NASD

Notice To Members

National Association of Securities Dealers, Inc. June 1992

Number 92-30

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 Amendment to Rules of Fair Practice to Require Members to Send Periodic Statements of Account to Customers; Last Voting Date: July 22, 1992

EXECUTIVE SUMMARY

The NASD invites members to vote on a proposed amendment to the Rules of Fair Practice to require member firms to send periodic account statements to customers. The last voting date is **July 22, 1992.** The text of the amendment follows this Notice.

BACKGROUND AND DESCRIPTION OF PROPOSAL

The NASD does not currently require members to send periodic account statements to customers. SEC Rule 15c3-2 requires broker/dealers to send statements to customers at least every three months notifying them that their free credit balances may be used by broker/dealers or paid on demand to the customers. The requirement of Rule 15c3-2, however, only applies if a customer has a free credit balance.

The NASD is aware that some broker/dealers send only the required Rule 15c3-2 notice to those customers with free credit balances and do not send account statements. As a result, these customers are not advised of the current status of their accounts, regardless of whether the status of the accounts may have changed.

The Board of Governors (Board) believes that, in the interest of customer protection, customers should be more fully informed of the status of their accounts. The Board is proposing to require that members send periodic account statements at least once every quarter to customers having securities positions, funds, or any change in their account during the period since the previous statement was sent. The proposed rule would require that the statement include a description of all securities positions, money balances, and account activity in the account during the period.

Subsection (a) of the proposed rule would require each general securities member to send a statement of account containing a description of all account activity to each customer not less than once every quarter. The requirement may be met by any account statements showing all account activity that are sent more frequently than quarterly.

Subsection (b) of the proposed rule defines the term "account activity" to include all types of activity that may occur in a securities account with respect to "securities or funds in the possession or control of the member." Thus, this limitation exempts account activity relating to funds or securities not in the control of the member, such as direct participation program (DPP) securities where the

general partner communicates directly with investors after the initial purchase through the distributing broker/dealer.

Subsection (c) defines the term "general securities members" as a member that calculates its net capital under Subsection (a) of SEC Rule 15c3-1 [excluding paragraphs (a)(2) and (3)], or, in other words, a broker/dealer subject to a minimum net capital requirement of at least $25,000. Subsection (c) further defines the term general securities member to *exclude* members who do not carry customer accounts or hold customer funds or securities. Thus, members whose business is limited to the sale of variable contract insurance products, mutual funds, and unit investment trusts, among other products, or who do not carry accounts or hold customer funds or securities are exempt from the provisions of the rule. The member carrying the account or holding the funds or securities for such members will be responsible for complying with the rule.

The Board believes that customers of members with such limited business are adequately informed and protected under various statutory and regulatory mechanisms. The Investment Company Act of 1940 currently requires issuers of variable contracts, mutual funds, and unit investment trusts to send semi-annual statements of portfolio and financial condition to contractholders and shareholders. Also, activity such as a purchase, distribution, or redemption in connection with variable contracts, mutual funds, or unit trusts usually triggers a statement to the customer from the issuer, its agent, or a member firm.

Both subsections (b) and (c) exempt members from the periodic account statement requirements if the member does not carry customer accounts or hold customer funds or securities. The Board does not believe members, whether limited or general broker/dealers, should bear the burden of reporting information on securities or funds not in their possession and for which they may not be able to obtain or independently confirm. In the case of DPP and similar products, when a customer purchases DPP units through a member, the funds received from the customers are forwarded to the general partner (through an escrow account), admission to the partnership is confirmed directly to the purchaser by the general partner, and all subsequent communications are usually between the general partner and the investor. The selling member normally has neither possession of the security nor information to report to the investor.

Subsection (d) of the proposed rule permits the NASD's Operations Committee to exempt any member from the provisions of the rule on a showing of good cause. This would permit the NASD under unusual circumstances to exempt a member if application of the rule would be unnecessarily burdensome given the type of business it conducts and the nature of the accounts, securities, or funds involved, and if the goal of customer protection and information could be met under alternative arrangements.

REQUEST FOR VOTE

The Board believes that the proposed new rule will provide customers with more timely information regarding the status of their securities positions and account balances and will be an additional safeguard against errors and misunderstandings between members and customers, a benefit to both customers and members. The Board considers the proposed rule change necessary and appropriate and recommends that members vote their approval. Please mark the attached ballot according to your convictions and mail in the enclosed, stamped envelope to The Corporation Trust Company. Ballots must be postmarked by **no later than July 22, 1992.** Questions concerning this Notice should be directed to Elliott R. Curzon, Office of General Counsel, at (202) 728-8451.

TEXT OF PROPOSED RULE

Rules of Fair Practice

(**Note:** All language is new.)

Customer Account Statements

(a) Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer.

(b) For purposes of this section, the term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal en-

tries relating to securities or funds in the possession or control of the member.

(c) For purposes of this section, the term "general securities member" shall refer to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraphs (a)(2) and (a)(3). Notwithstanding the foregoing definition, a member which does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of this section.

(d) The Association, acting through its Operations Committee, may, pursuant to a written request and for good cause shown, exempt any member from the provisions of this section.

NASD

Notice To Members

National Association of Securities Dealers, Inc. June 1992

Number 92-31

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 Approval of Amendments Relating to the Contingent Suspension of Members and Associated Persons

EXECUTIVE SUMMARY

On May 13, 1992, the Securities and Exchange Commission (SEC) approved amendments to Article V, Section 1 of the NASD Rules of Fair Practice. The amendments permit suspension of members and associated persons in disciplinary actions to be made contingent on the performance of a particular act. The amendments will become effective July 15, 1992. The text of the amendments follows the discussion below.

BACKGROUND AND DESCRIPTION OF AMENDMENTS

On May 13, 1992, the SEC approved amendments to the Article V, Section 1 of the Rules of Fair Practice relating to the use of contingent suspensions in disciplinary actions involving members and associated persons.

Article V, Section 1 of the NASD Rules of Fair Practice currently sets forth the types of sanctions that may be imposed by the Board of Governors (Board) or any District Business Conduct Committee (DBCC) or Market Surveillance Committee (MSC) (collectively, the "NASD") for rule violations. Among several types of sanctions, Section 1 states that the NASD may "suspend the membership of any member or suspend the registration of a person associated with a member, if any, *for a definite period* . . ." (emphasis added). As a result of this requirement that suspensions be for a definite period, Article V, Section 1 currently precludes the imposition of a suspension that does not state a specific duration.

The NASD has often required, as part of the sanctions imposed, that the respondent in a disciplinary action perform a particular act (e.g., make restitution to the victim(s) or requalify for registration by retaking the appropriate qualification examination). Because of the requirement that suspensions be for a definite period, the NASD believes that imposing a requirement to perform a specific act as part of a sanction of suspension may render the suspension indefinite and, therefore, inconsistent with Article V, Section 1.

Under the new language of Article V, Section 1, the NASD will be permitted to impose a suspension that has a duration contingent on the performance of a specific act by the respondent. Thus, the duration of the suspension is controlled by the respondent. This rule change provides the NASD with the flexibility to fashion sanctions that require respondents to undertake and meet certain obligations before being allowed to continue in their status as members or registered persons.

Examples of such contingent suspensions are

the suspension of an individual until he requalifies by examination, the suspension of a firm until it meets the limitations imposed by its restrictive agreement, the suspension of a firm or individual until restitution is made to the victim(s), the suspension of a firm or individual until an arbitration award is paid in full, or the suspension of a firm until it institutes additional supervisory safeguards. In addition, a suspension of a specific duration may be combined with a contingent one. For example, an individual could be suspended until he or she requalifies by examination but in no case less than three months. Or, as another example, a firm could be suspended until it hires a Financial and Operations Principal (FINOP) or for 30 days, provided that when the 30 day suspension is completed, the firm will not conduct a business requiring that the firm have a FINOP.

The NASD believes that placing control over the duration of the suspension with the respondent provides incentives that will further the purposes of the securities laws and the disciplinary program by ensuring that remedial measures are taken. A contingent suspension will be particularly useful in cases involving customer losses, as it would provide an incentive to the respondent to make restitution to its victim(s). Customers who are the beneficiaries of such restitution may thereby be relieved of the necessity of obtaining damages through a separate proceeding in arbitration or in the courts.

Questions regarding this Notice may be directed to P. William Hotchkiss, Director, Surveillance Department, at (202) 728-8221, and Elliott R. Curzon, General Counsel's Office, at (202) 728-8451.

ARTICLE V OF THE NASD RULES OF FAIR PRACTICE

(**Note:** New language is underlined.)

Sanctions for Violations of the Rules

Sec. 1. Any District Business Conduct Committee, Market Surveillance Committee, the National Business Conduct Committee, any other committee exercising powers assigned by the Board, or the Board, in the administration and enforcement of these Rules, and after compliance with the Code of Procedure, may (1) censure any member or person associated with a member, and/or (2) impose a fine upon any member or person associated with a member, and/or (3) suspend the membership of any member or suspend the registration of a person associated with a member, if any, for a definite period, and/or for a period contingent on the performance of a particular act, and/or (4) expel any member or revoke the registration of any person associated with a member, if any, and/or (5) suspend or bar a member or person associated with a member from association with all members, and/or (6) impose any other fitting sanction deemed appropriate under the circumstances, for each or any violation of any of these Rules by a member or person associated with a member or for any neglect or any refusal to comply with any orders, directions or decisions issued by any such committee or by the Board in the enforcement of these Rules, including any interpretative ruling made by the Board, as any such committee or the board, in its discretion, may deem to be just; provided, however, that no such sanction imposed by any such committee shall take effect until the period for appeal therefrom or review thereof by the National Business Conduct Committee or the Board, as applicable, has expired and any such appeal or review has been completed in accordance with the Code of Procedure; and provided, further, that all parties to any proceeding resulting in a sanction shall be deemed to have assented to or to have acquiesced in the imposition of such sanction unless any party aggrieved thereby shall have made application for review thereof pursuant to the Code of Procedure, within fifteen (15) days after the date of the decision rendered in such proceeding.

NASD

Notice To Members

National Association of Securities Dealers, Inc. June 1992

Number 92-32

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: Request for Comments on Proposed Amendment to the Rules of Fair Practice Relating to the Respective Obligations and Supervisory Responsibilities of Introducing and Clearing Firms; Last Date for Comments: July 22, 1992

EXECUTIVE SUMMARY

The NASD requests comments on a proposed amendment to the Rules of Fair Practice to require members entering into clearing or carrying agreements to specify the obligations and supervisory responsibilities of both the introducing and clearing firm. The text of the proposed rule follows this Notice.

BACKGROUND

The NASD is proposing to amend the Rules of Fair Practice to require members entering into a clearing agreement, as either an introducing firm or a clearing firm, to specify the respective functions, obligations, and supervisory responsibilities of each party to the agreement. The proposed rule results from recommendations of the NASD's Advisory Council and the Securities Industry Association (SIA) that the NASD clarify the obligations and supervisory responsibilities of clearing and introducing firms.

In considering whether to adopt the proposed rule, the Board of Governors (Board) has considered that a similar New York Stock Exchange (NYSE) rule (NYSE Rule 382) was already in place. Accordingly, the Board believes that it is appropriate to propose a rule that would provide consistent treatment for broker/dealers that are not NYSE members.

At the time the Securities and Exchange Commission (SEC) considered the NYSE's proposed rule, the NASD commented to the SEC that permitting certain functions to be allocated to the introducing member may result in compliance failures and violations resulting from the inability of the introducing member to adequately perform those functions. The NASD urged that members should not be permitted to avoid obligations or responsibilities which would otherwise be theirs under the securities laws.

In its order approving the NYSE Rule 382, the SEC recognized the NASD's concerns and stated, " . . . no contractual arrangement for the allocation of functions between an introducing and carrying organization can operate to relieve either organization from their respective responsibilities under federal securities laws and applicable SRO rules."[1] This rule incorporates this principle as

[1]Securities Exchange Act Release No. 18497.

previously asserted by the NASD and noted by the SEC.

Subsection (a) of the proposed rule requires a member's clearing agreement to specify the functions and responsibilities of the respective parties. Subsection (a) further requires that at a minimum the agreement address the seven functions enumerated in subsections (a)(1) through (a)(7), and that the agreement specify the party ordinarily responsible for any other function included in the agreement. Members which are subject to a comparable rule of a national securities exchange, such as NYSE Rule 382, are exempt from the provisions of the proposed rule.

Subsection (b) of the proposed rule requires a clearing member to submit its clearing agreement to the NASD for review and approval in the event there are any amendments relating to the functions specified in subsection (a)(1) through (a)(7), or if the clearing member enters into a new agreement with another introducing firm, unless the clearing member is subject to review and approval pursuant to a comparable rule of a national securities exchange.

Subsection (c) of the proposed rule requires an introducing member to submit its clearing agreement to the NASD in the event of any amendment relating to the functions specified in subsections (a)(1) through (a)(7), or if the introducing member enters into a new clearing agreement with another clearing firm. Subsection (a) does not require the introducing member to seek prior approval of any changes. Subsections (b) and (c) both embody the NASD's view that changes which are of little regulatory concern, such as changes to fees and charges, do not need approval.

Under Subsections (b) and (c), the NASD would review and approve clearing agreements required to be submitted by a clearing firm if the agreement is not subject to the review and approval of a national securities exchange.

Finally, Subsection (d) of the proposed rule requires introducing members to disclose the existence of the agreement to customers on the opening of an account and to disclose the terms of the agreement as it relates to the responsibilities specified in subsections (a)(1) through (a)(7).

The Board believes that this provision will reduce customer confusion regarding the identity of the responsible party when questions or complaints arise.

REQUEST FOR COMMENTS

The Board asks members and other interested persons to comment on the proposed rule to the NASD Rules of Fair Practice. Comments should be directed to:

Stephen Hickman
Office of the Secretary
National Association of Securities Dealers, Inc.
1735 K Street, NW
Washington, DC 20006-1506.

Comments must be received **no later than July 22, 1992.** Comments received by this date will be considered by the Board. Prior to becoming effective, the rule must be adopted by the Board and the membership and then filed with the SEC for its approval.

Questions concerning this Notice should be directed to Elliott R. Curzon, Office of General Counsel, at (202) 728-8451.

TEXT OF PROPOSED RULE

Rules of Fair Practice

(**Note:** All language is new.)

Clearing Agreements

(a) Any clearing or carrying agreement entered into between a member firm and any other firm, except where the member is also subject to a comparable rule of a national securities exchange, shall specify the respective functions and responsibilities of each party to the agreement and shall, at a minimum, specify the responsibility of each party with respect to each of the following functions:

(1) opening, approving and monitoring customer accounts;
(2) extension of credit;
(3) maintenance of books and records;
(4) receipt and delivery of funds and securities;
(5) safeguarding of funds and securities;
(6) confirmations and statements; and
(7) acceptance of orders and execution of transactions.

(b) Whenever a clearing member amends its clearing or carrying agreement with an introducing firm with respect to any item enumerated in Subsections (a)(1) through (a)(7) of this Section, or enters into a new clearing or carrying agreement with an introducing firm, the clearing member shall sub-

mit the agreement to the NASD for review and approval unless the clearing member is subject to comparable review and approval requirements of a national securities exchange.

(c) Whenever an introducing member designated to the NASD under Securities and Exchange Commission Rule 17d-1 amends its clearing or carrying agreement with a clearing firm with respect to any item enumerated in Subsections (a)(1) through (a)(7) of this Section, or enters into a new clearing agreement with another clearing firm, the introducing member shall submit the agreement to the NASD.

(d) Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of his account of the existence of the clearing or carrying agreement and of the terms of the agreement as it relates to the responsibilities specified in subsections (a)(1) through (a)(7).

NASD

Notice To Members

National Association of Securities Dealers, Inc. June 1992

Number 92-33

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: Providing of Proxy Voting Advice to Customers

EXECUTIVE SUMMARY

The NASD has received a "No-Action Letter" (letter) from the Division of Corporation Finance of the Securities and Exchange Commission. It provides that a broker/dealer may rely on the provisions of SEC Rule 14a-2(b)(2) to contact a customer and provide proxy voting advice and information on a company's proposals without complying with certain of the proxy rules of the Commission. The text of the NASD's letter requesting clarification of SEC Rule 14a-2(b)(2) and the no-action letter follow this Notice.

BACKGROUND

The NASD is engaged in efforts with the United States Congress, the Securities and Exchange Commission (SEC), and others to protect the rights of security holders involved in merger and acquisition transactions that are commonly referred to as roll-ups. Roll-ups are an area of concern at the present time in the partnership industry as Congress, the SEC, the NASD, and the states move to protect investors from documented abuses that have occurred in previous roll-up transactions.

As part of its efforts to ensure that an investor is provided with accurate information on which to base a decision regarding a proxy vote, the NASD asked the SEC to clarify that broker/dealers may rely on the "safe-harbor provisions" of SEC Rule 14a-2(b)(2) to contact a customer and advise them regarding the merits of a roll-up transaction. The NASD requested the no-action letter because it was unclear under the safe-harbor provisions that a broker/dealer could initiate contact with the customer to provide such information and advice.

The letter states that the anti-fraud provisions of SEC Rule 14a-9 are fully applicable to a broker/dealer that relies on the safe harbor. The letter further provides that a broker/dealer must render financial advice as part of its ordinary course of business and have a business relationship with the customer at the time it is providing the proxy voting advice.

The broker/dealer must also disclose to the customer any significant relationship it has with the issuer and its affiliates or with a shareholder who has a stated position on the matter on which the advice is given. And the broker/dealer must disclose if it has a material interest in the matter to be voted on.

Furthermore, the broker/dealer may not receive special compensation for furnishing the advice from any person other than the customer and may not rely on the safe harbor if the advice is being furnished on behalf of anyone who is actively soliciting proxies or on behalf of a person

who is a participant in an election contest subject to SEC Rule 14a-11.

Once the terms and conditions outlined above have been satisfied, a broker/dealer can contact and advise a customer regarding his or her proxy vote. It should be noted that no amount of disclosure will permit a broker/dealer to rely on the provisions of the safe harbor if it is acting on behalf of a soliciting person such as the issuer or its affiliates, or receiving directly or indirectly any compensation from a soliciting person.

Traditionally, broker/dealers have relied on the provisions of the safe harbor only when a customer has called the broker to ask for advice. In these cases of providing unsolicited advice, the SEC normally has not considered a broker/dealer to be a participant in a proxy solicitation or to be engaged in soliciting activity where the broker/dealer merely responded, whether orally or in writing, to a customer's request for an opinion or recommendation on how to vote. The terms of this letter now make clear that a broker/dealer may initiate contact with customers to provide such proxy voting advice.

Questions regarding this letter may be directed to the Office of the Chief Counsel for the Division of Corporation Finance at (202) 272-2573 or to Charles L. Bennett, Director of the NASD's Corporate Financing Department, at (202) 728-8258 or Shirley H. Weiss, Assistant General Counsel, at (202) 728-8844.

NASD®

National Association of
Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1506
(202) 728-8000

May 19, 1992

Ms. Linda C. Quinn
Director, Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Room 3000, Mail Stop 3-1
Washington, D.C. 20549

Re: National Association of Securities Dealers, Inc.
Request for Clarification of SEC Rule 14a-2(b)(2)

Dear Ms. Quinn:

The National Association of Securities Dealers, Inc. ("NASD") requests the Commission's assistance to clarify the regulatory responsibilities of its member firms, and persons associated therewith (collectively "broker/dealers") who, in compliance with the requirements of SEC Rule 14a-2(b)(2), give proxy voting advice which has not been solicited by their customers.

Rule 14a-2(b)(2), which was "designed to remove an impediment to the flow of information to shareholders from professional financial advisors who may be especially familiar with the affairs of issuers," (Release No. 34-16356 (November 23, 1979)), exempts financial advisors who furnish proxy voting advice to persons with whom the advisor has a business relationship from the proxy filing and informational requirements (Rules 14a-3 through 14a-8, and 14a-10 through 14a-14) provided certain conditions are met. In Release No. 34-16104 (August 13, 1979), the Commission explained that "advisors" would normally include financial analysts, investment advisors, and broker/dealers. A "business relationship" would exist if the advisor had previously provided financial advisory services, and the recipient had provided compensation or otherwise consented to receipt of the services.

The NASD believes that the plain meaning of Rule 14a-b(2) creates an exemption for broker/dealers from the informational and filing requirements of Section 14(a) of the Securities Exchange Act of 1934 (the "Act") and Rule 14A thereunder, if they comply with the requirements of SEC Rule 14a-2(b)(2), notwithstanding that their customers have not sought such advice. A significant number of broker/dealers have, however, sought reassurance from the NASD that they are not subject to the proxy informational and filing requirements if they provide proxy voting advice which their customers have not solicited, even if they meet the requirements

of Rule 14a-2(b)(2). This issue has become particularly pertinent in connection with roll-up transactions of direct participation programs.

The NASD therefore requests interpretative advice from the Division of Corporation Finance regarding the circumstances under which broker/dealer members of the NASD may give proxy voting advice, whether solicited by customers or not, without becoming subject to the informational and requirements of Section 14(a) of the Act and Rule 14A thereunder.

Should you have any questions regarding this request, please do not hesitate to contact Charles L. Bennett, Director, Corporate Financing Department, at (202) 728-8253, Shirley H. Weiss, Assistant General Counsel, Office of General Counsel, at (202) 728-8844, or the undersigned at (202) 728-8020. I appreciate your attention regarding this issue.

Very truly yours,

Richard G. Ketchum
Executive Vice President
Legal, Regulatory & Market Policy

L-NOACT4

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

May 19, 1992

Mr. Richard G. Ketchum
Executive Vice President
Legal, Regulatory & Market Policy
National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re: National Association of Securities Dealers, Inc.
Incoming letter dated May 19, 1992

Dear Mr. Ketchum:

This responds to your request regarding the applicability of the Commission's proxy rules to proxy voting advice rendered by registered broker-dealers to their customers in the context of a proxy solicitation which seeks securityholder approval of a proposed roll-up transaction. As explained below, broker-dealers providing such advice are exempted from otherwise applicable proxy filing and disclosure requirements, but not from the antifraud provisions of the proxy rules, provided they comply with certain specified conditions that are intended to enable securityholder-customers to assess the reliability and integrity of the advice.

Rule 14a-2(b)(2), promulgated by the Commission under Section 14(a) of the Exchange Act, provides an exemption from the proxy rules other than the antifraud provisions of Rule 14a-9 for a broker-dealer or other person who, subject to certain conditions, furnishes proxy voting advice to another person with whom he or she has a business relationship. Such conditions are as follows:

(1) that the person furnishing proxy voting advice to any securityholder of the issuer, referred to as the "advisor," render financial advice in the ordinary course of business;

(2) the advisor disclose any significant relationship with the issuer, its affiliates, or a securityholder proponent of the matter on which proxy voting advice is given, as well as any material interest of the advisor in that matter;

(3) that the advisor receive no special commission or remuneration for furnishing the voting advice from any person other than the securityholder recipient thereof; and

(4) that the voting advice is not furnished on behalf on any person soliciting proxies, or on behalf of a participant in an election contest subject to Commission Rule 14a-11.

Under the foregoing requirements, a broker-dealer advising customer-securityholders may contact them to provide information and advice regarding their proxy vote in reliance on Rule 14a-2(b)(2) notwithstanding the existence of a significant relationship between the broker-dealer and the issuer or any other person engaged in soliciting proxies, or a material interest of the broker-dealer in the resolution of a proxy voting issuer. The broker-dealer would, however, have to disclose any such relationship or interest when providing proxy voting advice to a securityholder-customer, and also meet the other eligibility standards enumerated in the Rule. No amount of disclosure would allow a broker-dealer to rely on the exemption to furnish proxy voting advice voluntarily to a securityholder customer if he or she is acting on behalf of a person soliciting proxies, or receives compensation related, directly or indirectly, to the furnishing of the advice or the matter subject to the solicitation from such a soliciting person or from any other person who is not the customer-recipient of the advice.

A broker-dealer's need to rely on the Rule 14a-2(b)(2) exemption when rendering proxy voting advice generally arises only when the advice is unsolicited. The Commission normally would not deem a broker-dealer not otherwise a participant in a proxy solicitation to be engaged in soliciting activity triggering application of the Commission's proxy rules where the broker merely responds, whether orally or in writing, to a customer request for an opinion or recommendation on how to vote. Absent evidence to the contrary, the fact that a broker did not affirmatively seek out a customer to offer an opinion or recommendation on the issues submitted to a securityholder vote, but instead expressed a view when asked by a customer, is considered reflective of a lack of intent to solicit a proxy, consent or authorization within the meaning of the Commission's definition of a "solicitation" subject to it's proxy regulation.

I hope this information proves helpful.

Sincerely,

Abigail Arms
Chief Counsel

NASD

Notice To Members

National Association of Securities Dealers, Inc. June 1992

Number 92-34

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: Independence Day — Trade Date-Settlement Date Schedule

Securities exchanges and The Nasdaq Stock Market[SM] will be closed on Friday, July 3, 1992 in observance of Independence Day. "Regular way" transactions made on the business days immediately preceding that day will be subject to the settlement date schedule listed below.

Trade Date		Settlement Date		Reg. T Date*	
June	24	July	1	July	6
	25		2		7
	26		6		8
	29		7		9
	30		8	June	10
July	1		9		13
	2		10		14
	3	Markets Closed			—
	6		13		15

Brokers, dealers, and municipal securities dealers should use these settlement dates for purposes of clearing and settling transactions pursuant to the NASD Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of these settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (212) 858-4341.

*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within seven (7) business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column entitled "Reg. T Date."