NASD

Notice To Members

National Association of Securities Dealers, Inc. March 1990

Number 90 - 14

Suggested Routing:*

✓Senior Management	__Internal Audit	__Operations	__Syndicate
__Corporate Finance	✓Legal & Compliance	__Options	__Systems
__Government Securities	__Municipal	__Registration	__Trading
__Institutional	__Mutual Fund	__Research	__Training

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

MAIL VOTE

Subject: Proposed Amendments to Article III, Section 35 of NASD's Rules of Fair Practice Re: Communications With the Public; Last Voting Date: April 5, 1990

EXECUTIVE SUMMARY

Members are invited to vote on proposed amendments to Article III, Section 35 of the NASD's Rules of Fair Practice that would: (1) subject advertisements and sales literature concerning public direct participation programs to routine spot-checking by the Association, notwithstanding that a spot check may have been conducted by another self-regulatory organization or securities exchange using procedures and time cycles comparable to those used by the Association; (2) adjust the time period when spot-check reviews of members' advertising and sales literature may be conducted, to coordinate with similar reviews conducted by other self-regulatory organizations and securities exchanges; (3) exempt advertising and sales literature concerning direct participation programs from the review requirement of Section 35(c)(3), in which the material was only part of a listing of products and/or services offered by the member; and (4) require conformity of members' public communications with all applicable SEC rules. The text of the proposed Rules amendments follows this notice.

BACKGROUND

On November 17, 1989, the NASD's Board of Governors approved a resolution calling for a member vote and filing with the Securities and Exchange Commission amendments to Article III, Section 35 of the NASD's Rules of Fair Practice, which governs members' communications with the public.

The rule contains internal approval and recordkeeping requirements, filing requirements, and standards applicable to the content of such communications.

An amendment to Article III, Section 35(c)(3), adopted by the Association on July 1, 1987, requires that advertising and sales literature concerning publicly offered direct participation programs be filed with the NASD for review within 10 days of first use or publication.

The Board of Governors believes that the adoption of the filing requirement has created the

necessity for making conforming amendments to three other sections of Article III, Section 35: Section 35(c)(6), Section 35(c)(8), and Section 35(e).

PROPOSED AMENDMENTS

Spot Check - Direct Participation Program Securities

Section 35(c)(6) sets forth the procedures for conducting a spot check of every member's advertising and sales literature. The procedures do not apply to members that have been subjected to a spot check by a registered securities exchange or other self-regulatory organization utilizing comparable procedures, except for material relating to municipal securities and investment company securities, which remain subject to the Association's spot-check procedure regardless of whether there has been a spot-check by an exchange or self-regulatory organization within the preceding calendar year. The Association has sole jurisdiction for regulation of municipal securities advertising and sales literature and, therefore, does not defer to another self-regulatory organization or exchange in the review of municipal communications. Article III, Section 35(c)(1) sets forth a filing requirement for investment company securities advertising and sales literature. Parallel to the direct participation program filing requirement, it states that all investment company advertising and sales literature must be filed with the NASD within 10 days of first use.

Furthermore, there are similar requirements for government securities advertising and sales literature found in Section 8(c) of the Association's Government Securities Rules. Such advertising is required to be filed with the NASD within 10 days of first use, and government securities advertising and sales literature is subject to a periodic spot check by the Association, regardless of the timing of any previous Association review of such material.

Therefore, to be consistent with the spot-check requirements for these other securities products, the Board of Governors believes that Article III, Section 35(c)(6) should be amended to require that advertising and sales literature on behalf of public direct participation programs should be submitted in response to the Association's spot-check request, regardless of whether such material has been spot-checked by an exchange or self-regulatory organization.

Timetable For Spot-Checking

Section 35(c)(6) also states that, except for material related to municipal securities or investment company securities, the spot-check procedure will not be applied to members that have been spot-checked "within the preceding calendar year" by a registered securities exchange or other self-regulatory organization using comparable procedures. When this rule was originally adopted in 1980, the NASD conducted annual spot checks of each member firm. Since then, the volume of filings and complaints has increased to such a degree that the Association cannot effectively spot-check all members within a one-year period, and the cycle has been changed to conduct the spot check biennially. The New York Stock Exchange (NYSE) also conducts a spot check of its members' advertising and sales literature on a two-year cycle.

The current language in the rule means that some NASD members may be required to respond fully to an NASD spot check because they were spot checked by the NYSE beyond the "preceding calendar year," even though the spot check was conducted within the same cycle for both the NYSE and NASD. The Board of Governors believes that this section of the rule should be amended to eliminate the fixed time period in order to insert a flexible time period that would parallel the time frame used by the NYSE. This would create a more efficient spot-check process that would avoid duplicative spot-checking of members.

The NASD has become aware that the NYSE has filed with the SEC a proposed rule change that would eliminate the NYSE spot-check procedure. At such time as this change becomes effective, dual NASD/NYSE members no longer will have this exception available.

Exclusion From Filing

Section 35(c)(8) allows an exclusion from all filing requirements and spot-check procedures for advertising and sales material that refers to investment company securities or options communicated solely in a listing of the member's products or services. Section 35(c)(1) requires the filing of investment company advertising and sales literature, and Section 35(c)(2) requires the filing of all options communications used prior to the delivery of the

risk disclosure document. Similarly, government securities communications required to be filed under Section 8(c)(1) or spot checked under Section (8)(c)(A) of the Government Securities Rules are exempted under Section 8(c)(6) from these requirements only if referred to in such a listing.

The Board of Governors believes that Section 35(c)(8) should be amended to allow direct participation program securities to be excluded from the review and spot-check procedures in cases when the information communicated is merely a listing of the member's products or services. The Board of Governors believes that this amendment would fairly include public direct participation programs with the other categories of securities exempted from such review and spot-checking requirements.

Compliance With SEC Rules

Section 35(e) sets forth "Standards Applicable to Investment Company-Related Communications." This section provides for conforming such communications to applicable SEC rules, in addition to the standards set forth in Section 35(d).

The Board of Governors believes that this section should be amended to require that all communications with the public conform to applicable SEC rules. Protection of the public and maintaining public trust in the securities markets is an important priority of the Association. Therefore, the Board believes expanding the scope of Section 35(e) to require that members' communications with the public conform with applicable SEC rules is consistent with the NASD's longstanding policy of ensuring that, in conjunction with making informed investment decisions, the investing public receives accurate and complete information from Association members.

Please mark the attached ballot according to your convictions and return it in the enclosed, stamped envelope to The Corporation Trust Company. Ballots must be postmarked **no later than April 5, 1990.**

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

PROPOSED AMENDMENT TO ARTICLE III, RULES OF FAIR PRACTICE

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

Section 35. Communications with the Public

(c) Filing Requirements and Review Procedures

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

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

(e) [Standards Applicable to Investment Company-Related Communications] Application of SEC Rules

In addition to the provisions of paragraph (d) of this section, members' public communications [concerning investment company securities] shall conform to all applicable rules of the SEC, as in effect at the time the material is used.

NASD

Notice To Members

National Association of Securities Dealers, Inc. March 1990

Number 90 - 15

Suggested Routing:*

__Senior Management	✓Internal Audit	✓Operations	__Syndicate
__Corporate Finance	✓Legal & Compliance	__Options	✓Systems
__Government Securities	__Municipal	__Registration	__Trading
__Institutional	__Mutual Fund	__Research	__Training

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

Subject: Amendment to Uniform Practice Code Regarding Buy-In Procedures, Effective February 1, 1990

EXECUTIVE SUMMARY

The Securities and Exchange Commission has approved an amendment to Section 59 of the NASD's Uniform Practice Code to provide for the automation of the NASD's buy-in procedures. The provisions are effective for buy-ins instituted after February 1, 1990. The text of the amendment to Section 59 follows this notice.

EXPLANATION

The Securities and Exchange Commission has approved an amendment to the NASD's Uniform Practice Code that resulted from a review thereof to bring the code into conformity with current industry standards and practices. One of the sections that was reviewed was Section 59, pertaining to "buy-in" procedures.

The NASD Board, on the recommendation of the Uniform Practice Committee, adopted amendments to Section 59 to more clearly define the procedures that should be followed by broker-dealers in handling buy-ins. The new procedures are specifically designed to provide for the use of sophisticated and modern methods of sending "buy-in" notices and reflect current electronic notification and response methods. The amendments also eliminate provisions that are obsolete and provide greater precision regarding the procedures for manual transmission of buy-in notices.

The rule became effective for buy-ins initiated after February 1, 1990. Questions concerning this notice may be directed to Donald Catapano, Director of NASD Uniform Practice/TARS, at (212) 858-4350.

TEXT OF RULE CHANGE

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

Close-Out Procedure "Buying-in"

Sec. 59 A contract which has not been completed by the seller according to its terms may be closed by the buyer not sooner than the third business day following the date delivery was due, in accordance with the following procedure:

Notice of "buy-in"

(a) (1) (Text unchanged.)

(2) For purposes of this rule written notice shall include an electronic notice through a medium that provides for an immediate return receipt capability. Such electronic media shall include but not be limited to facsimile transmission, a computerized network facility, etc.

Information contained in "buy-in" notice

(b) 1. Every notice of buy-in shall state the date of the contract to be closed, [and] the quantity and contract price of securities covered by said contract, the settlement date of said contract and any other information deemed necessary to properly identify the contract to be closed. [and] Such notice shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 11:30 A.M. local time in the community where the buyer maintains his office, the security may be "bought-in" on the date specified for the account of the seller. If the originator of a "buy-in" in a depository eligible security is a participant in a registered securities depository, the "buy-in" may not be executed prior to 2:30 P.M., Eastern Time. [Every notice of buy-in transmitted pursuant to a buy-in issued by a registered clearing agency must contain the "buy-in reference number," if any, assigned by such registered clearing agency. This number, if preceded by the letters "EXT", will also indicate that the buy-in has already been extended seven (7) calendar days past its original proposed execution date pursuant to Section 59(g) of the UPC.] Each "buy-in" notice shall also state the name and telephone number of the individual [with whom further discussions concerning the buy-in may be carried on or the telephone extension where an individual] authorized to pursue further discussions [can be reached] concerning the buy-in.

2. (Text unchanged.)

[3.] (Deleted in its entirety.)

Seller's failure to deliver after receipt of notice

(c) (i) (a) On failure of the seller to effect delivery in accordance with the "buy-in" notice, or to obtain a stay as hereinafter provided, the buyer may close the contract by purchasing all or [any] part of the securities necessary to [complete the contract] satisfy the amount requested in the "buy-in" notice. Securities delivered subsequent to the receipt of the "buy-in" notice should be considered as delivered pursuant to the "buy-in" notice. Delivery of the requisite number of shares, as stated in the "buy-in" notice, or [Such] execution will also operate to close-out all contracts covered under retransmitted notices of buy-in issued pursuant to the original notice of buy-in. A "buy-in" may be executed by a member from its long position and/or from customers' accounts maintained with such member.

(c)(i)(b) (Text unchanged.)

(c)(ii) (Text unchanged.)

"Buy-in" not completed

(d) (Text unchanged.)

Partial delivery by seller

(e) (Text unchanged.)

Securities in transit

(f) [1] If prior to the closing of a contract on which a "buy-in" notice has been given, the buyer receives from the seller written or comparable electronic notice stating that the securities are 1) in transfer; [or] 2) in transit; 3) being shipped that day; or 4) due from a depository and giving the certificate numbers, except for those securities due from a depository, then the buyer must extend the execution date of the "buy-in" [may not execute "the buy-in"] for a period [not exceeding] of seven (7) calendar days from the date delivery was due under the "buy-in". Upon request of the seller, an additional extension of seven (7) calendar days may be granted by the Committee due to the circumstances involved. [provided the stock is in transfer and, due to the transfer agent, transfer is delayed.]

[(2)] (Deleted in its entirety.)

[Securities due from a registered clearing agency]

[(g)] (deleted in its entirety.)

Notice of executed "buy-in"

(g[h]) The party executing the "buy-in" shall immediately upon execution, but no later than the close of business, local time, where the seller maintains his office, [via TWX, Telex, hand delivery or other comparable written media, having the same immediate receipt capabilities,] notify the broker/dealer for whose account the securities were bought as to the quantity purchased and the price paid. Such notification should be in written or electronic form having immediate receipt capabilities. If [TWX, Telex or hand delivery are] this written media is not available the telephone shall be used for the purpose of [immediate] same day notification, and written or similar electronic notification [via

telegram or mail-o-gram] having next day receipt capabilities must also be sent out simultaneously. In either case formal confirmation of purchase along with a billing or payment, (depending upon which is applicable), should be [mailed or delivered] forwarded as promptly as possible after the execution of the "buy-in". [Immediate similar [n]Notification of the execution of the "buy-in" shall be given to succeeding broker/dealers to whom a re-transmitted notice was [given] issued [under] pursuant to subsection (b) using the same procedures stated herein. If a re-transmitted "buy-in" is executed, it will operate to close out all contracts covered under the re-transmitted notices.

"Close-out" under committee or exchange rulings

(h[i]) (Text unchanged.)

Failure to Deliver and Liability Notice Procedures

(i[j]) (1) If a contract is for warrants, rights, convertible securities or other securities which 1) have been called for redemption; [or] 2) are due to expire by their terms; [or on which a call or expiration date is impending or is for securities which] 3) are the subject of [to] a tender or exchange offer; or 4) are subject to other [such] expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered (the "expiration date") is the settlement date of the contract or later [any day after the settlement date, in addition to the close-out procedures set forth in paragraphs (a) - (h) of the Section.] the receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in paragraphs (a) - (g). Such Notice must be issued using written or comparable electronic media having immediate receipt capabilities no later than one business day prior to the latest time and date of the offer or other event in order to obtain the protection provided by this rule.

(2) (Text unchanged.)

(3) (Text unchanged.)

(4) (Text unchanged.)

Contracts made for cash

(j[k]) Contracts made for "cash", or made for or amended to include guaranteed delivery on a specified date may be "bought-in" without notice during the normal trading hours on the day following the date delivery is due on the contract; otherwise, the procedures set forth in paragraphs (a) - (f) of this Section shall apply. In all cases, notification of executed "buy-in" must be provided pursuant to paragraph (g) of this Section. "Buy-ins" executed in accordance with this subsection shall be for the account and risk of the defaulting broker/dealer.

Information on notices

(k[l]) (Text unchanged.)

"Buy-in" desk required

(l[m]) Members shall have a "buy-in" section or desk adequately staffed to process and research all "buy-ins" during normal business hours.

Buy-in of accrued securities

(m[n]) (Text unchanged.)

NASD

Notice To Members

National Association of Securities Dealers, Inc. March 1990

Number 90 - 16

Suggested Routing:*

✓ Senior Management	__ Internal Audit	__ Operations	✓ Syndicate
✓ Corporate Finance	✓ Legal & Compliance	__ Options	__ Systems
__ Government Securities	__ Municipal	__ Registration	✓ Trading
__ Institutional	__ Mutual Fund	__ Research	__ Training

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

Subject: New Interim Criteria for Initial Inclusion in the NASDAQ System

EXECUTIVE SUMMARY

To protect investors and the public interest, and to respond to concerns raised by the Securities and Exchange Commission (SEC), the NASD filed February 15, 1990, a proposed rule change that applies more stringent interim criteria for initial inclusion in NASDAQ. The interim criteria, which would amend the criteria set forth in Part II, Sections 1 and 2 to Schedule D of the NASD By-Laws, apply to requests for initial inclusion filed on or after February 15, 1990. Those companies applying between February 15 and the date the SEC approves the filing could be admitted for NASDAQ listing under the previous initial inclusion criteria but would have to meet the new criteria within 90 days of the SEC approval. The text of the rule filing follows this notice.

BACKGROUND AND EXPLANATION

In a letter dated January 10, 1990, the SEC's Division of Market Regulation expressed concern that certain promoters might attempt to circumvent the provisions of new SEC Rule 15c2-6, which imposes sales-practice requirements on broker-dealers that recommend transactions in "penny stocks," by seeking to list on NASDAQ.

In response to Rule 15c2-6, which became effective January 1, 1990, and the SEC letter, the NASD staff began an analysis of the initial inclusion criteria for NASDAQ to ensure that the financial and market requirements continue to adequately and appropriately serve the public interest.

The NASD Board of Governors will consider proposals for modification of the NASDAQ inclusion criteria, including both initial and maintenance standards, at its March 1990 meeting. The Association believes, however, that it would be contrary to the public interest and investor protection and inconsistent with the intent of the SEC letter not to modify initial inclusion criteria on an interim basis as quickly as possible. Otherwise, issuers that are unlikely to meet criteria that may be adopted by the Board at its March meeting would be able to enter the NASDAQ System and thereby avoid compliance with Rule 15c2-6. Similarly, the NASD does not believe it would be in the investing public's interest to allow issuers to enter the NASDAQ System when there is a substantial likelihood that their securities will be ineligible for continued inclusion when the NASD Board resolves this issue.

The interim criteria will not impact issuers having securities that are currently included in NASDAQ. Instead, the requirements will be fully applicable only to issuers applying for NASDAQ inclusion after SEC approval of this rule change.

In addition, those issuers applying for inclusion in NASDAQ on or after February 15, 1990, and entering the system before SEC approval of the change, would have 90 days after that approval to achieve compliance with the interim standards.

To eliminate the possibility of what effectively would be a perpetual "grandfathering" of a dormant application, the proposed rule change would treat a pre-February 15 application as withdrawn if the security does not enter the NASDAQ System within 90 days of SEC approval of the rule change.

THE INTERIM CRITERIA

There are five criteria that will be imposed on an interim basis in addition to or in lieu of the criteria set forth in Part II, Sections 1 and 2 to Schedule D of the NASD By-Laws. The criteria are that the issuer shall have total assets of at least $4 million; the issuer shall have capital and surplus of $2 million or more; in the case of common stock, there shall be at least 300,000 publicly held shares; the minimum price per share shall be not less than $3; and the issuer shall have a minimum of four market makers.

Questions regarding the interim criteria for initial inclusion may be directed to Perry Peregoy, Associate Director, Market Listing Qualifications, at (202) 728-8088.

TEXT OF PROPOSED RULE CHANGE ESTABLISHING INTERIM CRITERIA FOR INITIAL INCLUSION IN THE NASDAQ SYSTEM

The NASD has determined that in order to protect investors and the public interest, the following criteria for initial inclusion of securities in the NASDAQ system shall be imposed on an interim basis in addition to or in lieu of the criteria set forth in Part II, Sections 1 and 2 to Schedule D of the NASD By-Laws.

1. The issuer shall have total assets of $4 million.

2. The issuer shall have capital and surplus of $2 million.

3. In the case of common stock, there shall be at least 300,000 publicly held shares.

4. The minimum price per share shall be not less than three dollars ($3.00).

5. The issuer shall have a minimum of four market makers.

The foregoing criteria shall be applicable to the initial inclusion of all issuers making application for quotation in the NASDAQ System after approval of such criteria by the Securities and Exchange Commission until such time as the NASD has adopted and the SEC has approved permanent changes to the NASDAQ inclusion standards. In addition, issuers that make application and are authorized for NASDAQ inclusion on or after February 15, 1990 but prior to approval of the interim standards by the Securities and Exchange Commission shall be required to demonstrate compliance with the interim standards within 90 days of Commission approval or shall be removed from the system.

An application for NASDAQ inclusion filed prior to February 15, 1990 shall be deemed to have been withdrawn and a new application will be required if the issuer has not entered the NASDAQ system within 90 days of Commission approval of the interim criteria.

NASD

Notice To Members

National Association of Securities Dealers, Inc. March 1990

Number 90 - 17

Suggested Routing:*

__Senior Management	✓Internal Audit	✓Operations	__Syndicate
__Corporate Finance	__Legal & Compliance	__Options	✓Systems
__Government Securities	__Municipal	__Registration	✓Trading
__Institutional	__Mutual Fund	__Research	__Training

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

Subject: NASDAQ National Market System (NASDAQ/NMS) Additions, Changes, and Deletions As of February 9, 1990

As of February 9, 1990, the following 13 issues joined NASDAQ/NMS, bringing the total number of issues to 2,685:

Symbol	Company	Entry Date	SOES Execution Level
WRKB	Workmen's Bancorp, Inc.	1/11/90	500
MAFB	MAF Bancorp, Inc.	1/12/90	1000
FCTB	Financial Center Bancorp	1/16/90	200
KNOW	KnowledgeWare, Inc.	1/16/90	1000
PBSF	Pacific Bank, N.A. (The)	1/16/90	200
CIVC	Civic BanCorp	1/23/90	200
RPCX	Roberts Pharmaceutical Corporation	1/23/90	500
TRCR	TriCare, Inc.	1/26/90	500
HERC	Hadson Energy Resources Corporation	1/31/90	1000
HINT	Henley International, Inc.	2/2/90	1000
BDEV	BLOC Development Corporation	2/6/90	1000
HHGR	Helian Health Group, Inc.	2/6/90	1000
HHGRW	Helian Health Group, Inc. (Wts)	2/6/90	1000

NASDAQ/NMS Pending Addition

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

Symbol	Company	Location	SOES Execution Level
FOILP	Forest Oil Corporation (Pfd)	Bradford, PA	500

NASDAQ/NMS Symbol and/or Name Changes

The following changes to the list of NASDAQ/NMS securities occurred since January 12, 1990.

New/Old Symbol	New/Old Security	Date of Change
NFSL/NFSL	Newnan Savings Bank, F.S.B./Newnan Federal Savings & Loan Association	1/16/90
UBAN/USBP	USBANCORP, Inc./USBANCORP, Inc.	1/16/90
UBANP/USBPP	USBANCORP, Inc. (Pfd)/USBANCORP, Inc. (Pfd)	1/16/90
FCBN/FCBN	Furon Co./Fluorocarbon Co.	2/5/90
GATW/GATW	Gateway Fed Corporation/Gateway Federal Savings Bank	2/5/90
SHER/RANG	Scottish Heritable, Inc./Rangaire Corporation	2/8/90

NASDAQ/NMS Market Deletions

Symbol	Security	Date
EBNC	Equitable Bancorporation	1/18/90
RVCC	Reeves Communications Corporation	1/18/90
CAME	Carme, Inc.	1/19/90
NSTS	Northwestern States Portland Cement Company	1/22/90
RHII	Robert Half International, Inc.	1/22/90
UTDMK	United Investors Management Company	1/24/90
FNBF	Florida National Banks of Florida, Inc.	1/29/90
DYCO	Dycom Industries, Inc.	1/30/90
EXCG	Exchange Bancorp, Inc.	1/31/90
FFMC	First Financial Management Corporation	1/31/90
HUHOE	Hughes Homes, Inc.	2/1/90
HUHWE	Hughes Homes, Inc. (Wts)	2/1/90
MINQE	MiniScribe Corporation	2/1/90
DING	Diversified Investment Group, Inc.	2/2/90
GTCH	GTECH Corporation	2/2/90
ATLF	Atlantic Finanical Federal	2/5/90
ATLFP	Atlantic Finanical Federal (Pfd)	2/5/90
CANLZ	Canal-Randolph Limited Partnership	2/5/90
CTYFN	CityFed Financial Corp. (Ser. C Pfd)	2/5/90
SGIC	Silicon Graphics, Inc.	2/6/90
FARF	Fairfield-Noble Corporation	2/7/90
SYRA	Syracuse Supply Company	2/8/90

Questions regarding this notice should be directed to Kit Milholland, Senior Analyst, Market Listing Qualifications, at (202) 728-8281. Questions pertaining to trade reporting rules should be directed to Leon Bastien, Assistant Director, NASD Market Surveillance, at (301) 590-6429.

NASD
Disciplinary Actions
National Association of Securities Dealers, Inc. March 1990

Disciplinary Actions Reported for March

The NASD is taking disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice, securities laws, rules, and regulations, and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions began with the opening of business on Monday, March 5, 1990. The information relating to matters contained in this notice is current as of the 20th of the month preceding the date of the notice. Information received subsequent to the 20th is not reflected in this publication.

FIRMS EXPELLED

Individual's Securities Ltd. (Melville, New York) was expelled from membership in the NASD. The sanction was based on findings that the firm failed to honor a $3,500 arbitration award.

FIRMS SUSPENDED AND INDIVIDUALS SANCTIONED

R.B. Webster Investments, Inc. (Margate, Florida) and **Robert Bruce Orkin (Registered Principal, Boca Raton, Florida)** submitted an Offer of Settlement pursuant to which they were fined $50,000, jointly and severally, and suspended from effecting principal transactions with customers, except for unsolicited liquidation sales, for 10 business days. Without admitting or denying the allegations, they consented to the described sanctions and findings that the firm, acting through Orkin, sold low-priced non-NASDAQ securities to retail customers in contravention of the NASD's Mark-Up Policy, with markups above cost ranging from 20 percent to 167 percent.

FIRMS FINED AND INDIVIDUALS SANCTIONED

Fulton Prebon Securities (U.S.A.) Inc. (New York, New York) and **Timothy M. Carroll (Registered Principal, Short Hills, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $25,000, jointly and severally. Without admitting or denying the allegations, they consented to the described sanctions and findings that the firm, acting through Carroll, permitted nine individuals to conduct a securities business without becoming registered with the NASD. They also allowed a statutorily disqualified individual to conduct a securities business.

Liberty Capital Markets, Inc. (Irvine, California), Norman Andrew Gurley (Registered Representative, El Toro, California), and **Chester Arthur Walker, Jr. (Registered Representative, Mission Viejo, California)** submitted an Offer of Settlement pursuant to which Liberty Capital Markets was fined $25,000. Gurley was fined $10,000 and suspended from association with any member of the NASD in any capacity for 60 days, and Walker was fined $5,000 and suspended from association with any member of the NASD in any capacity for 30 days. Without admitting or denying the allegations, the firm, Gurley, and Walker consented to the described sanctions and findings that they engaged in the practice known as "adjusted trading," whereby the firm, acting through Gurley and Walker, purchased securities on a principal basis from a public customer at prices higher than the market. The losses to the firm that resulted from these trades were later recouped in the sale of securities to the same customer at prices that were excessive.

Shearson Lehman Hutton, Inc. (Buffalo, New York) and **Edward Anthony Okon (Registered Representative, Derby, New York)** submitted an Offer of Settlement pursuant to which the firm was fined $15,000, and Okon was fined $10,000, suspended from association with any member of the NASD in any capacity for 10 business days, and required to requalify by examination as a registered representative. Without admitting or denying the allegations, the firm and Okon consented to the described sanctions and

findings that Okon, during nearly three years, engaged in a course of conduct involving the recommendation, purchase, and sale of various securities in the account of a public customer. This activity was deemed to be excessive and unsuitable in relation to the customer's investment objectives and financial situation. Also, the firm failed to review the transactions in question and to enforce its supervisory procedures to prevent excessive trading in the customer's account.

Wellshire Securities, Inc. (New York, New York) and **Robert Cohen (Registered Principal, Bedford, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally. Without admitting or denying the allegations, Wellshire and Cohen consented to the described sanctions and findings that, on several occasions, the firm, acting through Cohen, conducted a securities business while failing to maintain the required minimum net capital.

INDIVIDUALS BARRED OR SUSPENDED

Robert Jefferson Armstrong (Registered Representative, Waldwick, New Jersey) was fined $10,000 and suspended from association with any member of the NASD in any capacity for one year. The sanctions were based on findings that Armstrong recommended the purchase of common stock, on margin, to a customer without reasonable grounds for believing the recommendation was suitable considering the customer's financial situation and investment objectives. He also deposited a check drawn on his personal account into the account of a second customer to meet margin calls, without the customer's knowledge or consent.

Anoop K. Barman (Registered Representative, Lynnfield, Massachusetts) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Barman exercised discretionary authority in five customer accounts without prior written authorization from the customers and without written acceptance from his member firm. During one month, he effected 17 unauthorized transactions in these accounts. He also failed to respond to the NASD's requests for information made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Robert P. Bitter (Registered Representative, Arlington Heights, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Bitter consented to the described sanctions and findings that, during two separate time periods, he participated in the sales of securities of public customers and failed to give his member firm prior written notification of his intention to engage in such activities. Also, Bitter failed to amend his application for securities-industry registration to disclose the state action taken against him in connection with the aforementioned sale of securities.

Ronald N. Burgess (Registered Representative, Essex, Connecticut) was fined $10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Burgess, while acting as an insurance agent, withheld and misappropriated to his own use customer funds totalling $21,000.

Raymond Burghard (Registered Representative, Shirley, New York) was fined $10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Burghard failed to respond to the NASD's requests for information, made pursuant to Article IV, Section 5 of the Rules of Fair Practice, concerning his termination from a member firm.

Lawrence F. Cianchetta (a/k/a Larry Powers) (Registered Principal, Staten Island, New York) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision rendered by the Market Surveillance Committee. The sanctions were based on findings that Cianchetta failed to provide testimony in connection with an investigation into the trading of a security. He also failed to respond to the NASD's requests for information, made pursuant to Article IV, Section 5 of the Rules of Fair Practice, concerning a customer complaint.

Travis Eugene Cornett (Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Cornett consented to the described sanctions and findings that he forged letters of authorization

to transfer funds, misdirected deposits, and altered account statements and effected unauthorized transactions in the accounts of 25 customers. For more than four years, Cornett made reimbursements to clients through the misuse of deposit slips, cash rebates, and personal checks. He also prepared false customer-account statements to conceal his activity.

Niko A. Corontzes (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any member of the NASD in any capacity for six months. Without admitting or denying the allegations, Corontzes consented to the described sanctions and findings that he sold uncovered call options for his personal account. When he realized there were potential losses in the positions, he placed them in the account of a public customer without the customer's knowledge or consent. In an attempt to hedge these positions, Corontzes then sold put options in a second customer's account without that customer's knowledge or consent. He also failed to pay for numerous options transactions while "day trading" in his personal account.

Martin W. Dowdell (Registered Representative, Norristown, Pennsylvania) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Dowdell caused a $4,500 check to be issued against the securities account of a public customer. He forged the customer's signature on the check, negotiated it, and converted the proceeds to his own use and benefit. Dowdell also entered into an oral agreement with a customer to share in the purchase of common stock in the customer's account. In connection with this agreement, Dowdell failed to obtain prior written approval from his member firm. In addition, Dowdell borrowed $5,000 from a public customer and, as part of the terms for repayment, represented to the customer that he would give the customer 5,000 shares of common stock. In connection with this commitment, Dowdell failed to provide written notice to his member firm in contravention of the Board of Governors' Interpretation with respect to Private Securities Transactions.

Jeffrey David Duffin (Registered Representative, Edmonds, Washington) submitted an Offer of Settlement pursuant to which he was fined $77,108 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Duffin consented to the described sanctions and findings that he agreed to sell a Deed of Trust for a customer and to invest the proceeds to yield a specified return. Duffin sold the Trust to a private company for $62,108.22, failed to deliver the proceeds to the customer, and instead converted the proceeds to his own use and benefit. In connection with the transaction, Duffin failed to provide prior written notice to his member firm. Also, Duffin failed to comply with the NASD's requests for information, made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Craig R. Fisk (Registered Representative, San Francisco, California) submitted an Offer of Settlement pursuant to which he was fined $6,000 and suspended from association with any member of the NASD in any capacity for 15 business days. Without admitting or denying the allegations, Fisk consented to the described sanctions and findings that, on three separate occasions, he directed that shares of stock be purchased for accounts of public customers without their knowledge or consent.

Charles E. Furedy (Registered Representative, Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $2,500 and suspended from association with any member of the NASD in any capacity for six months. Without admitting or denying the allegations, Furedy consented to the described sanctions and findings that he falsified four customer annuity applications and submitted them to his member firm in order to obtain commissions to which he was not entitled.

Neal Michael Greenberg (Registered Representative, Brooklyn, New York) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Greenberg failed to respond to the NASD's requests for information, made pursuant to Article IV, Section 5 of the Rules of Fair Practice, concerning his termination from a member firm.

Robert R. Grudzinski (Registered Principal, Laflin, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $2,500 and suspended from association with any member

of the NASD in any capacity for 45 days. Without admitting or denying the allegations, Grudzinski consented to the described sanctions and findings that he entered orders for the purchase or sale of securities for the accounts of public customers without having prior authorization from the customers and without having discretionary authority over the accounts.

David J. Hitzhusen (Registered Representative, Germantown, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Hitzhusen consented to the described sanctions and findings that he failed to disclose in writing to his member firm his involvement in a private securities offering and his private use of the firm's stationery and telephone number. In connection with the private securities offering, Hitzhusen failed to make certain disclosures to prospective customers. He also sold securities to public customers while acting in the capacity of an unregistered broker-dealer.

Thomas C. Jones (Registered Representative, Mill Hall, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Jones consented to the described sanctions and findings that he misled a public customer about the status of an insurance policy and used funds from the public customer to pay premiums on policies of other individuals. Also, Jones forged and falsified insurance documents in order to take a loan against another customer's insurance policy.

Richard L. Kobrin (Registered Principal, Crosswicks, New Jersey) was barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, for the purpose of generating unfair profits, Kobrin "swapped" shares of stock between two groups of customers, (i.e., the first group of customers sold stock A and purchased stock B, while the second group purchased stock A and sold stock B) by making simultaneous, contradictory recommendations. Also, Kobrin failed to respond to the NASD's requests for information, made pursuant to Article IV, Section 5 of the Rules of Fair Practice.

Warren Leggiere, Jr. (Registered Representative, Deer Park, New York) was fined $10,000 and suspended from association with any member of the NASD in any capacity for two years. The sanctions were based on findings that Leggiere effected the purchase of warrants in a joint account without the customers' knowledge or consent. To satisfy the debit balance arising from the unauthorized trade, Leggiere's member firm sold fully-paid shares held in the account. Leggiere then attempted to repay the loss sustained by the customer with a personal check, but it was returned due to insufficient funds.

Neil Litvin (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was fined $30,000 and suspended from association with any member of the NASD in any capacity for 30 days. Without admitting or denying the allegations, Litvin consented to the described sanctions and findings that a former member firm, acting through Litvin, dominated and controlled the market for the units and common stock of a public company to such a degree that there was no independent competitive market in these securities. In 131 principal transactions, the firm, acting through Litvin, purchased these securities from its retail customers at excessive markdowns ranging from 12.5 percent to 60 percent below the prevailing market price.

John G. Messina (Registered Representative, Atco, New Jersey) submitted an Offer of Settlement pursuant to which he was fined $2,500 and suspended from association with any member of the NASD in any capacity for one month. Without admitting or denying the allegations, Messina consented to the described sanctions and findings that he entered into an agreement with a public customer to guarantee him against loss in connection with the nonexecution of an order for the sale of securities. In furtherance of the agreement, Messina gave the customer a personal check for $10,000 when he knew that his account did not have sufficient funds to honor the check.

James P. Miles (Registered Representative, East Providence, Rhode Island) was fined $5,000 and suspended from association with any member of the NASD in any capacity for 90 days. The sanctions were based on findings that Miles forged customers' signatures to letters of authorization directing that shares of stock be transferred from their accounts to another customer account, all

without the knowledge or consent of the customers involved.

Richard D. Radcliffe (Registered Representative, Spokane, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $90,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Radcliffe consented to the described sanctions and findings that he effected 19 transactions in customers' accounts without their authorization. Also, Radcliffe misused a customer's funds totalling $52,643.68 in that he failed to deposit the funds into the customer's account. Instead, he deposited the funds into another customer's account.

Robert J. Robinson (Registered Representative, Bernardsville, New Jersey) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Robinson failed to respond to the NASD's requests for information, made pursuant to Article IV, Section 5 of the Rules of Fair Practice, regarding a customer complaint.

Stephen D. Thomas (Registered Representative, Glassboro, New Jersey) was fined $45,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Thomas received checks totalling $136,184 from public customers for investment purposes but failed to remit the funds for their intended purposes.

Joseph Franklin Thurmond (Registered Representative, Burlington, Washington) submitted an Offer of Settlement pursuant to which he was fined $15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Thurmond consented to the described sanctions and findings that he made improper use of a customer's funds. Thurmond received checks totalling $20,000 from a public customer to be used as an additional payment for an insurance policy belonging to the customer. Instead of depositing the funds as instructed, Thurmond endorsed and deposited the checks into an account of his own corporation.

Bryan A. Williams (Registered Representative, Liverpool, New York) was fined $10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Williams failed to respond to the NASD's requests for information, made pursuant to Article IV, Section 5 of the Rules of Fair Practice concerning his termination from a member firm and also to a customer complaint.

Walter Wisniewski (Registered Representative, Smithtown, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $8,000 and suspended from association with any member of the NASD in any capacity for three months. Without admitting or denying the allegations, Wisniewski consented to the described sanctions and findings that he forged a customer's signature on margin and option account agreements. He also entered four covered call option transactions in the same customer's account without the authorization of the customer.

George M. Wittschen (Registered Representative, Wantagh, New York) submitted an Offfer of Settlement pursuant to which he was fined $5,000 and suspended from association with any member of the NASD in any capacity for one year. Without admitting or denying the allegations, Wittschen consented to the described sanctions and findings that, in order to conceal trading losses in firm accounts that he controlled, Wittschen marked inventory positions at fictitious prices, thereby overstating the value of month-end positions.

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

Devon Equities, Inc., Bala Cynwyd, Pennsylvania

Exsys Securities Corporation, Newport Beach, California

Westmark Financial Services Corporation, Spring, Texas

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

Thomas E. Ellis, Albuquerque, New Mexico

Jack D. Jezek, Tulsa, Oklahoma

Larry R. Michel, Houston, Texas

Alvin Rosenblum, Plantation, Florida

Andrew M. Russin, Philadelphia, Pennsylvania

Howard P. Tangler, Corona del Mar, California

NASD SANCTIONS THREE FORMER OFFICERS OF INVESTORS CENTER, INC., FOR FRAUDULENT MARKUPS AND OTHER MISCONDUCT

The NASD announced a disciplinary action taken by its District 12 Committee against Investors Center, Inc.; Anthony J. Stoisich, President; Anthony Ferruzzi, Executive Vice President; and Anthony J. DeStefano, Chief Financial Officer, based on NASD proceedings that involved a Letter of Acceptance, Waiver and Consent (AWC) submitted by these individuals and the firm.

Pursuant to the AWC, Stoisich was barred from association with any NASD member in any capacity and fined $450,000, Ferruzzi was barred from association with any NASD member in any capacity and fined $150,000, and DeStefano was barred from association with any NASD member as a Financial and Operations Principal, suspended from association with any NASD member in any capacity for two years, and fined $50,000.

Without admitting or denying the allegations, Investors Center, Stoisich, and Ferruzzi consented to findings of violations of NASD rules that prohibit the use of any manipulative, deceptive, or other fraudulent behavior in the purchase or sale of any security. Also, without admitting or denying the allegations, Investors Center, Stoisich, and DeStefano consented to findings of violations of the Securities and Exchange Commission's (SEC) customer protection rule and net capital rule.

Investors Center was a Long Island based broker-dealer that specialized in low-priced, speculative securities, primarily "penny stocks." The firm ceased doing business on February 23, 1989. The NASD's action related to fraudulent markups charged to customers in principal sales of Partner's National Corp. (PNC), a non-NASDAQ penny stock.

The NASD charged that the firm, Stoisich, and Ferruzzi engaged in a course of conduct that defrauded purchasers of PNC. The NASD found that Investors Center, acting through these individuals, dominated and controlled the trading in PNC and charged fraudulently excessive markups in sales to customers. As part of such domination and control of trading in PNC, the firm sold all 25 million units of PNC to its customers, executed 100 percent of all purchase and sale transactions, and effected 100 percent of total purchase and sale volume from December 18, 1987, through December 31, 1987. In at least 1,035 transactions during this time, customers who purchased their PNC stock from the firm were charged fraudulent markups ranging up to 130 percent over the prevailing market price, contrary to NASD rules requiring that markups be fair and reasonable.

The NASD's investigation also found numerous and repeated instances of violations of SEC minimum net capital requirements (Rule 15c3-1) and the SEC customer protection rule (Rule 15c3-3) by Investors Center, Stoisich, and DeStefano. Investors Center conducted a securities business while failing to maintain minimum net capital as required, with deficiencies ranging from $373,019 to $4,890,183. In 1988 and 1989, the firm failed to make required deposits to its Special Reserve Account for the Exclusive Benefit of Customers in amounts ranging from $1 million to more than $5 million.

The investigation was conducted by the NASD's District 12 office in New York, in cooperation with the SEC's New York regional office. In a separate but related matter, the SEC announced settlement of its public administrative proceedings against Investors Center, Stoisich, and DeStefano for violations of the federal securities laws for which Stoisich and DeStefano were barred from the securities industry.

The NASD routinely cooperates with enforcement efforts of the SEC, other self-regulatory organizations, and governmental law enforcement agencies, and also conducts its own regulatory investigations. This action is part of a major commitment by the NASD to address fraud and other serious sales practice abuses, with particular emphasis on the penny-stock market.

NASD SUSPENDS AND FINES PENNY-STOCK FIRM, PRINCIPAL, AND REGISTERED REPRESENTATIVE FOR FRAUDULENT MARKUPS AND OTHER MISCONDUCT

The NASD has announced disciplinary action taken against Huberman Securities Corp. of North Miami Beach, Florida; its President, Michael Huberman; and one of the firm's registered representatives, Lawrence Ivan Kaplan.

The misconduct principally involved fraudulent markups in units of Top Sound International, Inc. (Top Sound), then a non-NASDAQ over-the-counter penny stock, and also involved a violation of the NASD Board of Governors' Cor-

porate Financing Interpretation.

Pursuant to an Offer of Settlement, without admitting or denying the allegations, the firm and Huberman were censured and fined $70,000, jointly and severally. The firm was suspended from NASD membership for 30 days, and Huberman was suspended from association with any member in any capacity for 30 days, both subject to limited exceptions. In addition, Kaplan was censured, fined $20,000, and suspended from association with any member in any capacity for 60 days.

Huberman Securities Corp. and Huberman consented to findings that they violated various NASD rules, including Section 18 of its Rules of Fair Practice. This section is the NASD's anti-fraud provision that prohibits the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security.

The NASD found that while dominating and controlling the market for Top Sound from November 28, 1986, through January 13, 1987, the firm charged fraudulently excessive markups in 111 principal sales to retail customers. The excessive markups ranged from approximately 10 percent to 100 percent above the prevailing market price for Top Sound, resulting in customers being substantially overcharged. The NASD's Market Surveillance Committee, which instituted the disciplinary action, noted that "the markups were undisclosed, and there was otherwise little information available to [the firm's] customers to apprise them of the excessive nature of the charges." The committee found that by charging excessive markups "[the firm] and Huberman breached their obligation of fair dealing which they owed to their customers."

The other principal misconduct relates to a violation of the Corporate Financing Interpretation by Huberman Securities, Huberman, and Kaplan. Kaplan and others received restricted Top Sound common stock for a nominal consideration, within approximately six months of Top Sound's initial public offering in October 1986. By participating in the offering, the Complaint claims the overall compensation available to NASD members was unfair and unreasonable. In addition, the restricted shares held by Kaplan and others exceeded the 10 percent stock limitation set forth in the Corporate Financing Interpretation.

This investigation was carried out by the NASD's Anti-Fraud Department and is part of a concerted nationwide effort by the NASD to eliminate sales-practice abuses in penny stocks. The disciplinary action was taken by the NASD's Market Surveillance Committee, which consists of 12 executives from securities firms across the country.

The committee is responsible for maintaining the integrity of the NASDAQ and non-NASDAQ markets, and for disciplining members that fail to comply with relevant NASD rules, and securities laws.

The suspensions imposed on the respondents will commence on March 5, 1990.

NASD

For Your Information

National Association of Securities Dealers, Inc. March 1990

Fingerprint Filing Fee Increases to $21.50 Per Card

Effective March 1, 1990, in accordance with Schedule A, Section 14 of the NASD By-Laws (page 1510 of the *NASD Manual*), the processing fee for initial fingerprint submissions increased to $21.50 per card. The fee for resubmissions as a result of illegible cards remains at $1.50 per resubmission.

The change is necessary as a result of an increase in the fee charged by the Federal Bureau of Investigation for the processing of fingerprint cards submitted to them for noncriminal licensing and employment purposes.

Series 7 Examination Sites and Dates Change; New PLATO Center Established

March Series 7 Date Change

The March 17, 1990, Series 7 examination in Atlanta will be held at Sheraton Century Hotel, 2000 Century Boulevard, Atlanta, Georgia. The April 1990 examination will be held April 28, 1990, at the Atlanta Merchandise Mart, 240 Peachtree Street, Atlanta, Georgia. The Merchandise Mart is located across from the Peachtree Center.

The March 17, 1990, Series 7 examination in Washington, D.C., will be held at the Gaithersburg Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, Maryland. For information on the April 1990 location and date for Washington, D.C., contact NASD Information Services at (301) 590-6500.

Permanent Site Change

Effective April 21, 1990, the Series 7 examination in New Orleans will be administered at the University of New Orleans, Business Administration Building, Room 179, New Orleans, Louisiana.

Temporary First Saturday Site Change

The first Saturday Series 7 test site in Loudonville, New York, will be located at Siena College, Siena Hall, Loudonville, New York. The temporary change will be effective March 3, 1990, and continue through July 7, 1990.

New PLATO Center — New York City

Effective February 1, 1990, the PLATO Learning Center nationwide network of test facilities was expanded to include a new location in New York City. The new test location is:

Control Data PLATO Development Center
111 Broadway, 4th Floor
New York, New York 10006
(212) 693-4340

NASD

Notice To Members

SPECIAL

National Association of Securities Dealers, Inc. March 19, 1990

Number 90 - 18

Suggested Routing:*

✓Senior Management	__Internal Audit	✓Operations	__Syndicate
__Corporate Finance	✓Legal & Compliance	__Options	__Systems
__Government Securities	__Municipal	__Registration	✓Trading
__Institutional	__Mutual Fund	__Research	__Training

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

Subject: SEC Staff Interpretations of Rule 15c2-6

SUMMARY

In response to a request by the Association, the staff of the SEC's Division of Market Regulation has issued its views on frequently raised interpretive questions regarding Rule 15c2-6 ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act"). The Rule, which went into effect on January 1, 1990, was adopted to combat fraud and manipulation in the market for "penny stocks." Following a brief description of the Rule, the SEC staff's views are set forth in a question and answer format. The views are presented to assist Association members that recommend and sell low-priced, non-NASDAQ over-the-counter (OTC) securities.

The Rule imposes supplemental sales practice requirements on broker-dealers who recommend and sell "designated securities" to customers in transactions that do not qualify for an exemption from the Rule.

The Rule prohibits such a transaction unless prior to the transaction, the broker-dealer has:

1. approved the purchaser's account for transactions in designated securities through the following four steps:

A. obtain information concerning the customer's financial situation, investment experience, and investment objectives;

B. reasonably determine that transactions in designated securities are suitable for the customer and that the customer (or the customer's independent adviser in designated security transactions) has sufficient knowledge and experience in financial matters that the customer (or adviser) reasonably may be expected to be capable of evaluating the risks of transactions in designated securities;

C. deliver to the customer a written suitability statement ("Suitability Statement") (i) setting forth the basis of the broker-dealer's suitability determination; (ii) stating in highlighted format that it is unlawful for the broker-dealer to effect a transaction in a designated security covered by the Rule unless the broker-dealer has received, prior to the transaction, a written agreement to the transaction from the customer; and (iii) stating in highlighted format immediately preceding the customer signature line that the broker-dealer is required by the Rule to provide the customer with the Suitability Statement and that the customer should not sign and return the Suitability Statement to the broker-dealer if it does not accurately reflect the customer's financial situation, investment experience, and investment objectives;

D. obtain from the customer a manually signed and dated copy of the Suitability Statement; and

2. received the customer's written agreement to the transaction setting forth the identity and quantity of the designated security to be purchased.

The Rule does not apply to NASDAQ or national securities exchange listed securities (except for the Spokane Stock Exchange). Application of the Rule is limited to transactions in a designated security, which is defined in general as any non-NASDAQ OTC equity security whose issuer has less than $2 million in net tangible assets ("Net Tangible Assets Exclusion"). In addition, the Rule provides exemptions for the following types of transactions:

1. transactions in which the price of the security is five dollars or more ("$5 Price Exemption");

2. transactions in which the purchaser is an "accredited investor" ("Accredited Investor Exemption") or an "established customer" of the broker-dealer ("Established Customer Exemption");

3. transactions that are not recommended by the broker-dealer ("Unrecommended Transaction Exemption"); and

4. transactions by a broker-dealer (i) whose commissions, commission equivalents and mark-ups from transactions in designated securities have not exceeded 5 percent of its total commissions, commission equivalents, and mark-ups from all transactions in securities during each of the immediately preceding three months and during eleven or more of the preceding twelve months and (ii) which has not been a market maker in the particular designated security that is the subject of the transaction in the immediately preceding twelve months ("Market Activity Exemption").

Broker-dealers claiming exemptions or exclusions from the Rule's sales practice requirements have the burden of proving that they meet each of the elements of the particular exemption or exclusion.

QUESTIONS AND ANSWERS

A. Sales Practice Requirements

Question #1: Would the Rule's account approval requirement be satisfied if a broker-dealer (i) sends blank Suitability Statement forms to its customers containing language concluding that transactions in designated securities are suitable for the customer; and (ii) requests customers to fill in the blanks with their financial information and investment objectives, and manually sign, date, and return the Suitability Statement to the broker-dealer?

Answer: No. The Rule requires that a customer have an opportunity to review the broker-dealer's suitability determination. Consequently, the customer must receive a completed Suitability Statement from the broker-dealer indicating why the broker-dealer believes, based on the stated customer information, that transactions in designated securities are suitable for the particular customer. This Suitability Statement must be manually signed and dated by the customer and returned to the broker-dealer before trades can be effected. In addition, such a procedure clearly would be inappropriate because at least some customers will not be deemed suitable based upon the information filled in by the customer.

Question #2: What information must a broker-dealer obtain from the customer in order to make a reasonable suitability determination?

Answer: The Rule requires that the broker-dealer obtain information about the customer's "financial situation, investment experience, and investment objectives." The SEC release adopting the Rule[1] states that a broker-dealer should seek to obtain the items of information in each of the three required categories as follows:

1. Financial situation — age, marital status, number of dependents, employment status, estimated annual income and the sources of that income, estimated net worth (exclusive of family residence), estimated liquid net worth (cash, securities, other).

2. Investment experience — number of years of experience, and the size, frequency, and types of transactions in stocks, bonds, options, commodities, and other investments.

3. Investment objectives — safety of principal, income, growth, or speculation.

A customer's refusal to provide certain information does not absolve a broker-dealer of its obligation to obtain sufficient information to make a reasonable suitability determination. It may not be necessary to obtain every item of information in each required category. The Rule does not permit

[1] Securities Exchange Act Release No. 27160 (August 22, 1989), 54 FR 35468, 35478.

an account to be approved for transactions in designated securities unless the broker-dealer has a reasonable basis, based on the information required by the Rule and any other information known by the broker-dealer, for determining that designated securities are suitable investments for the customer. In addition, the broker-dealer must have a reasonable basis for determining that the customer has sufficient knowledge and experience in financial matters that the customer reasonably may be expected to be capable of evaluating the risks of transactions in designated securities.

Question #3: Would the Rule's account approval requirement be satisfied if a broker-dealer obtains a written statement from a customer representing that the customer concludes or believes that designated securities are suitable investments for the customer?

Answer: No. The Rule requires the broker-dealer to make a reasonable suitability determination for every customer, and this obligation cannot be avoided by obtaining a customer's statement that designated securities are suitable investments.

Question #4: Does the Rule permit a broker-dealer to obtain the customer's signed Suitability Statement by telecopier?

Answer: No. A facsimile copy of the customer's signature does not satisfy the Rule's requirement that the Suitability Statement be manually signed and dated by the customer. Broker-dealers must obtain a copy of the Suitability Statement that contains the customer's "pen-on-paper" signature and date.

Question #5: With respect to a customer's written agreement to the transaction, does the Rule permit the quantity to be set forth in terms of the total purchase price to the customer, instead of the number of shares?

Answer: No. The customer's written agreement must set forth quantity in terms of the number of shares, units, warrants, or other type of designated security to be purchased.

Question #6: If a customer provides a written agreement setting forth the identity and quantity of the designated security to be purchased, is the customer bound to buy the security at whatever price exists when the broker-dealer receives the written agreement?

Answer: No. Price per share is a material term of the transaction that must be agreed to apart from identity and quantity.

B. Coverage of the Rule

Question #7: Does the Rule apply to agency transactions?

Answer: Yes. The broker-dealer's obligations under the Rule are not dependent upon the capacity in which the broker-dealer handles the transaction.

Question #8: Does the Rule apply to non-market makers?

Answer: Yes. However, a broker-dealer that has (i) not been a market maker in the particular designated security in the preceding twelve months and (ii) whose commissions, commission equivalents, and mark-ups from transactions in designated securities have not exceeded 5 percent of the total commissions, commission equivalents, and mark-ups from transactions in securities during each of the immediately preceding three months and during eleven or more of the preceding twelve months is exempt from the provision of the Rule with respect to those designated securities in which the broker-dealer does not make a market.

Question #9: Does the Rule apply to broker-dealers that solicit customers to exercise warrants?

Answer: Yes. The exercise of a warrant for a designated security is a purchase of the designated security by the customer.

Question #10: Does any foreign stock exchange or the Spokane Stock Exchange qualify for the Rule's exclusion from the definition of designated security for exchange-listed securities?

Answer: No. The only exchanges that qualify for the exclusion are the New York Stock Exchange, American Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange, Midwest Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange. The Spokane Stock

Exchange, as well as foreign stock exchanges, such as the Vancouver Stock Exchange, do not qualify for the exclusion because they do not make transaction reports available pursuant to Exchange Act Rule 11Aa3-1.[2] Such reports must be made available pursuant to a transaction reporting plan that has been filed with and approved by the SEC.

Question #11: In calculating an issuer's net tangible assets, must the issuer's liabilities be deducted?

Answer: Net tangible assets are calculated by deducting the total liabilities of an issuer from its tangible assets. This calculation will be the same as the calculation of net tangible book value under Item 506 of Regulation S-K.[3] None of the issuer's intangible assets can be included in the net tangible assets calculation. The definition of an intangible asset is addressed in Accounting Principles Board Opinion No. 17 (August 1970), and generally includes goodwill, patents, trademarks, trade names, secret processes, licenses, franchises, corporate organization costs, and stock promotion costs.

Question #12: In reviewing an issuer's audited financial statements to determine whether the issuer has more than $2 million in net tangible assets, what categories of assets is a broker-dealer entitled to include in its net tangible assets calculation, other than those specifically identified as tangible assets?

Answer: Broker-dealers are entitled to include only those categories of assets that clearly do not include intangible assets. Categories of assets that may include both tangible and intangible assets, such as "Other Assets," cannot be included in the determination of net tangible assets.

Question #13: If an issuer's audited financial statements do not clearly indicate on their face that the issuer has more than $2 million in net tangible assets, may a broker-dealer contact the issuer or other sources to determine whether the issuer qualifies for the Net Tangible Assets Exclusion?

Answer: No. The Rule requires that an issuer's net tangible assets be demonstrated by audited financial statements. Information from sources other than the audited financial statements therefore does not satisfy the Rule's requirement. For example, an unaudited statement from the issuer that it has $2 million in net tangible assets is not sufficient to establish the exclusion.

Question #14: Would sales in an offering qualify for the Net Tangible Assets Exclusion if the issuer will have more than $2 million in net tangible assets only after the completion of the offering?

Answer: No. To qualify for the Net Tangible Assets Exclusion the issuer must have $2 million in net tangible assets at the time that sales in the offering commence.

Question #15: For purposes of the $5 Price Exemption, does the price of a security include a broker-dealer's mark-up in a principal transaction?

Answer: Yes. The price of a security in a principal transaction generally will be the "net price" to the customer that is reported on the confirmation of the transaction pursuant to Exchange Act Rule 10b-10(a)(2). With respect to contemporaneous offsetting purchase and sale principal transactions by non-market makers that are covered by Rule 10b-10(a)(8)(i)(A), however, the price is the price exclusive of the disclosed mark-up. If the $5 Price Exemption is claimed for a transaction in which the broker-dealer charged an excessive mark-up, it would constitute a serious violation of SEC and NASD rules. The SEC and NASD will closely scrutinize transactions at prices near five dollars for excessive mark-ups.

Question #16: For purposes of the $5 Price Exemption, does the price of a security include the broker-dealer's commission in agency transactions?

Answer: No. Commissions in agency transactions are not included in the price of a security.

Question #17: How does the $5 Price Exemption apply to units? For instance, would transactions in units that are composed of 5 common shares and 10 warrants with an exercise price of $6

[2] 17 CFR 240.11Aa3-1.
[3] 17 CFR 229.506.

qualify for the $5 Price Exemption if the price of the units was $20?

Answer: Share price in units is calculated by dividing the unit price by the number of shares included in the unit. In addition, warrants must have an exercise price of $5 or more. In the above example, the $20 unit price would be divided by the 5 common shares, yielding a per share price of $4, which does not qualify for the exemption.

Question #18: After an initial public offering at $12 per unit of units that were composed of 2 common shares and 4 warrants with an exercise price of $7, the units are broken up and the warrants are sold in a secondary market transaction at a price of 20 cents per warrant. Sales in the initial public offering would qualify for the $5 Price Exemption, but would the secondary market warrant transaction qualify for the exemption?

Answer: No. After the components of a unit begin trading separately, the transaction price for the component must be $5 or more for the transaction to qualify for the $5 Price Exemption.

Question #19: Would a transaction in a designated security on 4/1/90 qualify for the Established Customer Exemption if the customer had purchased in its account with the broker-dealer another designated security on 5/15/89, a NASDAQ stock on 10/5/89, and another designated security on 1/14/90?

Answer: No. Purchases of non-designated securities do not count towards the three-purchase requirement in the definition of established customer. The designated security transaction on 4/1/90 would constitute the customer's third purchase of different designated securities, however, and thereafter the customer would qualify for the Established Customer Exemption.

Question #20: Would a transaction in a designated security on 5/15/90 qualify for the Established Customer Exemption if the customer had purchased a NASDAQ or national securities exchange listed security through the broker-dealer in 1988?

Answer: Yes. The customer would have purchased a security in its account with the broker-dealer more than one year prior to the transaction on 5/15/90. For purposes of the one-year-old account requirement in the definition of established customer, any securities transaction, or deposit of funds or securities, in the customer's account with the broker-dealer is sufficient to begin the one-year period.

Question #21: If a registered representative moves from Broker-Dealer X to Broker-Dealer Y and his customers transfer their accounts to Broker-Dealer Y, does the Rule permit Broker-Dealer Y to consider activity in the customers' accounts prior to the transfer for purposes of the Established Customer Exemption?

Answer: No. The definition of an established customer focuses on the relationship between customer and broker-dealer, and not customer and registered representative. Consequently, when customers transfer their accounts from one broker-dealer to another, the customers must be requalified for purposes of the Established Customer Exemption.

Question #22: Would the result in Question 19 differ if the customer accounts of Broker-Dealer X and Broker-Dealer Y were carried by the same clearing broker?

Answer: No. The customers still would have to be requalified as established customers of Broker-Dealer Y. Transactions in accounts carried by a clearing broker on behalf of one introducing broker cannot be used to qualify a customer as an established customer of another introducing broker whose accounts are carried by the clearing broker.

Question #23: If Broker-Dealer X sells its accounts to Broker-Dealer Y, can activity in the accounts prior to the sale be considered by Broker-Dealer Y for purposes of the Established Customer Exemption?

Answer: No. The customers will have to be requalified as established customers of Broker-Dealer Y (regardless of whether the same clearing broker carried the accounts of Broker-Dealer X and Broker-Dealer Y). The SEC staff has indicated, however, that with respect to mergers, successions, spin-offs, or other similar situations

involving account transfers, the staff is willing to consider on a case-by-case basis whether pre-transfer activity can be considered by the receiving broker-dealer for purposes of the Established Customer Exemption.

One important factor in such a determination would be the continuity of legal identity between the broker-dealers transferring and receiving the accounts, including the extent to which the receiving broker-dealer assumed responsibility and liability for the pre-transfer activity.

Question #24: On 2/18/90, a broker-dealer relies on the Accredited Investor Exemption for a transaction after having made a reasonable determination that the customer is an accredited investor. For another designated security transaction on 4/1/90, must the broker-dealer make a new accredited investor determination?

Answer: A new determination would not be required unless the broker-dealer has reason to doubt whether the customer continues to qualify as an accredited investor.

Solely for purposes of the Rule, a broker-dealer is entitled, in the absence of information to the contrary, to assume that a person continues to qualify for the Accredited Investor Exemption for a period of one year after a reasonable accredited investor determination is made.

Question #25: If the order ticket for a transaction in a designated security is marked "unsolicited," will the order ticket conclusively establish that the transaction qualifies for the Unrecommended Transaction Exemption?

Answer: No. While genuinely unrecommended transactions are exempt from the Rule, an order ticket marked "unsolicited" is not conclusive evidence that the exemption has been satisfied. Furthermore, an unsolicited conversation with a customer may result in a recommended transaction.

Question #26: If a broker-dealer's commissions, commission equivalents, and mark-ups from transactions in one particular designated security have never exceeded 5 percent of its total commissions, commission equivalents, and mark-ups from all securities transactions, does the broker-dealer qualify for the Market Activity Exemption with respect to sales of that security?

Answer: No. Commissions, commission equivalents, and mark-ups from transactions in all designated securities must be included for purposes of the Market Activity Exemption.

Question #27: If a broker-dealer's commissions, commission equivalents, and mark-ups from transactions in all designated securities have never exceeded 5 percent of its total commissions, commission equivalents, and mark-ups from all securities transactions, will all of the broker-dealer's transactions in designated securities qualify for the Market Activity Exemption?

Answer: Not necessarily. Transactions in any designated security for which the broker-dealer has acted as a market maker within the previous twelve months will not qualify for the Market Activity Exemption.

Questions or comments regarding the interpretations of the Rule in this Notice should be addressed to Robert L.D. Colby, Chief Counsel, (202) 272-2844, or Dan Gray, Attorney, (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5-1, Washington, D.C. 20549 or to Daniel M. Sibears, Associate Director, Anti-Fraud, or Gary A. Carleton, Senior Attorney, at (202) 728-8959, National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.