary public distributions.

The NASD's concerns have focused on the practice of short selling prior to a secondary distribution of securities in order to lower the price of the security before the offering date and thereby reduce the offering price. The short sellers then can cover their short transactions by purchasing securities in the distribution at the reduced price.

The NASD has argued that such short sellers are not subject to the usual market risk attendant on the covering transaction as the downward pressure of the short selling all but ensures that the transactions will be covered out of the offering at a lower price.

As a result of the continuing concern expressed by the NASD's Corporate Financing Committee and Corporate Advisory Board, the NASD's Board of Governors submitted a petition for rulemaking (Petition) to the SEC on June 11, 1986. The Petition urged the SEC to adopt a modified version of Rule 10b-21 and included proposed language for the rule.

In the Petition, the NASD argued that short selling into secondary distributions adversely affects issuers by depriving them of offering proceeds that would have been realized had the market not been subject to excessive short selling. Unlike the SEC's prior published versions of proposed Rule 10b-21, the NASD proposed that the rule apply only to short sale transactions entered into between the filing of the registration statement and commencement of the offering. Further, the NASD proposed that restrictions on covering transactions be limited to transactions with an underwriter or a member of the selling group where the short seller is bearing no market risk.

In response to the NASD's Petition, the SEC

published two alternative versions of Rule 10b-21 for comment in Securities Exchange Act Release No. 24485 (May 20, 1987). The NASD submitted three comment letters in response to the SEC's proposal. In support of its position, the NASD comment letters included a study of price movements immediately prior to and subsequent to secondary offerings and provided information with respect to investigations of three secondary offerings where it was determined that manipulative short selling had occurred.<sup>3</sup>

### DESCRIPTION OF RULE 10b-21

On August 25, 1988, the Securities and Exchange Commission approved the adoption of Rule 10b-21 on a temporary basis, but did not attach an expiration date.<sup>4</sup> The Commission requested, however, that the NASD monitor the application of the rule to ensure its effectiveness during the first 18 months of its operation. The rule is to take effect 30 days after publication in the Federal Register.<sup>5</sup>

**A copy of the SEC release announcing adoption of Rule 10b-21 is attached.**

As adopted, Rule 10b-21 applies to all NASDAQ and exchange-listed securities that are underwritten on a "firm-commitment" basis. However, the rule includes an exemption for "shelf" registrations, pursuant to SEC Rule 415. Rule 10b-21 applies only to short sale transactions between the time that a registration statement is filed with the SEC and the time that sales may be made pursuant to the registration statement.

The rule prohibits any person who effects, during the restricted period, one or more short sales of equity securities of the same class as securities offered pursuant to a registration statement filed with the SEC from covering such short sales with offered securities purchased from an underwriter or broker or dealer participating in the offering.

The version of the rule published for comment by the SEC included language that prohibited covering a short position "indirectly" with securities purchased from distribution participants. A number of commenters questioned whether this language imposed an insurmountable compliance

burden on market makers to trace the source of securities used to cover a short sale transacted during the prohibited time period if the securities were purchased from the open market at the time of or immediately subsequent to the offering. Therefore, such commenters argued, the rule should include an exemption for market makers.

To avoid ambiguity as to the application of the rule, the SEC has deleted the phrase "directly or indirectly" from the rule. The adopting release states that the SEC determined not to adopt an exemption for market makers as a result of concerns about the enforcement of Rule 10b-21 with respect to market makers that engage in the manipulative activity the rule is intended to address. Moreover, it is clarified that covering purchases effected by prearrangement or other understanding through other purchasers in the primary offering are proscribed through the operation of Section 20(b) of the Securities Exchange Act of 1934, which prohibits a person from doing indirectly any act that is prohibited directly by the Exchange Act or any rule thereunder.

Questions concerning this notice can be directed to Suzanne E. Rothwell, Associate General Counsel, NASD Office of the General Counsel, at (202)728-8247 or to Laura R. Singer, Counsel to Market Surveillance, at (202)728-6982.

<sup>1</sup> Securities Exchange Act Release No. 10626A (February 12, 1974).

<sup>2</sup> Securities Exchange Act Release No. 11328 (April 2, 1975) and Securities Exchange Act Release No. 13092 (September 21, 1976).

<sup>3</sup> The NASD's letters of comment are available for public inspection and copying at the SEC's Public Reference Room (See File No. S7-18-87) and from the NASD's Office of the General Counsel.

<sup>4</sup> Securities Exchange Act Release No. 26028 (August 25, 1988).

<sup>5</sup> Securities Exchange Act Release No. 26028 (August 25, 1988) was published in the *Federal Register* on August 31, 1988 and will be effective on September 30, 1988. See, 53 FR 33455 (August 31, 1988).

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33-6798; 34-26028; File No. S7-18-87]

Short Sales in Connection with a Public Offering

AGENCY: Securities and Exchange Commission.

ACTION: Temporary Rule.

**SUMMARY:** The Commission today announced the adoption, on a temporary basis, of Rule 10b-21(T) under the Securities Exchange Act of 1934, pertaining to certain short sales in connection with a public offering of securities. Rule 10b-21(T) prohibits a person who effects short sales of an equity security during the period beginning at the time that a registration statement or Form 1-A relating to the same class of equity securities is filed and ending at the time that sales may be made in the offering, from covering such short sales with offered securities purchased from an underwriter or other broker or dealer participating in the offering of such securities.

**EFFECTIVE DATE:** (Thirty days after publication in the Federal Register).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Burke or Ivette Lopez at (202) 272-2848, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:**

### I. INTRODUCTION

The Commission has adopted, on a temporary basis, Rule 10b-21(T) ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> which is designed to prevent manipulative short selling of securities in anticipation of a public offering of the same securities. The Commission proposed the Rule for public comment<sup>2</sup> in response to a petition ("NASD Petition") for rulemaking filed by the National Association of Securities Dealers, Inc. ("NASD").<sup>3</sup> The Rule prohibits a person who effects one or more short sales of equity securities of the same class as securities distributed for cash pursuant to a registration statement filed under the Securities Act of 1933 ("Securities Act")<sup>4</sup> or pur-

suant to a notification on Form 1-A<sup>5</sup> under the Securities Act, from covering such short sale or sales with offered securities purchased from an underwriter or broker or dealer participating in such public offering, if such short sale or sales took place during the period beginning at the time that the registration statement or Form 1-A is filed and the time that sales are permitted to be made pursuant to the registration statement or Form 1-A.<sup>6</sup> After considering the public comments received on the Proposing Release, the Commission has adopted the Rule substantially as proposed.

The NASD Petition was based on concerns relating to short selling prior to a public offering.<sup>7</sup> Such short sales may result in a decrease in the price of the security and consequently a lower offering price. The short sellers are then able to cover their sales and realize a profit by purchasing securities in the offering at the reduced price. Because of the availability of securities at a fixed price from the public offering, the risks entailed in covering those short sales are reduced substantially. The NASD indicated that this practice deprives the issuer of offering proceeds that otherwise would have been realized.

The Commission suggested in the Proposing Release that certain drafting changes could improve the NASD proposal ("Alternative A"). Accordingly, an alternative formulation ("Alternative B") was presented that: (1) reflected the scope of the Commission's authority to promulgate the Rule by substituting the phrase "it shall be unlawful" for the proposed reference solely to Section 10(b) of the Exchange Act;<sup>8</sup> (2) deleted paragraph (b) of Alternative A since it was virtually identical to the definition of "short sale" contained in Rule 3b-3 under the Exchange Act;<sup>9</sup> (3) inserted the term "offered securities" since the Commission understood the NASD Petition to be addressed only to covering purchases involving the securities that are offered pursuant to a registration statement or Form 1-A;<sup>10</sup> and (4) substituted the term "offering" for "distribution" since the latter term has a specific definition in Rule 10b-6 under the Exchange Act.<sup>11</sup>

### II. DISCUSSION

#### A. The Need for the Rule

The Commission received thirty-six comment letters submitted by thirty-two commentators.<sup>12</sup> The majority of the commentators supported the

adoption of the Rule.<sup>13</sup> Commentators favoring adoption stated that short selling in anticipation of a public offering can and does have the effect of driving down the price of the securities to be distributed. These commentators also indicated that, unlike the traditional short sale, persons selling short in anticipation of a public offering are not subject to the usual market risk accompanying the covering transaction, but are assured of covering with offered securities purchased in the public offering at a fixed, and generally lower, price. Only three commentators opposed adoption of the Rule, stating that manipulative short selling practices already are proscribed by existing laws, and that the Rule would have an adverse impact on normal market operations and result in unnecessary compliance burdens.

Nine commentators responded to the Commission's request for comment regarding the extent of pre-offering short selling activity and the impact of such sales on the costs to issuers of completing an offering. Seven of these commentators described first-hand experiences with the adverse effects of short selling activity, which caused them to cancel proposed offerings, or to complete offerings even though they were deprived of proceeds that would have been realized had the market not been subject to such activity. They noted that the market price of the security to be offered had declined significantly just prior to the public offering, allegedly as a result of short selling, and caused them to forfeit substantial proceeds that they otherwise would have received.

The NASD submitted information relating to investigations of three separate public offerings, and stated that, based on these investigations and others involving similar circumstances, it believed that the practice of short selling before a public offering with the intention of covering with shares purchased in the public offering is not uncommon. The investigations revealed substantial short selling activity by certain firms after the filing of the registration statement and a decline in the price of the stock prior to the effective date of the registration statement.<sup>14</sup> In each investigation, the short sellers covered their short positions immediately after the offering at a profit with shares purchased from entities that had obtained them in the public offering. The NASD stated that the timing and prices involved in these transactions may indicate prearrangement.<sup>15</sup>

The NASD also pointed to problems it faces in pursuing enforcement actions in such cases. The NASD does not have jurisdiction over certain non-broker-dealer entities from whom its members may routinely acquire offered securities to cover short positions established prior to an offering. Thus, the NASD may have difficulty obtaining information from those entities necessary to develop cases against such members. In addition, the NASD indicated that, since this abuse has not been specifically prohibited by a Commission rule, it must bring such cases under general anti-manipulation provisions of the federal securities laws which entail the difficult step of proving specific intent to depress the market price of the issuer's stock.

#### **B. Decision to Adopt Rule 10b-21(T)**

In light of the comments discussed above, the Commission believes that there is sufficient reason to adopt the Rule on a temporary basis,<sup>16</sup> and has determined to adopt Alternative B with slight modifications. The Rule will help deter a practice that the Commission views as manipulative and destructive of issuers' capital raising activities.<sup>17</sup> The Commission believes that the Rule will serve an important purpose by avoiding the difficult proof problems involved in demonstrating manipulative purpose.<sup>18</sup>

Short selling involves sales of stock that the seller does not own. These sales are made with the expectation that the market price of the stock will be lower at the time of the covering transactions. This selling entails the risk that the security's price might increase or the security's supply might be limited. The Commission believes that legitimate short selling activity contributes to the efficient pricing of securities. The activity prohibited by the Rule differs, however, from short selling as usually practiced because a short seller who covers from an offering has access to a pool of securities obtainable from identifiable sources at prices based upon market values that can be adversely affected by the short seller's activity. No such pool of securities or pricing relationships are, however, available for short selling activity as usually practiced. The market risk facing short sellers who cover their positions from the offering can therefore be less than the market risk that generally faces short sellers. This lower degree of risk can, in turn, provide the incentive for manipulative short selling. Because it results

in a level of short selling activity greater than that which would otherwise occur in the secondary market for the issuer's shares, that manipulative short selling can cause an artificial price decline around the time of the offering.

The Rule will not adversely affect legitimate market activity. It does not proscribe short selling, nor does it prevent covering transactions made in the open market. Moreover, the Rule does not prevent using securities acquired in a public offering to cover short sales effected prior to the time that the registration statement was filed, or short sales effected after the time that sales may be made in the offering.<sup>19</sup> The Rule is narrowly drawn to impede the particularly abusive conduct of short selling in anticipation of a public offering and covering with offered securities. As a result, all short sellers will be exposed to the risks inherent in short selling, namely, that the necessary securities may not be readily available, or that if available, they may be priced higher than the public offering price.

#### C. Time Period Covered by the Rule

As proposed, the Rule would have applied to short sales effected during the period "between the filing date of the registration statement or Form 1-A and the date that sales may be made pursuant to the registration statement or Form 1-A." The Commission believes that this period is overly broad in that it captures short sales made (1) on the date of filing, but prior to the time of filing, and (2) on the date of effectiveness, but after the time of effectiveness. Short sales made at those times, however, do not implicate the abuses to which the Rule is addressed. Accordingly, the period specified in the Rule has been refined to begin at the time that the registration statement or Form 1-A is filed with the Commission and end at the time that sales may be made pursuant to the registration statement or Form 1-A.<sup>20</sup>

#### D. Indirect Covering Purchases

The Rule as proposed would have prohibited a short seller from "directly or indirectly" covering short sales with securities purchased in the public offering, if the short sales took place between the filing date of the registration statement or Form 1-A and the time that sales may be made. Several commentators objected to the term "indirectly," particularly as it would apply in the context of

market making activities, and suggested that the Commission include an exemption for market makers from the Rule's restrictions.<sup>21</sup>

Specifically, one commentator stated that the word "indirectly" was undefined and ambiguous, leaving open to question exactly what types of transactions were prohibited by the Rule. Several commentators suggested that the term "indirectly" could be read to require a market maker who had established a short position in the normal course of business to ascertain whether the shares purchased in the market following an offering had been issued in that offering. This was described as an insurmountable compliance burden that might severely restrict the legitimate activities of market makers during the period from the filing date of the registration statement and its effectiveness. Commentators remarked that, because no market maker would want to assume such a burden, trading would be disrupted, thereby adversely affecting the liquidity of the market and the stability of security prices. Such result, it was argued, would not be in the public interest.

The NASD, in its letter dated June 8, 1988, however, urged the Commission not to remove market makers from the Rule's coverage, although it acknowledged that prior proposals of the Rule did provide for an exemption for *bona fide* market makers. According to the NASD, the term "indirectly" was intended to cover the situation where a short seller interjects an intermediary for the purpose of covering a short sale with securities purchased in a public offering. In the NASD's opinion, normal market making purchases would not constitute the type of conduct meant to be covered by the term "indirectly." Consequently, it believed that no special compliance procedure to determine the source of the securities purchased would be required. Any exemption for market makers, stated the NASD, would shield market makers engaged in manipulative short selling and would hinder successful enforcement of the Rule.

The Commission agrees with the NASD that a market maker exemption may allow certain persons who engage in manipulative pre-offering short selling to continue that activity free of the Rule's restrictions. Nonetheless, the Commission recognizes the adverse effects that the reading of the proposed Rule suggested by some commentators might have on market makers and securities markets, and has modified the Rule to address

those concerns. The "indirectly" language of the proposed Rule was intended to address circumstances where a person covers his short sale by an arrangement or understanding to obtain offered securities from another person who acquires the securities in the primary offering. However, that language could have been interpreted broadly to bring within the Rule transactions in which a person acquired in the marketplace offered securities from persons who had purchased in the offering, but where there was no arrangement or understanding as described above. In order to avoid this ambiguity and possible uncertainty on the part of market participants, the phrase "directly or indirectly" has been deleted from the Rule.

The Rule as adopted prohibits purchases of offered securities to cover short sales made during the specified period, as originally intended. The Rule proscribes such covering purchases effected directly from an underwriter, broker, or dealer participating in the offering. Moreover, such covering purchases effected by prearrangement or other understanding through other purchasers in the primary offering are proscribed through the operation of Section 20(b) of the Exchange Act,<sup>22</sup> which prohibits a person from doing indirectly any act that he is prohibited from doing directly by the Exchange Act or any rule thereunder. Thus, the "prearrangement" of the sort that the NASD believes may have been present in the cases it investigated<sup>23</sup> would be prohibited by Rule 10b-21(T) through the operation of Section 20(b).<sup>24</sup>

#### **E. Other Issues**

The Commission requested commentators to address various other issues related to the Rule including the specified time period of the Rule, and application of the Rule to exchange-traded securities and to shelf offerings conducted pursuant to Rule 415 under the Securities Act.<sup>25</sup>

Two commentators expressed concern about the time period specified in the Proposing Release, i.e., from the filing date of a registration statement or Form 1-A until the time that sales may be made. They noted that a significant period of time could occur between those two events and suggested the period begin on the later of a specified number of days prior to the date sales may be made or the date of filing of the registration statement or Form 1-A. The Commission recognizes that, where, for example, extended review of a registration state-

ment is involved, a substantial period of time could elapse before the public offering commences. Nevertheless, use of a lesser time period would create compliance problems because short sellers would not necessarily be aware of the effective date planned for an offering. Accordingly, the Commission is adopting the Rule with the time period essentially as proposed.<sup>26</sup>

There was little comment on the propriety of applying the Rule to exchange-traded securities. Two commentators noted that the "tick test" of Rule 10a-1<sup>27</sup> may not be a proper deterrent to short selling prior to an offering of exchange-listed securities and that the Rule should apply to such securities. One commentator pointed out that, in light of the differences between the over-the-counter and exchange markets, the Rule should apply to over-the-counter securities only. The NASD specifically declined to comment on the issue. The Commission believes that the potential for manipulative short selling based on the ability to cover in the offering exists both on an exchange and in the over-the-counter market. Accordingly, the Rule as adopted applies to both over-the-counter and exchange-listed securities.<sup>28</sup>

Several commentators stated that the Rule should not apply to shelf offerings conducted pursuant to Rule 415 under the Securities Act. The Commission agrees that such offerings are not normally conducive to the abuse at which the Rule is directed. Accordingly, the Commission has decided to except Rule 415 offerings from the coverage of the Rule. The Commission has also determined to limit the applicability of the Rule to firm commitment offerings, as these offerings present a greater potential for manipulative short selling.<sup>29</sup>

### **III. FINAL REGULATORY FLEXIBILITY ANALYSIS**

This Final Regulatory Flexibility Analysis, which relates to Rule 10b-21(T), has been prepared in accordance with 5 U.S.C. 604. The corresponding Initial Regulatory Flexibility Analysis ("IRFA") is contained in the Proposing Release.<sup>30</sup> No comments on the IRFA were received.

**A. The Need for and Objectives of the Rule**  
Rule 10b-21(T) prohibits a person who effects short sales of an equity security during the

period beginning at the time that a registration statement or Form 1-A relating to the same class of equity securities is filed and ending at the time that sales may be made pursuant to such registration statement or Form 1-A, from covering such short sales with securities purchased from an underwriter or broker or dealer participating in the public offering of such equity securities. The Rule excludes offerings conducted pursuant to Rule 415 under the Securities Act and offerings conducted otherwise than on a firm commitment basis. The Rule is designed to prevent manipulative short selling by market participants in anticipation of underwritten public offerings.

Manipulative opportunities exist in such offerings because outstanding securities can be sold short prior to the commencement of a public offering of such securities with the motive that such selling activity will lower the price of the offered security and enable the short seller to cover at a depressed price. The ability to purchase shares in the public offering substantially reduces the risks entailed in such short selling. Because the shares in a public offering are generally priced at or slightly below the price of securities of the same class and series in the existing trading market as of a given date shortly before the public offering commences, the issuer and underwriting group may be forced to offer the security at a lower price if the market price decreases during the registration process, especially in the period immediately before the offering price is fixed. As a result, the issuer may realize lower than expected proceeds while the short sellers may cover their short sales with lower priced securities purchased in the public offering.

The Rule addresses the concerns created by the type of short selling activity described above without affecting open market activities. It is designed to deter a practice that does not involve legitimate short selling activity. The Rule only prohibits covering short sales with offered securities purchased from an underwriter or broker or dealer participating in a public offering of such securities. Short sellers will still be able to cover their short sales with purchases outside the public offering. Such purchases would expose short sellers to the risks inherent in short selling, namely, that the necessary securities may not be available in the amount required, or that if available,

the securities may be priced higher than the public offering price.

#### **B. Issues Raised by Public Comment**

No comments were received on the IRFA. Several commentators remarked, however, that the Rule would impose difficult compliance burdens on market makers as it applied to their purchases to cover short positions established in the course of normal market making activities. The Commission does not intend that market makers establish specific procedures to ensure that shares purchased in normal market making transactions did not originate from a public offering. The Rule is designed to address those situations in which a person covers his short sale by an arrangement or understanding to obtain offered securities from another person who acquired the securities in the primary offering.

#### **C. Significant Alternatives**

The Regulatory Flexibility Act directs the Commission to consider significant alternatives to the Rule consistent with the stated objectives of the applicable statutes and designed to minimize any significant economic impact of the Rule on small entities. The Rule has the potential to affect small businesses that engage in short sales prior to a distribution, small businesses with an existing market for their stock that anticipate a public offering of stock, and small broker-dealers that participate in the offering of securities.

The Rule prohibits the covering of a short sale from a broker or dealer participating in a public offering of the security sold short. The Commission has previously proposed three different versions of the Rule, none of which were adopted. In the Commission's opinion, the Rule adopted today is the least intrusive to deal with the practice of manipulative short selling prior to a public offering. Indeed, small issuers with an existing market in their stock may benefit from the Rule since it should remove an incentive to engage in short selling of the issuer's stock before a public offering. The Commission continues to believe that any adverse economic impact on small entities will be outweighed by the primary objective of the Rule, which is to prevent manipulative short selling of an issuer's securities by market participants in anticipation of an underwritten public offering.

#### IV. COST-BENEFIT ANALYSIS

The Commission indicated in the Proposing Release that the cost associated with the Rule would be a reduction in the ability of market participants to sell short in advance of offerings that they believed to be overpriced, resulting in an increased incidence of such offerings. The NASD questioned the assumption underlying this statement, namely, that there is a correct price for securities distributed in a public offering, and stated that the criteria to be used in determining when an offering is overpriced are not well defined. The NASD pointed out that the Rule is intended to ensure that a short seller will not use the distribution process to eliminate the market risk associated with short sale transactions. Another commentator pointed out that the Rule does not prohibit short selling, but merely restricts covering transactions in the context of a registered offering and for a limited and well-defined period. A third commentator acknowledged that short selling could benefit the public by allowing a security to be purchased at a more attractive price, but also was of the opinion that to allow the short seller to cover through the public offering represented an unfair advantage and could result in manipulative conduct.

Although the Commission recognizes that the Rule will diminish a short seller's ability to effect a covering transaction by restricting the source of securities from which he may cover, it believes the Rule will not prevent the beneficial effects of short selling from reaching the market. If legitimate market forces would have driven down the price of a security before a public offering in the past, those same forces are free to operate in the same manner today.

The Commission believes that the cost of restricting a short seller's ability to cover is balanced by the benefits derived from preventing manipulative short selling activity before a public offering. Several commentators described instances of such selling resulting in the withdrawal of proposed public offerings or in lower proceeds than anticipated. In the case of a withdrawn public offering, an issuer faces out-of-pocket expenses that have been incurred by the time the offering is filed. When an issuer completes a public offering despite lower proceeds, it may have been forced to do so because of an urgent need for the funds or the higher cost of alternative financing. The Rule

adopted today will allow an issuer to proceed with a proposed offering without facing the situations described above. The Commission believes that the resulting benefit to issuers outweighs the limited cost imposed on short sellers.

#### V. EFFECTS ON COMPETITION

Section 23(a)(2) of the Exchange Act<sup>31</sup> requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered Rule 10b-21(T) in light of the standards cited in Section 23(a)(2) and believes for the reasons stated in this release that adoption of Rule 10b-21(T) will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

#### List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities, Issuers, Fraud.

#### Statutory Authority and Text of Rule

The Commission hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

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

1. The authority citation for Part 240 is amended by adding the following citation.

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w, \* \* \* §240.10b-21(T) also issued under Secs. 2, 3, 9(a)(6), 10(a), 10(b), 15(c), 23(a), and 30(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78o(c), 78w(a), and 78dd(a).

2. By adding new text of §240.10b-21(T) to read as follows:  
§240.10b-21(T). Short Selling in connection with a public offering.

(a) It shall be unlawful for any person who effects one or more short sales of equity securities of the same class as securities offered for cash pursuant to a registration statement filed under the Securities Act of 1933 ("Securities Act") or pur-

suant to a notification on Form 1-A under the Securities Act ("offered securities") to cover such short sale or sales with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale or sales took place during the period beginning at the time that the registration statement or Form 1-A is filed and ending at the time that sales may be made pursuant to the registration statement or Form 1-A.

(b) This rule shall not apply to offerings filed under Rule 415 under the Securities Act (17 CFR 230.415) or to offerings that will not be conducted on a firm commitment basis.

(c) This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion exempts such transaction or transactions either unconditionally or on specified terms and conditions.

By the Commission.

Jonathan G. Katz  
Secretary

Date: August 25, 1988

<sup>1</sup> 15 U.S.C. 78a *et seq.*

<sup>2</sup> Securities Exchange Act Release No. 24485 (May 20, 1987), 52 FR 19885 ("Proposing Release").

<sup>3</sup> The NASD Petition was filed with the Commission on June 12, 1986 pursuant to 553(e) of the Administrative Procedure Act, 5 U.S.C. §553(e), and Rule 4(a) of the Commission's Rules of Practice, 17 CFR 201.4(a), and is publicly available in File No. S7-18-87 in the Commission's Public Reference Room.

<sup>4</sup> 15 U.S.C. 77a *et seq.*

<sup>5</sup> 17 CFR 239.90. Form 1-A is used in connection with offerings made pursuant to Regulation A under the Securities Act. 17 CFR 230.251-230.264.

<sup>6</sup> The Commission previously proposed three

different versions of the Rule, none of which has been adopted. See Securities Exchange Act Release No. 10636 (February 11, 1974), 39 FR 7806; Securities Exchange Act Release No. 11328 (April 2, 1975), 40 FR 16090; and Securities Exchange Act Release No. 13092 (December 21, 1976), 41 FR 56542; File No. S7-510. For further discussion of these proposals, see Proposing Release, 52 FR at 19886. In light of today's adoption of the Rule as proposed in 1987, the Commission is withdrawing all three prior proposals.

<sup>7</sup> The NASD's study, "Short-Sale Regulation of NASDAQ Securities" (November 2, 1986), headed by former Commissioner Irving M. Pollack, endorsed the NASD Petition and the proposed Rule.

<sup>8</sup> The Commission observed that the notational convention of using "10b-" to designate a rule is not a reflection of the scope of the rule's statutory authority. See Proposing Release, 52 FR at 19987 n.19.

<sup>9</sup> 17 CFR 240.3b-3.

<sup>10</sup> The NASD urged the Commission to regulate only those covering purchases made out of the public offering to avoid affecting the operation of the market for the securities already outstanding. The Commission agrees that covering short sales in the open market exposes the short seller to the risk that securities to cover the short sale will not be readily available in the amount required, or will be priced higher than the public offering price, and that such purchases should not be restricted by the Rule.

<sup>11</sup> See 17 CFR 240.10b-6(c)(5).

<sup>12</sup> The letters of comment, as well as a summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room. See File No. S7-18-87.

<sup>13</sup> The six commentators who discussed the alternative proposed formulations, including the NASD, endorsed Alternative B.

<sup>14</sup> The Commission had requested that com-

mentators provide statistical analysis demonstrating the extent to which short selling prior to public offerings results in a decrease in the market price of the security to be offered. In response, the NASD conducted a study ("NASD Study") that analyzed the price movements of 194 NASDAQ issues (i.e., securities quoted in the National Association of Securities Dealers Automated Quotation System) and 158 exchange-listed issues immediately prior to and subsequent to non-initial public offerings of common stock conducted from May 1, 1986 to May 31, 1987 and priced at \$5 or more.

The NASD Study also examined equity audit trail data for NASDAQ/NMS securities (i.e., NASDAQ securities designated as national market system securities under Rule 11Aa2-1 under the Exchange Act, 17 CFR 240.11Aa2-1), and National Securities Clearing Corporation (NSCC) clearing short position data for many of the 194 NASDAQ securities included in the price performance analysis.

The NASD Study concluded that its findings provide evidence of unusual short selling, as well as the possible effect of Rule 10b-6 under the Exchange Act, 17 CFR 240.10b-6, on the market price of securities subject to non-initial public offerings. Rule 10b-6 precludes persons participating in a distribution from bidding for or purchasing the security to be distributed, absent an exception to or exemption from the rule. The NASD further concluded that the price data reviewed are consistent with the widely held view that a pattern exists of short selling prior to a non-initial public offering, with covering transactions made from offered securities.

The NASD Study, along with two other studies it references, Barclay and Litzenberger, "Announcement Effects of New Equity Issues and the Use of Intraday Price Data," and Barclay, "Common Stock Returns Preceding Seasoned New Equity Offerings on the New York Stock Exchange," are attached as exhibits to the NASD's comment letter dated November 2, 1987, included in File No. S7-18-87.

<sup>15</sup> Any prearrangement between short sellers and those purchasing from underwriters or broker-dealers participating in the offering would be an "indirect" covering transaction with offered securities and would violate the Rule. See Section II.D. *infra*.

<sup>16</sup> The Commission is adopting the Rule on a temporary basis to give it the opportunity to analyze, at a later date, whether the Rule is achieving its intended purpose. In this regard, the Commission's staff will request the NASD and the exchanges to furnish statistical information for non-initial public offerings conducted after adoption of the Rule for an eighteen-month period. The staff will then review this data and report to the Commission, within twenty-four months of adoption, whether the pricing impact the NASD believes is indicative of short selling persists and whether any new pricing impacts are observed. At that time, the Commission may revisit Rule 10b-21(T), including whether the Rule should continue to apply to exchange-traded securities.

<sup>17</sup> In 1972, the Commission published a staff opinion that addressed short selling activities prior to a public offering. Securities Exchange Act Release No. 9824 (October 16, 1972). The release observed that such short selling may be "disruptive of fair and orderly markets in the securities" and, where the short sales are intended to depress the market price of the security so that the short position can be covered at a lower price, the activity would violate the anti-manipulation provisions of the Exchange Act.

Short selling schemes of the type addressed by Rule 10b-21(T) have been the subject of enforcement actions by the Commission as violations of the anti-manipulation provisions of the Securities Act and the Exchange Act. E.g., *J.A.B. Securities Co., Inc.*, Securities Exchange Act Release No. 15948 (June 25, 1979); *A.P. Montgomery & Co., Inc.*, Securities Exchange Act Release No. 10909 (July 9, 1974).

The Commission has also cautioned that "any person intending to purchase securities in any registered secondary offering should be on notice that his selling short the same securities prior to the offering may be subject to the registration requirements of Section 5 of the Securities Act [15 U.S.C. 77e], as well as other applicable statutes and rules." Securities Exchange Act Release No. 10636 (February 11, 1974). *Accord*, Securities Exchange Act Release Nos. 11328 n.1 (April 2, 1975) and 9824 (October 16, 1972).

<sup>18</sup> The Commission has on other occasions recognized the need to protect the market for of-

ferred securities from the manipulative influences of certain market participants by adopting such rules as Rules 10b-6 and 10b-7 under the Exchange Act, 17 CFR 240.10b-6 and 240.10b-7. These rules limit bids and purchases, including stabilizing transactions, by persons participating in a distribution of securities to prevent their artificially conditioning the market to facilitate the distribution.

A few commentators, including the NASD in its comment letter dated November 2, 1987, suggested that Rule 10b-6, which requires distribution participants to cease market making in the security to be distributed two or nine business days prior to the offering's commencement, may also play a role in a decline of the security's price immediately preceding the offering. The NASD, in its comment letter dated June 2, 1988, stated that its investigation of a corporation that experienced a lower stock price prior to an offering demonstrated that such decline is not necessarily due to the withdrawal of market makers for Rule 10b-6 purposes, but may be due to short selling. The Commission believes that adoption of Rule 10b-21(T) will prevent price declines due to abusive short selling activity related to the ability to cover from the offering, independent of price effects, if any, that may result as a consequence of Rule 10b-6.

<sup>19</sup> See Section II.C. *infra* for a discussion of the time period covered by the Rule.

<sup>20</sup> In most registered offerings, the time that sales may be made occurs on the date of effectiveness of the pricing amendment to the registration statement. However, for offerings conducted pursuant to Rule 430A under the Securities Act, 17 CFR 230.430A, the time that sales may first be made is on the date of pricing, which may be later than the effective date.

Where a short position is held immediately prior to the time of filing, and one or more subsequent short sales and covering transactions occur, it will not always be evident whether the short sales associated with a current short position were effected before the time of filing or subsequently. Under these circumstances, it is intended that holders of short positions prior to the time of filing may cover, with offered shares purchased from a broker or dealer participating in an offering, the lesser of the short position that ex-

isted immediately prior to the filing time or the smallest short position held subsequent to that time. Cf. *Letter regarding Bernard H. Raouls, Jr.*, [1985-1986 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶78,144, at 76,637 (June 7, 1985).

<sup>21</sup> Previous versions of the Rule included an exemption for *bona fide* market makers, exchange specialists, odd-lot dealers, and *bona fide* arbitrageurs. See note 6 *supra*.

<sup>22</sup> 15 U.S.C. 78t(b). Section 20(b) provides: It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this title or any rule or regulation thereunder through or by means of any other person.

Although Section 20 is entitled "Liabilities of Controlling Persons," paragraph (b) is not limited to situations involving persons in control relationships.

<sup>23</sup> See note 15 *supra*.

<sup>24</sup> Trading volume in a security subject to an offering may be greater than usual on the offering's effective date, indicating that a significant number of shares sold in the public offering have entered the secondary market. Customers of the distribution participants may have purchased in the offering and have decided to sell shortly thereafter. Moreover, certain distribution participants may resume market making as soon as the distribution is completed. However, a person with a short position is not required by the Rule to inquire whether any covering purchases he makes in the secondary market (e.g., from a market maker who had participated in the distribution) include shares that had been acquired in the offering.

<sup>25</sup> 17 CFR 230.415.

<sup>26</sup> See Section II.C. *supra*.

<sup>27</sup> 17 CFR 240.10a-1.

<sup>28</sup> See note 16 *supra*.

<sup>29</sup> One commentator suggested adding to the Rule a prohibition on covering purchases made

from an issuer to prevent manipulative short selling in connection with rights offerings. The Commission is not aware of this type of abuse occurring in rights offerings and is therefore not adopting the suggested change. The Commission will, however, continue to review whether the

Rule should be extended to rights offerings, shelf offerings, and best efforts offerings.

<sup>30</sup> 52 FR at 19888.

<sup>31</sup> 15 U.S.C. 78w(a)(2).

# Notice To Members

National Association of Securities Dealers, Inc.

September 1988

## Number 88 - 63

### Suggested Routing:\*

- Senior Management
- Corporate Finance
- Government Securities

- Institutional
- Internal Audit
- Legal & Compliance
- Municipal

- Mutual Fund
- Operations
- Options
- Registration

- Research
- Syndicate
- Trading
- Training

\*These are suggested departments only. Others may be appropriate for your firm.

## Subject: New Requirements – Effective Immediately – Re Issuing Companies' Notification of NASD Regarding Material News

### EXECUTIVE SUMMARY

The Securities and Exchange Commission (SEC) recently approved changes to Part II of Schedule D to the NASD By-Laws requiring NASDAQ companies to notify the NASD of material news prior to release of the news to the public. Material news includes information regarding corporate

events of an unusual or nonrecurring nature that may affect the value of the issuing company's securities or influence investors' decisions.

Compliance with the new requirements may affect a company's continued NASDAQ qualification status.

### BACKGROUND AND EXPLANATION

On August 8, the SEC approved changes to Part II of Schedule D to the NASD By-Laws requiring NASDAQ companies to notify the NASD of material news announcements prior to their release to the public. The NASD recommends that issuers notify the NASD of material news at least 10 minutes in advance.

Another provision of the rule requires NASDAQ issuers to provide full and prompt responses to all requests for information by the NASD.

**Compliance with this new requirement may affect a company's continued NASDAQ qualification status.**

The rule change also eliminates the previous requirement that information released after 5 p.m., Eastern Time, be reported by 9 a.m., Eastern Time, the following day. The NASD Market Surveillance

Section now has the ability to receive information 24 hours a day. In addition, oral notification must be confirmed promptly in writing.

The purpose of this rule is to assist in maintaining a stable and orderly market for NASDAQ securities. One of the methods used by the NASD to accomplish this is the institution of NASDAQ trading halts. A trading halt benefits current and potential shareholders by halting trading in the NASDAQ System until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known to them but not known to others.

A trading halt normally lasts about 30 minutes after the appearance of the news on the wire services, but it may last longer if a determination is made that the news has not been adequately disseminated. A trading halt provides the public

with an opportunity to evaluate the information and consider it in making investment decisions.

Upon receipt of the information from the company, the NASD, after consultation with the company, will immediately evaluate the information, estimate its potential impact on the market, and determine whether a trading halt in the security is appropriate.

### EXCERPTS FROM THE RULE LANGUAGE

Schedule D requires NASDAQ companies to disclose promptly to the public through the press any material information that may affect the value of their securities or influence investors' decisions, and that NASDAQ companies notify the NASD of the release of any such information prior to its release to the public through the press. The Board of Governors recommends that NASDAQ companies provide such notification at least 10 minutes before such release.

#### Schedule D, Part II, Section 1(c)(13)

The issuer shall make prompt disclosure to the public through the press of any material information that may affect the value of its securities or influence investors' decisions and shall, **prior to** the release of the information, provide notice of such disclosure to the NASD Market Surveillance Section. The issuer shall provide full and prompt responses to all requests for information by the NASD.

#### Section 2(e)(14)

The issuer shall make prompt disclosure to the public in the United States through international wire services or similar disclosure media of any material information that may affect the value of its securities or influence investors' decisions and shall, **prior to** the release of the information, provide notice of such disclosure to the NASD Market Surveillance Section. The issuer shall provide full and prompt responses to all requests for information by the NASD.

#### Section 5(b)(2)

Notification shall be provided directly to the NASD Market Surveillance Section by telephone. Information communicated orally by authorized representatives of a NASDAQ issuer should be confirmed promptly in writing.

### ADVANTAGES OF RULE CHANGE

At its June 29 meeting, the NASD Corporate Advisory Board (CAB) considered the material

news matter and concluded that the rule would be in the best interest of the investing public. The CAB is composed of 15 NASDAQ company representatives who advise the NASD Board of Governors on matters of interest to issuers.

This rule will aid the NASD in facilitating the recent changes mandating the use of its Small Order Execution System for transactions in NASDAQ/NMS securities. By requiring issuers to notify the NASD of material news releases prior to notification to the press, the NASD will be better able to keep market participants informed.

In the event that a trading halt would be an appropriate response to the news, prior notification will give the NASD an opportunity to make such a judgment and order a trading halt before the news becomes public.

### WHAT IS MATERIAL NEWS?

Material information that might reasonably be expected to affect the value of a company's securities or influence investors' decisions would include information regarding corporate events of an unusual and nonrecurring nature.

The NASD developed the following list of events, which is not exhaustive, to help determine whether information is material. Not all developments in these areas would warrant a trading halt.

- A merger, acquisition, or joint venture.
- A stock split or stock dividend.
- Unusual earnings or dividends.
- The acquisition or loss of a significant contract.
- A significant new product or discovery.
- A change in control or a significant change in management.
- A call for redemption of securities.
- The public or private sale of a significant amount of additional securities.
- The purchase or sale of a significant asset.
- A significant change in capital investment plans.
- A significant labor dispute.
- Establishment of a program to purchase a company's own shares.
- A tender offer for another company's securities.
- An event requiring the filing of a current report under the Securities Exchange Act.

# Notice To Members

National Association of Securities Dealers, Inc.

September 1988

**Number 88 - 64****Suggested Routing:\***

Senior Management  
 Corporate Finance  
 Government  
 Securities

Institutional  
 Internal Audit  
 Legal & Compliance  
 Municipal

Mutual Fund  
 Operations  
 Options  
 Registration

Research  
 Syndicate  
 Trading  
 Training

\*These are suggested departments only. Others may be appropriate for your firm.

**IMPORTANT MAIL VOTE**

**Subject: Proposed Amendment Regarding Filing of Advertising and Sales Literature for Investment Company Securities; Deadline for Voting: October 3, 1988**

**EXECUTIVE SUMMARY**

The NASD invites members to vote on a proposed amendment to Article III, Section 35 of the NASD Rules of Fair Practice.

The amendment would require advertising and sales literature for registered investment company securities to be filed by members with the NASD Advertising

Department within 10 days of first use or publication. Currently, the rule requires members that are investment company underwriters to file advertising and sales literature concerning such companies.

The proposed amendment would extend this requirement to all NASD members.

**BACKGROUND**

Article III, Section 35 of the NASD Rules of Fair Practice regulates members' communications with the public. It requires that all such communications be based on principles of fair dealing and good faith and that they provide a sound basis for evaluating the facts regarding any securities offered by members.

Material facts and qualifications may not be omitted if, in the context of material presented, the omission would make the communication misleading. Exaggerated or misleading statements are prohibited, and members may not publish or distribute any public communication that the member knows or has reason to know contains any untrue

statements of material facts or is otherwise false or misleading.

Article III, Section 35 currently requires a member to file all advertisements with the NASD Advertising Department for review 10 days prior to use for one year, commencing with the member's initial advertisement. Under certain circumstances, an NASD District Business Conduct Committee may also require a member to file advertising and/or sales literature with the Advertising Department at least 10 days prior to first use. All members are subject to routine spot-checks of their advertising and sales literature.

Members must also file advertising and sales literature pertaining to direct participation

programs within 10 days of first use, and certain options materials must be filed 10 days prior to first use. Also, advertising and sales literature concerning registered investment company securities must be filed within 10 days of first use by members **that are underwriters of such companies.**

During the past two years, attention has been focused on problems with mutual fund advertising, particularly income fund advertising. The Securities and Exchange Commission (SEC) recently adopted extensive rule amendments governing the presentation of investment company performance (See SEC Release Nos. 33-6753; IC-16245). The NASD Board of Governors also addressed these concerns in Notice to Members 86-41 regarding the presentation of investment companies' yield quotations.

One of the Board's concerns was that the problems were not limited to material prepared by investment company underwriters but were also common in material prepared by dealers. The Board noted that the majority of complaints received by the NASD about investment company communications related to material prepared by dealers. Much of the material was written and published by individual representatives or branch managers and reflected a lack of knowledge or observance of SEC and NASD Rules.

In addition, numerous violations resulted from a dealer inappropriately revising an advertisement that was prepared by the underwriter or using the material long after the information contained therein was current. The NASD has referred such practices to the appropriate District Business Conduct Committee.

The Board of Governors notes that the underwriter or distributor of a fund bears the responsibility to disseminate literature to dealers that has been filed with the NASD and that complies with applicable regulations. The Board is of the opinion that underwriters supplying non-complying material should be referred to the appropriate District Business Conduct Committee for possible disciplinary action. Nevertheless, the Board recognizes that a large number of problems are created after the material is distributed to dealers, or when dealers prepare the material themselves.

Therefore, the Board of Governors has approved the proposed amendment to Article III, Section 35(c)(1) of the NASD Rules of Fair Practice and the amendment is now being submitted for membership approval. Prior to becoming effective,

the rule change must also be approved by the Securities and Exchange Commission.

### COMMENTS RECEIVED

The proposed amendment to Article III, Section 35(c)(1) of the NASD Rules of Fair Practice was published for comment in NASD Notice to Members 88-20 dated March 14, 1988. The NASD received 34 comments on the proposed amendment. Of these, 16 commentators were generally in favor of the proposed amendment and 16 were generally opposed. Two commented only on proposed procedures.

The most frequent comment made both for and against the proposal was the concern that filings would be duplicated because it would be difficult to ascertain whether a piece had been filed previously by the underwriter.

Additionally, it was noted that the proposed amendment did not clearly state the necessity to refile any communication supplied by the underwriter if the dealer has changed the communication in any way. It was also pointed out that the proposed language exempted from filing only material already filed by "the underwriter or distributor . . . or by another member firm." Since the material may be filed by an entity other than an NASD member for subsequent use by NASD members, the proposed language was considered too restrictive.

To deal with these concerns, the Investment Companies Committee recommended that the last sentence of the proposed amendment be further amended as follows:

"Members are not required to file advertising and sales literature which have previously been filed [by the underwriter or distributor of the securities or by another member] and which are used without change."

**NOTE:** New language underlined; deleted language in brackets.

The Board of Governors approved the recommendation of the Investment Companies Committee.

\* \* \* \* \*

The Board of Governors believes that the amendment to Article III, Section 35 of the NASD Rules of Fair Practice is necessary and appropriate and recommends that members vote their approval.

Please mark the enclosed ballot according to your convictions and return it in the enclosed, stamped envelope to "The Corporation Trust Company."

Ballots must be postmarked no later than October 3, 1988.

Questions concerning this notice may be directed to R. Clark Hooper, NASD Advertising Department, at (202) 728-8330.

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

NOTE: New language is underlined; deleted language is in brackets.

Communications with the Public  
Sec. 35.

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(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) shall be filed with the Association's Advertising Department within 10 days of first use or publication by any member, [who has utilized or distributed such material in connection with the offer or sale of such securities issued by companies for which such member is a principal underwriter.] Filing in advance of use is recommended [optional]. Members are not required to file advertising and sales literature which have previously been filed and which are used without change.

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# Notice To Members

National Association of Securities Dealers, Inc.

September 1988

Number 88 - 65

**Suggested Routing:\***

- Senior Management
- Corporate Finance
- Government Securities

- Institutional
- Internal Audit
- Legal & Compliance
- Municipal

- Mutual Fund
- Operations
- Options
- Registration

- Research
- Syndicate
- Trading
- Training

\*These are suggested departments only. Others may be appropriate for your firm.

**REQUEST FOR COMMENT**

**Subject: Proposed Amendment: Use and Disclosure of Member Names; Last Date for Comment: October 3, 1988**

**EXECUTIVE SUMMARY**

The NASD requests comment on a proposed amendment to Article III, Section 35 of the NASD Rules of Fair Practice that would establish standards regarding the use and disclosure of member names in advertising, sales literature, business cards, and letterhead.

The proposed amendment reflects the NASD's concern that members of the public may be confused by advertising or sales literature that either fails to refer to an NASD member firm by its registered name, or includes unclear references to both NASD member firms and entities that are

not NASD members. Unless the identity of and the products offered by an NASD member firm are made clear in such advertising or sales literature, the public may be confused or misled as to which entity does, in fact, offer securities.

The proposed amendment seeks to address this problem by establishing both general and specific standards governing the manner in which member names must be disclosed in communications with the public.

The text of the amendment follows this notice.

**BACKGROUND AND SUMMARY OF AMENDMENT**

Article III, Section 35 of the NASD Rules of Fair Practice governs members' communications with the public. Among the standards set forth in the rules are requirements that all advertising and sales literature contain the name of the NASD member and that no material fact be omitted if the omission would cause the communication to be misleading.

In recent years, non-member entities, such as financial planners, insurance companies, banks, and thrift institutions, have increasingly become involved in the securities field. As a consequence, the names of both NASD member firms and non-member entities often appear in a single advertisement or item of sales literature. Sometimes, advertising and sales literature that have included the names of both member and non-member entities have done so in ways that made it difficult

for the public to identify which entity was actually offering securities. Similar problems have arisen when an individual who is affiliated with member and non-member entities is named in public communications, but the nature of the individual's relationships with named member and nonmember entities is left unclear.

A related problem that has also developed during recent years stems from some members' use in advertising and other public communications of fictitious names or variations upon member names. Once again, this practice can make it difficult for the public to identify the NASD member with which it is dealing.

The recurrent problems in this area can be divided into five broad categories. Generally speaking, problems of public confusion have tended to occur when: (1) NASD members conduct business under a fictional "doing business as" (DBA) name rather than the name set forth on their Forms BD; (2) members use "generic" names that are based upon the firm name to promote certain areas of the firm's business; (3) the term "division of" is used to distinguish those divisions of the member that conduct specialized businesses; (4) members permit certain firms, primarily financial planning firms, to use in advertising the phrases such as "service of" or "securities offered through," followed by the name of the NASD member; or (5) members use confusing or misleading business cards and letterhead that incorporate one or more of the foregoing characteristics.

### GENERAL STANDARDS

To address these problem areas, the proposed amendment sets forth general standards that would apply to any business card, letterhead, or other communication used in the promotion of a member's securities business. These general standards would require, among other things, that the names of NASD members be disclosed as prominently as any non-member entities named in communications; that when multiple entities are named in one communication, the nature of the relationships among the named entities and the products offered by each entity be made clear; that when an individual and multiple entities are named in one communication, the nature of the individual's relationship with each entity be clearly identified. The proposed general standards would also prohibit individuals from including in communications references to non-existent degrees or

designations, or the use of *bona fide* degrees or designations in a misleading manner.

### SPECIFIC STANDARDS

In addition to such general standards, the proposed amendment sets forth a number of specific standards that would apply to advertising and other commercial communications with the public. The specific guidelines seek to address four recurring problems that have been seen in advertising and sales literature.

**Fictional Names.** Under these specific guidelines, members would be permitted voluntarily to use fictional, or DBA, designations only when the DBA name has been filed with the NASD and the SEC on the Form BD, and when it was the only name under which the member conducts business. In cases in which a state or other regulatory authority requires a member to use a DBA (e.g., because the member's NASD-approved name was deemed too similar to that of another corporation registered in the state), the amendment would permit the member to use the DBA only in the jurisdiction that requires its use. With respect to required use of DBA names, the proposed amendment would also require that, whenever possible, the member use the same DBA name in every jurisdiction that requires the use of a DBA. The proposed amendment would further require, with respect to a required DBA, that members clearly disclose in any communication both the name of the member as set forth on the Form BD and the fact that the firm is using a DBA designation in the particular state or jurisdiction.

**Generic Names.** As to the use of generic names to promote certain areas of a member firm's business, the amendment would permit an NASD member to use an altered version of the firm name only when the generic name is a derivative of the name of the member, the member name is disclosed as prominently as the generic name, and the relationship between the member and the generic entity is made clear.

**"Division of" Designations.** With respect to the use of "division of" and similar designations, the amendment would permit members to designate a portion of their businesses in this manner only when the designation is used with respect to a *bona fide* division of the member (i.e., a division that results from a merger or acquisition, or a functional division that conducts a specialized aspect of the member's business). The amendment would

also require that the member name be disclosed as prominently as that of the division, and that the division be clearly identified as a division of the member.

**"Service of" and "Securities Offered Through."** With respect to the use by financial planners or other non-member entities of phrases such as "service of" or "securities offered through," followed by the name of a member firm, the amendment would permit the use of member names in this manner only if the name of the member were disclosed as prominently as that of the non-member entity, and the securities function were clearly identified as a function of the member rather than the financial planning or other entity that was also named in the communication.

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 **October 3, 1988**. Comments received by this date will be considered by the NASD National Business Conduct Committee and NASD Board of Governors. Any changes to the NASD Rules of Fair Practice that are approved by the Board must be voted upon by the membership and thereafter filed with and approved by the Securities and Exchange Commission before becoming effective.

Questions concerning this notice can be directed to R. Clark Hooper, Director, NASD Advertising Department, at (202) 728-8330 or Anne H. Wright, NASD Office of General Counsel, at (202) 728-8815.

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

NOTE: New language is underlined.

**COMMUNICATIONS WITH THE PUBLIC**

Sec. 35.

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**(g) Standards Applicable to the Use and Disclosure of the NASD Member's Name**

In addition to the provisions of subsection (f) of this Section, members' public communications shall conform to the following provisions concerning the use and disclosure of the member's name:

**(1) General Standards**

**(A) Any business card, letterhead or other communication used in the promotion of a member's securities business must clearly and prominently set forth the name of the NASD member.**

**(B) The name of the NASD member firm shall be in type size at least as prominent as that used for any other entity named in the communication.**

**(C) If more than one entity is named in the communication, any relationship among the entities shall be clear. However, if there is no direct relationship, the communication shall not imply that there is one.**

**(D) If an individual is named in the communication, the nature of the affiliation or relationship of the individual with each entity shall be made clear.**

**(E) Individuals shall not create or award to themselves non-existent degrees or designations or use *bona fide* designations in a misleading manner.**

**(F) If products or services are offered by companies identified in the communication, there shall be no confusion as to which entity is offering which products and/or services. Securities products and services shall be clearly identified as being offered by the registered broker/dealer.**

**(G) If the communication identifies a single company, the communication shall not be used in a manner which implies the offering of a product or service not available from the company named (e.g., an insurance agency business card should not accompany an offer of securities).**

(H) The positioning of disclosures can create confusion even if the disclosures or references are entirely accurate. To avoid confusion, a reference to an affiliation (e.g., registered representative), shall not be placed in proximity to the wrong entity.

(I) Any references to memberships, (e.g., NASD, SIPC, etc.) shall be clearly identified as belonging to the entity that is the actual member of the organization.

## (2) Specific Standards

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

(A) Doing Business As: An NASD member may conduct business under a fictional name provided the following conditions are met:

(i) Non-Required Fictional Name: A member may voluntarily conduct its business under a fictional name provided that the name has been filed with the NASD and the SEC, all business is conducted under that name and it is the only name by which the firm is recognized.

(ii) Required Fictional Name: If a state or other regulatory authority requires a member to use a fictional name, the following conditions shall be met:

• The fictional name shall be used to conduct business only within the state or jurisdiction requiring its use.

• If more than one state or jurisdiction requires a firm to use a fictional name, the same name shall be used in each, wherever possible.

• Any communication, including business cards and letterhead, shall disclose the name of the member and the fact that the firm is doing business in that state or jurisdiction under the fictional name, unless the regulatory authority prohibits such disclosure.

(B) Generic Names: An NASD member may

use altered versions of the firm name to promote certain areas of the firm's business or as an "umbrella" tag line to promote name recognition, provided the following conditions are met:

(i) The generic name shall be a derivative of the name of the member.

(ii) The name of the member shall be prominently disclosed as prominently as the generic name.

(iii) The relationship between the entities named shall be made clear.

(C) "Division of": An NASD member firm may designate an aspect of its business as a division of the firm, provided that the following conditions are met:

(i) The designation shall only be used by a bona fide division of the member. This shall include:

• a division resulting from a merger or acquisition that will continue the previous firm's business; or

• a functional division that will conduct one specialized aspect of the firm's business.

(ii) The name of the member shall be disclosed as prominently as the name of the division.

(iii) The division shall be clearly identified as a division of the member firm.

(D) "Service of": An NASD member firm may identify its brokerage service being offered through other institutions as a service of the member, provided that the following conditions are met:

(i) The name of the member shall be disclosed as prominently as the name of the service.

(ii) The service shall be clearly identified as a service of the member firm.

# Notice To Members

National Association of Securities Dealers, Inc.

September 1988

**Number 88 - 66****Suggested Routing:\***

Senior Management  
 Corporate Finance  
 Government  
 Securities

Institutional  
 Internal Audit  
 Legal & Compliance  
 Municipal

Mutual Fund  
 Operations  
 Options  
 Registration

Research  
 Syndicate  
 Trading  
 Training

\*These are suggested departments only. Others may be appropriate for your firm.

**Subject: Test Center Change for Houston Series 7 Exam in September**

Please note that the September 17, 1988  
 Series 7 test session in Houston will be held at:

**Houston Airport Marriott Hotel  
 Intercontinental Airport  
 18700 Kennedy Boulevard  
 Houston, Texas 77032**

Candidates are to report to the intercontinen-  
 tal ballroom. The hotel is located within the Inter-  
 continental Airport.

Free parking is available in the hotel's south  
 tower parking lot, which is adjacent to the Inter-  
 continental Ballroom.

# Notice To Member

Securities Dealers, Inc.

Number 88 - 67

**Suggested Routing:\***

- |   |  |  |                                    |
|---|--|--|------------------------------------|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Institutional                 | <input checked="" type="checkbox"/> Mutual Fund  | <input type="checkbox"/> Research  |
| <input type="checkbox"/> Corporate Finance            | <input type="checkbox"/> Internal Audit                | <input checked="" type="checkbox"/> Operations   | <input type="checkbox"/> Syndicate |
| <input type="checkbox"/> Government                   | <input checked="" type="checkbox"/> Legal & Compliance | <input checked="" type="checkbox"/> Options      | <input type="checkbox"/> Trading   |
| <input type="checkbox"/> Securities                   | <input type="checkbox"/> Municipal                     | <input checked="" type="checkbox"/> Registration | <input type="checkbox"/> Training  |

\*These are suggested departments only. Others may be appropriate for your firm.

**Subject: Obligation to Provide Accurate Information on Forms U-4 and U-5 and to Research Potential Employee's Background**

**EXECUTIVE SUMMARY**

The NASD reminds members that the NASD By-Laws and Rules of Fair Practice require that complete and accurate information be provided on Forms U-4 and U-5 and that members are responsible for investigating a potential employee's background prior to hiring such person.

**BACKGROUND**

The NASD Board of Governors, in implementing the recommendations of the Regulatory Review Task Force, has determined that it is appropriate to re-emphasize the NASD's policy with respect to complete and accurate disclosure on Forms U-4 and U-5 and with respect to a member's obligation to adequately research the background of its potential employees.

**Complete and Accurate Forms U-4 and U-5**

Associated persons of NASD members have an obligation to provide complete and accurate information on any Uniform Application for Securities Industry Registration or Transfer ("Form U-4") that is to be filed with the NASD. Article IV, Section 2(a)(3) of the By-Laws, which relates to registered representatives and associated persons, together with the instructions to Form

U-4, clearly require that complete and accurate information be provided on this Form. In addition, Item 1 on page 4 of the Form U-4 requires each applicant for registration with the NASD to swear or affirm that the applicant has read and understood the items and instructions on the form and that the applicant's answers (including attachments) are true and complete to the best of the applicant's knowledge.

Member firms are also required to file complete and accurate information on any Uniform Termination Notice for Securities Industry Registration ("Form U-5") that is required to be filed with the NASD. Article IV, Section 3 of the By-Laws requires that a member firm file Form U-5 promptly, but not later than 30 calendar days after terminating a registered person. Items 13-15 on Form U-5 ask for information concerning apparent misconduct by a person while associated with the firm submitting the Form U-5. A "yes" answer to Items 13-15 must be accompanied by a detailed explanation of the apparent misconduct. Failure to provide accurate answers to Items 13-15 may deprive the NASD of its ability to detect violations and subsequently sanction persons for violations of the NASD's rules and other applicable federal statutes and regulations. Failure to provide this information may also subject members of the investing public to repeated misconduct and may

deprive member firms of the ability to make informed hiring decisions.

The NASD would also point out that members and their associated persons may be subject to administrative, civil, and even criminal penalties for failing to provide complete and accurate information on Forms U-4 and U-5.

### **Researching a Potential Employee's Background**

Member firms have an obligation to thoroughly research a potential employee's background before hiring such person. Article III, Section 27(e) of the Rules of Fair Practice provides that "[e]ach member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification

in the application of such person for registration with this association." The last section of Form U-4 on page 4 also requires that the member firm certify that the member has communicated with all of the applicant's previous employers for the past three years and has taken appropriate steps to verify the items and attachments contained in the Form U-4. The NASD has brought disciplinary actions against member firms who have failed to properly research a potential employee's background prior to hiring such person. Members are reminded that they may use the Firm Access Query Systems (FAQS) or may file an information request through NASD Disclosure Program in order to comply with the investigation requirement.

Questions concerning this notice may be directed to Craig L. Landauer, Senior Attorney, Office of General Counsel, at (202) 728-8291.

# Notice To Members

National Association of Securities Dealers, Inc.

September 1988

## Number 88 - 68

### Suggested Routing:\*

- |   |  |  |                                    |
|---|--|--|------------------------------------|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Institutional                 | <input checked="" type="checkbox"/> Mutual Fund  | <input type="checkbox"/> Research  |
| <input type="checkbox"/> Corporate Finance            | <input type="checkbox"/> Internal Audit                | <input checked="" type="checkbox"/> Operations   | <input type="checkbox"/> Syndicate |
| <input type="checkbox"/> Government                   | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options                 | <input type="checkbox"/> Trading   |
| <input type="checkbox"/> Securities                   | <input type="checkbox"/> Municipal                     | <input checked="" type="checkbox"/> Registration | <input type="checkbox"/> Training  |

\*These are suggested departments only. Others may be appropriate for your firm.

### REQUEST FOR COMMENT

**Subject: Proposed Amendment Re Providing Terminated Employee with Form U-5 and Obtaining Prior Form U-5 for Potential Employees; Comment by October 1, 1988**

### EXECUTIVE SUMMARY

The NASD requests comment on proposed amendments to Article IV, Section 3 of the NASD By-Laws and Article III, Section 27 of the Rules of Fair Practice. These amendments would require NASD members to provide a copy of the Form U-5 to persons who terminate or are terminated by the

member. Members would provide the Form U-5 concurrently with the filing of the Form U-5 with the NASD. Further, each NASD member seeking to associate a person in a registered capacity would be required to obtain the most recent Form U-5 from any person seeking employment.

### BACKGROUND AND ANALYSIS

The NASD Board of Governors, in implementing the recommendations of the Regulatory Review Task Force, has determined that a member submitting to the NASD a Uniform Termination Notice of Securities Industry Registration (Form U-5), pursuant to Article IV, Section 3 of the By-Laws, should provide a copy to the terminated employee.

Further, the Board of Governors has determined that it is appropriate to require NASD members who employ persons previously registered with an NASD member to obtain a copy of the Form U-5 (and any amendments thereto) filed by the person's most recent employer. The Board

believes that, by making the Form U-5 available in this manner, members will be better able to meet their obligation under Article III, Section 27(e) of the Rules of Fair Practice to adequately investigate the background of potential employees.

Article III, Section 27(e) requires that "each member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration with this association." Members are not required to obtain the Form U-5 for the most recent employment with an NASD member.

The NASD believes, however, that the cir-

cumstances of a termination, as disclosed on the Form U-5, may well be relevant to the hiring decision and that this information should be readily available to any NASD member for that purpose. This information is particularly pertinent in the situation where the person was terminated for cause or where affirmative answers have been provided to Items 13-15 of the Form U-5 regarding possible rule violations during the period of employment. As part of the hiring process, members should be allowed to compare the Form U-5 with any statements made by the potential employee regarding the termination. The proposed amendments would establish the requirement to obtain the Form U-5, set forth timeliness standards for compliance, and provide for obtaining the Form U-5 through FAQs for FAQs subscribers or from the prospective employee for firms that do not subscribe to FAQs.

The present Article IV, Section 3 of the NASD By-Laws does not require NASD members to give terminated employees a copy of the Form U-5 filed with the NASD. The NASD believes that the policy of providing broader access to the information on the Form U-5 requires that terminated persons be given the Form U-5 so they can verify the accuracy and completeness of the representations in the form. The terminated individual can then take appropriate steps to have this information changed or corrected as necessary and can express any disagreement with the Form U-5 to his or her subsequent NASD member employer. The proposed amendments would establish this requirement. In addition, the amendments would codify the requirement that an amendment to the Form U-5 be filed if later-discovered information causes any statements in the form to be inaccurate or incomplete.

The NASD also invites comments on whether it would be appropriate for the NASD to require that an NASD member, upon request by the hiring member, provide a copy of the Form U-5 directly to the hiring member, rather than through FAQs or the employee.

The NASD encourages all members and other interested persons to comment on the proposed amendments. Comments should be received no later than October 1, 1988 and should be sent to:

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

Questions concerning this notice may be directed to Craig L. Landauer, NASD Office of General Counsel, at 202-728-8287.

**PROPOSED AMENDMENTS TO  
ARTICLE IV, SECTION 3 OF  
NASD BY-LAWS AND ARTICLE III,  
SECTION 27 OF THE  
RULES OF FAIR PRACTICE.**

(Note: New language is underlined.)

**NASD BY-LAWS  
ARTICLE IV  
REGISTERED REPRESENTATIVES AND  
ASSOCIATED PERSONS**

Notification by Member to Corporation and Associated Person of Termination; Amendments to Notification.

Sec. 3(a). Following the termination of the association with a member of a person who is registered with it, such member shall promptly, but in no event later than thirty (30) calendar days after such termination, give written notice to the Association on a form designated by the Board of Governors of the termination of such association, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the Association. A member who does not submit such notification in writing, or provide a copy thereof to the person whose association has been terminated, within the time period prescribed shall be assessed a late filing fee as specified by the Board of Governors. Termination of registration of such person associated with a member shall not take effect so long as any complaint or action is pending against a member and to which complaint or action such person associated with a member is also a respondent, or so long as any complaint or action is pending against such person individually or so long as any examination of the member or person associated with such member is in process. The Corporation, however, may in its discretion declare the termination effective at any time.

(b) The member shall notify the Association in writing by means of an amendment to the notice filed pursuant to paragraph (a) above in the event that the member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amend-

ment shall be provided to the Association and to the person whose association with the member has been terminated not later than thirty (30) calendar days after the member learns of the facts and circumstances giving rise to the amendment.

**RULES OF FAIR PRACTICE  
ARTICLE III, SECTION 27  
SUPERVISION**

.  
. .

**Qualifications investigated.**

Sec. 27(e) Each member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration with this Association. Where applicable, each member shall obtain from the Firm Access Query System (FAQS) or shall request and obtain from the applicant for registration a copy of the Uniform Termination Notice of Securities Industry Registration ("Form U-5") filed with the Association by such person's most recent previous NASD member employer, together with any amendments thereto that may have been filed pursuant to Article IV, Section 3(b) of the Association's By-Laws.

Where the member utilizes FAQS to comply with this paragraph, the Form U-5 shall be obtained (i) prior to the submission of the applica-

tion for registration if such application is filed more than thirty (30) days following the termination of the applicant's most recent employment with an NASD member or (ii) not more than sixty (60) days following such termination if the application is filed less than thirty (30) days after the termination.

Where the member obtains a copy of the Form U-5 from the applicant for registration, the member shall request the Form U-5 (i) prior to the filing of the application if such application is filed more than thirty (30) days following the termination of the applicant's most recent employment with an NASD member or (ii) not more than sixty (60) days following such termination if the application is filed less than thirty (30) days after the termination. Any applicant for registration who receives a request for a copy of his or her Form U-5 from a member pursuant to this paragraph shall provide such copy to the member within two (2) business days of the request if the Form U-5 has been provided to such person by his or her former employer. If the former employer has failed to provide the Form U-5 to the applicant for registration, such person shall promptly obtain the Form U-5 and shall provide it to the requesting member within two (2) business days of receipt thereof. Any subsequent amendments to a Form U-5 received by the applicant shall be promptly provided to the requesting member.

A member receiving a Form U-5 pursuant to the foregoing paragraphs shall review the Form U-5 and any amendments thereto and shall take such action as may be deemed appropriate.

# Notice To Members

National Association of Securities Dealers, Inc.

September 1988

**Number 88 - 69****Suggested Routing:\***

Senior Management  
 Corporate Finance  
 Government  
 Securities

Institutional  
 Internal Audit  
 Legal & Compliance  
 Municipal

Mutual Fund  
 Operations  
 Options  
 Registration

Research  
 Syndicate  
 Trading  
 Training

\*These are suggested departments only. Others may be appropriate for your firm.

**Subject: Documentation for Excused Withdrawal Under Schedule D of By-Laws****BACKGROUND AND EXPLANATION**

Part VI, Sec. 7(b) of Schedule D to the NASD By-Laws permits excused withdrawals based on demonstrated legal or regulatory requirements when supported by appropriate documentation.

In order to streamline procedures for market makers requesting excused withdrawal for legal reasons relating to participation in an underwriting group for a secondary offering, the following procedure has been adopted:

A single letter furnished by the lead underwriter, listing all participating dealers, will be accepted by NASDAQ Operations as appropriate documentation for excused withdrawal status for all market makers participating in that underwriting.

The letter should include: the name of the security, the specific reason for the excused withdrawal request, and a list of the other firms participating in the underwriting. The letter must be signed by an officer of the firm, with the officer's title indicated.

The letter should be addressed to:

NASDAQ OPERATIONS  
 33 Whitehall Street  
 New York, NY 10004

As an alternative to mailing, the letter may be faxed to: (212) 509-5799.

The procedures described above apply to the documentation requirement only – individual market makers must still call NASDAQ Operations (212) 509-3640 and request the excused withdrawal.

In the case of excused withdrawal requests for other legal reasons, documentation should be supplied in the format described above, with reference to the specific securities law necessitating the withdrawal.

Please direct any questions on this notice to Sue Kober, NASDAQ Operations, (212) 858-4439.

# Notice To Members

National Association of Securities Dealers, Inc.

September 1988

## Number 88 - 70

### Suggested Routing:\*

- |  |   |  |   |
|--|---|--|---|
| <input type="checkbox"/> Senior Management | <input type="checkbox"/> Institutional        | <input type="checkbox"/> Mutual Fund           | <input type="checkbox"/> Research             |
| <input type="checkbox"/> Corporate Finance | <input type="checkbox"/> Internal Audit       | <input checked="" type="checkbox"/> Operations | <input checked="" type="checkbox"/> Syndicate |
| <input type="checkbox"/> Government        | <input type="checkbox"/> Legal & Compliance   | <input type="checkbox"/> Options               | <input checked="" type="checkbox"/> Trading   |
| <input type="checkbox"/> Securities        | <input checked="" type="checkbox"/> Municipal | <input type="checkbox"/> Registration          | <input type="checkbox"/> Training             |

\*These are suggested departments only. Others may be appropriate for your firm.

### Subject: Columbus Day Trade Date-Settlement Date Schedule

The schedule of trade dates/settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 10, 1988. On this day, the NASDAQ System and the exchange markets will be open for trading. However, it will not be a settlement date since many of the nation's leading banking institutions will be closed in observance of Columbus Day.

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

| Trade Date   | Settlement Date | Regulation T Date <sup>1</sup> |
|--------------|-----------------|--------------------------------|
| September 30 | October 7       | October 11                     |
| October 3    | 11              | 12                             |
| 4            | 12              | 13                             |
| 5            | 13              | 14                             |
| 6            | 14              | 17                             |
| 7            | 17              | 18                             |
| 10           | 17              | 19                             |
| 11           | 18              | 20                             |

**NOTE:** October 10, 1988 is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 10, will be combined with transactions made on the

previous day, October 7, for settlement on October 17. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 10.

These settlement dates should be used by brokers, dealers, and municipal securities dealers for purposes of clearing and settling transactions pursuant to the NASD 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) 858-4341.

<sup>1</sup> 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), apply to extend the time period specified. The date by which members must take such action is shown in the column entitled "Regulation T Date."

# Notice To Members

National Association of Securities Dealers, Inc. September 1988

## Number 88 - 71

### Suggested Routing:\*

- |   |  |   |   |
|---|--|---|---|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Institutional                 | <input checked="" type="checkbox"/> Mutual Fund | <input checked="" type="checkbox"/> Research  |
| <input checked="" type="checkbox"/> Corporate Finance | <input type="checkbox"/> Internal Audit                | <input checked="" type="checkbox"/> Operations  | <input checked="" type="checkbox"/> Syndicate |
| <input type="checkbox"/> Government                   | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options                | <input type="checkbox"/> Trading              |
| <input type="checkbox"/> Securities                   | <input type="checkbox"/> Municipal                     | <input type="checkbox"/> Registration           | <input type="checkbox"/> Training             |

\*These are suggested departments only. Others may be appropriate for your firm.

### Subject: NASDAQ National Market System Additions as of August 19, 1988

As of August 19, 1988, the following 29 issues joined the NASDAQ National Market System, bringing the total number of issues in NASDAQ/NMS to 2,923:

| Symbol | Company                                      | Entry Date | SOES Execution Level |
|--------|--|------------|----------------------|
| CFED   | Charter Federal Savings Bank                 | 7/29/88    | 500                  |
| SEMI   | All American Semiconductor, Inc.             | 8/2/88     | 1000                 |
| AEZNS  | Asiamerica Equities, Inc.                    | 8/2/88     | 200                  |
| CHFC   | Chemical Financial Corp.                     | 8/2/88     | 200                  |
| ECGI   | Environmental Control Group, Inc.            | 8/2/88     | 1000                 |
| HDGH   | Hodgson Houses, Inc.                         | 8/2/88     | 200                  |
| OSBW   | Olympic Savings Bank                         | 8/2/88     | 200                  |
| RFIN   | Rock Financial Corporation                   | 8/2/88     | 200                  |
| TOPT   | Tele-Optics, Inc.                            | 8/2/88     | 500                  |
| TOPTW  | Tele-Optics, Inc. (Wts)                      | 8/2/88     | 500                  |
| UNBJV  | United National Bancorp (WI)                 | 8/2/88     | 200                  |
| WTPR   | Wetterau Properties, Inc.                    | 8/2/88     | 200                  |
| WSBX   | Washington Savings Bank, FSB (The)           | 8/2/88     | 500                  |
| GLYT   | Genlyte Group, Inc.                          | 8/8/88     | 1000                 |
| LMAC   | Landmark American Corporation                | 8/9/88     | 1000                 |
| MFFC   | Mayflower Financial Corporation              | 8/9/88     | 200                  |
| HAMS   | Smithfield Companies, Inc. (The)             | 8/9/88     | 1000                 |
| KIND   | Kinder-Care Learning Centers, Inc.           | 8/11/88    | 1000                 |
| LICF   | Long Island City Financial Corporation (The) | 8/11/88    | 1000                 |
| NERX   | NeoRx Corporation                            | 8/11/88    | 1000                 |
| STOT   | Stotler Group, Inc.                          | 8/12/88    | 1000                 |
| UTRX   | Unitronix Corporation                        | 8/15/88    | 500                  |
| CODS   | Corporate Data Sciences, Inc.                | 8/16/88    | 1000                 |
| GULL   | Gull Laboratories, Inc.                      | 8/16/88    | 500                  |
| ICAR   | Intercargo Corporation                       | 8/16/88    | 1000                 |
| INTV   | InterVoice, Inc.                             | 8/16/88    | 1000                 |

|       |                            |         |      |
|-------|----------------------------|---------|------|
| NMCO  | National Media Corporation | 8/16/88 | 1000 |
| PTEC  | Phoenix Technology Ltd.    | 8/16/88 | 1000 |
| STKLF | Stake Technology Ltd.      | 8/16/88 | 1000 |

### NASDAQ/NMS Pending Additions

The following issues have filed for inclusion in NASDAQ/NMS upon effectiveness of their registration statements with the SEC or other appropriate regulatory authority. Their inclusion may commence prior to the next regularly scheduled phase-in date.

| Symbol | Company                                 | Location         | SOES Execution Level |
|--------|---|------------------|----------------------|
| DFSE   | DFSoutheastern, Inc.                    | Decatur, GA      | 1000                 |
| SEEBV  | DEKALB Genetics Corporation (CI B) (WI) | DeKalb, IL       | 1000                 |
| FFFC   | Franklin First Financial Corp.          | Wilkes-Barre, PA | 1000                 |
| HPBC   | Home Port Bancorp, Inc.                 | Nantucket, MA    | 1000                 |
| PRIDV  | Pride Petroleum Services, Inc. (WI)     | Houston, TX      | 1000                 |

### NASDAQ/NMS Symbol and/or Name Changes

The following changes to the list of NASDAQ/NMS securities occurred since July 22, 1988.

| New/Old Symbol | New/Old Security  | Date of Change |
|----------------|---|----------------|
| BFCS/BFCS      | Boston Five Bancorp, Inc./<br>Boston Five Cents Savings Bank, FSB                                 | 7/28/88        |
| ABCV/VBNK      | Affiliated Banc Corporation/<br>Vanguard Savings Bank   | 8/1/88         |
| BFBS/BFBS      | Brookfield Bancshares Corp./<br>Brookfield Federal Bank for Savings                               | 8/1/88         |
| DNFC/DNSB      | D&N Financial Corporation/D&N<br>Savings Bank, FSB  | 8/1/88         |
| LCBIV/LBFC     | Landmark/Community Bancorp, Inc.<br>(WI)/Landmark Financial Corporation                           | 8/1/88         |
| WCBK/WCBK      | Workingmens Corporation/<br>Workingmens Co-Operative Bank   | 8/1/88         |
| NWVI/NUCP      | New Visions Entertainment Corp./<br>New Century Entertainment Corp.                               | 8/4/88         |
| NWVIP/NUCPP    | New Visions Entertainment Corp. (Ser A Pfd)/<br>New Century Entertainment Corp. (Ser A Pfd)       | 8/4/88         |
| SSLN/SSLN      | Security Savings, SLA/Security<br>Savings and Loan Association                                    | 8/4/88         |
| DYANW/DYANW    | Dyansen Corp. (12/30/88 CI A Wts)/<br>Dyansen Corp. (8/3/88 CI A Wts)                             | 8/8/88         |
| NSSB/NSSB      | Norwich Financial Corp./<br>Norwich Savings Society (The)   | 8/11/88        |
| PTMIW/PTMIW    | Precision Target Marketing, Inc. (8/23/89 Wts)/<br>Precision Target Marketing, Inc. (8/23/88 Wts) | 8/12/88        |
| FRMBF/ANCEF    | Forum Re Group (Bermuda) Ltd./<br>Aneco Reinsurance Co., Ltd.                                     | 8/15/88        |
| HHGP/LXXX      | Harris and Harris Group, Inc./<br>Lexington Group, Inc. (The)                                     | 8/15/88        |

|           |  |         |
|-----------|--|---------|
| MGNC/AVSN | Mediagenic/Activision, Inc.                        | 8/17/88 |
| HALL/MAYP | Hall Financial Group, Inc./<br>May Petroleum, Inc. | 8/18/88 |

**NASDAQ/NMS Deletions**

| <b>Symbol</b> | <b>Security</b>                          | <b>Date</b> |
|---------------|--|-------------|
| SPIP          | SPI Pharmaceuticals, Inc.                | 7/22/88     |
| BECQE         | Bercor, Inc.                             | 7/26/88     |
| RAGQE         | Coated Sales, Inc.                       | 7/26/88     |
| CRVSQ         | Corvus Systems, Inc.                     | 7/26/88     |
| DMCZ          | Datametrics Corp.                        | 7/26/88     |
| HWSI          | Healthways Systems, Inc.                 | 7/26/88     |
| JBIEQ         | J. Bildner & Sons, Inc.                  | 7/26/88     |
| LACR          | Lancer Corporation                       | 7/26/88     |
| WYSE          | Wyse Technology                          | 7/26/88     |
| BIWC          | BIW Cable Systems, Inc.                  | 7/27/88     |
| UCFC          | UniCARE Financial Corporation            | 7/27/88     |
| DAXR          | Daxor Corporation                        | 7/29/88     |
| BSBK          | Beverly Savings Bank                     | 8/1/88      |
| FKYN          | First Kentucky National Corp.            | 8/1/88      |
| FUNC          | First Union Corporation                  | 8/2/88      |
| CPCO          | Central Pacific Corporation              | 8/2/88      |
| GEMH          | Gemcraft, Inc.                           | 8/2/88      |
| SDSB          | Southhold Savings Bank                   | 8/2/88      |
| FRFE          | Freedom Federal Savings Bank             | 8/3/88      |
| MMSTW         | MedMaster Systems, Inc. (Wts)            | 8/5/88      |
| CHFS          | Chief Automotive Systems, Inc.           | 8/8/88      |
| FEXP          | Frozen Food Express Industries, Inc.     | 8/9/88      |
| GART          | Gartner Group, Inc.                      | 8/9/88      |
| GCGI          | Geneve Capital Group, Inc.               | 8/9/88      |
| INTCL         | Intel Corporation (8/15/88 Wts)          | 8/9/88      |
| IRINE         | International Robomation/Intelligence    | 8/9/88      |
| RMTKE         | Ramtek Corporation                       | 8/9/88      |
| SIMM          | Simmons Airlines, Inc.                   | 8/9/88      |
| SHOSQ         | Southern Hospitality Corporation         | 8/9/88      |
| USPTS         | USP Real Estate Investment Trust         | 8/10/88     |
| WING          | Wings West Airlines, Inc.                | 8/10/88     |
| SLCN          | Silicon Systems, Inc.                    | 8/11/88     |
| FOOD          | P&C Foods, Inc.                          | 8/15/88     |
| BIGI          | Brougher Insurance Group, Inc.           | 8/16/88     |
| PHOT          | Photronics Corporation                   | 8/16/88     |
| MTRX          | Matrix Science Corporation               | 8/18/88     |
| INFTA         | Infinity Broadcasting Corporation (Cl A) | 8/19/88     |
| LWIS          | Palmer G. Lewis Company, Inc.            | 8/19/88     |

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.

NASDAQ and NASDAQ/NMS are registered trademarks and service marks of the National Association of Securities Dealers, Inc.