

# Notice To Members

National Association of Securities Dealers, Inc.

April 1989

**Number 89-33****Suggested Routing:\***

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

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

**REQUEST FOR COMMENTS**

**Subject: Proposed Amendments to Article III, NASD Code of Procedure Re: Board of Governors' Reviews of Disciplinary Actions; Last Date for Comments: May 1, 1989**

**EXECUTIVE SUMMARY**

The NASD requests comments on proposed amendments to Article III of the NASD Code of Procedure concerning Board of Governors' reviews of disciplinary actions taken by District Business Conduct Committees (DBCC) and the Market Surveillance Committee (MSC).

The proposed amendments would (i) establish procedures for hearings in connection with such reviews, (ii) convert such reviews into truly appellate-type proceedings, (iii) limit the duration of oral argument at such hearings to 15 minutes, with hearing panels empowered to extend that time, (iv) codify practices as to matters reviewed on the basis of the written record, (v) prohibit the introduction of new

evidence before Board review panels, (vi) provide for a remand to the District Business Conduct Committee or Market Surveillance Committee in any appeal where the appealing party did not participate in the DBCC or MSC proceedings but shows good cause for such failure to participate, (vii) provide for review by the Board panel on the basis of the written record when the appealing party did not participate in the DBCC or MSC proceedings or offer a valid explanation for such failure to participate, unless the appealing party seeks and obtains leave to introduce evidence before the Board review panel, and (viii) provide for the dismissal of appeals that are not pursued by the appealing party.

**BACKGROUND**

Under Article III of the NASD Code of Procedure, respondents in disciplinary actions taken by the DBCC and the MSC may appeal those actions to the NASD Board of Governors, or the Board may call a matter for review. In either case, current code provisions permit the respondents to elect to

attend or waive a hearing before a hearing panel of the Board and to submit new evidence, provided that (i) the evidence has been made available to the NASD within a reasonable time before the hearing or on-the-record review or (ii) if a hearing is held, the hearing panel determines to permit the presentation of evidence submitted for the first time at the

hearing. The Board review procedure is based on the presumption that the respondent participated in and produced evidence at the proceedings before the DBCC or MSC, and that each matter has, therefore, received a full review by a Committee below.

The proposed amendments are in response to the NASD's recent observations that:

- (1) a significant amount of additional evidence, both testimonial and documentary, is presented at the Board level that should properly have been considered first by the DBCC or MSC;
- (2) a number of appeals have been received from persons who did not participate in the proceedings before the DBCC or MSC; and
- (3) an increasing number of appellants fail to respond to staff inquiries or otherwise pursue their appeals to the Board beyond filing of the initial notice of appeal.

### PROPOSED AMENDMENTS

As a result of these observations, the National Business Conduct Committee (NBCC) and the Board of Governors have discussed possible amendments to Article III of the Code of Procedure in an attempt to address these concerns while maintaining the integrity of the Board review process. These discussions have resulted in proposals that would amend Article III in several respects.

First, the amendments would provide for the dismissal of appeals when the respondent fails, following the initial notice of appeal, to pursue the appeal by responding to staff requests for information required to proceed with the appeal. In response to each notice of appeal, the staff sends a letter acknowledging the appeal, requesting certain additional information, and specifying a time period for a response. Under the proposed amendments, if no response is received by the specified date, the appeal would be deemed abandoned and would be dismissed. The Board believes that this is appropriate because it is an unnecessary expenditure of NASD resources to devote time to appeals that the appealing party fails to pursue.

In addition, it is the Board's intent to convert the Board-level proceedings to truly appellate-type proceedings in which the introduction of evidence is not permitted and oral argument is made on the law as applied to the facts developed below. The proposed amendments would provide a limitation on the length of a respondent's presentation to 15

minutes. Hearing panels would be empowered to extend this time period for good cause. The Board believes this period is sufficient for the majority of matters, and will allow panels to grant more time for matters that require more detailed arguments. A District staff representative or regional counsel also would be permitted to make oral argument on behalf of the District Committee.

As to the introduction of additional evidence in Board proceedings, if the party seeking to introduce the evidence demonstrates good cause for failing to do so before the DBCC or MSC, the Board would have the authority to rule in favor of admissibility. As noted above, there are now almost no restrictions on the ability to introduce new evidence in Board proceedings. The Board of Governors believes that parties to NASD disciplinary proceedings should introduce all relevant evidence before the DBCC or MSC so that those committees have the benefit of a complete record. The Board also believes, however, that provision should be made for the introduction of new evidence under certain limited circumstances when, for example, evidence was unavailable or not reasonably discoverable at the time of the DBCC or MSC proceedings. The Board committee would be authorized to admit new evidence in such circumstances, but it would be unlikely to permit the introduction of additional evidence unless the respondent can sustain the burden of showing good cause for failing to introduce the evidence below. The materiality of the evidence also would be a factor in that decision. This standard would be similar to that used by certain other self-regulatory organizations and to the standard applied in SEC Rule 19d-3(e), which governs the admissibility of new evidence in Commission review of NASD disciplinary actions. This provision will be administered strictly with a presumption against admissibility at the Board level.

The proposed amendments would also provide for a remand to the DBCC or MSC, without Board consideration, of appeals in which the appealing party did not participate in the DBCC or MSC proceedings and shows good cause for such failure to participate.<sup>1</sup> This amendment is consistent with the Board's view that the integrity of the two-level disciplinary process must be preserved and that a full proceeding below should precede Board review. If, however, the appealing party did not participate in the DBCC or MSC proceedings

and does not show good cause for such failure, then the matter generally will be considered by the Board on the basis of the written record developed by the DBCC or MSC. In any event, the introduction of evidence at the Board-level hearing would be severely restricted.

In addition, the Board of Governors has determined to incorporate into the amendments language that clarifies the procedures for seeking a hearing in connection with an appeal or call for review and codifies certain existing practices with respect to matters considered on the basis of the written record. These amendments are reflected in Sections 2(a) and 2(c)-(f) of the proposed amendments.

Finally, the Board has also determined to propose amendments to Article II, Sections 7(a) and (b) of the Code of Procedure to provide that the NASD staff (or complainant if other than a DBCC or the MSC) and the respondent shall make available to one another on a timely basis the names of proposed witnesses in addition to proposed documentary evidence. The Board also invites comments concerning the desirability of amending Article II, Section 7(c) to place restrictions, similar to those set forth in the proposed amendment to Article III, on the ability to introduce documentary and testimonial evidence at the DBCC or MSC hearing that has not been provided in advance as set forth in Sections (a) and (b).

The Board of Governors believes that the proposed amendments will further the objective of encouraging a full and complete presentation to the DBCC or MSC without impinging upon the important function of Board review.

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

Mr. Lynn Nellius, Secretary  
National Association of Securities Dealers, Inc.  
1735 K Street, NW  
Washington, DC 20006

<sup>1</sup> Failure to participate means the failure to file an answer or otherwise respond to the complaint or the failure to appear at the hearing when a hearing has been scheduled. It does not include a waiver of the right to a hearing pursuant to Article II of the Code of Procedure.

Questions concerning this notice can be directed to Dennis C. Hensley, Vice President and Deputy General Counsel, at (202) 728-8245 or T. Grant Callery, Associate General Counsel, at (202) 728-8285.

Comments must be received no later than **May 1, 1989**. Comments received by this date will be considered by the NBCC and the Board of Governors. Changes to the Code of Procedure must be approved by the Board of Governors and filed with, and approved by, the SEC before becoming effective.

## PROPOSED AMENDMENTS TO CODE OF PROCEDURE

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

### ARTICLE II

**Sec. 1-Sec. 6** No change.

#### Evidence and Procedure in Committee Hearings

**Sec. 7.(a)** The Committee staff, or the complainant, if other than a Committee, shall upon request make available to respondents and their counsel any documentary evidence and the names of any witnesses the staff intends to present no later than five business days prior to [at the hearing within a reasonable time before] the hearing.

(b) Respondents shall submit to the Committee staff or the complainant, any documentary evidence and the names of any witnesses respondents intend to present at the hearing no later than five business days prior to [within a reasonable time before] the hearing.

(c) If a hearing is held, both the complainant and the respondent shall be entitled to be heard in person and by counsel. Formal rules of evidence shall not be applicable. Notwithstanding paragraphs (a) or (b), the parties may submit any additional documentary evidence at the hearing as the hearing panel, in its discretion, determines may be relevant and necessary for a complete record. A record of the hearing shall be kept in all cases.

**Sec. 8-Sec. 13** No change.

### ARTICLE III

#### Review of Disciplinary Actions and [Hearings] Proceedings Before the Board of Governors

**Sec. 1.** No change.

**[Hearings] Proceedings Before the Board**

**Sec. 2.** (a) In the case of an appeal or call for review, the [complainant, if other than the Committee, or the respondent] party seeking review may request a hearing. If the party desires a hearing, it should be requested in his application for review. A party subject to a call for review may request a hearing within 15 calendar days of notification of the call for review. [may request a hearing before a hearing panel of the Board of Governors.] If a request is made, subject to the limitations of Section 2(j) below, a hearing shall be granted. In the absence of a request for a hearing, the Board of Governors may have any matter set down for a hearing.

(b) If a hearing is held, a [A] notice stating the date, time and place of the hearing shall be mailed to the complainant and respondent at least 10 calendar days before the hearing. The notice period may be waived in writing by the respondent or a shorter notice given where extraordinary circumstances require.

(c) If a hearing is not held, the matter shall be considered on the basis of the written record.

[(c)] (d) Unless otherwise consented to by the parties, all hearings shall be held before a hearing panel, and all on-the-record reviews shall be conducted by a review panel, appointed by the National Business Conduct Committee consisting of two or more persons, all of whom are associated with members of the Corporation, at least one of whom shall also be a current member of the Board of Governors.

(e) If a hearing is held, the hearing panel shall consider the record before the Committee and any new material submitted by the complainant and the respondents. If respondent waived a hearing and the Board does not order a hearing on its own motion, the panel shall consider the matter on the record, which may include new evidence as long as all parties have previously been tendered the new evidence.]

(g) A hearing on review by the Board shall consist of oral arguments limited to a period of 15 minutes each for argument and responses by appellant or respondent where cases were called for review and responses by a representative of the

District Committee unless extended by the hearing panel in its discretion for good cause shown. The Board's review shall include consideration of written briefs, as applicable, and shall be limited to consideration of the record before the Committee, including the complaint, respondent's(') answer(s), the transcript of the Committee hearing, any exhibits reviewed by the Committee, and the Committee decision.

(h) Notwithstanding paragraph (g) above, a party to the Board's review may apply to the Board for leave to adduce additional evidence. If the party provides notice of the intention to introduce such evidence no later than 10 business days prior to the date of the hearing, identifies and describes the evidence, and satisfies the burden of demonstrating that there was good cause for failing to adduce it before the Committee and that the evidence is material to the proceeding, the Board may, in its discretion, permit the evidence to be introduced into the record on review or may remand the case to the Committee for further proceedings in whatever manner and on whatever conditions the Board considers appropriate. On its own motion, the Board may direct that the record on review be supplemented with such additional evidence as it may deem relevant.

(i) Any application for review as to which the party seeking review fails to advise the Board of the basis for seeking review, or otherwise fails to provide information or submit a written brief in response to a request, may be dismissed as abandoned.

(j) Any application for review of a matter in which the party seeking review did not participate in the proceedings before the Committee and shows good cause for failure to participate, shall be dismissed and the matter shall be remanded to the Committee for further proceedings. If the party seeking review did not participate in the proceeding before the Committee and does not show good cause for the failure to participate, the matter shall be considered on the basis of the written record. For purposes of this paragraph, failure to participate shall mean failure to file an answer or otherwise respond to a complaint or failure to appear at a hearing which has been scheduled and

shall not include failure to request a hearing pursuant to Article II, Section 4 of this Code. In the latter case, the appeal shall be limited to the evidence before the District Committee.

[(f)] (k) The hearing or on-the-record review panel shall present its recommended findings and sanctions to the National Business Conduct Committee. The National Business Conduct Committee shall make its recommended findings and sanctions to the Board of Governors which shall make the final determination.

#### **Evidence and Procedure in Board Hearings**

**Sec. 3.** (a) [Upon request] Where leave to adduce additional evidence is granted, the Corporation staff or the complainant, if other than a Committee, and the respondent shall make available to the Board hearing or review panel and to the parties all [such] documentary evidence which

was not part of the record before the Committee within a reasonable time,] no later than 10 business days before the hearing.

[(b)] Respondents shall also make available to the Corporation staff or the complainant, any documentary evidence, which was not part of the record before the Committee, within a reasonable time before the hearing.]

[(c)] (b) If a hearing is held both the complainant and respondent shall be entitled to be heard in person and by counsel. Formal rules of evidence shall not be applicable. [Notwithstanding paragraphs (a) or (b), the parties may submit any additional documentary evidence at the hearing as the hearing panel, in its discretion, determines may be relevant and necessary for a complete record.] A record of the hearing shall be kept in all cases.

**Sec. 4 - Sec. 7** No change.

# Notice To Members

National Association of Securities Dealers, Inc.

April 1989

## Number 89-34

### Suggested Routing:\*

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

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

## Subject: Guidelines for Compliance With Article III, Section 27 of the NASD Rules of Fair Practice Re: Supervisory Practices and Procedures

### EXECUTIVE SUMMARY

On April 13, 1989, significant amendments to Article III, Section 27 of the NASD Rules of Fair Practice will take effect. This notice sets forth, in question and answer format, certain guidelines for compliance with the new provision.

### BACKGROUND

As announced in *Notice to Members* 88-84 (November 1, 1988), significant amendments to Article III, Section 27 of the Rules of Fair Practice, pertaining to supervision, will take effect **April 13, 1989**. The amendments (1) prescribe specific supervisory practices and procedures for all member firms and (2) revise the definitions of office of supervisory jurisdiction and branch office. Since the publication of *Notice to Members* 88-84, several NASD members have raised questions concerning the new provisions. The NASD is publishing the answers to certain of these questions for the benefit of all members.

### QUESTIONS AND ANSWERS

#### Supervisory Practices and Procedures

(1) **Q:** Must the supervisory system established in compliance with Article III, Section 27

cover all operations of the firm or only retail sales?

**A:** The supervisory system must cover all aspects of the firm's investment banking and securities business, including back office; corporate financing; trading activity; market services such as SOES, OCT, and NASDAQ/NMS trade reporting; and so forth. The degree of detail in the plan for a given aspect of business will vary, depending on, for example, the extent to which detailed regulatory requirements apply to that aspect. Thus, the supervisory procedures for retail activity are likely to be more extensive than for other areas.

(2) **Q:** Section 27(a)(2) requires the designation, where applicable, of an appropriately registered principal with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker-dealer is required. Has the NASD established any specific requirements for these individuals?

**A:** No specific requirements have been established for purposes of Article III, Schedule 27. The applicable standards are contained in Part II of Schedule C, which sets forth the qualifications for functioning in the various principal capacities. Thus, for example, the principal designated as responsible for the review of the firm's options business must be qualified under Schedule C to

function in a principal capacity with respect to options transactions. Similarly, the principals and representatives who are assigned to carry out supervisory functions in the members' offices pursuant to Section 27(a)(4) must be qualified to function as principals or representatives as to the products sold in the offices they supervise.

(3) **Q:** Section 27(a)(6) requires members to make reasonable efforts to determine that all supervisory personnel are properly qualified. What constitutes reasonable efforts?

**A:** It would be impossible for the NASD to prescribe specific steps to be taken to determine the proper qualification of supervisory personnel. Generally speaking, such persons should be knowledgeable with respect to both regulatory requirements and the firm's product line, experienced in the activities that take place in the office they are supervising, and capable of exercising authority over their subordinates. In addition, factors such as relevant industry experience, previous employment, and disciplinary history should be taken into account.

(4) **Q:** Section 27(a)(7) requires that each representative participate in an annual compliance interview.

(a) Is a telephone interview adequate?

**A:** Neither a telephone interview nor a video conference complies with the rule. The interview or meeting must be "in person," although, as the rule states, it may be individual or collective, and the compliance discussions may take place in conjunction with discussions or presentations on other topics. It would, however, be permissible to include the showing of a videotape prior to or as a part of the presentation.

(b) Must the interview be conducted by a principal? By an employee from the compliance department or main office?

**A:** The interview or meeting is not required to be conducted by a registered principal or by an employee from the main office or compliance department. A qualified branch manager may conduct the interview or meeting, as may a qualified registered representative. A member may also engage a third party to conduct the interview or meeting; however, the firm cannot avoid ultimate responsibility for any inaccuracies or other problems in the contents presented or procedures employed.

(c) What should be discussed and what type of records should the firm maintain to establish compliance?

**A:** It would be impossible for the NASD to provide an exhaustive list of the topics that should be addressed at the compliance interview or meeting. Generally speaking, the purpose of the requirement is threefold: (1) to provide the member an opportunity to review the product mix and method of operation of each representative and emphasize compliance issues related thereto; (2) to provide the representative an opportunity to ask any questions he or she may have and receive authoritative guidance; and (3) to communicate regulatory developments, firm policies, and similar information to the representatives. As to evidencing compliance, members may wish to maintain records that reflect the date and location of the interview or meeting, the attendees, and the subjects discussed.

(d) Is the requirement limited to those representatives who engage in retail sales?

**A:** The rule requires that all registered representatives must attend an interview or meeting; it is not intended to be restricted to those representatives engaged in retail sales.

(5) **Q:** Section 27(a)(8) requires members to designate and "specifically identify" to the NASD one or more principals to review the member's supervisory system and take or recommend appropriate action. How should members identify such individuals to the NASD?

**A:** Members should maintain a record of the individual(s) so designated so that it may be provided to the NASD on request. Sometime in the future, the identification will be made by means of the Form BD. Members will be advised of any changes in this regard.

(6) **Q:** Section 27(c) continues the existing requirement that each member review the activities of each office, including the periodic examination of customer accounts to detect and prevent irregularities or abuses. By the phrase "each office," does the NASD mean to include nonbranch offices?

**A:** This review requirement (as contrasted to the inspection requirements applicable to offices of supervisory jurisdiction and branch offices) encompasses all offices of the member, regardless of whether they are OSJs or branch offices. The NASD believes that it is essential for a member to be aware, on an ongoing basis, of the individuals

located in and activities of each office at which the member's business is conducted, and to be able to monitor all customer accounts, wherever they are handled, for irregularities and abuses.

(7) **Q:** May a member employ outside entities to perform the branch office inspections required by Section 27(c)?

**A:** Yes. As with the compliance interview, however, the member cannot avoid regulatory responsibility for the conduct of the inspections.

#### Definition of Office of Supervisory Jurisdiction

(8) **Q:** If an individual located away from an office of the firm telephones an order to the firm's clearing broker, does that person's location become an Office of Supervisory Jurisdiction (OSJ) under Section 27(f)(1)(i), "order execution and/or market making"?

**A:** The individual's location would not be an OSJ because the order is executed by the clearing broker, not the introducing broker. Such a practice, however, does raise concerns about the introducing broker/employer's ability to supervise the transaction.

#### Definition of Branch Office

(9) **Q:** If, prior to April 13, 1989, a member has contracted for a telephone directory listing that does not comply with the exception to the branch office definition, must the office be designated as a branch office until a complying listing is published?

**A:** No, provided that the listing is modified to comply in the next-published directory and that the contract was entered into prior to November 1, 1988, the date when the membership was notified of the effective date of the amendments.

(10) **Q:** Must a "white pages" listing also contain the address and telephone number of the supervising office in light of the exclusion of a routine listing from the definition of advertisement in Section 35(a)(1) of the Rules of Fair Practice?

**A:** Yes, a "white pages" or routine listing must contain the address and telephone number of the supervising office if the member wishes to avail itself of the exception from the definition of branch office. The definition of advertisement does not affect this requirement.

(11) **Q:** The NASD has proposed amendments

to Article III, Section 35 that would affect the form of business cards and letterhead (see *Notice to Members 89-22*). Is it possible to delay compliance with Article III, Section 27(f)(2) until those provisions go into effect?

**A:** No. The NASD has already provided a six-month phase-in period for the new branch office definition and does not believe it is appropriate to delay further the effectiveness of this key aspect of the new rules. In order to reduce the financial burden of compliance with both changes, it may be possible to affix the supervising office identification to existing cards and letterhead until the new advertising rules take effect. As an alternative, a member may wish to prepare new business cards that comply with both rules even though the advertising rules are not yet effective.

(12) **Q:** Under Section 27(f)(2), would the branch office definition include:

(a) An exhibit booth in a shopping mall?

**A:** If an "exhibit booth" is permanent or regularly used, it would be covered by the definition.

(b) An office listed on a building lobby directory?

**A:** Such an office would be subject to the definition because it is being identified to the general public as an office of the member.

(c) An office identified by a sign on the door?

**A:** The NASD believes that, if a door sign is visible to the general public, it would cause the location to be a branch office. In response to member inquiries concerning certain state law requirements regarding door signs, the NASD is considering whether a sign that appears only on a door inside a building on an interior hallway and is not placed in an area of general public access would cause the location to be a branch office.

(d) A sign at a desk in a savings and loan office?

**A:** If the member does business at that location, it must be designated as a branch office; however, a sign that merely advertises the member's business and directs interested parties to a telephone number or an office of the firm would not give rise to the branch office designation.

(e) An office where only the local telephone number (not an address) is printed in a newspaper advertisement?

**A:** A nonbranch location may not advertise. If a newspaper advertisement lists a local



telephone number, the location at which that telephone is answered would be a branch office regardless of whether the address is given. Such an advertisement identifies that location as a place where the public, via telephone, can do business with the member.

(f) A location to which individuals are referred when they respond to a newspaper or magazine advertisement listing the main office telephone number?

**A:** The identification of a location otherwise excepted from the definition of a branch office under such circumstances is unlikely to cause that location to become a branch office. It is the main office that is being identified to the public; the local office is identified only after the prospective customer has initiated the contact.

Questions concerning this notice can be directed to Jacqueline D. Whelan, Assistant General Counsel, Office of the General Counsel, at (202) 728-8270.

# Notice To Members

National Association of Securities Dealers, Inc.

April 1989

## Number 89-35

### Suggested Routing:\*

Senior Management

Corporate Finance

Government Securities

Institutional

Internal Audit

Legal & Compliance

Municipal

Mutual Fund

Operations

Options

Registration

Research

Syndicate

Systems

Trading

Training

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

## Subject: Misuse of "No Load" Terminology in the Offer of Mutual Funds That Have Contingent Deferred Sales Loads

### EXECUTIVE SUMMARY

The NASD has received a number of complaints from investors in mutual funds that have no front-end sales loads but that have contingent deferred sales loads (CDSLs). The NASD intends to investigate the circumstances that generated each of the complaints received and to pursue disciplinary action against persons associated with NASD members who misrepresented the sales load structure of any of the mutual funds purchased by the complainants.

### Background and Explanation

CDSLs are sales loads that are charged on redemption on a declining percentage basis annually and are usually reduced to zero percent by the sixth or seventh year of share ownership. The complaining investors allege that registered representatives, when offering the securities, described the funds as "no load" or as having "no initial load." The investors claim they were unaware of the CDSL until they decided to redeem their shares.

To assert that a mutual fund with a CDSL is a "no load fund" is an unacceptable misrepresentation. To state that there is "no initial load" without explaining the nature of the CDSL is an omission of material information.

Stated simply, such funds are not "no load" funds, and to say or imply that they are is a violation of Article III, Section I of the NASD Rules of Fair Practice that is not alleviated by the disclosures about a CDSL in a mutual fund's prospectus.

All members and their registered representatives must ensure that prospective investors understand the nature of the various charges made by mutual funds to defray sales and sales promotion expenses, whether they are deducted from an investor's purchase payment, charged on redemption, or levied against the net assets of a fund.

Please ensure that this notice is distributed to all persons associated with your firm who are engaged in the sale or distribution of mutual funds.

Questions about this notice should be directed to A. John Taylor, Vice President, Investment Companies/Variable Contracts Department at (202) 728-8328.

# Notice To Members

National Association of Securities Dealers, Inc.

April 1989

**Number 89-36****Suggested Routing:\*** Senior Management Corporate Finance Government Securities Institutional Internal Audit Legal & Compliance Municipal Mutual Fund Operations Options Registration Research Syndicate Systems Trading Training

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

**Subject: SIPC Trustee Appointed for Investors Center, Inc.**

On March 7, 1989, the United States District Court for the Eastern District of New York appointed a SIPC Trustee for:

Investors Center, Inc.  
110 Ricefield Lane  
Hauppauge, NY 11788

Members may use the "immediate close-out" procedures provided for in Section 59(i) of the NASD's Uniform Practice Code to close out open OTC contracts with this firm. Also, Municipal Securities Rulemaking Board Rule G-12(h)(iv) provides that members may use identical proce-

dures to close out transactions in municipal securities.

Questions should be directed to the SIPC Trustee:

Irving R. Picard, Esq.  
Olshan Grundman & Frome  
505 Park Avenue, 16th Floor  
New York, NY 10022  
(212) 753-7200

Previously, Mr. Picard had been appointed Temporary Receiver.

# Notice To Members

National Association of Securities Dealers, Inc.

April 1989

## Number 89-37

### Suggested Routing:\*

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| <input type="checkbox"/> Senior Management     | <input checked="" type="checkbox"/> Internal Audit | <input checked="" type="checkbox"/> Operations | <input type="checkbox"/> Syndicate          |
| <input type="checkbox"/> Corporate Finance     | <input type="checkbox"/> Legal & Compliance        | <input type="checkbox"/> Options               | <input checked="" type="checkbox"/> Systems |
| <input type="checkbox"/> Government Securities | <input type="checkbox"/> Municipal                 | <input type="checkbox"/> Registration          | <input checked="" type="checkbox"/> Trading |
| <input type="checkbox"/> Institutional         | <input type="checkbox"/> Mutual Fund               | <input type="checkbox"/> Research              | <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 March 13, 1989.

As of March 13, 1989, the following six issues joined the NASDAQ National Market System, bringing the total number of issues in NASDAQ/NMS to 2,859:

Symbol	Company	Entry Date	SOES Execution Level
TMAS	TriMas Corporation	2/14/89	1000
FAHSP	Farm & Home Financial Corporation (Pfd)	2/15/89	500
CHMLV	Chemex Pharmaceuticals, Inc.(1989-1 Wts) (WI)	3/7/89	1000
EQBK	Equity Bank (The)	3/7/89	200
TRNS	Transmation, Inc.	3/7/89	1000
WLRF	WLR Foods, Inc.	3/7/89	500

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

The following changes to the list of NASDAQ/NMS securities occurred since February 10, 1989:

New/Old Symbol	New/Old Security	Date of Change
NATR/AMTC	Nature's Sunshine Products, Inc./ Nature's Sunshine Products, Inc.	2/15/89
SSBC/SSAL	Shelton Bancorp, Inc./Shelton Bank	2/15/89
VSLF/VSLF	VMS Strategic Land Fund II/VMS Strategic Land Trust II	2/21/89
ALLP/OBPI	Alliance Pharmaceutical Corp./Otisville BioPharm, Inc.	2/27/89
ALLPW/OBPIW	Alliance Pharmaceutical Corp. (Wts)/ Otisville BioPharm, Inc. (Wts)	2/27/89
CMTK/TKAI	Cimflex Teknowledge Corp./Teknowledge, Inc.	2/27/89
FOTO/APAS	Seattle Film Works, Inc./American Passage Marketing Corp.	2/27/89
FFNS/FFNS	First Savings Bancorp/First Financial Savings Association, F.A.	3/1/89
INTP/INTP	Interpoint Corp./Integrated Circuits, Inc.	3/1/89
NCBR/NCBR	National Community Banks, Inc./ National Community Bank of New Jersey	3/1/89

New/Old Symbol	New/Old Security	Date of Change
MSBI/MSBI	Montclair Bancorp, Inc./Montclair Savings Bank	3/2/89
SSLN/SSLN	Security Investments Group, Inc./Security Savings Bank, SLA	3/6/89
CLRXW/CLRXW	Colorocs Corp. (CI C 6/30/89 Wts)/ Colorocs Corp. (CI C 3/31/89 Wts)	3/13/89

**NASDAQ/NMS Deletions**

Symbol	Security	Date
CESC	Computer Entry Systems Corporation	2/13/89
LAGR	L.A. Gear, Inc.	2/13/89
GALCF	Galactic Resources Ltd.	2/14/89
APER	Atlantic Permanent Savings Bank, FSB	2/14/89
SCIE	Scicom Data Services, Ltd.	2/15/89
ENZNW	Enzon, Inc. (Wts)	2/16/89
HRCLY	Huntingdon International Holdings, plc	2/16/89
MALR	Malrite Communications Group, Inc.	2/22/89
MALRA	Malrite Communications Group, Inc. (CI A)	2/22/89
MCRD	Micro D, Inc.	2/23/89
FARKC	First Federal Savings of Arkansas, FA	2/24/89
PUBO	Pubco Corporation	2/27/89
TOOT	202 Data Systems, Inc.	2/28/89
AFSL	AmFed Financial Corporation	2/28/89
AITX	Automatix Incorporated	2/28/89
DLTAQ	DeltaUS Corporation	2/28/89
ENER	Energy Conversion Devices, Inc.	2/28/89
FARR	Farragut Mortgage Co., Inc.	2/28/89
ITXI	Interactive Technologies, Inc.	2/28/89
ITXIW	Interactive Technologies, Inc. (Wts)	2/28/89
NAFI	Northern Air Freight, Inc.	2/28/89
SISB	SIS Corp.	2/28/89
TELQ	TeleQuest, Inc.	2/28/89
FFWS	First Farwest Corporation	3/1/89
RADX	Radionics, Inc.	3/1/89
WDMR	Windmere Corporation	3/1/89
LAUR	Laurel Entertainment, Inc.	3/2/89
TEMC	Temco Home Health Care Products, Inc.	3/3/89
TEMCW	Temco Home Health Care Products, Inc. (Wts)	3/3/89
WNDT	Wendt-Bristol Co. (The)	3/3/89

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.

# Notice To Members

National Association of Securities Dealers, Inc.

April 1989

## Number 89-38

### Suggested Routing:\*

- Senior Management
- Corporate Finance
- Government Securities
- Institutional

- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund

- Operations
- Options
- Registration
- Research

- Syndicate
- Systems
- Trading
- Training

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

### Subject: Quarterly Check List of NASD Notices to Members

The following NASD *Notices to Members* were issued during the first quarter of 1989. Each monthly issue costs \$15 and can be obtained by sending the payment and a **self-addressed mailing label** to: NASD Administrative Services, 1735 K Street, NW, Washington, DC 20006-1506.

Notice	Date	Topic			
89-1	1/89	Proposed By-Laws Amendment on Filling Vacancies on District Committees			for Investment Company Securities
89-2	1/89	Proposed New Rule Re: Business Conduct Of Members	89-12	2/89	Reporting Suspicious Currency and Other Questionable Transactions to the IRS/Customs Hotline
89-3	1/89	Proposed Rule to Restrict Payment of Referral Fees by NASD Members	89-13	2/89	Access to Disciplinary Information on Prospective Employees
89-4	1/89	Proposed Mandatory Participation By Clearing Members in Reconfirmation and Pricing Services	89-14	2/89	Approval of Amendments Re: Lost and Stolen Securities Program
89-5	1/89	Insider Trading and Securities Fraud Enforcement Act	89-15	2/89	Rule Amendment to Permit Withdrawal of Quotations from NASDAQ for Market-Maker Vacations
89-6	1/89	State Participation in CRD Form BD and BDW Processing	89-16	2/89	Amendment Permitting Indeterminate Compensation in Public Direct Participation Programs
89-7	1/89	Renewal Rosters and Final Adjusted Invoices	89-17	2/89	Adoption of Rule Amendments Mandating the Automated Submission of Trading Data — Technical Specifications
89-8	1/89	NASD 1989 Holiday Schedule	89-18	2/89	Presidents' Day Trade Date-Settlement Date Schedule
89-9	1/89	Trade Date-Settlement Date (for all of 1989)	89-19	2/89	NASDAQ/NMS Additions, Deletions, and Changes as of 1/12/89
89-10	1/89	NASDAQ/NMS Additions, Deletions, and Changes as of 12/13/88	89-20	2/17/89	Proposed Amendments to
89-11	2/89	Approval of Amendment Re: Advertising and Sales Literature			

		Article III, Sections 1 - 28 of the NASD Rules of Fair Practice — Last Voting Date: March 20, 1989	<b>89-26</b>	3/89	Revenue
<b>89-21</b>	3/89	Proposed Amendment Re: Predispute Arbitration Clauses in Customer Agreements	<b>89-27</b>	3/89	SEC Request for Comments — Re: Sales Practices in Pink Sheet Stocks
<b>89-22</b>	3/89	Proposed Amendment Re: Use and Disclosure of Member Names	<b>89-28</b>	3/89	Treasury Finalizes Two Amendments Re: Currency Transactions
<b>89-23</b>	3/89	Proposed Amendment Re: Providing Terminated Employees with Form U-5 and Obtaining Prior Form U-5 for Potential Employees	<b>89-29</b>	3/89	Approval and Immediate Effectiveness of Definition of "Bona Fide Research"
<b>89-24</b>	3/89	Proposed Amendment Re: Definition of a Direct Participation Program	<b>89-30</b>	3/89	SOES Tier Levels to Change on March 17, 1989, for All NASDAQ/NMS Securities
<b>89-25</b>	3/89	SIPC Reimposes Assessments Based on Percentage of Gross	<b>89-31</b>	3/89	Good Friday Trade Date-Settlement Date Schedule
			<b>89-32</b>	3/89	NASDAQ/NMS Additions, Deletions, and Changes as of February 10, 1989
					Temporary Receiver Appointed for Investors Center, Inc.

# Disciplinary Actions

National Association of Securities Dealers, Inc.

April 1989

## Disciplinary Actions Reported for April

The National Association of Securities Dealers, Inc. (NASD), is taking disciplinary actions against firms and individuals for violations of the NASD Rules of Fair Practice and/or the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions begin with the opening of business on Monday, April 3, 1989.

### FIRMS SUSPENDED

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The action was based on the provisions of Article IV, Section 5 of the NASD Rules of Fair Practice and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after each entry. If the firm has complied with the request for information, the listing also includes the date that the suspension concluded.

**Heritage-Park Securities, Ltd.**, Sacramento, CA (February 10, 1989)

**Nasher, Inc.**, New York, NY (February 10, 1989)

**PBS Securities International, Inc.**, Chicago, IL (January 11, 1989, to February 6, 1989)

**TCF Securities Group, Inc.**, Northridge, CA (February 10, 1989)

### FIRM EXPELLED AND INDIVIDUAL SUSPENDED

**Thomas Bryan & Associates, Inc.** (Birmingham, AL) and **Thomas A. Bryan** (Registered Principal, Birmingham, AL) submitted an Offer of Settlement pursuant to which the firm is fined \$20,000 and expelled from membership in the Association, and Thomas A. Bryan is fined \$30,000, suspended from association with any member of the NASD as a principal for one year, and is required to requalify by examination as a principal before again acting in any principal capacity. Without admitting or denying the allegations, the firm and Bryan consented to the described sanctions and findings that the firm imposed excessive markups on 35 municipal

securities transactions and failed to disclose the markups in corporate transactions on confirmations sent to customers.

In addition, the firm and Bryan engaged in a fraudulent activity in connection with two transactions with financial institutions and assisted these institutions in falsifying their books and records. The first transaction represented a practice known as "adjusted trading" by which a bank was offered a price in excess of the current market price for FNMAs in order to allow the bank to avoid or postpone recognizing a loss on the sale. The firm recouped its loss by selling other FNMAs at a price in excess of the current market price for such security.

The second transaction involved the sale to a savings and loan association of U.S. Treasury notes for \$2,900,000 for which a markup of approximately 20.32 percent was imposed. The books and records for the financial institution were falsified in that certain research and consulting expenses incurred by the savings and loan in the sale of certain loans were included in the markup. This allowed the savings and loan to avoid recording this expense and to overstate its assets by recording the new security on its books at a price above the true market value at the time of the purchase.

In addition, the firm and Bryan failed to maintain and keep current certain books and records, and inaccurately computed the amount required to be on deposit in the firm's Special Reserve Bank Account for the Exclusive Benefit of Customers. The Respondent also sold certain corporate and municipal securities to customers on a principal basis at unfair prices. Additionally, the firm and Bryan engaged in a securities business while failing to maintain minimum required net capital.



**FIRM AND INDIVIDUALS SUSPENDED**

All-Tech Investment Group, Inc., (Pompton Plains, NJ), Mark D. Shefts (Registered Principal, Pompton Plains, NJ), Andrew B. Citrynell (Registered Principal, Pompton, NJ) and certain other registered individuals at All-Tech are named as respondents in a complaint alleging they misused the NASDAQ market's Small Order Execution System (SOES).

The Market Surveillance Committee imposed the following sanctions which were consented to by the Respondents: (1) All-Tech is suspended for seven months from entering orders into SOES and fined \$40,000; (2) Shefts is fined \$10,000; and (3) Citrynell is suspended for five days from associating with any NASD member firm in any supervisory capacity, and fined \$5,000. Furthermore, All-Tech must undertake to adopt, implement, and enforce written procedures to adequately supervise compliance with the SOES Rules.

SOES is intended to be used by securities firms to execute only agency orders of limited size received from public customers. The term "public customer," for purposes of SOES, excludes a person associated with a securities firm who has physical access to a terminal capable of entering orders into SOES, and accounts of a member of the "immediate family" of such an associated person.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to findings that, between August 29 and September 12, 1988, All-Tech executed 864 transactions in SOES for accounts beneficially owned or controlled by Shefts, or for accounts of his immediate family members, in contravention of the SOES rules. Shefts and his immediate family members failed to meet the definition of "public customer," in that Shefts was found to have physical access to SOES terminals.

Between August 26 and September 9, 1988, All-Tech executed approximately 195 trades through SOES for accounts of certain registered representatives at the firm who had physical access to SOES terminals or for their immediate family members. As a result, these persons were also excluded from the definition of "public customer" for purposes of SOES.

Further, 268 SOES transactions executed for the accounts of Shefts' brother-in-law and sister-in-law were aggregated, resulting in 134 instances of order splitting, also in contravention of the SOES

rules which, forbid the splitting of a larger order which exceeds the SOES maximum size limit. Likewise, an order based on a single investment decision entered in SOES, as a group or series of transactions for accounts that are related or controlled by a person associated with a member or by a customer, must be aggregated to determine compliance with SOES size limits. In addition to the charges relating to order splitting and the use of SOES for non-public customers, the Market Surveillance Committee made findings that: All-Tech gave its customers regular and direct access to terminals capable of transmitting SOES orders, and thus violated the rules governing the physical security of the System; that an associated person of All-Tech regularly accepted orders from the public, without having been registered as required by NASD rules; and that, Citrynell violated the NASD rules requiring adequate supervision.

The seven-month suspension imposed against All-Tech, prohibiting it from acting as a SOES Order-Entry Firm, began on February 6, 1989.

**FIRM AND INDIVIDUALS SANCTIONED FOR FRAUDULENT PRACTICES**

Sherwood Securities Corp. (New York, NY) is fined \$20,000, censured, and ordered to comply with its undertakings to enforce written procedures to supervise adequately its associated persons with respect to the reporting of transactions in NASDAQ securities and non-NASDAQ securities; **Robert P. Rosso (Registered Representative, New York, NY)**, is suspended from association with any NASD member firm in any capacity for four months, fined \$50,000, and censured; **Edward L. Byrd (Registered Representative, New York, NY)**, is suspended from association with any NASD member firm in any capacity for 20 business days, fined \$25,000, censured, and required for five years to have any firm with which he becomes associated confirm to the NASD that it is familiar with the NASD's allegations against him and that it has procedures in place to supervise him; and **Frank Dyer, III, (Registered Representative, New York, NY)**, is suspended from association with any NASD member firm in any capacity for 15 days, fined \$10,000, and censured.

In the Offers of Settlement, the Respondents neither admitted nor denied the allegations of the NASD Complaint, but did consent to the findings

and sanctions which were imposed by the NASD's Market Surveillance Committee.

The Complaint alleged that in 1986 and 1987, Rosso, Byrd, and Dyer, as traders in certain NASDAQ/NMS securities for Sherwood, engaged in the manipulative and deceptive trade-reporting practice known as "marking the close of the market," and caused Sherwood to enter fictitious trade reports in 29 different securities on various days.

These reports were predominantly entered at or near the market close, thereby causing Sherwood's trade report to be, at times, the closing one for the day. The reports were generally higher than the previous trade reports when Sherwood maintained a long proprietary position, and lower than the previous trade reports when Sherwood carried a short proprietary position. Such reports did not reflect any actual transactions.

The Committee made findings that Rosso was responsible for trading 23 of the 29 securities and entering 147 fictitious trade reports; Byrd was responsible for trading five of the securities and entering 100 fictitious trade reports; and Dyer was responsible for trading one of the securities and entering 31 fictitious trade reports. The Committee also made findings that Byrd failed to report certain NASDAQ/NMS transactions that should have been reported.

The Market Surveillance Committee found that the foregoing misconduct constituted separate and distinct violations by Rosso, Byrd, and Dyer of Article III, Section 1, 5, and 18 of the NASD Rules of Fair Practice, and Schedule D of the By-Laws.

Further, the Complaint alleged that Sherwood and supervisory personnel at the firm failed to supervise properly and adequately the activities of the three traders, in contravention of Article III, Sections 1 and 27 of the Rules of Fair Practice.

The suspensions imposed on Rosso and Dyer commenced on February 15, 1989, and the suspension imposed on Byrd commenced on February 27, 1989.

### **THREE INDIVIDUALS FINED AND SUSPENDED FOR FRAUDULENT MARKDOWNS AND OTHER MISCONDUCT**

Formal disciplinary actions have been announced against **Mark G. Ross**, **Marc J. Rothenberg**, and **Donna L. Morris** for excess markdowns and other fraudulent conduct concerning the com-

mon stock of Business Computing International, Inc. (BCII), a low-priced security that formerly traded on NASDAQ. The violations were committed while these individuals were associated with E. C. Farnsworth & Co., Inc., a former member of the NASD. All three are currently registered and active with other NASD members.

Pursuant to their Offers of Settlement, without admitting or denying the allegations of the Complaint, Ross and Rothenberg were censured and fined \$100,000, jointly and severally. Ross was suspended from association with any member in any capacity for 60 calendar days. Rothenberg was suspended from association with any member in any capacity for 30 calendar days and thereafter suspended for an additional 60 calendar days from determining (or supervising the determination of) markups or markdowns. Morris was censured, fined \$10,000, and suspended from association with any member in certain capacities for 30 calendar days.

The NASD Market Surveillance Committee found that the three respondents violated Article III, Sections 1 and 18 of the Association's Rules of Fair Practice. Section 18 is the NASD's anti-fraud provision, which prohibits the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security. The Committee also found that Ross and Rothenberg violated Article III, Section 4 of the Rules of Fair Practice, and that Ross and Morris violated Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-6, and Section 17(a) of the Exchange Act and Rule 17a-3(a)(9).

Ross was the president, majority shareholder, and allegedly head of over-the-counter trading at E.C. Farnsworth & Co., Inc. Rothenberg was executive vice president and head of retail sales. Morris was a registered representative and allegedly served as a branch office manager.

Farnsworth was the underwriter on a firm-commitment basis of BCII, which made its initial public offering of 6,000,000 shares of common stock at \$.50 per share. The Market Surveillance Committee found that Ross and Rothenberg caused the firm to purchase BCII from its retail customers with markdowns of 15.7 percent to 36.8 percent below the prevailing market, contrary to NASD rules, which require that markups and markdowns must be fair. The Committee stated that the vast majority of markdowns were 20

percent or more of the prevailing market price. It observed that by charging excessive markdowns "Ross and Rothenberg breached their obligation of fair dealing which they owed to Farnsworth customers and undermined the integrity of the NASDAQ marketplace, particularly with respect to that segment of the marketplace relating to low-priced securities."

In addition to the fraudulent markdowns, the Committee's Complaint alleged other serious misconduct against Ross and Morris. Specifically, the Complaint alleged that, in reviewing the BCII offering, the NASD's Corporate Finance Department objected to the compensation arrangement for a certain promoter of BCII, viewing the overall compensation as excessive. The promoter supposedly contributed back to BCII about one week prior to the offering the shares the promoter had received.

The Complaint claimed that the promoter then opened up eight securities accounts at Farnsworth in the names of third parties, with the approval of Ross and the assistance of Morris. The Complaint stated that Ross and Morris knew that the promoter was the beneficial owner of these accounts or were reckless in not knowing. It alleged that the accounts were established for the purpose of permitting the promoter to purchase shares in the initial public offering and to resell them in the immediate aftermarket.

In furtherance of the scheme for the benefit of the promoter, the Complaint charged, Ross, assisted by Morris, sold to these accounts 400,000 shares for \$200,000 and immediately thereafter repurchased the shares for \$409,000, resulting in a profit of \$209,000 for the promoter. The Complaint alleged that, by virtue of Ross' and Morris' knowledge of and participation in the scheme, they engaged in fraudulent conduct prohibited under the NASD's Rules of Fair Practice and the Exchange Act. Without admitting or denying the allegations, Ross and Morris agreed to a settlement of these charges.

The investigation of this case was carried out by the NASD's Anti-Fraud Department. The disciplinary action was taken by the NASD's Market Surveillance Committee, which consists of 12 executives of securities firms across the country. The Committee is responsible for maintaining the integrity of the NASDAQ market and for disciplining members who fail to comply with relevant securities laws.

The suspensions imposed on Respondents will commence April 3, 1989.

#### INDIVIDUALS BARRED AND SUSPENDED

Walton Frederick Carlisle (Registered Principal, Tulsa, OK), Dennis Keith Thompson (Registered Principal, Tulsa, OK) and Ron Curtis Shaw (Registered Representative, Burbank, CA) submitted an Offer of Settlement pursuant to which Carlisle was fined \$3,000 and suspended from association with any NASD member for five days, Thompson was fined \$3,000 and suspended from association with any NASD member for five days, and Shaw was fined \$18,000 and suspended from association with any member of the NASD in any capacity for 20 days.

Without admitting or denying the allegations, Carlisle, Thompson, and Shaw consented to the described sanctions and findings that Shaw exercised effective control over the Individual Retirement Account of a customer and recommended to the customer the purchase and sale of securities in 104 transactions without having reasonable grounds for believing that such recommendations were suitable in view of the size and frequency of the transactions and the customer's financial situation and needs. In connection with this activity, Carlisle and Thompson failed to establish, maintain, and enforce written supervisory procedures adequate to detect and prevent the violations and to adequately supervise Shaw.

Richard G. Strauss (Registered Representative, Morrison, CO) was fined \$25,000 and suspended from association with any NASD member in any capacity for six months. The sanctions were imposed by the NASD's Board of Governors following the appeal of a decision rendered by the DBCC for District 3. The sanctions were based on findings that Strauss, while functioning as a trader for his employer-member, failed to prepare order tickets for eight transactions with other broker-dealers. Strauss also prepared order tickets reflecting the purchase of certain securities from other broker-dealers when, in fact, he had not executed the trades. This action has been appealed to the Securities and Exchange Commission, and the sanctions are not effective pending consideration of the appeal.

T. Philip Webb (Registered Representative, Birmingham, AL) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he

was fined \$5,000, jointly and severally with his employer-member and another individual respondent, and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Webb consented to the described sanctions and findings that, in connection with a contingency offering of limited partnership interests, Webb failed to execute a written escrow agreement and deposit customer funds into an escrow account, as required by SEC Rule 15c2-4, and permitted investor funds to be disbursed from the partnership's custodial account prior to the satisfaction of the stated contingency. Webb also failed to extend or terminate the offering and return investor funds although the minimum number of units had not been sold in bona fide transactions by the termination date.

In addition, when the price of each unit was reduced, Webb failed to make a rescission offer to those investors who purchased units at the original terms. Further, Webb participated in the purchase of units to close the offering while having failed to disclose to investors the possibility of purchases by the general partners, the possibility that such purchases might be made in order to meet the specified minimum, and the maximum amount of the possible purchases. In connection with another offering, Webb also failed to execute a written escrow agreement, made an impermissible investment with customer funds, failed to maintain an accurate record of purchase and sale transactions, and cash received and deposited or forwarded, and failed to terminate the offering and return investor funds although the contingency was not satisfied.

In addition, Webb functioned as a principal although he was not registered as a principal with the Association.

#### **INDIVIDUALS FINED AND BARRED**

**Vicki Ann DiLorenzo (Registered Representative, Clifton Park, NY)** submitted an Offer of Settlement pursuant to which she was fined \$50,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, DiLorenzo consented to the described sanctions and findings that, without the knowledge or consent of her employer-member, she made false entries on the firm's books and records, issued two checks totaling \$42,000 against the firm's bank account purportedly payable to customers, forged the

customers' names on these checks, and converted the proceeds to her own use. In addition, without the knowledge or consent of a customer, DiLorenzo misappropriated to her own use at least 1,950 shares of stock belonging to the customer also by making false entries to her firm's books and records.

**Robert W. Hasper, II, (Registered Representative, Prescott, AZ)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hasper recommended and effected excessive trading in three customer accounts. Hasper also induced certain customers to open options accounts by misrepresenting the merits and risks of trading options.

**Karen Louise Szynskie (Associated Person, Dallas, TX)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$1,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Szynskie consented to the described sanctions and findings that, without the knowledge or consent of her employer-member, she took \$175 from the firm's petty cash fund and converted these funds to her own use and benefit.

**William F. Wuerch (Registered Representative, Mercer Island, WA) and Mark Dean Thomason (Registered Principal, Seattle, WA).** William F. Wuerch was fined \$25,000 and barred from association with any NASD member as a principal, and Mark Dean Thomason was fined \$5,000, barred from association with any NASD member as a principal, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination in any capacity in which he seeks to function. The sanctions were imposed by the NASD's Board of Governors following the appeal of a decision rendered by the District Business Conduct Committee for District 1. The sanctions were based on findings that Wuerch and Thomason engaged in private securities transactions without written notification to their employer.

This action has been appealed to the Securities and Exchange Commission, and the fines and suspensions imposed are not effective pending consideration of the appeal. However, the principal bars imposed on the Respondents are effective.

**INDIVIDUALS WHOSE REGISTRATIONS  
WERE REVOKED FOR FAILURE TO  
PAY FINES AND COSTS IN  
CONNECTION WITH VIOLATIONS**

Dennis L. Astorri, East Windsor, NJ  
Pat J. Casey, Spokane, WA  
Henry I. Chiesa, Venetia, PA  
Ronald D. Edwards, Southfield, MI  
Edward J. Hynes, Mill Valley, CA  
Brett M. Kingstone, Boulder, CO  
Willis F. Mabey, Sandy, UT  
Albert H. Matsushige, Honolulu, HI  
Brian C. McLaughlin, Deer Park, NY  
Donald R. Mead, Portland, OR  
James P. Moran, Vienna, VA  
Salvatore J. Parisi, Lake Oswego, OR

Herbert A. Schley, San Diego, CA  
Thomas H. Richards, III, Sacramento, CA  
Eugene F. Smith, Pittsburgh, PA  
Carl Specht, Kearny, NJ  
Scott E. Thomas, Tulsa, OK

**FIRMS EXPELLED FOR FAILURE  
TO PAY FINES AND COSTS IN  
CONNECTION WITH VIOLATIONS**

Diversified Securities Investment,  
Honolulu, HI  
Financial First Securities, Inc., Irving, TX  
First Securities of America, Wilmington, DE  
Managed Investments, Inc., Pittsburgh, PA  
Transinternational Securities, Sacramento, CA

# For Your Information

National Association of Securities Dealers, Inc.

April 1989

## NASD Releases Interpretive Summaries Under SEC Rule 19c-4

The NASD recently made available summaries of interpretive letters issued under Securities and Exchange Commission Rule 19c-4. That rule prohibits the major securities markets from listing companies that issue securities or take other corporate actions that disenfranchise existing shareholders. These summaries are expected to be published by the reporting services, including the Bureau of National Affairs and Commerce Clearing House.

The summaries reflect the conclusions reached by the NASD in analyzing the effect of specific issuer proposals and therefore don't necessarily set precedent for future transactions, each of which must be evaluated in light of its own facts

and circumstances. Copies of the summaries may be obtained by sending a written request to the NASD Office of General Counsel, 1735 K Street, NW, Washington, DC 20006.

NASD staff members are available to discuss Rule 19c-4 issues, but, binding determinations will be issued only in response to written inquiries. Requests for such determinations must identify the company, describe the proposed transaction, and include copies of relevant documents, e.g., draft proxy or registration statements. A request also should include an analysis of the rule's application to the proposed transaction. In addition, it should indicate whether inquiries have been made of any other market and, if so, identify such contacts.

## Reminder — Use the Form U-4 Disclosure Reporting Page

Members are reminded that all details relating to Item 22 on Page 3 of Form U-4 must be submitted on a fully completed Disclosure Reporting Page (DRP).

Submission of details on a blank attachment page are no longer acceptable and may result in delays in the Special Registration Review process.

Please refer to *Notice to Members* 88-97 for further details regarding the DRP.

Questions regarding the DRP may be directed to Ellen J. Badler, Assistant Director, Special Registration Review at (301) 590-6743. Copies of the DRP and/or Form U-4 may be obtained by calling NASD Information Services at (301) 590-6500.

## Series 7 Test Changes for April; Atlanta, Memphis, Rochester, and Dallas

### Atlanta Test Site for April

The April 15, 1989, Series 7 exam in Atlanta will be held at:

Sheraton Century Hotel  
2000 Century Boulevard  
Atlanta, GA

Free parking is available in the hotel parking lot.

### Permanent Site Change in Memphis

Effective April 15, 1989, all Series 7 exams in Memphis will be held at:

The Fogelman Executive Center  
Memphis State University  
330 DeLoach Street  
Room 315  
Memphis, TN

Free parking is available across from the Center.

### Date Change for Dallas and Rochester

The Series 7 exams in Dallas, TX and Rochester, NY will be given on **May 13, 1989** instead of the third Saturday of the month.

### **NASAA CRD User Committee Targets Registration Requirements in National Seminar**

The North American Securities Administrators Association (NASAA) CRD User Committee has scheduled a CRD (Central Registration Depository) National Seminar at the Ramada Inn in Nashville, Tennessee, June 2-3, 1989, from 9 a.m. to 5 p.m. each day.

The seminar aims to provide a forum for NASAA and the industry to jointly address issues on Phase I, Phase II, Special Registration Review (SRR), non-CRD state requirements, and enforcement issues and to provide better overall com-

munication between NASAA members and industry representatives.

Registrations cost \$150 each, including lunches, and must be made by April 24. Hotel reservations should be sent directly to the Ramada Inn, 2401 Music Valley Drive, Nashville, TN 37214 by May 1.

For further information regarding this seminar and to obtain a registration form, please contact the NASAA corporate office at (202) 737-0900.

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### **March Notices to Members Incorrectly Reports Disciplinary Action**

In the complaint against William J. McLaren (Registered Principal, Mentor, OH), the second cause of complaint, which alleged that McLaren made recommendations to a customer for the purchase and sale of securities without having

reasonable grounds for believing that the recommendations were suitable, **was dismissed.**

The March issue of *Notices to Members* erroneously reported that McLaren was found in violation of the second cause of complaint.

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### **NASD Implements New Subscription Policy for Notices to Members**

NASD members can purchase an additional subscription to *Notices to Members* for \$150 a year. Single issues can be purchased for \$15 and individual notices for 50 cents per page. The full NASD subscription service, which costs \$300 per year, includes *Notices to Members*, *Guide to Information and Services*, *IR Report*, *Subscriber Bulletin*, *Executive Digest*, *Regulatory and Compliance Alert*, *NASDAQ Notes*, *NASDAQ News*, the

*NASDAQ Fact Book*, the *NASD Annual Report*, two editions of the *NASDAQ Company Directory*, and special reports.

To order a subscription, send a check payable to the National Association of Securities Dealers, Inc., to:

NASD Publications, Treasurer's Department  
9513 Key West Avenue  
Rockville, MD 20850-3389.

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### **District 7 to Sponsor Membership Meeting and Educational Seminar in Florida**

NASD District 7 will sponsor a compliance-oriented seminar for management and operations personnel of NASD members that will include topics of special interest to securities lawyers and accountants. Seminar participants can choose among 18 subjects in five sessions. The seminar will be held May 18-19 at the Pier 66 Hotel and

Marina in Fort Lauderdale, Florida. The fee for registration is \$240 for members and \$265 for non-members. Discounts are available for members registering more than three people and for early registration.

Call Deborah Hampel at (404) 239-6145 for more information.