

Notice To Members

National Association of Securities Dealers, Inc.

October 1988

Number 88 - 72**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 to Definition of "Bona Fide Research" —
Last Voting Date: November 3, 1988

EXECUTIVE SUMMARY

NASD members are invited to vote on a proposed amendment to Article III, Section 24(b) of the NASD Rules of Fair Practice to conform the definition of "bona fide research" to the standard announced by the Securities and Exchange Commission with respect to the meaning of "research" under Section 28(e) of the Securities Exchange Act of 1934, as amended.

BACKGROUND

Section 24(a) of Article III of the NASD Rules of Fair Practice provides that in connection with the sale of securities that are part of a fixed-price offering, no NASD member may grant selling concessions, discounts, or other allowances to anyone other than another broker/dealer for services rendered in distribution.

However, nothing in this Section prohibits any NASD member from selling any such securities to any person or account to which it has provided or will provide bona fide research if the

stated public offering price is paid by the purchaser.¹

The proposed amendment would change the definition of "bona fide research" contained in Section 24(b) of Article III of the NASD Rules of Fair Practice (hereinafter "Section 24(b) definition"). The Board of Governors has also determined to make conforming changes to the Interpretation of the Board of Governors under Section 24, which interprets and explains the Section 24(b) definition ("Interpretation"). The amendments to the Interpretation do not require membership vote and are attached for information purposes only.

The definition proposed to be amended and the Interpretation were originally incorporated into the NASD rules as part of a larger package of new rules submitted by the NASD to the Securities and Exchange Commission ("SEC" or "Commission") regulating the granting by NASD members of selling concessions, discounts, and other allowances in connection with sales of fixed price offerings.²

The rule package, including the provisions proposed to be amended by this filing, came to be known as the "Papilsky" rules and were approved by the Commission on December 12, 1980.³ Currently, subsection (a)(1) of Section 24 provides

that nothing in the Section shall prevent any member from selling any securities that are part of a fixed-price offering to any person to whom it has or will provide "bona fide research" if the stated public offering price is paid by the purchaser.

The proposed rule change would amend the definition contained in Section 24(b), which exempts certain products and services from being considered "bona fide research." The term "bona fide research" contained in Section 24(b) is defined to mean "advice, rendered directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities, or analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and performance of accounts; provided, however, that (1) investment management or investment discretionary services, and (2) products or services that are readily and customarily available and offered to the general public on a commercial basis are not bona fide research."

The Interpretation of the NASD Board of Governors adopted under Section 24 presently states that the definition of "bona fide research" is substantially the same as the definition of the term research in Section 28(e)(3) of the Securities Exchange Act of 1934 ("Exchange Act"), as interpreted by the Commission.

The existing exclusion from the definition of "bona fide research" provided by subsection (b)(2) of Section 24 incorporates into the NASD provision the SEC's interpretation of the term "research" under Section 28(e)(3), which was published in Securities Exchange Act Release No. 12251 (March 24, 1976).⁴ Thus, Section 24(b)(2) presently excludes "products or services that are readily and customarily available and offered to the general public on a commercial basis." The Board of Governors' Interpretation following Section 24 states that, for guidance concerning the meaning of "bona fide research" under Section 24(b), NASD members should refer to SEC interpretations of the definition of "research" under Section 28(e) of the Exchange Act.

On April 30, 1986, the Commission withdrew its 1976 standard and announced a revised standard to be used in determining what products and services shall be deemed protected "research" under Section 28(e) of the Act. The change being submitted for vote is intended to

amend the language of Section 24(b)(2) of Article III of the NASD Rules of Fair Practice to eliminate the existing exclusion from the definition and to allow the standard established by the Commission in its most recent release to determine the parameters of "bona fide research." The Commission, in its 1986 release, stated that the controlling principle to be used to determine whether something is research under the statute is ". . . whether it provides lawful and appropriate assistance to the money manager in the performance of his investment decision-making responsibilities."

The Commission also stated that, under the revised standard of "research," the fact that a product or service is readily and customarily available and offered to the general public on a commercial basis does not dictate the conclusion that the product or service is not research, as was the case under its earlier 1976 standard.

In short, the NASD Board of Governors' Interpretation under Section 24, with respect to the exclusion in Section 24(b)(2) from the definition of "bona fide research" for products and services that are commercially available and offered to the general public, states that it is based directly upon the standard established by the Commission in its 1976 release.

The 1986 Commission release, however, substituted a revised standard that the NASD Board of Governors now believes should be incorporated into Section 24 to replace the present language. The Board is concerned that a failure to do so may create confusion in the securities industry and among money managers who, without a change in Section 24, would be required to use one standard for fixed-price public offerings, but a totally different standard for other types of securities transactions such as secondary market trading. The NASD Board of Governors believes that consistency in the definitions under Section 24 of the NASD rules and Section 28(e) of the Exchange Act is appropriate.

EFFECTIVE DATE

Prior to becoming effective, the amendment to the Section 24 definition must be approved by the NASD membership and thereafter by the SEC. The conforming amendments to the Interpretation must also be approved by the SEC before they become effective. The NASD has not published the amendments to the Section 24 definition and the

Interpretation for member comment prior to filing the amendments with the SEC for approval. However, NASD members and other interested persons are invited to make any comments they may have directly to the SEC at the time the Commission publishes the proposed rule changes for public comment, which is required prior to SEC approval.

The NASD Board of Governors believes that the proposed amendment is necessary and appropriate and recommends that members vote approval. The text of the amendment to Section 24 to be voted upon follows this notice. **The text of the amendments to the Interpretation thereunder also follows for information purposes and not for vote.**

Please mark the attached 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 November 3, 1988.

Questions concerning this notice can be directed to either Dennis C. Hensley, Vice President and Deputy General Counsel at (202) 728-8245, or to John Mylod, Assistant General Counsel at (202) 728-8288 or to the attorney on duty for the NASD Office of General Counsel at (202) 728-8294.

¹ NASD Manual (CCH), ¶ 2174, pp. 2097-2098.

² The term "fixed price offering" is defined by Section 1(m) of Article II of the Rules of Fair Practice to mean the offering of securities at a stated public offering price or prices, with certain specified exceptions, including securities exempted under Sections 3(a)(12) and 3(a)(29) of the Exchange Act and certain redeemable securities of registered investment companies. NASD Manual (CCH), ¶ 2101, p. 2013.

³ Securities Exchange Act Release No. 17371 (Dec. 12, 1980).

⁴ Securities Exchange Act Release No. 12251 (March 24, 1976).

**PROPOSED AMENDMENTS TO NASD
RULES OF FAIR PRACTICE**

Article III

Sec. 24.

(Note: Deleted language is bracketed; no new language is to be added.)

SELLING CONCESSIONS

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- .
- .

In connection with the sale of securities which are part of a fixed price offering:

(a) A member may not grant or receive selling concessions, discounts, or other allowances except as consideration for services rendered in distribution and may not grant such concessions, discounts or other allowances to anyone other than a broker or dealer actually engaged in the investment banking or securities business; provided, however, that nothing in this Section shall prevent any member from (1) selling any such securities to any person, or account managed by any person, to whom it has provided or will provide bona fide research, if the stated public offering price for such securities is paid by the purchaser; or (2) selling any such securities owned by him to any person at any net price which may be fixed by him unless prevented therefrom by agreement.

(b) The term "bona fide research," when used in this Section, means advice, rendered either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities, or analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and performance of accounts; provided, however that [(1)] investment management or investment discretionary services [and (2) products or services that are readily and customarily available and offered to the general public on a commercial basis] are not bona fide research.

(Note: For Information Purposes and Not for Vote)

**PROPOSED AMENDMENTS TO THE
INTERPRETATION OF THE
BOARD OF GOVERNORS
BONA FIDE RESEARCH EXCLUSION**

(Note: New language is underlined; deleted language is bracketed.)

While Section 24 provides that a member may grant or receive selling concessions, discounts and other allowances only as consideration

for services rendered in distribution and may grant such concessions, discounts or other allowances only to brokers or dealers actually engaged in the investment banking or securities business, that Section also states that a member is not prohibited by Section 24 from selling securities at the stated public offering price to persons to whom it provides bona fide research. Accordingly, nothing in Section 24 prohibits a member from providing bona fide research to a customer who also purchases securities from fixed price offerings from the member whether or not there is an express or implied agreement between the member providing the research and the recipient that the member will be compensated for the research in cash, brokerage commissions, selling concessions or some other form of consideration.

The definition of bona fide research is substantially the same as the definition of the term research in Subsection 28(e)(3) of the Securities Exchange Act of 1934, as amended, and as interpreted by the Securities and Exchange Commission. Members should refer to the Commission's interpretation[s] in Securities Exchange Act Release No. 23170 (April 30, 1986) concerning the definition of research under Section 28(e) for guidance as well as to any interpretations of the Commission or its staff thereafter issued. [For example, in Securities Exchange Act Release No. 12251 (March 24, 1976) the Commission indicated that items such as "newspapers, magazines and periodicals, directories, computer facilities and software, government publications, electronic calculators, quotation equipment, office equipment, airline tickets, office furniture and business supplies" are the type of products and services which are readily and customarily available and offered to the general public on a commercial basis. Accordingly, such services and products and other similar services and products are not bona fide research for purposes of Section 24.]

Moreover, while the provisions in the Section concerning bona fide research are intended to permit money managers to receive bona fide research from persons from whom securities are purchased, it is not intended to enable a money manager, who is also a member, to view its money management services as bona fide research. Accordingly, the performance of money management or investment discretionary services themselves are expressly excluded from the definition of bona fide research.

Another factor relating to bona fide research is that the research must be "provided by" the member who receives or retains the selling concession, discount or other allowance. Under Section 28(e) of the Securities Exchange Act of 1934, the Commission has stated that the "safe harbor" provided by Section 28(e) only extends to research that is "provided by" the broker to whom brokerage commissions are paid. In determining whether the exclusion for bona fide research under Section 24 is available in any given instance, members should refer to the interpretations of the Commission and its staff of the similar requirement applicable to Section 28(e). [In that regard, the Commission, in Securities Exchange Act Release No. 12251, stated that:

Section 28(e) might, under appropriate circumstances, be applicable to situations where a broker provides a money manager with research produced by third parties....]

Whether research is provided by the member will depend on all the facts and circumstances surrounding the relationship of the member and the recipient of the research, relying upon interpretations by the Commission and staff with respect to similar questions under Section 28(e). See also Securities Exchange Act Releases 12251 (March 24, 1976, and 23170 (April 30, 1986).

INDIRECT DISCOUNTS

A member who, itself or through its affiliate, supplies another person with services or products which are readily and customarily available and offered to the general public on a commercial basis and which fail to qualify as bona fide research, or which, in the case of services or products other than bona fide research, are provided by the member or its affiliate to such person or others for cash or for some other agreed upon consideration, and also retains or receives selling concessions, discounts or other allowances from purchases by that person or its affiliate of securities from a fixed price offering is improperly granting a selling concession, discount or other allowance to that person unless the member or its affiliate has been, or has arranged and reasonably expects to be, fully compensated for such services or products from sources other than the selling concession, discount or allowance retained or received on the sale.

Notice To Members

National Association of Securities Dealers, Inc.

October 1988

Number 88 - 73**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: Amendment to NASD UPC That Requires Syndicate Managers to Provide Itemized Expense Statements to Members of Underwriting Syndicates**EXECUTIVE SUMMARY**

The Securities and Exchange Commission (SEC) has approved an amendment to the NASD Uniform Practice Code that requires syndicate managers of public offerings to provide itemized expense statements to members of underwriting syndicates.

The text of the amendment follows this notice.

syndicate expense statements issued pursuant to Rule G-11(h), syndicate expense statements used in non-municipal underwriting are diverse in format and generally provide little or no detail about the nature of expenses incurred by the syndicate. The NASD is concerned that the lack of detail in the syndicate expense statement reduces the syndicate manager's accountability for syndicate funds and determined that a detailed expense statement could result in more care being taken in determining actual syndicate expenses.

BACKGROUND

Section 66 of the NASD Uniform Practice Code requires final settlement of syndicate accounts by the syndicate manager within ninety days following the syndicate settlement date. Syndicate accounts are established by underwriting groups to process the income and expenses of the syndicate in distributions of corporate securities.

As a result of concerns about the lack of details provided by syndicate managers in syndicate settlement statements, the NASD considered the need to require syndicate managers to provide to members of underwriting syndicates itemized statements of the expenses incurred by the syndicate. The Municipal Securities Rule Making Board Rule G-11(h) currently requires an itemized statement in municipal underwritings. Compared with

DESCRIPTION OF AMENDMENT

On August 3, 1988, the SEC approved the NASD's adoption of an amendment to Section 66 of the Uniform Practice Code (Code) to require syndicate managers to provide an itemized expense statement to the underwriting syndicate no later than the date of final settlement of the syndicate account, which Section 66 requires to be within 90 days after the syndicate settlement date.¹ The expense statement is required to include, where applicable, the following expense categories: legal fees; advertising; travel and entertainment; closing expenses; loss on oversales; telephone; postage; communications; co-manager's expenses; computer and data processing charges; interest expense; and miscellaneous. The amendment to Section 66 provides that the

"miscellaneous" category should include only minor items that cannot be easily categorized elsewhere in the statement and that the amount under miscellaneous should not be disproportionately large in relation to other items. It is anticipated that any other major expense that cannot be included in the enumerated categories will be itemized separately.

Although the new rule was effective on Commission approval on August 3, 1988, the NASD will provide a 30-day grace period from the date of this notice until November 3, 1988, for members to adjust their administrative procedures to comply with the new provision.

Questions concerning this notice can be directed to the NASD Corporate Financing Department at (202) 728-8258 or to Suzanne E. Rothwell, Associate General Counsel, NASD Office of General Counsel, at (202) 728-8247.

UNIFORM PRACTICE CODE

Sec. 66

(Note: New language is underlined.)

SETTLEMENT OF SYNDICATE ACCOUNTS

(a) Definitions

(1) "selling syndicate" means any syndicate formed in connection with a public offering to distribute all or part of an issue of corporate securities by sales made directly to the public by or through participants in such syndicate.

(2) "syndicate account" means an account formed by members of the selling syndicate for the purpose of purchasing and distributing the corporate securities of a public offering.

(3) "syndicate manager" means the member of the selling syndicate that is responsible for maintenance of syndicate account records.

(4) "syndicate settlement date" means the date upon which corporate securities of a public offering are delivered by the issuer to or for the account of the syndicate members.

(b) Final settlement of syndicate accounts shall be effected by the syndicate manager within 90 days following the syndicate settlement date.

(c) No later than the date of final settlement of the syndicate account the syndicate manager shall provide to each member of the selling syndicate an itemized statement of syndicate expenses that shall include, where applicable, the following categories of expenses: legal fees; advertising; travel and entertainment; closing expenses; loss on oversales; telephone, postage, communications; co-manager's expenses; computer and data processing charges; interest expense; and miscellaneous. The amount under "miscellaneous" should not be disproportionately large in relation to other items and should include only minor items that cannot be easily categorized elsewhere in the statement. Any other major items not included in the above categories shall be itemized separately.

¹Securities Exchange Act Release No. 25962 (August 3, 1988).

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National Association of Securities Dealers, Inc.

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Suggested Routing:*

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|---|--|---------------------------------------|------------------------------------|
| <input checked="" 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 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 type="checkbox"/> Registration | <input type="checkbox"/> Training |

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

Subject: Amendment to Code of Procedure Re: Composition of Panels for DBCC and Market Surveillance Hearings

EXECUTIVE SUMMARY

At its July 1988 meeting, the NASD Board of Governors voted to amend the Code of Procedure so as to reduce, from three to two persons, the minimum number of persons required for hearing panels for cases before District Business Conduct Committees ("DBCC") and the Market Surveillance Committee.

The Board also determined to reduce, from two to one, the number of persons on DBCC hearing panels required to be current DBCC members. These amendments have been filed with the SEC for approval. Members and other interested persons wishing to comment on the proposed changes should direct their comments to the SEC.

BACKGROUND AND ANALYSIS

Currently, under the NASD Code of Procedure, each case before a District Business Conduct Committee ("DBCC") may be heard by a subcommittee consisting of three or more persons, at least two of whom must be members of the DBCC. During the last several years, the Association's disciplinary cases have become

more numerous and complex and have required significant time commitments on the part of DBCC members. As a result, the Association has experienced increasing difficulty in conducting DBCC hearings due to the unavailability of hearing subcommittee members. In order to alleviate this problem, the Board has determined to amend the Code of Procedure so as to permit two-person hearing panels and to require that only one person on the panel be a member of the DBCC.

In the consideration of this matter, it was also noted that similar problems are being encountered in the conduct of Market Surveillance cases. Under the Code of Procedure, Market Surveillance Committee cases currently may be heard by a panel of three or more persons. The Board determined that, in order to facilitate the hearing process and reduce the demands made on Market Surveillance Committee members, the minimum number of persons required to hear a Market Surveillance case should similarly be reduced from three to two.

In the interest of expediting the effectiveness of these amendments, the Board directed the Association staff to file the proposed rule changes with the SEC for approval. The SEC is required to solicit comment regarding the changes and expects to publish the changes for comment soon.

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The comment period will run 21 days from the date of publication in the *Federal Register*. Members and those who wish to comment on the proposed changes should send six copies of their written submissions to:

Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Submissions should refer to file No. SR-NASD-88-38.

A copy of the submission also should be sent to:

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

Questions regarding this notice can be directed to Therese Haberle, Special Counsel, NASD Office of General Counsel, at (202) 728-8287.

Notice To Members

National Association of Securities Dealers, Inc.

October 1988

Number 88 - 75

Suggested Routing:*

- Senior Management
- Corporate Finance
- Government Securities

- Institutional
- Internal Audit
- Legal & Compliance
- Municipal

- Mutual Fund
- Operations
- Options
- Registration

- Research
- Syndicate
- Trading
- Training

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Subject: Amendment Eliminating the Fine Limitation in Disciplinary Proceedings

Executive Summary

The Securities and Exchange Commission has approved an amendment to Article V, Section 1 of the NASD Rules of Fair Practice that removes the current fine limitation of \$15,000 per violation that would be assessed against a member or a person associated with a member. The text of the amendment follows this notice.

Background and Summary of Amendment

Article V, Section 1 of the NASD Rules of Fair Practice sets forth various types of sanctions that may be imposed in disciplinary proceedings before the NASD. Such sanctions are authorized pursuant to Article XIV of the NASD By-Laws. Since 1984, pursuant to that provision, the Board of Governors and the Association's District Business Conduct Committees (DBCCs) have been able to assess fines up to a maximum, \$15,000 for each violation.

However, the NASD Board of Governors has been concerned that the \$15,000 fine ceiling limits the NASD's ability to adequately redress violations in cases where the number of alleged violations is small but the underlying misconduct is

egregious, involves substantial sums, or both. Therefore, the Board determined to eliminate the \$15,000 per violation ceiling in order to respond appropriately to grave misconduct.

On August 16, 1988, the SEC approved the NASD's adoption of an amendment to Article V, Section 1 of the NASD Rules of Fair Practice to eliminate the \$15,000 per violation. The removal of the fine ceiling will enable the NASD's DBCC, Market Surveillance Committee, and Board of Governors to craft more effective remedial sanctions in cases involving serious violations of the NASD's rules or activities in contravention of the federal securities laws. Therefore, fines in excess of \$15,000 per violation may be assessed by the NASD's DBCCs, Market Surveillance Committee, and Board of Governors for misconduct occurring on or after August 16, 1988. The text of the amendment follows this notice.

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

AMENDMENT TO ARTICLE V, SECTION 1 OF THE NASD RULES OF FAIR PRACTICE

(Note: New language is underlined; deleted language is in brackets.)

Penalties

Sanctions for Violation of the Rules

Sec. 1. Any District Business Conduct Committee, Market Surveillance Committee, or the Board of Governors, in the administration and enforcement of these Rules, and after compliance with the Code of Procedure, may (1) censure any member or person associated with a member and/or (2) impose a fine [not in excess of Fifteen Thousand Dollars (\$15,000)] upon any member or person associated with a member and/or (3) suspend the membership of any member or suspend the registration of a person associated with a member, if any, for a definite period, and/or (4) expel any member or revoke the registration of any person associated with a member, if any, and/or (5) suspend or bar a member or person associated with a member from association with all members, or (6) impose any other fitting penalty deemed appropriate under the circumstances, for each or any violation of any of these Rules by a

member or person associated with a member or for any neglect or refusal to comply with any orders, directions or decisions issued by any District Business Conduct Committee, Market Surveillance Committee or by the Board of Governors in the enforcement of these Rules, including any interpretive ruling made by the Board of Governors, as any such Committee or Board, in its discretion, may deem to be just; provided, however, that no such penalty imposed by any District Business Conduct Committee or Market Surveillance Committee shall take effect until the period for appeal therefrom or review has expired, as provided in [Section 14] Article III, Section 1 of the Code of Procedure; and provided, further, that all parties to any proceeding resulting in a penalty shall be deemed to have assented to or to have acquiesced in the imposition of such penalty unless any party aggrieved thereby shall have made application to the Board of Governors for review pursuant to the Code of Procedure, within fifteen (15) days after the date of such notice.

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National Association of Securities Dealers, Inc.

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Number 88 - 76**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 Location for Houston Series 7 Exam in October

Please note that the October 15, 1988, Series 7 test session in Houston will be held at:

**Holiday Inn/Hobby Airport
Atrium Hotel & Convention Center
9100 Gulf Freeway
Houston, Texas 77017**

Parking is available on the hotel grounds, and signs to direct candidates to the examination will be posted prominently inside the facility.

Notice To Members

National Association of Securities Dealers, Inc.

October 1988

Number 88 - 77**Suggested Routing:***

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|--|--|--|------------------------------------|
| <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 type="checkbox"/> Syndicate |
| <input type="checkbox"/> Government Securities | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options | <input type="checkbox"/> Trading |
| | <input type="checkbox"/> Municipal | <input type="checkbox"/> Registration | <input type="checkbox"/> Training |

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**Subject: SIPC Trustee Appointed:
Fairweather (George R.) Securities, Inc.
75 Montgomery Street, Jersey City, New Jersey**

On September 8, the United States District Court for the Northern District of New Jersey appointed a SIPC trustee for Fairweather (George R.) Securities, Inc., 75 Montgomery Street, Jersey City, New Jersey.

Members may use the "immediate close-out" procedures as provided in Section 59(i) of the NASD's Uniform Practice Code to close out open OTC contracts.

Also, Municipal Securities Rulemaking Board

Rule G-12(h)(iv) provides that members may use the above procedures to close-out transactions in municipal securities. Questions regarding the firm should be directed to:

SIPC Trustee
Securities Investor Protection Corporation
Attention: William Fischer
805 Fifteenth Street, N.W., Suite #800
Washington, D.C. 20005-2207
Telephone: (202) 371-8300

Notice To Members

National Association of Securities Dealers, Inc.

October 1988

Number 88 - 78**Suggested Routing:***

Senior Management
 Corporate Finance
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Mutual Fund
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**Subject: Telephone Number Change for NASD's Rockville, Maryland Office
 Effective October 14, 1988**

The phone number of the Rockville, Maryland office will change effective October 14, 1988. The change in the number of the Rockville office will not affect the NASD office in Washington, D.C.

The new number is (301) 590-6500.

All extensions will remain the same. For a period of six months, all calls to the old main number, (301) 738-6500, will be forwarded to the new number, (301) 590-6500.

Call NASD Administrative Services at (301) 738-6703 with questions.

Notice To Members

National Association of Securities Dealers, Inc.

October 1988

Number 88 - 79

Suggested Routing:*

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| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Institutional | <input 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, Changes, and Deletions as of September 16, 1988

As of September 16, 1988, the following 15 issues joined the NASDAQ National Market System, bringing the total number of issues in NASDAQ/NMS to 2,906:

Symbol	Company	Entry Date	SOES Execution Level
FFFC	Franklin First Financial Corporation	8/23/88	1000
HPBC	Home Port Bancorp, Inc.	8/23/88	1000
SEEDB	DEKALB Genetics Corporation (CI B)	8/29/88	1000
PRDE	Pride Petroleum Services, Inc.	8/29/88	1000
APCC	American Power Conversion Corporation	9/6/88	1000
BMCS	BMC Software, Inc.	9/6/88	1000
CLR X	Colorocs Corporation	9/6/88	1000
CLR X W	Colorocs Corporation (CI C) (Wts)	9/6/88	1000
CLR X L	Colorocs Corporation (CI D) (Wts)	9/6/88	200
ECRC	Employers Casualty Company	9/6/88	500
HIPC	High Plains Corporation	9/6/88	500
KWIK F	KWIK Products International Corporation	9/6/88	500
RB P A A	Royal Bank of Pennsylvania (CI A)	9/6/88	500
STRU	Structofab, Inc.	9/6/88	500
SNPX	SynOptics Communications, Inc.	9/6/88	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

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prior to the next regularly scheduled phase-in date.

Symbol	Company	Location	SOES Execution Level
NGAS	Associated Natural Gas Company	Denver, CO	1000
CMLE	Casual Male Corporation (The)	Shrewsbury, MA	500
CLDRP	Cliffs Drilling Company (Pfd)	Houston, TX	200
GGNS	Genus, Inc.	Mountain View, CA	500
LINZ	Lindsay Manufacturing Company	Lindsay, NE	1000
LOGC	Logic Devices Incorporated	Sunnyvale, CA	200

NASDAQ/NMS Symbol and/or Name Changes

The following changes to the list of NASDAQ/NMS securities occurred since August 19, 1988.

New/Old Symbol	New/Old Security	Date of Change
QUME/DTCI	Qume Corporation/Data Technology Corporation	8/29/88
CKSB/CKSB	CK Federal Savings Bank/ CK Federal Savings & Loan Association	8/30/88
LIVE/LMAN	Lieberman Enterprises Incorporated/ Lieberman Enterprises Incorporated	8/30/88
ATCC/MESA	AirTran Corporation/MesabaAviation, Inc.	9/1/88
FMLY/FMLY	Family Bancorp/Family MutualSavings Bank	9/1/88
ENRGB/DKLBB	DEKALB Energy Company (CI B)/ DEKALB Corporation (CI B)	9/6/88
SSIX/SAYI	Scribe Systems, Inc./S.A.Y. Industries, Inc.	9/6/88
SECR/ALFD	Secor Bank, Federal Savings Bank/ Alabama Federal Savings & Loan Association	9/12/88
VABF/VABF	Virginia Beach Federal Savings Bank Virginia Beach Federal Savings & Loan Association	9/14/88
HNIS/HNIS	Heritage Bancorp, Inc./ Heritage-NIS Bank for Savings	9/15/88

NASDAQ/NMS Deletions

Symbol	Security	Date
TSBK	Taunton Savings Bank	8/22/88
EIGR	Empire Insurance Company	8/23/88
ATNN	American Telemedia Network, Inc.	8/24/88
BOKCC	BancOklahoma Corp.	8/24/88
BIOP	Bioplasty, Inc.	8/24/88
CWCC	Capital Wire and Cable Corporation	8/24/88
HITK	HITK Corporation	8/24/88
IDEA	Invention, Design, Engineering Associates, Inc.	8/24/88
QSII	Quality Systems, Inc.	8/24/88
RITZ	G.D. Ritzy's, Inc.	8/24/88
STGA	Saratoga Standardbreds, Inc.	8/24/88
SOONQ	Sooner Defense of Florida, Inc.	8/24/88

Notice to Members 88-79

THPR	Thermal Profiles, Inc.	8/24/88
UFGIC	United Financial Group, Inc.	8/24/88
WSSX	Wessex Corporation	8/24/88
GPHY	General Physics Corporation	8/29/88
AFCX	Anchor Financial Corporation	8/30/88
BUTC	John O. Butler Company	8/30/88
XIDX	Xidex Corporation	8/30/88
XIDXW	Xidex Corporation (Wts)	8/30/88
ZOND	Zondervan Corporation (The)	9/1/88
NRTN	Norton Enterprises, Inc.	9/6/88
CXRL	CXR Telecom Corporation	9/7/88
SPMD	Spectramed, Inc.	9/7/88
AMLEE	Amcole Energy Corporation	9/8/88
CCAMZ	CCA Industries, Inc. (Wts)	9/8/88
WLMN	Wellman, Inc.	9/12/88
SOVN	Sovran Financial Corporation	9/13/88
GMSI	Gateway Medical Systems, Inc.	9/14/88
BEAR	Bear Automotive Service Equipment Company	9/15/88
SHNS	Shoney's South, Inc.	9/15/88
DIET	American Companies, Inc.	9/16/88

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.

Notice To Members

National Association of Securities Dealers, Inc.

October 1988

Number 88 - 80

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: Third-Quarter Check List of NASD Notices to Members

The following NASD Notices to Members were issued during the third quarter of 1988. Requests for copies of notices should be *accompanied by a self-addressed mailing label* and sent to: NASD Administrative Services, 1735 K Street, N.W., Washington, D.C. 20006-1506

Notice	Date	Topic
88-44	7/01	Mail Vote on Rule Amendments: Supervision and Definitions of "Branch Office" and "Office of Supervisory Jurisdiction"
88-45	7/01	Mail Vote on Proposed Rule Re Outside Business Activity
88-46	7/01	Rule Amendment to Authorize Trading Halts in NASDAQ Securities
88-47	7/01	Request for Comments Re Prompt Receipt and Delivery of Securities
88-48	7/01	Request for Comments on Amendment Re Filling Vacancies on District Committees
88-49	7/01	Request for Comments on Proposed Prohibition of Concurrent Registration
88-50	7/01	Guidelines for Registration of Persons Soliciting on Behalf of Members

88-51	7/01	Registration of Foreign Branch Offices by August 1, 1988
88-52	7/01	Rule Amendment Re Testimonial Advertisements
88-53	7/01	SIPC Trustee Appointed for Fitzgerald, DeArman & Roberts, Inc.
88-54	7/01	(Supplement 1) Implementation of Reporting Requirements for Non-NASDAQ OTC Securities
88-55	8/01	Amendments Adopted Re Sharing in Customer Accounts and Performance-Based Fees
88-56	8/01	Revisions to Form BD; State Pilot for Broker-Dealer Phase of CRD
88-57	8/01	NASDAQ National Market System Additions, Changes, and Deletions as of July 22, 1988
88-58	8/01	September First-Saturday Exam Session Date Changes
88-59	8/01	Schedule for Labor Day Trade Date-Settlement Date
88-60	8/01	Second-Quarter 1988 Notices to Members Check List
88-61	8/25	(Supplement) Interpretation of SOES Rules Re Maximum Order Size Restrictions
88-62	9/01	SEC Adopts Rule 10b-21 Prohibiting Short Selling into Secondaries
88-63	9/01	SEC Approves Rule: Issuing

Notice to Members 88-80

- | | | | | | |
|--------------|-------|--|--|-------|---|
| | | Companies Must Notify NASD Re Material News Before Public Release | 88-73 | 10/01 | UPC Amendment Requires Syndicate Managers to Provide Itemized Expense Statements to Members of Underwriting Syndicate |
| 88-64 | 9/01 | Mail Vote on Proposed Amendment Re Advertising and Sales Literature for Investment Company Securities | 88-74 | 10/01 | Amendments to Code of Procedure Re Composition of Panels for DBCC and Market Surveillance Hearings |
| 88-65 | 9/01 | Request for Comment: Proposed Amendment Re Use and Disclosure of Member Names | 88-75 | 10/01 | Amendment Eliminating the Fine Ceilings in Disciplinary Proceedings |
| 88-66 | 9/01 | Test Center Location Change for September Houston Series 7 Exam | 88-76 | 10/01 | Houston Test Center Change for October 15 Series 7 Examination |
| 88-67 | 9/01 | Obligation to Provide Accurate Information on Forms U-4 and U-5 and Research Potential Employees' Backgrounds | 88-77 | 10/01 | SIPC Trustee Appointed for Fairweather (George R.) Securities, Inc., Jersey City, New Jersey |
| 88-68 | 9/01 | Request for Comment: Providing Terminated Employees with Form U-5 and Obtaining Prior Form U-5 for Potential Employees | 88-78 | 10/01 | New Telephone Number for NASD's Rockville, Maryland Office Effective October 14, 1988 |
| 88-69 | 9/01 | Procedures to Document Excused Market-Maker Withdrawal Under Schedule D of By-Laws | 88-79 | 10/01 | NASDAQ National Market System Additions, Changes, and Deletions as of September 16, 1988 |
| 88-70 | 9/01 | Schedule for Columbus Day Trade Date-Settlement Date | 88-80 | 10/01 | Third-Quarter 1988 Check List of NASD Notices to Members |
| 88-71 | 9/01 | NASDAQ National Market System Additions, Changes, and Deletions as of August 19 | 88-81 | 10/01 | NASD Raises Corporate Filing Fees, Effective October 1, 1988 |
| 88-72 | 10/01 | Mail Vote on Proposed Change in Definition of "Bona Fide Research" | Correction to Notice to Members 88-55 | | |
| | | | | 10/01 | Re Sharing in Customer Accounts |

Notice To Members

National Association of Securities Dealers, Inc.

October 1988

Number 88 - 81**Suggested Routing:***

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|---|--|---------------------------------------|---|
| <input type="checkbox"/> Senior Management | <input type="checkbox"/> Institutional | <input type="checkbox"/> Mutual Fund | <input type="checkbox"/> Research |
| <input checked="" type="checkbox"/> Corporate Finance | <input type="checkbox"/> Internal Audit | <input 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: NASD Raises Corporate Filing Fee – Effective October 1, 1988

The NASD Board of Governors has approved an increase in the corporate financing filing fee for all public offerings filed with its Corporate Financing Department effective October 1, 1988.

The increase was approved by the NASD Board on September 19 and was approved by the SEC on September 22. The filing fee has not been increased since it was originally imposed in 1970.

The new fee will be \$500 plus 0.01 percent of

the gross dollar amount of the offering, up to a maximum of \$15,500. The current filing fee is \$100 plus 0.01 percent of the gross dollar amount of the offering, up to a maximum of \$5,100.

Rising costs over the past 18 years necessitated the increase.

Questions about this notice can be directed to Charles Bennett, Assistant Director, NASD Corporate Financing, at (202) 728-8253.

Correction to 88 - 55

Suggested Routing:*

<input checked="" 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 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.

CORRECTION TO NOTICE TO MEMBERS 88-55

Notice to Members 88-55 announced the approval by the Securities and Exchange Commission of amendments to Article III, Section 19(f) of the NASD Rules of Fair Practice permitting performance-based fees under some circumstances. One of the requirements for charging such a fee is that the customer either has a net worth of not less than **\$1 million** at the time the account is opened or the minimum amount to be invested in the account is not less than \$500,000.

The text of the change to Section 19 that accompanied Notice to Members 88-55 erroneously stated that the minimum net worth was \$100,000 rather than **\$1 million**. A corrected copy of the amendments to Section 19(f) accompanies this notice.

**PROPOSED AMENDMENTS TO
ARTICLE III, SECTION 19(f) OF THE
NASD RULES OF FAIR PRACTICE**

(Note: New language underlined; deleted language in brackets; correction in boldface.)

Customers' Securities or Funds

:

Sharing in accounts; extent permissible

(f) (1)(A) Except as provided in Subsection (f)(2) no member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member [unless]; provided, however, that a member or person as-

sociated with a member may share in the profits or losses in such an account if (i) such member or person associated with a member obtains prior written authorization from the member carrying the account; and (ii) the member or person associated with a member shares in the profits or losses in the account only in direct proportion to the financial contributions made to such account by either the member or person associated with a member.

(B) Exempt from the direct proportionate share limitation of subsection (f)(1)(A)(ii) are accounts of the immediate family of such member or person associated with a member. For purposes of this section, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the member or person associated with a member otherwise contributes directly or indirectly.

(2) Notwithstanding the prohibition of subsection (f)(1), a member or person associated with a member may receive compensation based on a share in profits or gains in an account if all of the following conditions are satisfied:¹

(A) The member or person associated with a member seeking such compensation obtains prior written authorization from the member carrying the account;

(B) The customer has at the time the account is opened either a net worth which the member or person associated with a member reasonably believes to be not less than \$1,000,000, or the minimum amount invested in the account is not less than \$500,000;

(C) The member or person associated with a member reasonably believes the customer is able to understand the proposed method of compensation and its risks prior to entering into the arrangement;

(D) The compensation arrangement is set forth in a written agreement executed by the customer and the member;

(E) The member or person associated with a member reasonably believes, immediately prior to entering into the arrangement, that the agreement represents an arm's-length arrangement between the parties;

(F) The compensation formula takes into account both gains and losses realized or accrued in the account over a period of at least one year; and

(G) The member has disclosed to the customer all material information relating to the arrangement including the method of compensation and potential conflicts of interest which may result from the compensation formula.

¹ It is the position of the Division of Investment Management of the Securities and Exchange Commission that compensation received by a member or person associated with a member under this rule would constitute "special compensation" for purposes of the exception to the definition of "investment adviser" in Section 202(a)(11)(C) of the Investment Advisers Act of 1940 (Advisers Act). Any member or person associated with a member, required to be registered under the Advisers Act, or state law, who receives compensation based on a share of profits or capital appreciation of a customer's account must comply with Section 205(1) and Rule 205-3 under the Advisers Act, or applicable state law, with respect to such compensation. (SEC Release 34-24355, 52 Fed. Reg.