

Notice To Members

National Association of Securities Dealers, Inc.

May 1990

Number 90 - 27**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.

IMPORTANT MAIL VOTE

**Subject: Proposed Amendment to Article III, Section 26 of the NASD Rules of Fair Practice
Re: Disclosure of Deferred Sales Charges on Confirmations of the Sale of Investment Company Shares; Last Voting Date: June 5, 1990**

EXECUTIVE SUMMARY

NASD members are invited to vote on proposed new subsection (n) of Article III, Section 26 of the NASD Rules of Fair Practice that, if adopted, would require disclosure on confirmations of share purchases when an investment company imposes a deferred sales charge on the redemption of shares.

BACKGROUND

In *Notice to Members 89-77* (December 1989), the NASD distributed for comment a proposed amendment to Article III, Section 12 of the NASD Rules of Fair Practice that would require disclosure on confirmations when investment company shares may be subject to a deferred sales charge on redemption. The NASD received 23 comment letters.

After reviewing the comments, the Investment Companies Committee recommended to the Board of Governors the following changes to the original proposal:

The proposal would have involved an amend-

ment to Section 12 of the NASD Rules of Fair Practice, which is a confirmation rule of general application to the sale of securities by NASD members. A number of commenters suggested that, since most separate accounts of insurance companies issuing variable contracts (variable annuities and variable life insurance) are registered with the Securities and Exchange Commission under the provisions of the Investment Company Act of 1940, the NASD should clarify that the proposed amendment to Section 12 was not intended to apply to variable contracts.

The committee recommended that, to avoid uncertainty about the scope of the new requirement, the proposal should be made a part of Article III, Section 26 of the NASD Rules of Fair Practice rather than an amendment to Section 12. Section 26 is the investment company rule. It specifically exempts variable contracts from its provisions.

The committee also recommended that the proposed disclosure legend should be required to be placed on the front of a confirmation to ensure that the disclosure is highly visible to a prospective investor.

The Board of Governors agreed to both of these recommendations.

Although most of the remaining commenters

were in favor of the proposal, some raised the following objections:

Two believe that current disclosure requirements in prospectuses and sales literature are adequate, while some thought that more prominent disclosure of a deferred sales charge should be made in prospectuses. Others believe that the proper place for disclosure is in the prospectus and not in a confirmation. Some commenters asked for more extensive disclosure language and requested that members be permitted to draft their own legend.

The Board concedes that the proper place for most disclosures is the prospectus, but it regards the current proposal as an additional safeguard so that investors who have not read a prospectus will be alerted to the presence of a deferred sales charge. The Board does not agree that the proposed disclosure language should be expanded or that members should be permitted to develop their own disclosure legend. Space on confirmations is limited and, in the Board's view, the proposed legend is clear, concise, and will be readily understood by investors. The Board also considers that, in a disclosure of this type, there is great merit in uniformity.

The Board of Governors believes the proposal is necessary and appropriate and recommends that members vote their approval. Please mark the attached ballot according to your convictions and return it in the enclosed stamped envelope. Ballots must be postmarked no later than June 5, 1990.

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

**PROPOSED ADDITION OF NEW
SUBSECTION (n) TO ARTICLE III,
SECTION 26 OF THE NASD RULES OF
FAIR PRACTICE**

(n) In addition to the requirements for disclosure on written confirmations of transactions contained in Section 12 of the NASD Rules of Fair Practice, if the transaction involves the purchase of shares of an investment company that imposes a deferred sales charge on redemption, such written confirmation shall also include the following legend: "On selling your shares, you may pay a sales charge. For the charge and other fees, see the prospectus." The legend shall appear on the front of a confirmation and in, at least, 8-point type.

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| <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 |
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| <input type="checkbox"/> Institutional | <input type="checkbox"/> Mutual Fund | <input type="checkbox"/> Research | <input type="checkbox"/> Training |

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Subject: Automated Confirmation Transaction (ACT) Service Fees

EXECUTIVE SUMMARY

In response to requests from members concerned about rising costs for comparison of negotiated trades, NASD Market Services, Inc. (MSI) is reducing the previously approved rates for the Automated Confirmation Transaction (ACT) service. Effective as of April 2, 1990, MSI is instituting a variable fee based on the size of the trade and is eliminating the late fee for trade-date entries into ACT. At the request of the MSI Board, revenues and costs will be reviewed at least annually so that appropriate rate adjustments can be considered.

BACKGROUND

Participation in the Automated Confirmation Transaction (ACT) service became mandatory March 1, 1990 for all self-clearing broker-dealers that are members of a registered clearing agency or have an access relationship with such a clearing-agency member (see *Notice to Members 89-76*). The ACT service is designed to shorten the comparison cycle for trades in NASDAQ securities that are eligible for comparison processing through registered clearing agencies.

In response to industry concerns regarding

overall comparison costs for negotiated trades, MSI did not charge ACT fees for the month of March, and, effective April 2, is instituting a modified service charge for broker-dealers participating in ACT.

This change is made possible by altering the method of recovering development costs for ACT. Instead of recouping development expenditures over the traditional three-year period, MSI expanded the time frame to five years.

THE NEW ACT CHARGES

The resulting changes affect two components of the ACT service charge — the comparison charge and the charge for late reports submitted to the service on trade day.

The original ACT comparison charge was a fixed fee of 25 cents per side and was calculated to recoup ACT development costs over three years and to cover current operating costs. Because many participants in ACT execute trades in small transactions, the Board believes that a variable fee based on the size of the trade would recover costs more equitably. Therefore, the new comparison fee will be 1.25 cents per 100 shares, with a minimum and maximum range of 400 to 7,500 shares.

In addition to the variable comparison charge, MSI is eliminating the late fee for trade-date entries into ACT for the time being. The purpose of the late fee is to encourage timely reporting of

transactions on trade day. However, late reporting of transactions in NASDAQ National Market System securities is a violation of NASD rules, and late reporting to ACT is a violation of ACT rules. Since the NASD recently submitted a proposal to the SEC emphasizing a member's trade-reporting obligations, MSI believes the late charge is not necessary at this time. The Board will review members' compliance with ACT reporting time frames and will consider charging late fees if necessary in the future.

ACT RATES IN THE FUTURE

The new rates for ACT were derived from projections of comparison traffic during the next five years. MSI should be able to recover development costs by that time if ACT traffic projections remain viable. The Board has directed the staff to monitor the actual ACT comparison traffic against the original projections to ensure cost recovery over the five-year period.

Should ACT volume permit, there could be additional reductions in ACT charges in the future. Conversely, if the Board determines that the volume of trades reported to ACT for comparison processing falls significantly short of the levels set for recovery of ACT expenses, the Board will consider other means of cost recovery.

For example, broker-dealers that use ACT for trade reporting, but send locked-in trades directly to clearing through the use of Qualified Special Representative (QSR) agreements with NSCC, in the future may have to pay a fee for transaction reporting through ACT. The Board intends to monitor closely members' use of ACT, whether for trade reporting alone or for both trade reporting

and comparison, and anticipates future adjustments in ACT rates depending on the use made of the service.

RATE SCHEDULE AS OF APRIL 2, 1990

MSI will bill the ACT rates as of April 2, 1990. The entire schedule of service charges appears below and will also be in Schedule D to the NASD By-Laws.

ACT Service Charges

Comparison	\$0.0125/side per 100 shares (minimum 400 shares, maximum 7,500 shares)
Late Report — T+1	\$.25/side
Browse/query	\$.25/side*
Terminal Fee	\$50/month (ACT-only terminals)
CTCI fee	\$500/month
Service desk	\$50/month**

*Each ACT query incurs the \$.25 fee; however, the first accept or decline processed for a transaction is free, to ensure that no more than \$.25 is charged per comparison. Subsequent queries for more data on the same security also will be processed free. Any subsequent query on a different security will incur the \$.25 query charge.

**The ACT Service Desk is available to ACT participants that do not have access to NASDAQ equipment and that average five or fewer trades per day during the previous calendar quarter (see *Notice to Members 90-9*).

Questions regarding ACT fees may be directed to NASDAQ Subscriber Services at (301) 948-6162.

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Subject: SEC Approval of New Schedule I to the NASD By-Laws Establishing and Setting Rules for The PORTALSM Market for Primary Distributions and Secondary Trading of Private Placements

EXECUTIVE SUMMARY

The SEC approved April 19 an NASD rule change adopting new Schedule I (PORTAL Rules) to the NASD By-Laws. The Schedule establishes a marketplace for primary distributions and secondary trading of private placements. The PORTAL Rules meet the requirements of simultaneously approved SEC Rule 144A under the Securities Act of 1933. The PORTAL Market is based on full clearing and settlement of domestic and foreign debt and equity securities that are immobilized within a dedicated custodial network. The network provides appropriate record keeping and controls to provide for multi-currency settlements. It also controls the exit of the unregistered securities into the domestic U.S. retail market. The text of the PORTAL Rules follows this notice.

BACKGROUND

The SEC on April 19, 1990, adopted Rule 144A, which provides a safe harbor from its registration requirements under Section 5 of the Securities Act of 1933 ("Securities Act") for resales of securities that comply with the new rule. Rule 144A aims to maximize the potential of the private placement market for capital formation. These private offerings are playing an increasing role, as shown by the rise of private placements from 22 percent to 43 percent of total new corporate financing in the U.S. between 1980 and 1988. The primary market in private placements is currently about \$171 billion a year, and the potential second-

dary market is much larger.

The rule seeks to further develop the secondary market by allowing qualified institutional investors freely to trade privately placed securities among themselves. Previously, such trading was hampered by a variety of regulations governing the original purchase and the period of time a private placement security must be held by the original investor before it could be resold.

The SEC also approved new Schedule I (the PORTALSM Rules) to the NASD By-Laws. The

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PORTAL Market provides a safe harbor for compliance with Rule 144A since all PORTAL securities and participants are prequalified. The new market, developed by the NASD, systematically allocates and distributes primary offerings as well as facilitates secondary trading. It allows participants access to all quotes and permits flexibility in quotation display by offering both two-sided and one-sided quotations, as well as indications.

Qualified NASD members are able to enter and retrieve quotations from The PORTAL Market's central data bank. All sales are negotiated, and the participants report price and volume details of the transactions to the data base. Qualified investors have access to the information through the dealers in the market.

In addition, The PORTAL Market offers global standardization of clearance and settlement (five days) by electronic book entry in a worldwide clearing and depository system. It is able to settle in multiple currencies and to provide locked-in settlement to reduce currency-exchange risk.

With all these features, The PORTAL Market instantly taps a universe of prequalified buyers and sellers. The increased exposure and visibility result in more favorable pricing in both primary and secondary markets. Because all eligible securities and participants are prequalified, The PORTAL Market also provides peace of mind and saves time and money through reducing back-office requirements and legal procedures.

Settlement in The PORTAL Market occurs much faster than does physical delivery or traditional European clearance and settlement, which may take weeks. And as the only U.S.-located fully automated clearance and settlement mechanism, The PORTAL Market virtually eliminates the previously frequent problem of uncompleted transactions.

SUMMARY OF PORTAL RULES

The PORTAL Rules are comprised of eight parts. Part I defines terms used in the Rules. Part II sets forth the requirements applicable to securities in The PORTAL Market. Part III delineates the requirements for NASD members that wish to participate in The PORTAL Market. Part IV provides the requirements applicable to investors wishing to participate in The PORTAL Market. Part V specifies the procedure for handling grievances concerning the designation of a security in The

PORTAL Market or the registration of participants. Part VI sets forth requirements for the operation of and transactions in The PORTAL Market. Part VII delineates the applicability of the NASD Rules of Fair Practice to transactions in The PORTAL Market. Part VIII makes available to participants the facilities of the Association's Arbitration Department and Code of Arbitration Procedure to settle disputes arising from PORTAL transactions.

Securities approved pursuant to the requirements of Part II of the PORTAL Rules are considered designated as "PORTAL securities." To be PORTAL securities, they must be eligible to be sold pursuant to SEC Rule 144A. NASD members must meet the requirements of Part III applicable to "PORTAL dealers" or "PORTAL brokers" to participate in The PORTAL market on a principal or agency basis. The distinction between the two categories is that PORTAL dealers must be eligible to purchase securities under Rule 144A, and PORTAL brokers are prohibited from executing a principal transaction in a PORTAL security.

Investors must be designated as "PORTAL qualified" investors pursuant to Part IV to buy and sell PORTAL securities in The PORTAL Market. The major requirement is that the investor be eligible to purchase securities pursuant to SEC Rule 144A. PORTAL qualified investors may execute purchase or sale "transactions" in PORTAL securities only through a PORTAL dealer or a PORTAL broker with another PORTAL qualified investor or in a "qualified exit transaction" to an account outside The PORTAL Market.

A "qualified exit transaction" is one meeting the requirements of Section 18 to Part I of the PORTAL Rules. That section restricts transactions in PORTAL securities with an account outside The PORTAL Market to transactions (1) registered under the Securities Act, (2) exempt from Securities Act registration by reason of compliance with SEC Regulation S (adopted simultaneously with Rule 144A), SEC Rules 144 and 145, or because of repurchase by the issuer, (3) exempt from Securities Act registration by reason of compliance with Rule 144A, so long as an opinion of counsel is reviewed by the Association prior to the transaction, or (4) exempt from registration and resulting in the purchaser holding freely tradable securities, so long as information concerning the exit is reviewed by the Association prior to the transaction. Furthermore, PORTAL participants are

prohibited from transferring PORTAL securities out of The PORTAL Market except in a "qualified exit transfer," which restricts transfers exiting the market to the return of borrowed securities and a transfer to the participant's non-PORTAL account.

PORTAL dealers, PORTAL brokers, and PORTAL qualified investors (together defined as "PORTAL participants") must be members of (or have a relationship providing them access to) a "PORTAL depository system" that is composed of one or more organizations designated by the NASD to perform the functions of a securities depository with respect to PORTAL securities. Currently, the designated PORTAL depositories are Centrale de Livraison de Valeurs Mobilieres S.A. Luxembourg (Cedel) with respect to foreign securities and The Depository Trust Company (DTC) with respect to U.S. securities.

PORTAL dealers and PORTAL brokers (or their agent) must be members of a "PORTAL clearing system," which consists of one or more organizations designated by the Association to perform the clearance and settlement functions with respect to PORTAL securities. The PORTAL clearing organizations designated by the NASD are the International Securities Clearing Corporation (ISSC) with respect to foreign securities and DTC with respect to U.S. securities.

PORTAL participants also are required to participate in a "PORTAL account instruction system," which consists of one or more communications systems designated by the Association to transfer information concerning PORTAL account activities between a PORTAL qualified investor, the agent providing it access to the PORTAL depository system, PORTAL dealers, and PORTAL brokers. The PORTAL account instruction systems designated by the NASD are the International Institutional Delivery System (IID) and the Institutional Delivery System (ID), owned and operated by The Depository Trust Company.

The normal PORTAL Market hours of operation are between 9:30 a.m. and 4 p.m., Eastern Time. However, Section 1 to Part VI of the PORTAL Rules permits the NASD to establish different hours. The PORTAL Market accepts prices and quotations that are one- or two-sided, and firm or indicative. Transactions in The PORTAL Market settle five business days after the date of transactions, except as otherwise agreed between the par-

ties to the transactions. In addition, the transaction can settle in any currency accepted by the PORTAL clearing organization.

Each PORTAL dealer and PORTAL broker that executes a transaction or effects a qualified exit transfer must enter a PORTAL transaction report in The PORTAL Market that includes necessary information regarding the transaction or transfer. Any modification, correction, or cancellation of the PORTAL transaction report also has to be entered into The PORTAL Market. PORTAL participants must either affirm or reject a PORTAL transaction report in The PORTAL Market to obtain a compared PORTAL transaction report.

"When, as and if" trading of a new issue of securities is permitted in The PORTAL Market subsequent to effectiveness of the designation of the securities as PORTAL securities so long as the managing underwriter establishes a settlement date for the securities based on their anticipated availability and enters a corrected PORTAL transaction report designating a substitute settlement date if settlement is delayed.

Short-sale transactions are permissible in The PORTAL Market, and securities may be borrowed from another PORTAL Market account or from outside The PORTAL Market to meet delivery requirements. The requirements applicable to short sales are based on those presently found in the Interpretation of the Board of Governors — Prompt Receipt and Delivery of Securities, Article III, Section 1 of the NASD's Rules of Fair Practice. A provision is also included that gives the NASD authority to adopt additional restrictions regarding short sales and the borrowing and return of securities as the NASD deems necessary to prevent violation of the registration requirements of the Securities Act.

The PORTAL Rules specify that stabilizing bids are permitted in The PORTAL Market. The Rules also incorporate the close-out and buy-in procedures in Sections 15, 59, and 60 of the NASD's Uniform Practice Code, with modifications to reflect the context of transactions in The PORTAL Market. The close-out procedures are not mandatory. The PORTAL Rules also contain provisions setting forth the applicability of the NASD's Rules of Fair Practice to transactions and business activities relating to The PORTAL Market, distinguishing between provisions that are applicable, those applicable with exceptions, those applicable

to members regardless of their participation in The PORTAL Market, and those that are not applicable.

The PORTAL Rules also provide that any NASD determination to deny, suspend, or terminate the designation of a PORTAL security or registration of a participant may be reviewed on application by the aggrieved person pursuant to Article IX of the Association's Code of Procedure. A conforming amendment to Article IX of the Code of Procedure also has been approved by the SEC expanding the jurisdiction of the article to cover grievances related to The PORTAL Market. Moreover, as stated above, the facilities of the NASD's Arbitration Department and the procedures of the Code of Arbitration Procedure are available to PORTAL participants to resolve disputes arising from PORTAL transactions or activities related to them.

The PORTAL Rules provide authority for the NASD to impose a fee on PORTAL dealers, PORTAL brokers, or PORTAL qualified investors for PORTAL transactions, or such other fees that the NASD may determine are appropriate. It is not now the NASD's intention to impose a fee with respect to transactions in The PORTAL Market for the first six months of the market's operation.

The PORTAL Rules are scheduled to become effective on publication of the SEC-adopting release in the Federal Register.

Questions regarding the operation of The PORTAL Market may be directed to S. William Broka, Vice President, Business Development, at (212) 480-4231. Questions regarding The PORTAL Market Rules may be directed to Frank J. Wilson, General Counsel, at (202) 728-8319 or Suzanne E. Rothwell, Associate General Counsel, at (202) 728-8247.

THE PORTALSM MARKET RULES

Schedule I to the NASD By-Laws

Part I

DEFINITIONS¹

For purposes of Schedule I, unless the context requires otherwise:

Sec. 1 "Association" means the National Association of Securities Dealers, Inc. ("NASD") or its

wholly-owned subsidiary, NASD Market Services, Inc., as determined by the NASD.

Sec. 2 "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.

Sec. 3 "Execution" means entering into a purchase, sale or **transfer of a PORTAL security**.

Sec. 4 "PORTAL" or "PORTAL Market" means the Association's market for designated foreign and domestic securities through an automated quotation and communications system that facilitates private offerings, resales, trading, clearance and settlement by **PORTAL participants**.

Sec. 5 "PORTAL account instruction system" means one or more communications systems designated by the **Association** to transfer information concerning PORTAL account activities between a **PORTAL qualified investor**, its agent providing it access to the **PORTAL depository system**, **PORTAL dealers** and **PORTAL brokers**.

Sec. 6 "PORTAL broker" means any member of the Association that is currently registered as a **PORTAL broker** in the **PORTAL Market** pursuant to Part III, Section 2 of the **PORTAL Rules**.

Sec. 7 "PORTAL clearing organization" means a clearing organization that is part of the **PORTAL clearing system** and is designated by the **Association** to perform clearance and settlement functions with respect to **PORTAL securities**.

Sec. 8 "PORTAL clearing system" means the system consisting of one or more organizations designated by the **Association** to perform clearance and settlement functions with respect to **PORTAL securities**.

Sec. 9 "PORTAL dealer" means any member of the Association that is currently registered as a **PORTAL dealer** in the **PORTAL Market** pursuant to Part III, Section 1 of the **PORTAL Rules**,

¹The definitions in Part I to the PORTAL Rules shall include the plural form of the term and the past tense and the future tense of the term, as applicable.

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and is thereby also registered as a **PORTAL qualified investor**.

Sec. 10 "PORTAL depository organization" means a depository organization that is part of the **PORTAL depository system** and is designated by the **Association** to perform the functions of a securities depository with respect to **PORTAL securities**.

Sec. 11 "PORTAL depository system" means the system consisting of one or more organizations designated by the **Association** to perform the functions of a securities depository with respect to **PORTAL securities**.

Sec. 12 "PORTAL Exit Report" means a report manually or electronically filed with NASD Market Surveillance within one (1) business day after a sale or transfer of a **PORTAL security** by a **PORTAL participant** pursuant to Part III, Section 3(b)(5) and Part IV, Section 1(b)(11) of the **PORTAL Rules**.

Sec. 13 "PORTAL participant" means a **PORTAL dealer**, a **PORTAL broker** and a **PORTAL qualified investor**.

Sec. 14 "PORTAL qualified investor" means any investor that is currently registered as a **PORTAL qualified investor** in the **PORTAL Market** pursuant to Part IV of the **PORTAL Rules**.

Sec. 15 "PORTAL Rules" means the **PORTAL Market rules** as included in Schedule I to the **NASD By-Laws**.

Sec. 16 "PORTAL security" means a security which (i) is of a class that is currently designated by the **Association** for inclusion in the **PORTAL Market** pursuant to Part II of the **PORTAL Rules** and (ii) is or will be deposited in the **PORTAL depository system** pursuant to the requirements of the participating **PORTAL depository organization**.

Sec. 17 "PORTAL transaction report" means a report entered into the **PORTAL Market** pursuant to Part VI, Section 5 of the **PORTAL Rules**.

Sec. 18 "Qualified exit transaction" means the sale

of **PORTAL securities** to an account outside the **PORTAL Market** by or through a **PORTAL dealer** or **PORTAL broker**:

(a) in a transaction registered with the **SEC** under Section 5 of the **Securities Act**;

(b) in a transaction not subject to registration under the **Securities Act** by reason of compliance with:

(1) **Securities Act Release No. 4708** (July 9, 1964), 29 F.R. 9828 or with **Regulation S** when adopted, as it may be amended from time to time;

(2) **Rules 144 or 145** adopted thereunder, as they may be amended from time to time;

(3) transfer of the securities to the issuer or an affiliate of the issuer; or

(4) **Rule 144A** adopted thereunder, as determined by the **Association**, upon the submission of an opinion of counsel prior to the transaction; or

(c) in any other transaction which is exempt from registration under Section 5 of the **Securities Act** and results in the purchaser acquiring securities that may be freely resold without registration under the **Securities Act**, as determined by the **Association**, upon the submission of any information that may be required by the **Association** prior to the transaction.

Sec. 19 "Qualified exit transfer" means:

(a) the return of borrowed **PORTAL securities** to an account outside the **PORTAL Market** from which the securities were borrowed; and

(b) the transfer of **PORTAL securities** by a **PORTAL participant** from its **PORTAL account** to an account of the **PORTAL participant** outside the **PORTAL Market**.

Sec. 20 "Restricted securities" means securities that meet the definition of that term contained in **Rule 144(a)(3)** under the **Securities Act**.

Sec. 21 "Rule 144A" means **Rule 144A** adopted under the **Securities Act**, as amended from time to time.

Sec. 22 "SEC" means the **United States Securities and Exchange Commission**.

Sec. 23 "Securities Act" means the **Securities Act of 1933**, as amended from time to time.

Sec. 24 "Short sale" means any sale of a security that meets the definition of that term contained in

Rule 3b-3 adopted under the Exchange Act.

Sec. 25 "Transaction" or "trade" means the purchase or sale of a **PORTAL security**.

Sec. 26 "Transfer" means the movement of a **PORTAL security** from or to a **PORTAL account** not related to a purchase or sale transaction, including borrowing, lending, and the receipt or return of borrowed securities.

Sec. 27 "United States" means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

Part II

REQUIREMENTS APPLICABLE TO PORTAL SECURITIES

Sec. 1 Application for Designation

(a) Application for designation as a **PORTAL security** shall be in the form required by the **Association** and shall be filed by a **PORTAL participant**. Applications may be made with or without the concurrence of the issuer. The application shall demonstrate to the satisfaction of the **Association** that the security meets or exceeds the qualification requirements set forth in Section 2.

(b) Designation of a security as a **PORTAL security** shall be declared effective within a reasonable time after determination of qualification. The effective date of designation as a **PORTAL security** shall be determined by the **Association** giving due regard to the requirements of the **PORTAL Market**.

Sec. 2 Qualification Requirements for PORTAL Securities

(a) To qualify for inclusion in the **PORTAL Market**, a security shall, at the time application is made:

(1) be eligible to be sold pursuant to **Rule 144A** under the **Securities Act**;

(2) be in negotiable form and not subject to any restriction, condition or requirement that would impose an unreasonable burden on any **PORTAL participant**;

(3) be eligible for deposit into and have been or will be deposited into the **PORTAL depository**

system by the issuer or a **PORTAL participant**;

(4) in the case of convertible debt, convertible preferred stock, rights, warrants and other derivative products, the underlying or related security shall satisfy the criteria herein; and

(5) satisfy such additional criteria or requirements as the **Association** may prescribe.

(b) A **PORTAL security** shall be deposited into the **PORTAL depository system** no later than the date specified by the relevant **PORTAL depository organization**.

(c) The application to the **Association** with respect to a proposed **PORTAL security** shall include information sufficient for the **Association** to make a determination that the security is eligible to be sold under **Rule 144A**, which may include:

(1) a statement of counsel who:

(i) has demonstrated experience, expertise and familiarity with the **United States securities laws**, including **Rule 144A** and the **PORTAL Rules**;

(ii) is admitted to practice law before the highest court of any state in the **United States**, the **District of Columbia**, or any territory or possession of the **United States**;

(iii) is not an employee or affiliate of the issuer of the security, provided, however, that counsel may be the senior legal counsel to the issuer;

(iv) in providing its statement, has (a) reviewed information detailing the capital structure of the issuer; (b) reviewed other documents and pertinent information obtained by counsel; and (c) has made inquiries of the issuer of the security and received responses if counsel determines that such further review and inquiry are necessary and relevant to determine whether the security is eligible to be sold pursuant to **Rule 144A**; and

(v) has determined that the security for which designation is requested (and the underlying security, if the security is convertible debt, convertible preferred, rights, warrants or any other derivative product) is eligible to be sold pursuant to **Rule 144A**; or

(2) a statement of a certified public accountant who:

(i) is permitted to practice before the SEC pursuant to Rule 2-01 of SEC Regulation S-X;

(ii) in providing its statement, has reviewed (a) information detailing the capital structure of the issuer; (b) other documents and pertinent information obtained by the certified public accountant; and (c) made inquiries of the issuer of the security and received responses if the certified public accountant determines that such further review and inquiry are necessary and relevant to determine whether the security is eligible to be sold pursuant to Rule 144A; and

(iii) has determined that the security for which designation is requested (and the underlying security, if the security is convertible debt, convertible preferred, rights, warrants or any other derivative product) is eligible to be sold pursuant to Rule 144A; or

(3) a certification of the Chief Executive Officer of the issuer of the security for which designation is requested that the security (and the underlying security, if the security is convertible debt, convertible preferred, rights, warrants or any other derivative product) is eligible to be sold pursuant to Rule 144A; and

(4) any other information that the Association, in its discretion, may require to be submitted to the Association.

Sec. 3 Exceptions

The Association may make exceptions to the criteria contained in Part II, Subsections 2(a)(2) and (4) of the PORTAL Rules as it deems appropriate. The fact that a security meets the applicable criteria in Part II, Section 2 of the PORTAL Rules does not necessarily mean that an application for designation as a PORTAL security will be approved.

Sec. 4 Suspension or Termination of a PORTAL Security Designation

(a) The Association may, in its discretion, suspend or terminate designation as a PORTAL security if it determines that:

- (1) the security is not in compliance with the requirements of the PORTAL Rules;
- (2) a holder or prospective purchaser that re-

quested issuer information pursuant to Rule 144A(d)(4) did not receive the information;

(3) any application or other document relative to such securities submitted to the Association contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(4) failure to withdraw designation of such securities would for any reason be detrimental to the interests and welfare of PORTAL participants or the Association.

(b) The Association will promptly notify PORTAL participants and the PORTAL clearing system and PORTAL depository system of the suspension or termination of a security's designation as a PORTAL security. Such notification may be made through the facilities of the PORTAL Market. Suspension or termination shall become effective in accordance with the terms of notice by the Association.

(c) Notwithstanding the suspension or termination of designation as a PORTAL security, any security within the PORTAL Market shall remain subject to all rules of the Association applicable to the PORTAL Market until the security is sold in a qualified exit transaction or is dealt with in accordance with the terms of notice by the Association of the suspension or termination.

(d) No PORTAL participant shall trade through the PORTAL Market a PORTAL security as to which designation in the PORTAL Market has been suspended or terminated unless such transaction is a qualified exit transaction or is in accordance with the terms of notice of the Association of the suspension or termination.

Part III

REQUIREMENTS APPLICABLE TO PORTAL DEALERS AND PORTAL BROKERS

Sec. 1 Registration Requirements of PORTAL Dealers

(a) No member of the Association shall participate in a principal transaction in the PORTAL Market unless the Association has approved its registration as a PORTAL dealer and such registration has not been suspended or terminated. A member of the Association that registers as a PORTAL dealer shall also be registered as a PORTAL

qualified investor.

(b) To register as a **PORTAL dealer**, a member shall apply to the **Association** in the form required by the **Association** and shall demonstrate to the satisfaction of the **Association** that it:

(1) is eligible to purchase securities under **Rule 144A** as it applies to a dealer registered under Section 15 of the **Exchange Act**, and shall submit the member's most recent Audited Financial Statements filed with the **SEC** pursuant to Rule 17a-5(d) under the **Exchange Act**, with the supporting schedules required pursuant to subparagraph (3) thereof, and any other information that the **Association**, in its discretion, may require to be submitted to the **Association**;

(2) is a member of the **Association** and qualified to do business as a general securities firm;

(3) agrees to maintain an account for **PORTAL transactions** at its agent (providing it access to the services of a **PORTAL depository organization**) that is segregated from all other accounts it may have at the agent, if applicable;

(4) is a participant in (or its agent, providing it access to the services of the **PORTAL depository system**, is a participant in) the **PORTAL account instruction system**, as necessary;

(5) is a member of, or its agent is a member of, a **PORTAL clearing organization** and a **PORTAL depository organization** and, with respect to the **PORTAL depository organization**, has directed that its account or accounts therein for **PORTAL securities** be segregated from all other accounts it may have at the depository;

(6) agrees to deposit and maintain all **PORTAL securities** in its segregated **PORTAL account** at the **PORTAL depository organization** and at its agent, if applicable, until the **PORTAL securities** are (i) sold or transferred to a **PORTAL account** in a **transaction or transfer** in the **PORTAL Market** or (ii) sold or transferred to a non-**PORTAL account** in compliance with the restrictions on **qualified exit transactions** and **qualified exit transfers**;

(7) has authorized and directed both the relevant **PORTAL clearing organization** and **PORTAL depository organization** (or has authorized its agent to authorize and direct the **PORTAL clearing organization** and **PORTAL depository organization**) to release information in respect of its **PORTAL account activity** to the **As-**

sociation or its designee and, with respect to the **PORTAL clearing organization**, to submit data to the **PORTAL account instruction system** on behalf of the **PORTAL dealer**, as may be required;

(8) has established supervisory procedures reasonably designed to achieve compliance with the restrictions on **qualified exit transactions** and **qualified exit transfers**, including (i) preserving information demonstrating compliance with respect to each **exit transaction** and **exit transfer** pursuant to Rule 17a-4(a) under the **Exchange Act** and (ii) filing a **PORTAL Exit Report** with **NASD Market Surveillance** within one (1) business day after the execution of the **transaction or transfer**;

(9) agrees to comply with the requirements of the **PORTAL Rules**, including the filing of such documents and the payment of such fees as may be required by the **Association**; and

(10) agrees to purchase **PORTAL securities** only for **PORTAL qualified investors** or for their own account.

Sec. 2 Registration Requirements for PORTAL Brokers

(a) No member of the **Association** shall participate in an agency **transaction** in a **PORTAL security** in the **PORTAL Market** unless the **Association** has approved its registration as a **PORTAL dealer** or as a **PORTAL broker**, and such registration has not been suspended or terminated.

(b) To register as a **PORTAL broker**, a member shall apply to the **Association** in the form required by the **Association** and shall demonstrate to the satisfaction of the **Association** that it meets or exceeds the criteria in Part III, Sections 1(b)(2) through 1(b)(9) of the **PORTAL Rules** and agrees to purchase **PORTAL securities** only for **PORTAL qualified investors**.

Sec. 3 Continuing Requirements for PORTAL Dealers and Brokers

(a) No **PORTAL broker** shall execute a principal **transaction** in a **PORTAL security**, provided, however, that for purposes of compliance with the **PORTAL Rules** a **PORTAL broker** may participate in an underwriting of **PORTAL securities** on a "best-efforts" basis.

(b) No **PORTAL dealer** or **PORTAL broker** shall:

(1) execute a transaction or a transfer in a **PORTAL security** except through the **PORTAL Market** or in a **qualified exit transaction** or **qualified exit transfer**;

(2) execute a transaction or a transfer in a **PORTAL security** through the **PORTAL Market** with any party other than a **PORTAL participant**, except in a **qualified exit transaction** or a **qualified exit transfer**;

(3) execute a transaction in a **PORTAL security** as to which designation in the **PORTAL Market** has been suspended or terminated, unless the transaction is a **qualified exit transaction** or in accordance with the terms of notice by the **Association** of the suspension or termination;

(4) accept a **PORTAL qualified investor's** purchase order for any **PORTAL security**, except an order for less than a single unit of trading, unless it has first ascertained that the **PORTAL qualified investor** placing the order, or its agent, agrees to receive securities in an amount equal to any execution, even though such an execution may represent the purchase of only a part of a larger order; or

(5) sell or transfer a **PORTAL security** to an account outside the **PORTAL Market** unless (i) the transaction or transfer is in compliance with the restrictions on **qualified exit transactions** or **qualified exit transfers**, (ii) information demonstrating such compliance is preserved pursuant to Rule 17a-4(a) under the **Exchange Act**, and (iii) a **PORTAL Exit Report** is filed with NASD Market Surveillance within one (1) business day after the execution of the sale or transfer.

(c) For a **PORTAL dealer** to continue to be eligible to participate as a **PORTAL dealer** in the **PORTAL Market**, the **PORTAL dealer** shall annually (or more frequently if required by Rule 144A) demonstrate to the satisfaction of the **Association** that it continues to be eligible to purchase securities under Rule 144A as it applies to a dealer registered under Section 15 of the **Exchange Act**.

(d) For a **PORTAL dealer** or **PORTAL broker** to continue to be eligible to participate in the **PORTAL Market**, the **PORTAL dealer** or **PORTAL broker** shall notify the **Association**² on a timely basis of any change in:

(1) its **PORTAL depository organization**, **PORTAL clearing organization** or **PORTAL account instruction system**;

(2) the account numbers identifying its segregated **PORTAL accounts** in its **PORTAL depository organization** or **PORTAL clearing organization**; and

(3) any change in the supervisory procedure accepted by the **Association** pursuant to Part III, Subsection 1(b)(7) of the **PORTAL Rules**.

(e) The **Association** shall suspend or terminate the registration of a **PORTAL dealer** or **PORTAL broker** if it:

(1) fails to maintain membership for purposes of maintaining segregated **PORTAL accounts** in the **PORTAL depository system** or the **PORTAL clearing system**, or membership in the **PORTAL account instruction system**, as necessary;

(2) fails to maintain its account or accounts in the **PORTAL depository system** for **PORTAL securities** segregated from all other accounts the **PORTAL dealer** or **PORTAL broker** may have at the depository; or

(3) rescinds its authorization to the **PORTAL clearing organization** or **PORTAL depository organization** of which the **PORTAL dealer** or **PORTAL broker** is a member to release information in respect of its activities in its **PORTAL account** to the **Association** or its designee.

(f) The **Association** may suspend or terminate the registration of a **PORTAL dealer** or **PORTAL broker** if:

(1) it fails to comply with any requirement of the **PORTAL Rules** with respect to any **PORTAL security**;

(2) any application or other document submitted by or on behalf of it contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(3) it fails to file any documents or to pay any fee as may be required by the **Association**.

(g) Nothing in paragraphs (e) and (f) shall prohibit the **Association** from taking such other action as it deems necessary under the circumstances against a **PORTAL dealer** or a **PORTAL broker** for violations of the requirements of the **PORTAL Rules**, any other rule or regulation of the **Association**, or any rule or regulation of the **SEC**.

²Notification must be provided to NASDAQ Operations, 1735 K Street, NW, Washington, DC 20006-1506, (202) 728-8479.

(h) Notwithstanding the suspension or termination of a **PORTAL dealer**, such dealer shall:

(1) remain subject to all rules of the **Association** applicable to the **PORTAL Market** in respect of any **PORTAL securities** in the dealer's **PORTAL trading** and **PORTAL proprietary account**; and

(2) only engage in **transactions in PORTAL securities** in the dealer's **PORTAL trading** and **PORTAL proprietary account** in accordance with the terms of notice by the **Association** of the **PORTAL dealer's** suspension or termination.

Part IV

REQUIREMENTS APPLICABLE TO PORTAL QUALIFIED INVESTORS

Sec. 1 Registration Requirements for PORTAL Qualified Investors

(a) No investor shall participate in a **transaction** in a **PORTAL security** in the **PORTAL Market** unless the **Association** has approved its registration as a **PORTAL qualified investor** and such registration remains in effect.

(b) To register as a **PORTAL qualified investor** in the **PORTAL Market**, an investor shall apply in the form required by the **Association** and shall demonstrate to the satisfaction of the **Association** that:

(1) it is eligible to purchase securities in accordance with **Rule 144A**;

(2) the purchase or sale by it of **PORTAL securities** would be exempt from the securities registration and broker-dealer registration requirements of applicable state securities laws;

(3) it is a member of, or its agent is a member of, a **PORTAL depository organization** which will maintain **PORTAL securities** in an account segregated from all other accounts the investor or its agent may have at the depository;

(4) it agrees to maintain an account for **PORTAL transactions** at its agent (providing it access to the services of a **PORTAL depository organization**) that is segregated from all other accounts it may have at the agent, if applicable;

(5) it has authorized and directed the **PORTAL depository system** (or has authorized and directed its agent providing it access to the services of the **PORTAL depository system** to authorize and direct the **PORTAL depository sys-**

tem) to release information in respect of its **PORTAL account activities** to the **Association** or its designee;

(6) it is (and its agent, providing it access to the services of the **PORTAL depository system**, is) a participant in the **PORTAL account instruction system**, as necessary;

(7) it understands that it may purchase a **PORTAL security** from a **PORTAL qualified investor** who may rely on an exemption from the provisions of Section 5 of the **Securities Act** pursuant to **Rule 144A**;

(8) it agrees to deposit and maintain all **PORTAL securities** in its segregated **PORTAL account** at the **PORTAL depository organization** and at its agent, if applicable, until the **PORTAL securities** are (i) sold or transferred to a **PORTAL account** in a **transaction** or **transfer** in the **PORTAL Market** or (ii) sold or transferred to a non-**PORTAL account** in compliance with the restrictions on **qualified exit transactions** and **qualified exit transfers**;

(9) it agrees it will only **transfer ownership** of a **PORTAL security** in a **transaction** or **transfer** through the **PORTAL Market**, except that (i) **transfers** between accounts managed by the investor and among investment companies registered under the Investment Company Act of 1940 constituting part of a family of investment companies are permitted so long as the investor is eligible to purchase securities on behalf of the managed accounts or investment companies under **Rule 144A** and (ii) **qualified exit transactions** and **qualified exit transfers** will be permitted;

(10) it agrees to purchase **PORTAL securities** for its own account or for an account that the investor is eligible to make purchases for under **Rule 144A**;

(11) it agrees that it will not sell or transfer **PORTAL securities** to an account outside the **PORTAL Market** except in **qualified exit transactions** and **qualified exit transfers** and will file a **PORTAL Exit Report** with NASD Market Surveillance within one (1) business day after the **execution** of a **transfer** not **executed** through a **PORTAL dealer** or **PORTAL broker**; and

(12) it agrees to provide the **Association**, upon its request and at its discretion, with any information or document necessary to verify compliance with the restrictions on **exit transactions** and **exit transfers** in the **PORTAL Rules**.

(c) The **Association** may classify **PORTAL qualified investors** in such manner as it deems advisable for the purpose of conforming with **Rule 144A**.

(d) The investor's application to the **Association**, other than an investor that is a dealer registered under Section 15 of the **Exchange Act**, shall include information regarding the securities investments of the investor that is sufficient for the **Association** to make a determination that the investor is eligible to purchase securities under **Rule 144A** which may include:

(1) information that is publicly available as permitted by **Rule 144A(d)(1)(i)** and (ii), except that material filed with a foreign governmental agency or foreign self-regulatory organization must be in or translated into English and financial information must be expressed in U.S. dollars;
or

(2) information that is contained in a statement of the investor's securities and is accompanied by an accountant's report, as defined in Rule 1-02 of **SEC Regulation S-X**, that is prepared in compliance with Rule 2-02 of **SEC Regulation S-X** by a certified public accountant permitted to practice before the **SEC** pursuant to Rule 2-01 of **SEC Regulation S-X**; or

(3) statement of counsel who:

(a) has demonstrated experience, expertise and familiarity with the **United States** securities laws, including **Rule 144A** and the **PORTAL Rules**;

(b) is admitted to practice law before the highest court of any state in the **United States**, the District of Columbia, or any territory or possession of the **United States**;

(c) is not an employee or an affiliate of the investor;

(d) in providing its statement, has reviewed information detailing the securities investments of the investor and has requested and reviewed other documents and pertinent information and made inquiries of the investor and received responses, if counsel determines that such further review and inquiry are necessary and relevant to determine whether the investor is eligible to purchase securities in accordance with **Rule 144A**; and

(e) has determined that the investor is

eligible to purchase securities in accordance with **Rule 144A**; and

(4) any other information that the **Association**, in its discretion, may require to be submitted to the **Association**.

(e) The **PORTAL qualified investor's** application to the **Association** of a dealer registered under Section 15 of the **Exchange Act** shall include the dealer's most recent Audited Financial Statements filed with the **SEC** pursuant to Rule 17a-5(d) under the **Exchange Act**, with the supporting schedules required pursuant to subparagraph (3) thereof, and any other information that the **Association**, in its discretion, may require to be submitted to the **Association**.

Sec. 2 Continuing Requirements for PORTAL Qualified Investors

(a) For an investor to continue to be eligible to participate as a **PORTAL qualified investor** in the **PORTAL Market**, the investor shall:

(1) annually (or more frequently if required by **Rule 144A**) demonstrate to the satisfaction of the **Association** that the investor is eligible to purchase securities in accordance with **Rule 144A**; and

(2) advise the **Association**³ on a timely basis of any change in its agent, **PORTAL depository organization** or **PORTAL account instruction system** or its **PORTAL** account numbers therein.

(b) **Transactions in PORTAL securities**, including transactions to a non-**PORTAL** account, by **PORTAL qualified investors** shall be executed:

(1) through a **PORTAL dealer** or a **PORTAL broker**; and

(2) through the **PORTAL Market** or in a **qualified exit transaction**.

(c) The **Association** shall suspend or terminate the registration of a **PORTAL qualified investor** if:

(1) the investor sells or transfers a **PORTAL security** to an account outside the **PORTAL Market** in a manner not in compliance with the restrictions on **qualified exit transactions** or **qualified exit transfers**;

(2) any application or document submitted by or on behalf of the **PORTAL qualified investor** contained an untrue statement of material fact or

³Notification must be provided to NASDAQ Operations, 1735 K Street, NW, Washington, DC 20006-1506, (202) 728-8479.

omitted to state a material fact necessary to make the statements therein not misleading;

(3) the investor fails to comply with any requirements of the **PORTAL Rules**, or to file any documents or to pay any fee as may be required by the **Association**; or

(4) the investor rescinds its authorization to its **PORTAL depository organization** to release information in respect of its or its agent's **PORTAL** account activity to the **Association** or its designee.

(d) Nothing in paragraph (c) shall prohibit the **Association** from taking such action as it deems necessary under the circumstances against a **PORTAL qualified investor** that is also a member of the **Association** for violations of the requirements of the **PORTAL Rules**, any other rule or regulation of the **Association**, or any rule or regulation of the **SEC**.

(e) Notwithstanding the suspension or termination of a **PORTAL qualified investor**, such investor shall:

(1) remain subject to all rules of the **Association** applicable to the **PORTAL Market** with respect to any **PORTAL securities** owned by such investor; and

(2) engage in transactions in **PORTAL securities** owned by such investor only in accordance with the terms of notice by the **Association** of the suspension or termination.

Part V

DENIAL, SUSPENSION OR TERMINATION PROCEDURES

A determination by the **Association** to deny, suspend or terminate the designation of a **PORTAL security** or registration of a **PORTAL participant** may be reviewed upon application by the aggrieved person pursuant to the provisions of Article IX of the Code of Procedure.

Part VI

PORTAL MARKET TRANSACTIONS

Sec. 1 Normal PORTAL Market Hours Of Operation

The **PORTAL Market** shall be open for business from 9:30 a.m. Eastern Time to 4:00 p.m.

Eastern Time, or as otherwise determined by the **Association**.

Sec. 2 PORTAL Quotations

The **PORTAL Market** will accept prices and quotations from **PORTAL dealers** and **PORTAL brokers** that are one- or two-sided, firm or indicative.

Sec. 3 Deposit of PORTAL Securities

PORTAL securities that are deposited into the **PORTAL depository system** shall remain in the depository system until such time as the depository receives appropriate settlement instructions from a **PORTAL dealer** or **PORTAL broker** to deliver such securities out of the depository system in connection with a **qualified exit transaction** or **qualified exit transfer**.

Sec. 4 PORTAL Settlement

(a) Transactions in the **PORTAL Market** will settle five (5) business days after the date of the execution of the **transaction**, except as otherwise agreed between the **PORTAL participants**, in any currency accepted by the **PORTAL depository organization**.

(b) **PORTAL securities** and funds will be transferred on the books of the **PORTAL depository system** upon receipt from the **PORTAL clearing system** of the necessary settlement instructions from the appropriate **PORTAL dealer** or **PORTAL broker** and subject to the purchaser meeting the requirements of the relevant **PORTAL depository organization** concerning deposit and availability of funds in accordance with the depository organization's procedures.

Sec. 5 PORTAL Transaction Reports

(a) Each **PORTAL dealer** or **PORTAL broker** that executes a **transaction** or a **qualified exit transfer** in a **PORTAL security** shall enter in the **PORTAL Market** a **PORTAL transaction report** that includes, as applicable, the identity of the **PORTAL participants** in whose accounts the **transaction** will settle (or, in the case of a **qualified exit transaction** or **qualified exit transfer**, the contra-party and delivery destination for the securities on settlement date), whether the **transaction** is on an agency or principal basis, whether the **transaction** is a purchase or sale, whether a sale is a "short" sale, the settlement

date if different from the standard five-day settlement, the quantity of the security, the price of the security expressed in the currency in which the security was quoted in the **PORTAL Market**, the currency in which the **transaction** will settle, the total value of the **transaction** in the currency in which the **transaction** will settle, whether the settlement is "free" or "against payment", and such additional information as the **Association** may require.

(b) Modification, correction or cancellation of a **PORTAL transaction report** must be entered in the **PORTAL Market**.

(c) **PORTAL transaction reports** shall be entered in the **PORTAL Market** the same business day of the execution of the **transaction**. If a **transaction** is executed during hours that the **PORTAL Market** does not accept **PORTAL transaction reports**, the **PORTAL transaction report** shall be entered when the **PORTAL Market** is next open, with the trade date of the date of execution of the **transaction**. The **Association**, in its discretion, will establish hours for and time limitations on the entry of **PORTAL transaction reports**.

Sec. 6 Comparison of PORTAL Transaction Reports

(a) Each **PORTAL qualified investor** shall affirm or reject the **PORTAL transaction report** entered by the **PORTAL qualified investor's** executing **PORTAL dealer** or **PORTAL broker**.

(b) Each **PORTAL dealer** and **PORTAL broker** that executes a **transaction** in a **PORTAL security** shall:

(1) accept a **PORTAL transaction report** entered by the contra-party by entering in the **PORTAL Market** a matching **PORTAL transaction report** with the same terms as the first **PORTAL transaction report**;

(2) reject a **PORTAL transaction report** entered by the contra-party by entering a second **PORTAL transaction report** with different terms than included in the first **PORTAL transaction report**; or

(3) enter an affirmation or rejection with respect to the **PORTAL transaction report** entered by the contra-party.

Sec. 7 PORTAL Contracts

The existence and terms of each **PORTAL contract** shall be conclusively established by the compared **PORTAL transaction report** pertaining to

the underlying **transaction** in a **PORTAL security**. Notwithstanding the foregoing, the parties to any **PORTAL contract** may modify or correct the terms of any **transaction** in a **PORTAL security** in a manner consistent with the rules of the **PORTAL Market**.

Sec. 8 PORTAL Fees

PORTAL participants shall pay to the **Association** a fee for **PORTAL transactions** or such other fees as determined by the **Association**. The Board of Governors shall have the power to impose, alter, or amend such fees from time to time pursuant to Article VI, Section 1 of the By-Laws.

Sec. 9 "When, As and If Issued" Trading

PORTAL securities that are of a new issue of securities, primary or secondary, may trade "when, as and if issued" in the **PORTAL Market** subsequent to effectiveness of the designation of the securities as **PORTAL securities**, provided, however, that the lead manager shall:

(a) establish a settlement date for the securities based on their anticipated availability; and

(b) in event of any subsequent delay in the established settlement date, shall enter in the **PORTAL Market** a corrected **PORTAL transaction report** designating a substitute date for settlement and cancel the existing **PORTAL transaction report**.

Sec. 10 Transfers of PORTAL Securities

PORTAL securities deposited in the **PORTAL depository system** may not be transferred to an account outside the **PORTAL Market**, provided, however, that this section shall not prohibit a qualified exit **transaction** and a qualified exit **transfer**.

Sec. 11 "Short" Sales

(a) "**Short**" sale **transactions** in **PORTAL securities** may be entered in the **PORTAL Market**. "**Short**" sale **transactions** shall be identified as such in the **PORTAL transaction report**.

(b) The settlement date for "**short**" sales in **PORTAL securities** shall be negotiated by the parties.

(c) Securities obtained from outside the **PORTAL Market** may be used to cover the "**short**" position if they are promptly deposited into the **PORTAL depository system**.

(d) "**Short**" sale **transactions** in the **PORTAL**

Market are subject to the following requirements:

(1) No **PORTAL dealer** or **PORTAL broker** shall accept a "short" sale order for any **PORTAL qualified investor** in any **PORTAL security** unless the dealer or broker makes an affirmative determination that it will receive delivery of the security from the **PORTAL qualified investor** or that it can borrow the security on behalf of the **PORTAL qualified investor** for delivery by settlement date.

(2) No **PORTAL dealer** shall effect a "short" sale for its own account in any security unless the **PORTAL dealer** makes an affirmative determination that it can borrow the securities or otherwise provide for delivery of the securities by settlement date. This requirement will not apply to any transaction by a **PORTAL dealer** which (a) is a bona fide market making transaction where the **PORTAL dealer** is publishing a two-sided quotation in the **PORTAL Market** or (b) results in fully hedged or arbitrated positions.

(3) A **PORTAL dealer** or **PORTAL broker** shall indicate on the memorandum for the sale of any security whether the order is "short."

(4) The **Association** may adopt such restrictions on "short" sales, and the borrowing and return of securities, as it may deem necessary to prevent violation of the registration requirements of the **Securities Act** in connection with transactions in the **PORTAL Market**.

Sec. 12 Stabilizing Bids

(a) A **PORTAL dealer** may enter a stabilizing bid in the **PORTAL Market** subject to compliance with Rules 10b-6 and 10b-7 under the **Exchange Act**, which bid shall be identified in the **PORTAL Market**. When a stabilizing bid is entered, it shall be available for all outstanding securities in the **PORTAL Market** of the same class being offered.

(b) A **PORTAL dealer** shall notify the **Association**⁴ in writing prior to the first day in which the stabilizing bid is to appear in the **PORTAL Market**. The notice shall include:

(1) the name of the security and its **PORTAL** symbol;

(2) the date on which the distribution of the security will commence; and

(3) a copy of any offering document related to the distribution. The **PORTAL dealer** shall contact the **Association**⁴ for authorization on the day that the dealer wishes to enter the stabilizing bid.

(c) A **PORTAL dealer** shall not enter a stabilizing bid at the same time it is quoting any other bid or offer in the issue.

Sec. 13 Partial Delivery

A **PORTAL qualified investor** is required to accept a partial delivery on any **PORTAL** contract due, provided the portion remaining undelivered is not an amount that includes an odd-lot which was not part of the original transaction.

Sec. 14 Close-out Procedures - "Buying-In"

A **PORTAL** 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:

(a) Notice of "Buy-In"

(1) Written notice of "buy-in" shall be delivered to the seller at the seller's office not later than 12 noon, the seller's local time, two business days preceding the execution of the proposed "buy-in."

(2) For purposes of this provision, 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 and a computerized network facility.

(b) Information Contained in the "Buy-In" Notice

(1) Every notice of "buy-in" shall state the date of the **PORTAL** contract to be closed, the quantity and contract price of the **PORTAL securities** covered by said contract, the settlement date of said **PORTAL** contract and any other information deemed necessary to properly identify the **PORTAL** contract to be closed. Such notice shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 2:30 p.m. Eastern Standard Time, the **PORTAL security** may be "bought-in" on the date specified for the account of the seller.

(2) Notice may be redelivered immediately to another **PORTAL dealer** or **PORTAL broker** from whom the securities involved are due in the form of a re-transmitted notice ("re-transmit"). Re-

⁴Notification must be provided to **PORTAL Operations**, 33 Whitehall Street, New York, NY 10004, (800) 635-6485.

transmitted notice of buy-in must be delivered to subsequent **PORTAL dealers** or **PORTAL brokers** not later than one business day preceding the time and date of **execution** of the proposed buy-in.

(c) Seller's Failure to Deliver After Receipt of Notice

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 **PORTAL** contract by purchasing all or part of the **PORTAL securities** necessary to 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 amount of securities as stated in the "buy-in" notice or **execution** will also operate to close-out all **PORTAL** contracts covered under re-transmitted notices of buy-in issued pursuant to the original notice of buy-in. A "buy-in" may be **executed** by a **PORTAL dealer** from its long position and/or from customers' accounts maintained with such **PORTAL dealer**. In all cases, **PORTAL dealers** must be prepared to defend the price at which the "buy-in" is **executed** relative to the current market at the time of the "buy-in".

(d) "Buy-In" Not Completed

In the event that a "buy-in" is not completed pursuant to the provisions of subsection (b) hereof on the day specified in the notice of "buy-in," or as such date may be extended pursuant to the provisions of subsection (f) hereof, said notice shall expire at the close of business on the day specified in the notice of buy-in.

(e) Partial Delivery by Seller

Prior to the closing of a **PORTAL** contract on which a "buy-in" notice has been given, the buyer shall accept any portion of the **PORTAL securities** called for by the **PORTAL** contract, provided the portion remaining undelivered at the time the buyer proposes to **execute** the "buy-in" is not an amount which includes an odd-lot which was not part of the original **transaction**.

(f) Securities in Transit

If prior to the closing of a **PORTAL** 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**; (2) in **transit**; (3) are being shipped that day; or (4) are due from a depository

and giving the certificate numbers, except for those securities due from the depository, then the buyer must extend the **execution** date of the "buy-in" for a period of seven (7) calendar days from the date delivery was due under the "buy-in."

(g) Notice of Executed "Buy-In"

The party **executing** the "buy-in" shall immediately upon **execution**, but not later than the close of business, local time where the seller maintains its office, notify the **PORTAL dealer** or **PORTAL broker** 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 this written media is not available, the telephone shall be used for the purpose of same day notification, and written or similar electronic notification 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 forwarded as promptly as possible after the **execution** of the buy-in.

Notification of the **execution** of a "buy-in" shall be given to succeeding broker/dealers to whom a re-transmitted notice was issued 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.

(h) "Close-Out" under NASD or Exchange Rulings

(1) When a national securities exchange makes a ruling that all open contracts with a particular member, who is also a **PORTAL dealer** or **PORTAL broker**, should be closed-out immediately (or any similar ruling), **PORTAL dealers** and **PORTAL brokers** may close-out contracts as directed by the exchange.

(2) When the Association issues notification that all open contracts with the **PORTAL dealer** or **PORTAL broker** in question should be closed-out immediately, **PORTAL dealers** or **PORTAL brokers** may close-out contracts as directed by the Association.

(3) Within the meaning of this section, to close-out immediately shall mean that (i) "buy-ins" may be **executed** without prior notice of intent to "buy-in" and (ii) "Sell-outs" may be **executed** without making prior delivery of the securities called for.

(4) All close-outs **executed** pursuant to the provisions of this subsection shall be **executed** for the account and liability of the **PORTAL dealer** or **PORTAL broker** in question. Notification of all close-outs shall immediately be sent to such **PORTAL dealer** or **PORTAL broker**.

(i) Failure to Deliver and Liability Notice Procedures

(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 (3) are the subject of a tender or exchange offer; or (4) are subject to other expiring events such as the 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 any later day, 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) of this section. 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 provision.

(2) If the delivering **PORTAL dealer** or **PORTAL broker** fails to deliver the securities on the expiration date, the delivering **PORTAL dealer** or **PORTAL broker** shall be liable for any damages which may accrue thereby. A Liability Notice delivered in accordance with this provision shall serve as notification by the receiving member of the existence of a claim for damages. All claims for such damages shall be made promptly.

(3) If the above procedures are not utilized, contracts may be "bought-in" without prior notice, after normal delivery hours established in the community where the buyer maintains its office, on the expiration date. Such buy-in execution shall be for the account and risk of the defaulting **PORTAL dealer** or **PORTAL broker**.

(j) Information on Notices

Notices of "buy-in" and "re-transmitted buy-in" shall include all information contained in the sample forms prescribed by the Association.

(k) "Buy-In" Desk Required

PORTAL dealers or **PORTAL brokers** shall have a "buy-in" section or desk adequately staffed to process and research all "buy-ins" during normal business hours.

(l) "Buy-In" of Accrued Securities

Securities in the form of stock, rights or warrants which accrue to a purchaser shall be deemed due and deliverable to the purchaser on the payable date. Any such securities remaining undelivered at that time shall be subject to the "buy-in" procedures as provided in this Section.

Sec. 15 Close-Out Procedures - "Selling-Out"

A contract which has not been completed by the buyer according to its terms may be closed by the seller in accordance with the following procedures:

(a) Conditions Permitting "Sell-Out"

Upon failure of the buyer to accept delivery in accordance with the terms of the contract, and lacking a properly executed Reclamation Form, the seller may, without notice, "sell-out" in the **PORTAL Market** and for the account and liability of the party in default all or any part of the securities due or deliverable under the contract.

(b) Notice of "Sell-Out"

The party executing a "sell-out" as prescribed above shall, as promptly as possible on the day of execution, by written or comparable electronic notice, notify the **PORTAL dealer** or **PORTAL broker** for whose account and risk such securities were sold of the quantity sold and the price received, and shall promptly mail or deliver formal confirmation of such sale.

Part VII

Rules of Fair Practice

(a) The following Rules of Fair Practice and Interpretations and Policies adopted thereunder are specifically applicable to **transactions** and business activities relating to the **PORTAL Market**:

(1) Article I, Sections 3, 4 and 5;

(2) Article III, Section 1;

(3) Interpretation of the Board of Governors — Forwarding of Proxy and Other Materials, Article III, Section 1;

(4) Article III, Section 2;

(5) Policy of the Board of Governors — Fair Dealing With Customers, Article III, Section 2;

(6) Article III, Section 3 and 4;

(7) Interpretation of the Board of Governors — NASD Mark-Up Policy, Article III, Section 4;

(8) Article III, Section 5 and the Interpretation of the Board of Governors — Manipulative

and Deceptive Quotations, Article III, Section 5;

(9) Article III, Section 6 and Policy of the Board of Governors — Policy With Respect to Firmness of Quotations;

(10) Article III, Sections 7, 9, 11-18, 22, 23 and 25;

(11) Interpretation of the Board of Governors — Transactions Between Members and Non-Members, Article III, Section 25;

(12) Article III, Section 27;

(13) Article IV, Sections 1-5; and

(14) Article V, Sections 1-3.

(b) The following Rules of Fair Practice and Interpretations, Policies, and Explanations adopted thereunder are specifically applicable to **transactions** and business activities relating to the **PORTAL Market**, with the exceptions specified below:

(1) Interpretation of the Board of Governors — Execution of Retail Transactions in the Over-the-Counter Market, Article III, Section 1, except for subsection D, which requires that a member obtain quotations from three dealers to determine the best inter-dealer market for the subject security;

(2) Article III, Section 19 and Explanation of the Board of Governors — Explanation of Paragraph (d), except for paragraph (d); and

(3) Article III, Section 21, except subsection (b)(ii).

(c) The following Rules of Fair Practice are applicable to members and persons associated with members regardless of the member's participation in **transactions in the PORTAL Market**:

(1) Article I, Sections 1 and 2;

(2) Article II, Sections 1 and 2; and

(3) Article III, Section 10, 28, 32, 35, 38-40, and 42.

(d) The following Rules of Fair Practice and Interpretations adopted thereunder are not applicable to **transactions** and business activities relating to the **PORTAL Market**:

(1) Interpretation of the Board of Governors — Review of Corporate Financing, Article III, Section 1;

(2) Interpretation of the Board of Governors — Prompt Receipt and Delivery of Securities, Article III, Section 1⁵;

(3) Interpretation of the Board of Governors — "Free-Riding and Withholding", Article III, Section 1;

(4) Article III, Sections 8, 20, 24, 26, 29, 30, 31, 33, 34, 36, 37, and 41; and

(5) Article VI.

Part VIII

Arbitration

The facilities of the **Association's** Arbitration Department, and the procedures of the Code of Arbitration Procedure shall be available to **PORTAL participants** to resolve disputes arising from **PORTAL transactions and transfers** or activities related thereto.

⁵The applicable provisions of this Interpretation have been incorporated into Part III, Section 3(b)(4) and Part VI, Section 11 of the PORTAL Rules.

Notice To Members

National Association of Securities Dealers, Inc.

May 1990

Number 90 - 30

Suggested Routing:*

- | | | | |
|---|---|---------------------------------------|---|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit | <input type="checkbox"/> Operations | <input checked="" type="checkbox"/> Syndicate |
| <input checked="" type="checkbox"/> Corporate Finance | <input 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: New NASDAQ Listing and Maintenance Standards

EXECUTIVE SUMMARY

The NASD Board of Governors has approved and filed with the Securities and Exchange Commission amendments to Schedule D of the By-Laws that increase the initial and continued inclusion criteria for securities traded in the NASDAQ System. The SEC has published the proposal for public comment.

BACKGROUND

The NASD's consideration of changes to the NASDAQ listing criteria for entry and maintenance was prompted by a number of factors. The first of these was the receipt of a letter dated January 10, 1990, relating to Exchange Act Rule 15c2-6, which became effective January 1, 1990. In that letter, the Commission's Division of Market Regulation expressed concerns that certain promoters might attempt to circumvent the requirements of the Rule by seeking NASDAQ listing. The NASD was also concerned that the effects of inflation since these criteria were last amended in 1981 had seriously eroded the effectiveness of these criteria.

In response to the effectiveness of Rule 15c2-6 and to the Division's letter, various

proposals for modification of the NASDAQ entry and maintenance criteria were considered by a number of NASD committees and by the Board of Governors at its March 1990 meeting. The Board determined at this meeting that it would be consistent with the public interest and the protection of investors to amend Schedule D of the By-Laws to increase the initial and continued inclusion criteria for issues on the NASDAQ System.

SUMMARY OF PROPOSED AMENDMENTS

The rule change will increase the requirements for initial listing in the NASDAQ System to \$4 million in total assets and \$2 million in total capital and surplus, and require \$1 million in market value of public float and a minimum bid price of \$3 per share. Other entry standards for listing would be retained without change.

The rule change would also increase the NASDAQ maintenance requirements to \$2 million in total assets and \$1 million in capital and surplus, and would require two market makers, \$200,000 in market value of public float, and a minimum bid price of \$1 share.

The proposed amendments would treat U.S. and Canadian issuers in an equal manner but would exempt non-Canadian foreign issues and American Depositary Receipts from the price per share and the related market value of public float requirements. The NASD believes that treating Canadian

and domestic issues alike is appropriate and consistent with positions taken by the Securities and Exchange Commission in the past. (See Exchange Act Release 20624, October 6, 1983). Furthermore, the NASD believes that trading characteristics of non-Canadian foreign issuers warrant an exclusion, at this time, from the price per share and related market value of float requirements.

The increase in the maintenance requirements will be delayed until January 1, 1991 to allow issuers additional time to comply with the increased standards and is contingent upon the NASD-operated OTC Bulletin Board service being in operation at that time.

The NASD will make the rule changes to the initial inclusion criteria effective and applicable to all issuers on Commission approval. On February 15, 1990, the NASD filed with the SEC a proposal for certain interim changes to the NASDAQ entry standards. In that filing, the NASD expressed its intent that issuers that applied and were authorized for NASDAQ inclusion on or after February 15, 1990, but prior to the approval of the interim standards by the Commission, would be required to demonstrate compliance with the interim standards within 90 days of SEC approval of those standards or be subject to removal from the NASDAQ System.

The NASD has withdrawn that earlier filing and incorporated its provisions regarding the effectiveness of the new requirements into the permanent filing. The proposed entry requirements will, therefore, be applicable to issuers having applied on or after February 15, 1990, ninety (90) days after the Commission's approval of the rule changes.

Applications 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 ninety (90) days of Commission approval of the proposal.

The new criteria may result in certain NASDAQ companies being deleted from the system. In addition, certain issuers that would qualify under the existing entry requirements may not qualify under the proposed entry requirements.

The NASD has addressed these issues in several ways. First, the NASD intends to delay the effectiveness of the increased maintenance criteria until January 1, 1991, to allow existing NASDAQ

issuers a reasonable period of time to take appropriate action to remedy any deficiencies that may exist. In addition, the NASD is providing an alternative trading medium for companies that will not be eligible for NASDAQ inclusion, or that may be deleted from NASDAQ, through its proposed OTC Bulletin Board service, which will provide a viable market for issuers having securities that are not included in the NASDAQ System. The "Bulletin Board" will operate on a real-time basis, allowing member firms, for the first time, to enter, update, and view quotation information on OTC securities that are not included in the NASDAQ System. As previously indicated, the effectiveness of the proposed new maintenance standards is predicated on implementation of the Bulletin Board.

Finally, the procedures for obtaining exceptions to the qualification requirements pursuant to Part II, Section 3 of Schedule D, the procedural safeguards provided pursuant to Article IX of the NASD Code of Procedure, and review of such determinations by the Commission will continue to be available to the affected issuers.

The NASD has also considered the effect these proposed changes will have on the capital formation process. It is unquestionable that inclusion in the NASDAQ System aids in the capital formation process. However, this should not impede the ability of the NASD to impose meaningful standards for the initial and continued listing of securities in a credible marketplace. Such credibility is most important to the capital formation process, and the proposed increased standards will further enhance such credibility.

In addition, there are currently more than 10,000 securities that are publicly traded and regularly quoted outside of the NASDAQ and exchange markets that have, at some point, accessed the public capital markets without seeking inclusion in NASDAQ or an exchange. In its discussions on this issue, the NASD Board noted that traditional sources for financing of small companies have included, among others, private placements, venture capital investments, and offerings under Regulation A, all of which are still available. There is no reason to believe that such access to capital will not continue, and even be enhanced, once the increased visibility of the Bulletin Board becomes available.

Questions concerning this notice may be

directed to John T. Wall, Executive Vice President,
Marketing and Market Operations, at (202)

728-8200, or T. Grant Callery, Vice President and
Deputy General Counsel at (202) 728-8285.

NASDAQ QUALIFICATIONS STANDARDS

Entry Standards

	Present	Proposed
Total Assets	\$2 million	\$4 million
Capital & Surplus	\$1 million	\$2 million
Public Float	100,000 shares	100,000 shares
Market Value of Public Float	None	\$1 million
Market Makers	2	2
Bid Price	None	\$3

Maintenance Standards

To Be Effective 1/1/91 Contingent Upon OTC Bulletin Board Being Operational at That Time

	Present	Proposed
Total Assets	\$750,000	\$2 million
Capital & Surplus	\$375,000	\$1 million
Public Float	100,000 shares	100,000 shares
Market Value of Public Float	None	\$200,000*
Market Makers	1	2*
Bid Price	None	\$1*
Shareholders	300	300

*A deficiency in the maintenance standards for market value of public float, market makers, and bid price will be determined if the issue fails the individual stated requirement for 10 consecutive trading days. If failure of the 10-day test occurs, the issuer will be notified promptly and will be given 90 calendar days in which to comply with the entry-level standard of the specific area failed.