

# Notice To Members

National Association of Securities Dealers, Inc.

December 1992

## Number 92-65

### Suggested Routing:\*

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

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## Subject: SEC Approval of Amendments Concerning the Exclusion of Class-Action Matters From Arbitration Proceedings and Requiring That Predispute Arbitration Agreements Include a Notice That Class-Action Matters May Not Be Arbitrated

### EXECUTIVE SUMMARY

On October 28, 1992, the Securities and Exchange Commission (SEC) approved amendments to Section 12 of the NASD Code of Arbitration Procedure and Article III, Section 21 of the NASD Rules of Fair Practice. The amendments to Section 12 took effect on October 28, 1992, but the change to Article III, Section 21 will not take effect until October 28, 1993, one year after Commission approval. The text of the amendments follows the discussion below.

### BACKGROUND AND DESCRIPTION OF AMENDMENTS

On October 28, 1992, the SEC approved amendments to Section 12 of the NASD Code of Arbitration Procedure (Code) and Article III, Section 21 of the NASD Rules of Fair Practice to exclude class-action matters from arbitration proceedings conducted by the NASD® and to require that predispute arbitration agreements contain a notice that class-action matters may not be arbitrated.

The Securities Industry Conference on Arbitration (SICA) developed the rule change in response to the SEC's directive, articulated by

former SEC Chairman David Ruder, that investors have access to the courts in appropriate cases. SICA determined to clarify the treatment of class actions in its rules and, since 1990, has been developing such rules for the Uniform Code of Arbitration. On January 7, 1992, SICA unanimously adopted a final version of its rule language, which has been modified to conform to the NASD's Code provisions.

The amendment to Section 12 of the Code adds a new subsection (d). Under subsection (d)(1) claims filed in arbitration as class actions are not eligible for submission under the Code. Subsection (d)(2) provides that claims filed by members of a putative or certified class action (class action) filed in another forum are ineligible for submission if the claim is part of the class action. A panel of one or three arbitrators or the court with jurisdiction over the class action will settle disputes over whether the claim is part of a class action.

Under subsection (d)(3) no member or associated person can compel arbitration against a customer who is a member of a class action unless class certification is denied, the class is decertified, the customer is excluded from the class, the customer either elects not to participate in the class action, or the customer has complied with court-imposed conditions for withdrawing from the class.

Accordingly, neither members nor their associated persons may use an existing arbitration agreement to compel a customer to arbitrate a claim included in a class action. Subsection (d)(4) provides that members and associated persons do not waive their rights under the Code or any agreement to arbitrate, except to the extent stated in Subsection (d).

The rule change also amends Article III, Section 21(f) of the NASD Rules of Fair Practice, which governs the content of predispute arbitration agreements with customers, to make it consistent with Subsection 12(d) of the Code. All new agreements signed by customers must contain a statement prohibiting persons from bringing class actions to arbitration and from attempting to enforce an agreement to arbitrate against a member of a class action. To provide NASD members sufficient time to redraft and reprint their arbitration agreements, the amendment to Section 21(f) will take effect October 28, 1993.

Questions regarding this Notice may be directed to Deborah Masucci, Vice President, Arbitration, at (212) 480-4881.

**PART III OF THE  
CODE OF ARBITRATION PROCEDURE**

**Required Submission**

**Sec. 12.** (a), (b) and (c) Unchanged.

(d) Class Action Claims.

(1) A claim submitted as a class action shall not be eligible for arbitration under this Code at the Association.

(2) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the Association if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to an arbitral forum not sponsored by a self-regulatory organization for classwide arbitration. However, such claims shall be eligible for arbitration in accordance with Section 12(a) or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of

Arbitration to a panel of arbitrators in accordance with Section 13 or Section 19 of the Code, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrators.

(3) No member or associated person shall seek to enforce any agreement to arbitrate against a customer who has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until: (A) the class certification is denied; (B) the class is decertified; (C) the customer is excluded from the class by the court; or (D) the customer elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(4) No member or associated person shall be deemed to have waived any of its rights under this Code or under any agreement to arbitrate to which it is party except to the extent stated in this paragraph.

\* \* \* \* \*

**TEXT OF AMENDMENTS TO ARTICLE III  
OF THE RULES OF FAIR PRACTICE**

**Books and Records**

**Sec. 21.**

\* \* \* \* \*

**Requirements When Using Predispute  
Arbitration Agreements with Customers**

(f)(5) The requirements of [this subsection] subparagraphs (f)(1) through (4) shall apply only to new agreements signed by an existing or new customer of a member after September 7, 1989.

(6) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbear-

ance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.”

(7) The requirements of subparagraph (6)

shall apply only to new agreements signed by an existing or new customer of a member after October 28, 1993.

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## Subject: Quotation and Trade-Reporting Requirements for Members Dealing in High-Yield Bonds

### EXECUTIVE SUMMARY

On November 9, 1992, the NASD<sup>®</sup> submitted rule proposals to the Securities and Exchange Commission (SEC) regarding quotation and transaction reporting requirements for members trading high-yield, fixed-income securities. The SEC is expected to act on these rules in the next few months, and members that trade high-yield bonds, especially dealers, brokers, and brokers' brokers, should contact the NASD now to find out what their new quoting and trade-reporting obligations will entail. For further information and a copy of the rule filing, contact Market Data Services at (301) 948-6162.

### BACKGROUND AND DESCRIPTION OF REQUIREMENTS

The NASD is proposing regulatory requirements for members that participate in the high-yield, fixed-income securities market. The proposed trade-reporting rules will require members to report transactions in all high-yield bonds traded over-the-counter to the NASD for regulatory purposes and will also require real-time trade reporting for securities included in the Fixed

Income Pricing System (FIPS). The NASD has developed FIPS to facilitate the collection, processing, and dissemination of real-time, firm quotations for 30 to 50 of the most liquid bonds in the top tier of high-yield, fixed-income securities. FIPS also provides for hourly dissemination of high/low trading ranges and accumulated volume in each bond quoted in the system.

High-yield bonds are classified as bonds that have been rated by Standard & Poor's as BB+ or lower, and FIPS will require brokers and dealers in the top 30 to 50 high-yield bonds to participate in the quotation system. The NASD has established an advisory committee to develop a list of the top-tier securities based on volume, price, name recognition of the issue, research following, and representation from diverse industry groups.

The NASD will assign a unique symbol identifier to each bond quoted in FIPS and trade reported to the NASD. The identifiers will be configured as mnemonics that relate to the issuer and the specific bond series and will be available on-line to FIPS subscribers and also in hard copy from the NASD so that members may distinguish between bonds with the same or similar due dates.

### Broker and Dealer Obligations for Quoting FIPS Bonds

Members holding themselves out regularly as

brokers or dealers in high-yield bonds quoted in FIPS will be required to participate in FIPS and transmit their quotations to the system for dissemination to the public. Dealer quotes may be one- or two-sided but must be continuous and firm to all members submitting offers to trade at the quoted prices and sizes.

Quotations submitted by members must reflect a minimum size of 100 bonds (\$100,000 par value) and be in increments of 1/8 percentage points.

Participants may trade at prices other than those quoted, but all quotes must be reasonably related to the prices at which those executions occur.

Registered dealers may enter quotes directly into FIPS or may use a registered broker's broker. Dealer quotations entered directly will be identified as such in FIPS; dealer quotations entered through a broker's broker will appear on the FIPS screen as the broker's quotes and the dealer's identity will remain anonymous to other participants and the public.

However, each individual dealer will be able to use FIPS to see its own quote reflected in the broker's quote. For example, if a broker received two dealer quotes for 100 bonds each, priced at 98, FIPS would reflect a single quote of 200 bonds at 98 from the broker. Both FIPS dealers would be able to "pierce" that broker quote, however, and see that 100 bonds reflected their own quote and the other 100 bonds were from another unidentified dealer.

Members will be able to view FIPS quotations through a FIPS terminal, and quotations will be disseminated to non-members through securities information processors, or vendors, so that they will be generally available to investors. The operating hours of the quotation system have been established as 9:30 a.m. to 4 p.m., Eastern Time (ET), to mirror the equity market hours.

### **Reporting Transactions in High-Yield Bonds**

Members will be required to submit trade reports on all transactions in FIPS securities (those top-tier securities quoted in FIPS) within five minutes after an execution, from 9 a.m. to 5 p.m., ET. In addition, members will be required to report information on all transactions in high-yield bonds to the NASD for surveillance purposes. Trade reporting for non-FIPS securities may be accomplished any time during the trading day, but no later than 5 p.m., ET, of trade date.

### **FIPS Functionality and Equipment**

The NASD will make FIPS quotation and summary transaction information available to investors and the public through securities information vendors. The data feeds to these vendors will include dealer and broker quotations on the FIPS bonds as well as aggregate transaction information, including hourly and daily summaries of high and low execution prices and accumulated volume in the FIPS securities.

Brokers and dealers in FIPS securities will be required to obtain a FIPS device or terminal to input, update, and view their quotations. All members trading high-yield bonds will be required to make contact with the NASD for real-time or end-of-day reporting of trades — either through dial-up or leased-line connections, computer interface, or by using the NASD's FIPS service desk. In addition, FIPS functionality will provide specialized dealer and broker screens tailored to the high-yield market, allow members to use their existing equity Computer-to-Computer Interface (CTCI) lines for trade reporting, and provide interfaces with member in-house trading systems.

Questions regarding members' obligations or equipment needs may be directed to S. William Broka, Vice President, Trading and Market Services at (202) 728-8050.

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**Subject: NASD<sup>®</sup> Responds to SEC's Market 2000 Concept Release****EXECUTIVE SUMMARY**

On November 20, 1992, the NASD<sup>®</sup> submitted to the Securities and Exchange Commission (SEC) a letter responding to the SEC's request for comments on today's market structure and regulatory environment, its "Market 2000" study. In its letter, the NASD asked the SEC to rescind off-board trading restrictions (especially those in place after U.S. markets have closed), rescind exchange-market delisting restrictions, require enhanced disclosure of payment-for-order-flow practices, and adopt regulations for proprietary trading systems.

**SUMMARY OF COMMENTS**

The Securities Exchange Act of 1934 (Act), as amended in 1975, reflects a heavy presumption in favor of competition. The rationale for this presumption is even more valid today than it was in 1975: all investors share a common interest in fairness and liquidity, but increasingly pursue diverse investment and trading strategies. Competition is the best means to facilitate these investor demands by promoting innovation and diversity in fair and efficient secondary market trading mechanisms.

**COMPETITION FOR ORDER FLOW**

The NASD believes that there is nothing unique about competition for order flow in exchange-listed stocks that would justify deviations by the SEC or Congress from the longstanding and still prevailing pro-competition approach to U.S. market structure. Competition for order flow in exchange-listed stocks has not caused a reduction in market quality. Indeed, the evidence is to the contrary — market quality has improved as competition has increased. So long as markets remain transparent, the NASD sees no reason why these trends should not only continue, but receive increasing attention and support.

The NASD also believes that competition for order flow in exchange-listed stocks has resulted in numerous innovations that would not have occurred if one market had a monopoly over order flow. The value of these competitive benefits to investors is significant and would be impossible to replicate in a monopolistic environment. Dispersal of order flow in exchange-listed stocks is a natural result of differing execution needs of diverse customers with different types and sizes of orders. Such dispersal occurs within markets as well as across competing markets. Some of these competing markets are foreign, so that it is in the interest of U.S. investors of all sizes and types for the SEC to continue to permit U.S. markets to provide the benefits that competition for order flow in

exchange-listed stocks brings, rather than to force U.S. investors to seek innovation and diversity abroad.

### OFF-BOARD TRADING RESTRICTIONS

While the markets have been changed and driven by competitive forces in the past 20 years, that evolution has not always been evenhanded or equitable. The exchange markets are able to trade the most active, premier Nasdaq stocks according to the Nasdaq unlisted trading privileges plan, but the majority of NASD market makers are still precluded from trading the most active, premier exchange stocks because of off-board trading restrictions. Indeed, third-market market makers are presently precluded from trading all exchange-listed securities in the only intermarket trading linkage, the Intermarket Trading System (ITS).

The SEC should respond to the success of prohibiting further expansion of off-board trading restrictions (through implementation of SEC Rule 19c-3) by now removing all off-board trading restrictions, especially during after-hours trading sessions. There is no evidence that the competition that has been allowed to occur in the marketplace has in any way harmed investors. Indeed, given the evidence of the benefits of the competition that has been allowed to occur in the form of innovation, diversity, and pricing, more competition, not less, will benefit investors.

The SEC Rule 19c-3 experiment has proven two things. First, that the auction and dealer markets *can* operate in synergy with each other, and second, that the existence of different types of systems and degrees of automation in market centers *need not* impede effective communication, competition, or regulatory oversight of markets. In that connection, recent experience demonstrates that competitive pressures are encouraging secondary markets to provide for price improvement measures including the exposure before execution of orders through ITS. Accordingly, the concerns raised by the internalization of customer order flow may be far less warranted today than in the past. For these reasons, the NASD believes that it is entirely proper for the SEC to remove all off-board trading restrictions, and to include all securities in the ITS linkage.

### PROPRIETARY TRADING SYSTEMS

Competition for order flow also occurs with

proprietary trading systems.<sup>1</sup> These systems have been developed for specialized customers and in response to specialized needs. While proprietary trading systems may offer unique services to segments of the marketplace, they currently operate under an ad hoc "no action" letter approach, considerably less burdensome and time-consuming than the regulatory framework that the self-regulatory organizations (SROs) must abide by when seeking approval of or enhancements to similar systems. The SEC must fashion an equitable regulatory approach for proprietary trading systems that neither stifles the innovative developers of such systems nor unduly burdens the SROs charged with surveiling those systems or those interested in developing comparable competitive systems.

### PAYMENT FOR ORDER FLOW

Given an environment where payment for order flow appears to contribute to competition and innovation and to reduce customer costs, and where best execution is occurring routinely, the only remaining regulatory issue is whether such practices are effectively disclosed. The NASD has on file with the SEC a rule proposal to require specific disclosure on customer confirmations regarding the receipt of additional remuneration for directing order flow. In addition, the 1991 study of payment-for-order-flow practices, the "Ruder" report, *Inducements for Order Flow*, contained recommendations that the NASD augment its rule proposal to require that firms disclose to customers a description of the firm's order-routing and execution practices as well as the inducements received by the firm. Inducements for order flow such as reciprocal trading arrangements and routing orders to affiliated or wholly owned entities for execution are commonplace in all markets, and investors should be made aware of the numerous transactional relationships that their brokers are involved in as well as the market centers in which their orders are executed so that they will be able to make informed decisions when placing their orders.

### TRANSPARENCY

The NASD believes that competition in the

<sup>1</sup> The NASD notes that third market makers are not deemed to be operators of proprietary trading systems solely because they operate internal execution systems. Members of the NASD registered as market makers in exchange-listed stocks are required to maintain firm, continuous, two-sided quotations and are regulated as market makers.

markets does not damage liquidity or prevent best execution, provided there is market information available to the public. Transparency of market information significantly improves the fairness and efficiency of the markets through enhancing the ability of market makers to determine accurately the present value of a security and by permitting investors to evaluate the quality of the executions they receive. Accordingly, we believe that the Act's preference for real-time quotation and transaction reporting is entirely appropriate.

### **DELISTING RESTRICTIONS**

Equally critical to competition among markets for order flow is the competition for listings. There are approximately 900 Nasdaq issuers that meet the listing standards of the New York Stock Exchange (NYSE) and the competition to attract those companies to list on the exchange is intense.

The present competition for listings, however, is profoundly unbalanced. NYSE Rule 500 prevents a listed company (that is otherwise considered by the exchange to be eligible for continued listing) from withdrawing and transferring its securities from the NYSE to another exchange or the Nasdaq<sup>®</sup> market without being required to comply with extremely arbitrary and burdensome rule requirements. The proposed withdrawal from listing must be approved by the company's security holders at a meeting at which a substantial percentage of the outstanding amount of the particular security is represented.

Since 1984, the NASD has been on record op-

posing NYSE Rule 500 as an unfair barrier to competition between the NYSE and The Nasdaq Stock Market.<sup>SM</sup> The SEC has also acknowledged that Rule 500 conceivably could have an anti-competitive effect since it would make it possible for the NYSE to prospect freely for listings from other SROs while making it difficult for them to seek listings from among NYSE-listed companies. Accordingly, the NASD believes that anti-competitive delisting restrictions should be rescinded immediately.

### **CONCLUSION**

Today's marketplace is a highly competitive, technologically sophisticated environment that has been witness to dynamic and rapid development of new products and innovative trading mechanisms. The NASD believes that where competition has been allowed to flourish in the securities markets, overall efficiency and services for customers have improved. In order to facilitate continued growth and innovation in the markets, the NASD recommends the SEC take the following actions:

- Eliminate off-board trading restrictions.
- Permit third market makers access to all exchange-listed securities through the ITS/CAES linkage.
- Adopt disclosure requirements regarding inducements for order flow.
- Adopt procedures for review of operations and allocation of regulatory costs for proprietary trading systems.
- Eliminate exchange delisting restrictions.



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**Subject: Federal and State Legislative Update****EXECUTIVE SUMMARY**

The second session of the 102nd Congress, which adjourned on October 9, 1992, passed only one major bill of direct interest to the securities industry, the *Futures Trading Practices Act*. Other proposed securities legislation involved government securities, limited partnership rollups, investment advisers, and mark-to-market securities inventory accounting. This Notice describes these bills, the NASD interest in them, and their status, including the likelihood of action in the next Congress. In addition, this Notice describes NASD activities with the states and the North American Securities Administration Association (NASAA).

The NASD's Office of Congressional and State Liaison monitors legislation that affects

the NASD in particular and the financial services industry in general. At the federal level, it tracks legislation, coordinates testimony, gives technical legislative drafting assistance, and serves as a focal point for contact with the NASD by congressional members and staffs. It provides similar, though limited, legislative functions at the state level and is involved in the state regulatory process through state securities commissioners and NASAA.

If you need further information about the following bills, or have information about federal or state legislation or rules regarding securities regulation that you believe is of interest to the NASD, please call the Office of Congressional and State Liaison at (202)728-8248.

**FEDERAL LEGISLATION**

■ **Government Securities Act Amendments** — When Congress passed the *Government Securities Act (GSA)* in 1986, it gave the NASD limited authority to regulate the financial condition of government securities broker/dealers. However, the GSA still prohibited the NASD from applying its sales-practice rules to transactions in government securities, which include treasury bills and

bonds as well as securities issued by government sponsored agencies such as GNMA and FNMA. Given the increasing complexity and risk involved in government securities and their derivatives (such as STRIPS and CMOs), which have been more popular in recent years, the NASD has sought to have the statutory prohibition against sales-practice regulation removed.

The GSA was due to expire at the end of

1991, and in January 1991 a Senate bill was introduced to reauthorize the GSA and give the NASD sales-practice authority with SEC and Treasury oversight. Granting the NASD this sales-practice authority over the sales of government securities by its members was supported by the SEC, Treasury, and the Government Accounting Office (GAO) as a necessary protection for investors. The bill passed the Senate in July 1991.

After the Salomon Brothers disclosures in the government bond market surfaced in August 1991, the Senate and House held numerous hearings — at which the NASD testified — in September, and the Senate passed a second bill that month, clarifying the SEC's anti-fraud authority over the government securities auction. In November, the House Energy and Commerce Committee introduced a bill that included NASD sales-practice authority, quotation and transaction reporting for regulatory purposes, and SEC backstop authority for public dissemination of government securities information. The controversy surrounding these additional provisions prevented passage of the bill, and the Treasury's authority to write new rules for the government market expired.

In June, both the House Energy and Commerce Committee and House Ways and Means Committee approved the Energy and Commerce bill. The House Banking Committee reviewed the Energy and Commerce bill in August and made a number of changes to give bank regulators responsibility for bank government dealers instead of the SEC. The full House rejected the Energy and Commerce Committee's bill when it was sent to the floor in September without the Banking Committee's amendments, based on the bill's procedural status rather than a substantive determination of the issues. Because Congress must amend the GSA to restore the Treasury's authority to write government securities rules, this bill will most likely be reintroduced early in the 103rd Congress.

■ **Limited Partnership Rollups** — Early in 1991, the House and Senate introduced bills to reform limited partnership rollup practices by changing proxy solicitation rules and granting rights to dissenters. The SEC and NASD opposed both bills as unnecessary, citing sufficient SEC and NASD authority to address the abuses that the legislation covers. The House bill passed last November, but the Senate bill — in spite of widespread sponsorship by the Senate — was blocked by Senator

Gramm (R-TX), who opposed the bill as unnecessary and too burdensome. Both bills died when Congress adjourned.

The NASD has responded to the legislative activity by proposing rules to address congressional concerns about partnership rollups. After adjournment 18 senators wrote to the NASD in support of the NASD's proposed rollup rules. Those rules would limit NASD member participation in partnership rollups that meet predetermined criteria and would restrict listings on the Nasdaq National Market<sup>®</sup> of securities resulting from rollups that fail to meet these criteria. Because those rules generally track the Senate bill and were approved by the NASD Board at its November 1992 meeting, Congress may not see as compelling a need to reconsider rollup legislation next year.

■ **Investment Advisers** — In February of this year the Senate introduced, at the request of the SEC, a bill to increase the number of SEC investment adviser examiners by charging an annual fee of \$300 to \$7,000 for registration. The bill also included a suitability requirement, fidelity bonding, and authorization for the SEC to require investment adviser filings to be made with a Central Registration Depository-type system for a fee. The SEC requested the bill because its resources allowed it to inspect advisers only once every 30 years on average. The Senate passed the bill in August without the suitability requirement.

The NASD sought to include in any adviser bills, authority for the SEC to designate a self-regulatory organization (SRO) to perform inspections of investment advisers affiliated with SRO members. The NASD believes that the incremental cost of expanding current inspections of members is lower than creating a new program, and members would benefit by having only one NASD inspection instead of both an NASD and SEC inspection. In addition, with the increased use of wrap-fee arrangements, the investment advisory and securities businesses are converging, with securities transactions being the focal point for both sets of regulations. Given that, it would be inefficient and disruptive to members for the SEC to examine transactions for compliance with adviser rules while the NASD examines the same transactions for compliance with securities rules.

The House proposed legislation that would have, in addition to the Senate bill's requirements, required surveys for unregistered investment advis-

ers, a rulemaking on the definition of adviser, disclosure of disciplinary history to clients, updated disclosure of compensation arrangements, a private right of action under the *Investment Advisers Act*, confidentiality for clients, and increased federal-state cooperation. As the bill went through the House process, Congress added the NASD proposal for SEC designation of an SRO for adviser inspections, dropped the private right of action and definition rulemaking, and relaxed a number of other requirements. The bill that passed the House in late September was combined with two unrelated securities bills.

The House and Senate were not able to resolve their different bills, which died when Congress adjourned. Given the effort spent on the bills by both Houses and the SEC's continuing need for more frequent investment adviser inspections, the 103rd Congress is likely to reconsider investment adviser legislation.

■ **Futures Trading Practices Act** — The Senate reintroduced its bill to reauthorize the Commodity Futures Trading Commission (CFTC) at the beginning of the 102nd Congress in 1991. Since it agreed with the Treasury and SEC that revisions were necessary to the *Commodity Exchange Act* to respond to the increasing impact stock index futures have had on the underlying securities markets, the NASD joined with other SROs to support a Bush Administration proposal on the CFTC's reauthorization in 1990, and NASD President Joseph Hardiman testified several times in support of it. That proposal would have moved jurisdiction of stock index futures from the CFTC to the SEC, provided federal margin-setting authority over commodities markets, and revised the exclusivity clause in the *Commodities Exchange Act*. The jurisdictional shift was not accepted, but a Senate bill was passed that granted federal oversight of stock index future margins and provided a regulatory framework for hybrid products — which include both securities and futures aspects.

Because the House bill had no similar provisions, the bills went to conference to reconcile differences. In October of this year, the *Future Trading Practices Act* became law. The Act's reauthorization, which lasts through fiscal year 1994, authorizes the Federal Reserve to set stock index future margins, which may be delegated to the CFTC. It also gives the CFTC general exemptive authority, which may be exercised, among

other things, over exchange-traded and over-the-counter swaps, and over the regulation of hybrid instruments. While the futures exchanges raised competitive concerns about the absence of governmental oversight of the over-the-counter derivative market, no jurisdictional changes were made on swaps pending a GAO study now in progress. When that study is completed early 1993, swaps could again become an issue in Congress.

■ **Mark-to-market securities inventory accounting** — The President's budget submitted in January of this year included a proposal to require securities inventories valuation at market for tax purposes, a change from the current method of lower of cost or market valuation. The proposal, included in both major tax bills this year, is a significant revenue item, with estimates ranging from \$2.5 to \$3.7 billion over a four- or five-year period. The NASD was concerned that the legislation could adversely affect market liquidity by increasing the tax on market makers' inventories and discouraging position-taking at year end.

As a result of NASD efforts, the second Senate tax bill, which also provides for urban enterprise zones, contained an exemption for market makers' and specialists' inventory. This provision was eliminated in conference and was not in the final bill sent to the President. The President vetoed both this and the earlier tax bill as violating his "no new taxes" pledge. Given the size of the revenue projected for this proposal, it will likely be re-examined in the 103rd Congress.

## STATE DEVELOPMENTS

The NASD has also been involved in significant state developments in the past year. These issues have involved the redevelopment and redesign of the CRD, an investment adviser registration system, the state "blue sky" exemption for Nasdaq National Market securities and amendments to broker/dealer reporting requirements.

With the addition of five states in 1991, the Nasdaq National Market has the same exemption status as the New York and American Stock Exchanges in all states except Virginia. Nasdaq National Market securities — both initial and secondary public offerings — are exempt from blue-sky review in all states except New Hampshire, Connecticut, and Virginia.

During 1992, the NASD filed a report with the State of California on the listing and waiver

process for Nasdaq National Market securities. As a result, the California securities commissioner has reported to the California legislature that he has no objection to making the Nasdaq National Market exemption, now subject to a sunset provision, permanent. In addition, the NASD has actively worked this year with the NASAA Registration Exemption Committee, which examines, among other things, state registration marketplace exemptions.

As part of its technology redesign of all of its systems, the NASD is completely rebuilding the CRD. The CRD is the database of records of all broker/dealer members and registered representatives. Members and agents use the CRD to register with the NASD and all states and update their CRD information.

The NASD has reached an agreement with NASAA on the redesign effort. The agreement provides for a completely new system that will involve more efficient access and communications between the membership, NASD, and the states. This new system will employ state-of-the-art technology as well as electronic filing. The redesign will also include a more logical presentation of the

information, as well as a new system for relicensing registered representatives with new employers that will replace the current Temporary Transfer Program (TAT).

The redesigned CRD will be used to register investment advisers and agents. This issue has become more critical as the members and associated persons registering with the states as investment advisers increase. Like CRD, the new system will permit registrants to file once with the new system and become registered in the various states.

After several years of discussion, the SEC, NASD, and NASAA have resolved their differing views regarding disclosure requirements in matters reportable by broker/dealers on Form BD. The differences involved what needed to be reported as a "proceeding" on the form.

The resolution requires reporting SRO and government formal administrative and civil actions, formal felony criminal indictments and informations or equivalents, and certain formal misdemeanor criminal informations. Not to be reported are criminal arrests without a formal written charge, investigations, and civil litigation.

# Notice To Members

National Association of Securities Dealers, Inc.

December 1992

**Number 92-69****Suggested Routing:\***

- Senior Management
- Corporate Finance
- Government Securities
- Institutional

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

- Operations
- Options
- Registration
- Research

- Syndicate
- Systems
- Trading
- Training

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

**Subject: NASD 1993 Holiday Schedule**

The NASD will observe the following holiday schedule for 1993:

January 1	New Year's Day	July 5	Independence Day (Observed)
February 15	Presidents' Day	September 6	Labor Day
April 9	Good Friday	November 25	Thanksgiving Day
May 31	Memorial Day	December 24	Christmas Day (Observed)

Questions regarding this holiday schedule may be directed to (301) 590-6821.

# Notice To Members

National Association of Securities Dealers, Inc.

December 1992

## Number 92-70

### Suggested Routing:\*

- |  |  |  |   |
|--|--|--|---|
| <input type="checkbox"/> Senior Management     | <input checked="" type="checkbox"/> Internal Audit     | <input checked="" type="checkbox"/> Operations | <input checked="" type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance     | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options               | <input checked="" type="checkbox"/> Systems   |
| <input type="checkbox"/> Government Securities | <input checked="" 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: Trade Date-Settlement Date Schedule for 1993

### Martin Luther King, Jr., Day: Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Martin Luther King, Jr., Day, Monday, January 18, 1993. On January 18, securities exchanges and The Nasdaq Stock Market<sup>SM</sup> will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

Trade Date	Settlement Date	Reg. T Date*
Jan. 7	14	18
8	15	19
11	19	20
12	20	21
13	21	22
14	22	25
15	25	26
18	25	27
19	26	28

**Note:** January 18, 1993, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on January 18 will be combined with transactions made on the previous business day, January 15, for settlement on January 25. Securities will not be quoted ex-dividend, and set-

tlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on January 18.

### Presidents' Day: Trade Date-Settlement Date Schedule

Securities exchanges and The Nasdaq Stock Market will be closed on Monday, February 15, 1993, in observance of Presidents' Day. "Regular way" transactions made on the preceding business days will be subject to the settlement date schedule listed below.

Trade Date	Settlement Date	Reg. T Date
Feb. 5	12	17
8	16	18
9	17	19
10	18	22
11	19	23
12	22	24
15	Markets Closed	—
16	23	25

\*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."

**Good Friday: Trade  
Date-Settlement Date Schedule**

Securities exchanges and The Nasdaq Stock Market will be closed on Good Friday, April 9, 1993. "Regular way" transactions made on the business days immediately preceding that day will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date
April 1	8	13
2	12	14
5	13	15
6	14	16
7	15	19
8	16	20
9	Markets Closed	—
12	19	21

**Memorial Day: Trade  
Date-Settlement Date Schedule**

Securities exchanges and The Nasdaq Stock Market will be closed on Monday, May 31, 1993, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date
May 21	May 28	June 2
24	June 1	3
25	2	4
26	3	7
27	4	8
28	7	9
31	Markets Closed	—
June 1	8	10

**Independence Day: Trade  
Date-Settlement Date Schedule**

Securities exchanges and The Nasdaq Stock Market will be closed on Monday, July 5, 1993, in observance of Independence Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date
June 25	July 2	July 7
28	6	8
29	7	9

July 30	8	12
1	9	13
2	12	14
5	Markets Closed	—
6	13	15

**Labor Day: Trade  
Date-Settlement Date Schedule**

Securities exchanges and The Nasdaq Stock Market will be closed on Monday, September 6, 1993, in observance of Labor Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date
August 27	Sept. 3	Sept. 8
30	7	9
31	8	10
Sept. 1	9	13
2	10	14
3	13	15
6	Markets Closed	—
7	14	16

**Columbus Day: Trade  
Date-Settlement Date Schedule**

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 11, 1993. On this day, securities exchanges and The Nasdaq Stock Market will be open for trading. However, it will not be a settlement date since many of the nation's banking institutions will be closed.

Trade Date	Settlement Date	Reg. T Date
Sept. 30	Oct. 7	Oct. 11
Oct. 1	8	12
4	12	13
5	13	14
6	14	15
7	15	18
8	18	19
11	18	20
12	19	21

**Note:** October 11, 1993, is considered a busi-

ness day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 11, will be combined with transactions made on the previous business day, October 8, for settlement on October 18. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 11.

**Veteran's Day and Thanksgiving Day:  
Trade Date-Settlement Date Schedule**

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Veteran's Day, Thursday, November 11, 1993, and Thanksgiving Day, Thursday, November 25, 1993. On Thursday, November 11, securities exchanges and The Nasdaq Stock Market will be open for trading. However, it will not be a settlement date since many of the nation's banking institutions will be closed in observance of Veteran's Day. All securities markets will be closed on Thursday, November 25, in observance of Thanksgiving Day.

Trade Date	Settlement Date	Reg. T Date
Nov. 2	Nov. 9	Nov. 11
3	10	12
4	12	15
5	15	16
8	16	17
9	17	18
10	18	19
11	18	22
12	19	23
17	24	29
18	26	30
19	29	Dec. 1
22	30	2
23	Dec. 1	3
24	2	6
25	Markets Closed	—
26	3	7

**Note:** November 11, 1993 is considered a

business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on November 11 will be combined with transactions made on the previous business day, November 10, for settlement on November 18. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on November 11.

**Christmas Day and New Year's Day:  
Trade Date-Settlement Date Schedule**

Securities exchanges and The Nasdaq Stock Market will be closed on Friday, December 24, 1993, in observance of Christmas Day, and Friday, December 31, 1993, in observance of New Year's Day. "Regular way" transactions made on the preceding business days will be subject to the settlement date schedule listed below.

Trade Date	Settlement Date	Reg. T Date
Dec. 16	Dec. 23	Dec. 28
17	27	29
20	28	30
21	29	Jan. 3, 1994
22	30	4
23	Jan. 3, 1994	5
24	Markets Closed	—
27	4	6
28	5	7
29	6	10
30	7	11
31	Markets Closed	—
Jan. 3, 1994	10	12

Brokers, dealers, and municipal securities dealers should use the foregoing 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.