

# Notice To Members

National Association of Securities Dealers, Inc.

July 1989

**Number 89 - 47****Suggested Routing:\***

- |   |  |  |                                    |
|---|--|--|------------------------------------|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit                | <input checked="" 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 type="checkbox"/> Training  |

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

**IMPORTANT MAIL VOTE**

**Subject: Notice to Membership of Disciplinary Actions; Publication of Sanctions; Availability of NASD Manual; Last Voting Date: August 11, 1989**

**EXECUTIVE SUMMARY**

The NASD invites members to vote on proposed amendments to Article IV, Section 1 and Article VI of the Rules of Fair Practice. The amendments to Article VI would allow the NASD to provide notice of disciplinary actions in *Notices to Members*, which are issued monthly, rather than in the NASD Manual, which is updated quarterly. The amendments would leave unchanged the current requirement that a list of members be provided to each member, but would permit the member to make distribution within the firm as it deems necessary. The amendments to Article IV,

Section 1 would require that the NASD Manual be maintained in each branch office of a member.

NASD members are also advised that the Board of Governors has approved an amendment to the Resolution of the Board of Governors that follows Article V, Section 1. The amendment will permit the NASD to provide notices to the membership and releases to the press of all orders and decisions issued by the NASD by means other than including such notices in the NASD Manual. The text of the proposed amendments and the Board Resolution follows this notice.

**BACKGROUND**

Article VI of the Rules of Fair Practice requires the Secretary of the NASD to furnish every office of every member of the NASD with a list of all members and, by amendments to the list, to keep every office of every member advised of all new members and of all suspensions and cancellations of membership. This list has been provided to members of the NASD in monthly updates to the Manual. Members are entitled to rely on this list as last amended for purposes of complying with Ar-

ticle III, Section 25 of the Rules of Fair Practice. Article IV, Section 1 of the Rules of Fair Practice requires that the NASD Manual be maintained in "every office" of a member.

In addition, a resolution of the Board of Governors that was issued in connection with Article V, Section 1 of the Rules of Fair Practice requires the NASD to provide notice to the membership and publicity for disciplinary actions resulting in suspensions, bars, or monetary sanctions in excess of \$10,000. This resolution also con-

templates the inclusion of that information in the Changes to the List of Members section of the NASD Manual.

Recently, two changes have occurred that appear to warrant amendments to these provisions. First, the Manual is now being updated quarterly rather than monthly. This change was instituted at the beginning of the fiscal year and will save the NASD and its members a significant amount of money. Second, the NASD is now providing notice of disciplinary actions in the monthly package of *Notices to Members* that is distributed to all NASD members. This notice contains the text of all press releases relating to disciplinary actions that became final during the previous month.

As currently drafted, the provisions of Article VI require distribution of a list of members to every office of each member. The proposed amendment would require that the list be provided to each member and would further require the member to make such distribution within the firm as may be necessary. This change is designed to allow members to determine which of their offices need such information and to eliminate the need for the NASD to provide the information to thousands of locations where it may serve no useful purpose.

A second aspect of the proposed change to Article VI would allow the NASD to provide notice by means other than Changes to the List of Members. This would include the *Notices to Members* mechanism, which will substitute for inclusion in Manual updates and will provide the membership with more timely notification of disciplinary actions. It would therefore be duplicative and an unnecessary expense to require such information to be reprinted in the quarterly Manual supplements.

The Board of Governors has also approved a conforming amendment to the Resolution of the Board of Governors appearing after Article V, Section 1 of the Rules of Fair Practice, regarding Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions. The amendment eliminates the requirement that notifications to the membership and releases to the press be included in the supplement to the list of members, and permits the notifications to be disseminated to NASD members by way of *Notices to Members*.

In a related matter, Article IV, Section 1 of the Rules of Fair Practice, which deals with "Availability of the Certificate of Incorporation,

By-Laws, Rules and Code of Procedure," currently requires that these documents (i.e., the Manual) be maintained in "every office" of a member. In order to clarify this requirement, particularly in light of the new definition of branch office, which became effective April 13, 1989, the NASD is proposing to amend Article IV, Section 1 of the Rules of Fair Practice, to state that the Manual will be required to be maintained in each *branch* office of the member.

### EFFECTIVE DATE

Prior to becoming effective, the amendments to Article VI and Article IV, Section 1 of the Rules of Fair Practice must be approved by the NASD membership and thereafter by the SEC.

The NASD Board of Governors believes that the proposed amendment is necessary and appropriate and recommends that members vote approval. The text of the amendments follows this notice. **The text of the amendment to the Resolution of the Board of Governors also follows for information purposes only and not for vote.**

Please mark the attached ballot according to your convictions and return it in the enclosed envelope to The Corporation Trust Company. Ballots must be postmarked no later than August 11, 1989.

Questions concerning this notice can be directed to Shirley Weiss, Attorney, NASD Office of the General Counsel, at (202) 728-8844.

### PROPOSED AMENDMENT TO ARTICLE IV, SECTION 1 OF THE NASD RULES OF FAIR PRACTICE

(Note: New text is underlined.)

#### Availability to Customers of Certificate, By-Laws, Rules and Code of Procedure

Section 1 - Every member of the corporation shall keep in each branch office maintained by him, in the form to be supplied by the Board of Governors, a copy of the Certificate of Incorporation, By-Laws, Rules of Fair Practice, and Code of Procedure of the corporation and all additions and amendments from time to time made thereto, and of all published interpretive rulings made by the Board of Governors, all of which shall be available for the examination of any customer who makes requests therefore.

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

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

**Current Membership List**

The Secretary of the Corporation shall furnish every [office of every] member of the Corporation a list of all members of the Corporation, and shall currently keep every [office of every] member advised, by amendments to the list or otherwise, of all new members and of all suspensions and cancellations of membership. Each member shall be responsible for providing such information to its offices and associated persons as appropriate. For purposes of complying with [Rule 25] pertinent Rules of Fair Practice, a member shall be entitled to rely on [such list as last amended] the information provided by the Corporation.

**AMENDMENT TO RESOLUTION OF THE  
BOARD OF GOVERNORS NOTICE TO  
MEMBERSHIP AND PRESS OF  
SUSPENSIONS, EXPULSIONS,  
REVOCATIONS AND MONETARY  
SANCTIONS — ARTICLE V, SECTION 1 OF  
THE NASD RULES OF FAIR PRACTICE**

(Note: Deleted text is in brackets.) (For Information purposes and not for vote)

Paragraphs 1-8 — No change.

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

# Notice To Members

National Association of Securities Dealers, Inc.

July 1989

## Number 89 - 48

### Suggested Routing:\*

- |   |  |  |   |
|---|--|--|---|
| <input checked="" 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 checked="" 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: All Non-NASDAQ OTC Securities Are Subject to Price and Volume Reporting Effective September 1, 1989

### EXECUTIVE SUMMARY

Effective August 1, 1989, the requirement to report daily price and volume in non-NASDAQ OTC equity securities (NNOTC) pursuant to Schedule H to the NASD's By-Laws is extended to the entire universe of non-NASDAQ issues. This expands the group of securities subject to the electronic reporting requirement from the list of 5,700 National Securities Clearing Corporation cleared NNOTC securities that was established on September 1, 1988 to approximately 47,000 securities.

### BACKGROUND

*Notice to Members 88-54* announced the adoption of Schedule H to the NASD By-Laws, requiring the reporting of price and volume in non-NASDAQ over-the-counter equity securities. Specifically, all members executing principal transactions in NNOTC equity securities must electronically report if their aggregate daily volume of purchases or sales exceeds either a minimum of 50,000 shares or \$10,000. Members that are NASDAQ subscribers must use their NASDAQ/

Harris terminals, NASDAQ Workstations, or authorized foreign terminal emulations to report, while other firms must use the NASD's Automated Regulatory Reporting System (ARRS) to meet the electronic reporting mandate of Schedule H.

Schedule H is being implemented in two phases. Phase I, which began September 1, 1988, and is still in effect, requires the reporting of price and volume for the group of securities that were being cleared through the National Securities Clearing Corporation (NSCC) at the time Schedule H became effective.

### PHASE II IMPLEMENTATION

The second and final implementation phase of Schedule H reporting becomes effective August 1, 1989. In Phase II, *all* NNOTC equity securities are subject to daily price and volume reporting pursuant to the requirements of Schedule H. Refer to the text of Schedule H and *Notice to Members 88-54*, herein incorporated, for more details as to the requirements and mechanics of NNOTC daily price and volume reporting.

*It should be emphasized that all non-NASDAQ equity securities are now subject to the requirements of Schedule H, including foreign securities and preferreds.*

Symbols for all NNOTC securities can be obtained through the automated symbol directory lo-

cated on NASDAQ Level 2 and 3 terminals using the XDN.0 command. For those firms using the NASD's ARRS system, symbols are available in a look-up table. Consult the *NNOTC User Guide* for help in use of either the NASDAQ or ARRS reporting vehicles.

For a security that meets the minimum threshold reporting criteria under Schedule H but for which you cannot locate a symbol in the automated directory, call Dottie Kennedy at (212) 858-4340 to obtain symbol information. Members are not relieved of this reporting requirement because of the apparent absence of a symbol in the directory. Similarly, for issue name changes, symbol conflicts, or any matter related to symbols, contact Ms. Kennedy.

For copies of the *User Guide*, assistance in reporting, or to ask any general questions, call the NNOTC hotline at (800) 321-NASD.

#### **ENFORCEMENT ACTIONS**

The price and volume reporting requirements under Schedule H were adopted to enhance the

NASD's regulatory capabilities to routinely surveil for trading abuses in the NNOTC market. In this regard, an automated surveillance system has been implemented, thereby creating a centralized data base of price and transactions information that is subject to computerized analysis to detect violative practices and abuses such as manipulation, fraudulent pricing and markups, and other serious sales/trading practices.

Recently, the NASD has taken a number of enforcement actions as part of its increased efforts to eliminate fraud in the NNOTC securities market. In addition to carrying out its own investigations, the NASD routinely cooperates with other self-regulatory organizations, the SEC, and governmental law enforcement agencies. Several of these cooperative efforts have resulted in filing criminal charges relating to securities fraud. The NASD intends to continue cooperating with federal and state authorities as part of its efforts to vigorously enforce the securities law, particularly with regard to fraud and other serious sales practice abuses.

# Notice To Members

National Association of Securities Dealers, Inc.

July 1989

## Number 89 - 49

### Suggested Routing:\*

- |  |  |  |                                    |
|--|--|--|------------------------------------|
| <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 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 type="checkbox"/> Training  |

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

**Subject: SEC Approval of Amendment to Schedule C of NASD By-Laws to Require Members To Submit Applications for and Maintain the Registration of Only Such Persons Who Intend to Engage or Are Engaged in the Investment Banking or Securities Business For the Member — Effective July 17, 1989**

### EXECUTIVE SUMMARY

The Securities and Exchange Commission has approved amendments to Parts II and III of Schedule C of the NASD By-Laws that will require a member to submit applications for and maintain the registrations of only such persons who intend to engage or are engaged in the investment banking or securities business for the member. These amendments apply to both principal and representative registration categories.

### BACKGROUND AND SUMMARY

In response to certain recommendations of the NASD Regulatory Review Task Force, the Qualifications Committee of the NASD Board of Governors reviewed the NASD qualification system to consider additional means to maintain an appropriate level of knowledge and professionalism for persons associated with NASD members.

This review not only addressed the adequacy of existing NASD qualifications standards, but also considered issues relating to the need to provide the investing public reasonable assurance that

registered persons remain knowledgeable about products and services available to investors, as well as applicable rules, regulations, and policies governing the investment banking and securities business.

The Securities and Exchange Commission has approved an amendment to Part II, Section (1)(a) and Part III, Section (1)(a) of Schedule C to the NASD By-Laws to require that members register only persons who are engaged or will engage in the investment banking or securities business on behalf of the member in the capacities of principal and representative.

The amendments specifically prohibit members from maintaining registrations for persons who no longer function as principals or representatives of the firm and who no longer are active in the member's investment banking or securities business, or who wish to avoid the re-examination requirement applicable to persons who are not registered for more than two years.

Members are also prohibited from sponsoring an application for registration where there is no intent to maintain the applicant's employment with the member after examination. The NASD believes this amendment is fully consistent with the historic intent of the qualification and registra-

tion program and that the proposed rule change is necessary to prevent such unacceptable practices as "parking" registrations and using NASD membership to gain a competitive advantage in operating a commercial training business.

The amendments also allow a member to maintain or make application for the registration of those persons who are engaged in the investment banking securities business of a foreign securities affiliate or subsidiary.

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

### **AMENDMENT TO PARTS II AND III, SCHEDULE C OF THE NASD BY-LAWS**

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

#### **II**

### **REGISTRATION OF PRINCIPALS**

#### **(1) Registration Requirements**

(a) All Principals Must be Registered - All persons [associated with] engaged or to be engaged in the investment banking or securities business of a member who are to function as principals shall be registered as such with the Corporation in the category of registration appropriate to the function to be performed as specified in Part II, Section (2) hereof. Before their registrations can become effective, they shall pass a Qualification Examination for Principals appropriate to the category of registration as specified by the Board of Governors. A member shall not maintain a principal registration with the Corporation for any person (i) who is no longer active in the member's investment banking or securities business, (ii) who is no longer functioning as a principal, or (iii) where the sole purpose is to avoid the examination requirement prescribed in Section (1)(c) hereof. A member shall not make application for the registration of any person as principal where there is no intent to employ such person in the member's investment

banking or securities business. A member may, however, maintain or make application for the registration as a principal of a person who performs legal, compliance, internal audit, or similar responsibilities for the member or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

#### **III**

### **REGISTRATION OF REPRESENTATIVES**

#### **(1) Registration Requirement**

(a) All Representatives Must be Registered - All persons [associated with] engaged or to be engaged in the investment banking or securities business of a member who are to function as representatives shall be registered as such with the Corporation in the category of registration appropriate to the function to be performed as specified in Part III, Section (2) hereof. Before their registrations can become effective, they shall pass a Qualification Examination for Representatives appropriate to the category of registration as specified by the Board of Governors. A member shall not maintain a representative registration with the Corporation for any person (i) who is no longer active in the member's investment banking or securities business, (ii) who is no longer functioning as a representative, or (iii) where the sole purpose is to avoid the examination requirement prescribed in Section (2)(c) hereof. A member shall not make application for the registration of any person as representative where there is no intent to employ such person in the member's investment banking or securities business. A member may, however, maintain or make application for the registration as a representative of a person who performs legal, compliance, internal audit, or similar responsibilities for the member, or a person who performs administrative support functions for registered personnel, or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

# Notice To Members

National Association of Securities Dealers, Inc.

July 1989

## Number 89 - 50

### Suggested Routing:\*

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|--|--|--|---|
| <input type="checkbox"/> Senior Management     | <input type="checkbox"/> Internal Audit                | <input checked="" 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 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: NASD Initiates Computerized Extension Request Service for Regulation T and SEC Rule 15c3-3; New Form Required

### EXECUTIVE SUMMARY

The NASD has initiated an electronic filing system for use by members in submitting Regulation T/SEC Rule 15c3-3 extension requests. Subscribers to this Automated Regulatory Reporting System (ARRS) are encouraged to submit extension requests directly through their personal computers to the NASD.

Effective September 1, 1989, all members submitting extension requests to the NASD and not utilizing the reporting system must use the new Regulation T/SEC Rule 15c3-3 Extension Request Form.

### Automated Regulatory Reporting System (ARRS) Reg T/15c3-3 Service

NASD members should now take steps to subscribe to ARRS, which will permit firms to enter Reg T/SEC Rule 15c3-3 extension requests directly through their own personal computers. This service, which members are urged to use, is being offered as part of the Automated Regulatory Reporting System (ARRS) and can be accessed through a direct dial-up via Telenet, the GTE public network phone system. There are several advantages to this service, including:

- Immediate and direct on-line notification of approval/modification/denial of most routine extension requests.
- Weekly, monthly, and ad hoc management reports.

A brochure about the ARRS system is enclosed with this month's *Notices to Members*. The ARRS brochure contains additional information about the service in general, its use in facilitating other regulatory reports by members, hardware specifications, and software requirements.

If you wish to subscribe to this service, simply fill out your indication of interest on the survey portion of the ARRS brochure and return the business reply card. Instructions for accessing ARRS, along with a listing of reason codes for extension requests, are contained in a *Member Firm Quick Reference Guide* that will be forwarded on receipt of the business reply card.

### New Combined Regulation T/SEC Rule 15c3-3 Extension Request Form

The NASD has created a new combined form for use in submitting extension requests pursuant to Regulation T and SEC Rule 15c3-3. *Those firms not subscribing to ARRS, effective September 1, 1989, must use the new Regulation T/SEC Rule 15c3-3 Extension Request Form for all extension requests filed with the Association.* The new form



**Notice to Members 89-50**

requires additional information including the account representative's Central Registration Depository (CRD) number, the account Social Security or tax identification number, and a reason code that describes the rationale for the extension request.

Step-by-step instructions for completing the new Regulation T/SEC Rule 15c3-3 Extension Request Form, along with a listing of reason codes, are contained in a *Member Firm Quick Reference Guide*. The new form is reproduced below.

A supply of forms and a copy of the *Quick Reference Guide* will be mailed to all firms currently submitting extension request forms through the NASD. Additional forms and *Guides* can be obtained by contacting the Automated Reports department at (800) 537-8192 or your local NASD district office.

Questions concerning this notice may be directed to Elizabeth Wollin, Associate Director, NASD Automated Reports, at (301) 590-6887.



**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
REGULATION T AND SEC RULE 15c3-3  
EXTENSION REQUEST FORM**

*All dates should be in format: MONTH / DAY / YEAR*

DISTRICT NO.		FIRM NAME		FIRM I.D. NUMBER	REQUEST DATE / /
DAYS REQUESTED	REASON CODE	MULTIPLE REQUEST	SECURITY NAME		
SECURITY I.D. OR CUSIP NUMBER		NUMBER OF SHARES/UNITS		TOTAL AMOUNT	

**REGULATION T ONLY**

NEW ISSUE	DATE SECURITIES AVAILABLE / /	ACCOUNT TYPE	TRADE DATE / /	CUSTOMER SS NO. OR TIN
CUSTOMER NAME (LAST, FIRST, MIDDLE)		CRD NUMBER OF REGISTERED PERSON	REGISTERED PERSON NAME (LAST, FIRST, MIDDLE)	

**SEC RULE 15c3-3 ONLY**

RULE TYPE	SETTLEMENT DATE / /	DEFICIENCY DATE / /	PAYABLE DATE / /	DATE DETERMINED / /	CONTRA BROKER/DEALER
RECEIVABLE FROM		CUSTOMER SS NO. OR TIN	CUSTOMER NAME (LAST, FIRST, MIDDLE)		

COMMENTS: \_\_\_\_\_

**MEMBER COPY**

REGT02

# Notice To Members

National Association of Securities Dealers, Inc.

July 1989

## Number 89 - 51

### 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: Proposed Amendments to Article III, Section 26, of the NASD Rules of Fair Practice  
Re: Cash and Noncash Concessions in Connection with the Retail Sale of  
Investment-Company Securities — Last Date for Comments: August 4, 1989**

### EXECUTIVE SUMMARY

The NASD requests comments on proposed amendments to subsections (b)(7) — Definitions — and (l) — Dealer Concessions — of Article III, Section 26 of the Rules of Fair Practice. The proposed amendments would revise and simplify the current rule governing dealer concessions paid to members that retail investment-company shares. It would also add a requirement that members keep detailed records of noncash concessions received and paid to their associated persons.

### BACKGROUND

Subsection (l), Article III, Section 26 of the NASD Rules of Fair Practice requires disclosure in the prospectus of an investment company of items of material value, cash and noncash, that members will receive from the underwriters for the retail sale of investment company securities. Descriptions of items that are and are not considered to be of material value are also included in the rule.

The rule also requires that underwriters pay concessions, cash and noncash, to members and

not directly to associated persons of members.

When underwriters offer cash and noncash concessions to all members that retail their securities on a uniform basis, a general description of such compensation is permitted in prospectuses. When "special deals" or "special arrangements" are made with individual members that are not made available to all retailing members, the details of the arrangements and the names of the members must be included in the prospectus.

### THE PROPOSED AMENDMENTS

#### Purpose

The proposed amendments aim to revise and simplify the current rule and to enhance member control over registered representatives by introducing a record-keeping requirement for noncash concessions.

The major requirement of the current rule, prospectus disclosure of compensation, cash and noncash, is retained, as are the disclosure requirements with respect to "special deals."

The requirement that a member must be given the opportunity to take cash in lieu of a noncash concession has been eliminated.

#### Subsection (b)(7) - Definitions

The current rule is narrowly drawn to apply to relationships between underwriters and other

member firms and is headed "dealer concessions." This term was used originally to describe that portion of a front-end sales load reallocated to retail dealers by underwriters.

Currently, with the advent of other methods of financing the cost of sales and sales promotion, utilizing sources other than front-end sales loads, the provisions of the rule need to be broadened to apply to all compensation received by members for retailing investment-company securities.

It is proposed to achieve this by adopting the term "offeror" to broadly define any source of member income and to replace "dealer concessions" with the term "member compensation." The definitional section will also include separate definitions of "cash" and "noncash" compensation.  
Subsection (1)(1)

This subsection is new. It will require members to keep detailed records of the amount and nature of all compensation, cash and noncash, received from offerors for the retail sale of investment-company securities and distribution of such to members' associated persons. This will enhance a member's ability to control and supervise its associated persons.

Subsection (1)(2)

This subsection is similar in intent to subsection (1)(2) in the current rule. It prohibits an associated person of a member firm from receiving any compensation, cash or noncash, for selling investment-company securities except from the member with which the associated person is affiliated.

Subsection (1)(3)

This subsection reiterates the prohibition in the current rule against member compensation in the form of securities of any kind.

Subsection (1)(4)

This subsection reiterates the requirements in the current rule governing disclosure in prospectuses of cash and noncash compensation.

Subsection (1)(5)

The current rule contains extensive descriptions of items that are and are not of material value. In the Board's opinion, it is not possible to describe all such items in a rule of general application.

The concept of an item of material value has, therefore, been eliminated from the rule. The Board proposes that there will be only two items of compensation that will not require prospectus disclosure provided that they are not conditioned on

sales or the promise of sales.

First, the monetary limit on gifts by offerors to associated persons has been increased from \$50 to \$100 per person per annum. Such gifts must be approved by members but need not be recorded by the member firm.

Second, members may accept compensation from offerors to defray the costs associated with training or educational meetings held at locations appropriate to the purpose of such meetings. Such locations would normally be the offices of offerors or members or facilities located in the vicinity of such offices. No member may realize a profit from the receipt of such compensation.

Subsection (1)(6)

Subsections 6(a) and 6(b) reiterate exemptive provisions in the current rule. Subsection 6(c) has been rewritten to exclude from the provisions of the rule compensation arrangements between a member firm and its own associated persons.

The NASD encourages all members and other interested parties to comment on the proposed amendments to Article III, Section 26, of the NASD Rules of Fair Practice. Comments should be directed to:

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

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

**PROPOSED AMENDMENTS  
TO ARTICLE III, SECTION 26 OF THE  
NASD RULES OF FAIR PRACTICE**

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

Definitions

(b)(7) ["Associated persons of an underwriter," as used in subsection (1) of this section, shall include an issuer for which an underwriter is the sponsor or a principal underwriter, any investment adviser to such issuer, or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such underwriter, issuer or investment adviser.]

(b)(7) The terms "offeror," "cash compensation" and "non-cash compensation" as used in subsection

(l) of this section shall have the following meanings:

"Offeror" shall mean an investment company, an adviser to an investment-company, an underwriter and persons associated with such entities and their affiliates.

"Cash compensation" shall mean compensation received by a member in cash, by check and by electronic means.

"Non-cash compensation" shall mean any form of compensation received by members that is not cash compensation, including but not limited to merchandise, gifts and prizes, and payment of travel expenses, meals and lodging.

#### [Dealer Concessions

(1)(l) No underwriter or associated person of an underwriter shall offer, pay, or arrange for the offer or payment to any other member, in connection with retail sales or distribution of investment-company securities, any discount, concession, fee or commission (hereinafter referred to as "concession") which:

(A) is in the form of securities of any kind, including stock, warrants or options;

(B) is in a form other than cash (e.g., merchandise or trips), unless the member earning the concession may elect to receive cash at the equivalent of no less than the underwriter's cost of providing the noncash concession; or

(C) is not disclosed in the prospectus of the investment company. If the concessions are not uniformly paid to all dealers purchasing the same dollar amounts of securities from the underwriter, the disclosure shall include a description of the circumstances of any general variations from the standard schedule of concessions. If special compensation arrangements have been made with individual dealers, which arrangements are not generally available to all dealers, the details of the arrangements, and the identities of the dealers, shall also be disclosed.

(2) No underwriter or associated person of an underwriter shall offer or pay any concession to an associated person of another member, but shall make such payment only to the member.

(3)(A) In connection with retail sales or distribution of investment company shares, no underwriter or associated person of an underwriter shall offer or pay to any member or associated person, anything of material value, and no member or associated person shall solicit or accept anything of

material value, in addition to the concessions disclosed in the prospectus.

(B) For purposes of this paragraph (1)(3), items of material value shall include but not be limited to:

(i) gifts amounting in value to more than \$50 per person per year.

(ii) gifts or payments of any kind which are conditioned on the sale of investment company securities.

(iii) loans made or guaranteed by a non-controlled member or person associated with a member.

(iv) wholesale overrides (commissions) granted to a member on its own retail sales unless the arrangement, as well as the identity of the member, is set forth in the prospectus of the investment company.

(v) payment or reimbursement of travel expenses, including overnight lodging, in excess of \$50 per person per year unless such payment or reimbursement is in connection with a business meeting, conference or seminar held by an underwriter for informational purposes relative to the fund or funds of its sponsorship and is not conditioned on sales of shares of an investment company. A meeting, conference or seminar shall not be deemed to be of a business nature unless: the person to whom payment or reimbursement is made is personally present at, or is enroute to or from, such meeting in each of the days for which payment or reimbursement is made; the person on whose behalf payment or reimbursement is made is engaged in the securities business; and the location and facilities provided are appropriate to the purpose, which would ordinarily mean the sponsor's office.

(C) For purposes of this paragraph (1)(3), items of material value shall not include:

(i) an occasional dinner, a ticket to a sporting event or the theatre, or comparable entertainment of one or more registered representative which is not conditioned on sales of shares of an investment company and is neither so frequent nor so extensive as to raise any question of propriety.

(ii) a breakfast, luncheon, dinner, reception or cocktail party given for a group of registered representatives in conjunction with a bona fide business or sales meeting, whether at the headquarters of a fund or its underwriter or in some other city.

(iii) an unconditional gift of a typical item of reminder advertising such as a ballpoint pen with

the name of the advertiser inscribed, a calendar pad, or other gifts amounting in value to not more than \$50 per person per year.

(4) The provisions of this subsection (1) shall not apply to:

(A) Contracts between principal underwriters of the same security.

(B) Contracts between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.

(C) Compensation arrangements of an underwriter or sponsor with its own sales personnel.]

#### Member Compensation

(1) In connection with the retail sale and distribution of investment company securities:

(1) A member shall maintain records of all compensation, cash and noncash, received from offerors and the distribution by the member of any such compensation to its associated persons. The records shall include the names of the offerors, the names of the associated persons and the amount and nature of the compensation received and distributed.

(2) No associated person of a member shall accept any compensation, cash or noncash, from anyone other than the member with which the person is associated.

(3) No member shall accept any compensation from an offeror which is in the form of securities of any kind.

(4) Except as described in paragraph (5) of this subsection (1), no member shall accept any compensation, cash or noncash, from an offeror un-

less such is described in the current prospectus of the investment company. When special compensation arrangements are offered by an offeror to a member, which arrangements are not made available on the same terms to all members who distribute the investment company securities of the offeror, a member shall not enter into such arrangements unless the name of the member and the details of the arrangements are disclosed in the prospectus.

5) Notwithstanding the provisions of subsections (2) and (4) of this section, the following items of compensation are not required to be disclosed in a prospectus provided that they are not conditioned on sales or the promise of sales:

a) Gifts by an offeror to associated persons of members, with the approval of the member, that do not exceed \$100 in value per annum, per person.

b) Payment or reimbursement by offerors to members in connection with training or educational meetings where the location is appropriate to the purpose of such meetings, which would ordinarily mean a business location where the offeror or the member has an office.

6) The provisions of this Section (1) shall not apply to:

a) Compensation arrangements between principal underwriters of the same security.

b) Compensation arrangements between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.

c) Compensation arrangements between a member and its own associated persons.