NASD

Notice To Members

National Association of Securities Dealers, Inc. December 1992

Number 92-71

Suggested Routing:*

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

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

Subject: Nasdaq National Market® Additions, Changes, and Deletions as of November 20, 1992

As of November 20, 1992, the following 30 issues joined the Nasdaq National Market,® bringing the total number of issues to 2,956:

Symbol	Company	Entry Date	SOES Execution Level
EZEMB	E-Z-EM, Inc. (Cl B)	10/27/92	1000
HALO	HA-LO Industries, Inc.	10/28/92	1000
HCCH	HCC Insurance Holdings, Inc.	10/28/92	1000
PDCO	Patterson Dental Company	10/28/92	1000
RHOM	The Rottlund Company, Inc.	10/29/92	1000
MAIN	Main St. & Main, Inc.	10/30/92	1000
MAINW	Main St. & Main, Inc. (9/4/96 Wts)	10/30/92	1000
MTST	Microtest, Inc.	10/30/92	500
CNCN	Citizens National Corporation	11/02/92	200
ARONB	Aaron Rents, Inc. (Cl B)	11/03/92	1000
BAMM	Books-A-Million, Inc.	11/03/92	1000
DPGE	Dial Page, Inc.	11/05/92	500
ORPCV	Orion Pictures Corporation (WI)	11/09/92	1000
NEOP	Neoprobe Corporation	11/10/92	1000
NEOPW	Neoprobe Corp. (11/10/96 Cl E Wts)	11/10/92	1000
ANBC	ANB Corporation	11/11/92	200
MVIS	Media Vision Incorporated	11/11/92	1000
NPMH	NPM Healthcare Products, Inc.	11/17/92	1000
RAVN	Raven Industries, Inc.	11/17/92	500
BASER	Base Ten Systems, Inc. (11/10/94 Ser B Rts)	11/18/92	1000
CSAVP	Continental Savings of America (Ser A Non-Cumulative Conv Pfd)	11/18/92	1000
LGNDA	Ligand Pharmaceuticals (Cl A)	11/18/92	1000
CBOR	Commercial Bancorp	11/19/92	200

Symbol	Company	Entry Date	SOES Execution Level
CSTLR	Constellation Bancorp - Subscription (12/10/92 Rts)	11/19/92	1000
LNOPF	LanOptics Ltd. Ordinary Shares	11/19/92	1000
PSFT	PeopleSoft, Inc.	11/19/92	1000
SPCH	Sport Chalet, Inc.	11/19/92	1000
AMFF	AMFED Financial, Inc.	11/20/92	1000
MDCOR	Marine Drilling Co. (12/11/92 Rts)	11/20/92	1000
USCL	USA Classic, Inc.	11/20/92	1000

Nasdaq National Market Symbol and/or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since October 26, 1992:

New/Old Symbol	New/Old Security	Date of Change
EZEMA/EZEM	E-Z-EM, Inc. (Cl A) (Reclassification)/E-Z-EM, Inc.	10/27/92
UHCOW/UHCOW	Universal Holding Corp. (12/31/99 Wts)/Universal Holding Corp. (6/29/93 Wts)	10/28/92
ARONA/ARON	Aaron Rents, Inc. (Cl A)/Aaron Rents, Inc.	11/02/92
PURE/MBIO	Purepac, Inc./Moleculon, Inc.	11/02/92
STSA/STSA	Sterling Financial Corporation/Sterling Savings Association	11/02/92
ORBKF/OPTKF	Orbotech, Ltd./Optrotech, Ltd.	11/09/92
WSDI/SHEF	Wall Street Deli, Inc./Sandwich Chef, Inc.	11/10/92
GEMS/NWGI	Glenayre Technologies, Inc./N-W Group, Inc.	11/12/92
COOP/COOP	Cooperative Bank for Savings, Inc., SSB/Cooperative Bank for Savings, Inc.	11/13/92
PAGZ/CASH	PAGES, Inc./C.A. Short International, Inc.	11/16/92
HFMO/HFMO	Home Federal Bancorp of Missouri Inc./Home Federal Savings Bank of Missouri	11/19/92

Nasdaq National Market Deletions

Symbol	Security	Date
SUHC	Summit Holding Corporation	10/28/92
WETT	Wetterau, Incorporated	10/30/92
AFBK	Affiliated Bankshares of Colorado, Inc.	11/02/92
ILIOW	Ilio, Inc. (8/31/93 Wts)	11/04/92
COILP	Crystal Oil Company (Ser A Conv Pfd)	11/09/92
AXXX	Artel Communications	11/10/92
BASER	Base Ten Systems, Inc. (11/10/94 Ser B Rts)	11/10/92
NEWE	Newport Electronics, Inc.	11/11/92
VIRA	Viratek, Inc.	11/17/92
FNYB	First New York Bank For Business	11/17/92
RHMO	Ramsay - HMO, Inc.	11/17/92
VHII	Value Health, Inc.	11/18/92

Questions regarding this Notice should be directed to Mark A. Esposito, Supervisor, Market Listing Qualifications, at (202) 728-8002. Questions pertaining to trade reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

NASD

Board Briefs

National Association of Securities Dealers, Inc. December 1992

Actions Taken by the NASD® Board of Governors in November

■ **President's Report** — The NASD® and Nasdaq remain financially strong with a very favorable year-to-date revenues-to-expenses performance. Nasdaq entry and corporate financing fees are significantly higher than anticipated as are the number of registration/qualification examinations. The Nasdaq Stock Market℠ continues to contribute to these favorable performance figures. On November 13, 1992, Nasdaq® broke its all-time share-volume record of 41.3 billion set in 1991, when year-to-date share volume totaled 41.36 billion shares. All other indicators of performance remain strong with dollar volume ($720.7 billion) at a record high, all indicies above their 1991 year-end levels, strong activity in foreign securities and ADRs, and the dollar value of initial public offerings well on the way to passing the 1983 record level of $11.21 billion.

The NASD is responding to the Securities and Exchange Commission's (SEC) request for comments on its *Market 2000* study. This study will address key issues regarding the future structure of the equity securities markets. In its letter, the NASD is calling for increased opportunities for competition among markets and intermediaries by:

- Removing the remaining anti-competitive restrictions in a national market environment, such as NYSE Rule 390.
- Enhancing the efficiency and fairness of markets through improved transparency.
- Requiring enhanced disclosure of payment-for-order-flow arrangements so investors may make informed decisions.
- Abolishing NYSE Rule 500 that, in effect, prohibits an NYSE-listed company from moving its listing to another market.
- Allocating regulatory costs equitably among SROs and developers and operators of proprietary market systems.

■ **NASD Elections** — The NASD elected officers of the Board of Governors for 1993 and five new governors-at-large to begin their terms in January 1993. The incoming Chairman of the Board is Fredric M. Roberts, a corporate finance specialist and the President of F. M. Roberts & Company, Inc. in Los Angeles, California. He will succeed Charles B. Johnson, President of Franklin Distributors, Inc. and its parent firm Franklin Resources, Inc., located in San Mateo, California.

The 1993 Vice Chairman is Peter B. Madoff, Executive Managing Director of the New York City securities firm of Bernard L. Madoff Investment Securities. He will succeed Anson M. Beard, Jr., Managing Director of Morgan Stanley & Co. Incorporated in New York City.

The new Chairman of the NASD's National Business Conduct Committee is Robert Kleinberg, Executive Vice President and General Counsel of Oppenheimer & Co., Inc., and the Vice Chairman is William R. Rothe, Managing Director and Head of Nasdaq/OTC Trading at the Baltimore investment banking firm of Alex. Brown & Sons Incorporated.

Elected for three-year terms are the following new Governors-at-Large:

- **Bert C. Roberts, Jr.**, Chairman and Chief Executive Officer of MCI Communications Corporation.
- **John W. Rogers, Jr.**, President and founder of Ariel Capital Management, Inc. (ACMI).
- **Charles R. Schwab**, Chairman and Founder of Charles Schwab & Company, Inc.
- **A. A. Sommer, Jr.**, a partner of Morgan, Lewis & Bockius of Washington, D.C., and from 1973 to 1976, a Commissioner of the Securities and Exchange Commission.
- **Madelon DeVoe Talley**, an author, investment consultant, and Trustee of the New York State Teachers' Retirement System.

The following individuals have been elected to serve three-year terms on the Board through the

district election process:

- **John E. Schmidt**, Regional Managing Director and Resident Branch Manager of the First Boston Corporation in San Francisco, California.
- **Ian B. Davidson**, Chairman and Chief Executive Officer of D.A. Davidson & Co. and DADCO, the holding company that owns D.A. Davidson & Co., Financial Alms Corporation (money management), and TrustCorp (an independent trust company).
- **James S. Holbrook, Jr.**, President and Chief Executive Officer of Sterne, Agee & Leach, Inc., in Birmingham, Alabama.
- **Parks H. Dalton**, Chairman and Chief Executive Officer of Interstate/Johnson Lane, Dalton in Charlotte, North Carolina.
- **Richard G. McDermott, Jr.**, President of Chapdelaine & Company in New York City.

■ **Markets** — The Board approved for filing with the SEC a change to Schedule D that would require members to append the fifth-character identifier to their market maker symbol to identify a trading desk that is not located in the firm's main trading office.

The NASD will soon file for SEC approval changes to its Nasdaq International℠ rules to implement the multiple opening capability that has been developed for the service. Currently, market makers in the service have to maintain continuous, two-sided markets throughout the European trading session, which begins at 3:30 a.m., Eastern Time (ET). This early start time coupled with low volume has discouraged U.S.-based members from participating in the service. To stimulate participation, the proposed multiple opening times will permit active market makers to start trading at one of two discreet times after the 3:30 a.m., ET, general opening.

A measure to effect transaction reporting in convertible bonds in Nasdaq received Board approval for filing with the SEC. These changes, if approved by the SEC, would require members to report all transactions in convertible debt securities within 90 seconds following execution, provide that only those transactions of 99 bonds or less will be disseminated real-time to the public, and provide that end-of-day volume and price ranges will include only those transactions publicly disseminated during the trading day. Certain reporting protocols used with equities would also apply to convertible debt securities: the market-maker side would report; if there are two market makers, the sell side would report; and the execution price reported to the NASD would exclude commission, markup, or markdown. Six months after the measure takes effect, the NASD will review the operation of the rule to determine if there is a need to modify it.

The Board approved for filing with the SEC Schedule D rule changes to clarify issuer disclosure requirements regarding material news, rumors, unusual market activity, and the functions of the NASD Market Surveillance Department. Under the proposal, issuers would have to respond only to NASD requests that were related to unusual market activity or to events that were likely to have a material effect on Nasdaq trading. In addition, issuers would not be required to make public disclosure of material events under certain circumstances, including "where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its corporate objectives."

■ **Corporate Financing** — The Board approved for publication a *Notice to Members* seeking comment on a proposal to prohibit members from receiving warrants, options, and convertible securities as underwriting compensation when the contract for the acquisition of the securities contains disproportionate anti-dilution protection not offered to the public. Anti-dilution clauses are designed to protect an underwriter's proportionate economic interest represented by warrants, options, or convertible securities received as underwriting compensation. They adjust the features (exercise price, number of shares, etc.) of these instruments in response to events such as stock splits that change the ratio of outstanding shares to the shares underlying the investment vehicle. Such standard anti-dilution rights, which are triggered as a result of actions that affect all shareholders and proportionately protect the underwriter by treating it as if it had been a shareholder before the events occurred, will continue to be permitted under the proposal.

Anti-dilution provisions that provide all the benefits of a shareholder plus additional protections not afforded to public shareholders would, however, be prohibited. These include provisions that provide protection from dilution or adjustments to exercise price in the event of new issuances of securities in public or private offerings,

stock option plans, or the conversion of existing convertible securities.

The NASD's Corporate Financing Rule currently provides a blanket exemption from its filing provisions for securities registered with the SEC on registration statement Form S-3 and distributed pursuant to the SEC's shelf-registration rule, Rule 415. The exemption is based on the premise that little regulatory purpose is served by reviewing shelf offerings by seasoned companies where competitive pressures can be relied on to achieve the overall fairness of the underwriting terms and distribution arrangements.

The SEC has recently expanded eligibility for using Form S-3 by reducing the reporting history requirement for most issuers from 36 to 12 months, reducing the aggregate market value of the issuer's voting stock held by non-affiliates (the public float) from $150 million to $75 million, and eliminating the three-million-share-volume annual trading test. These changes, in turn, will increase the number and nature of issuers and transactions eligible to use the Form S-3 registration statement and the shelf-registration offering procedures of Rule 415. Changes to Rule 415 will permit the registration of debt, equity, and other classes of securities on a single shelf-registration statement without a specific allocation of offering amounts among the classes of securities being registered.

The NASD is concerned that these modifications to Form S-3 registration eligibility will potentially result in unseasoned issuers offering a wide range of securities (including equity) under Rule 415 without a requirement to file with the NASD for a fairness review of the underwriting terms and arrangements. It should be noted that an NASD staff study revealed that the compensation proposed for underwritings of companies with $75 million market float was much higher than compensation proposed for current S-3 companies. The NASD believes the reason for this is that there is less competitive pressure in negotiation of the underwriting terms between such lower capitalized issuers and member firms.

Responding to its concerns, the NASD has proposed amending the provisions of its Corporate Financing Rule governing the filing of such offerings. The modifications would require issuers filing on Form S-3 pursuant to Rule 415 to have a three-year reporting history and $150 million market float to be eligible for the exemption from filing under the Corporate Financing Rule. These Board-adopted changes must now be filed with the SEC for approval.

■ **Business Practices** — The NASD's *Guidelines for Determining Remedial Sanctions* will soon be available to the members and the investing public as a result of Board action. The purpose of these guidelines is not to prescribe fixed penalties for particular violations, but to provide a starting point as a guide to Committees and the staff to achieve greater consistency, uniformity, and fairness in the sanctions imposed by the District Business Conduct and Market Surveillance Committees. These guidelines, which the NASD developed for the most commonly found violations, include the basic considerations to decide the gravity of the offense and a starting point for the sanction. The sanction may be adjusted depending on the weight given to each consideration.

The Board approved rules to limit member participation to partnership rollups that meet predetermined criteria and would restrict listings on the Nasdaq National Market® of securities resulting from rollups that fail to meet these criteria. These changes must be submitted to the SEC for final approval before being enacted into the rules governing NASD members. Rollups involve the combination or reorganization of one or more limited partnerships, directly or indirectly, whereby investors in the original partnership(s) receive new securities or securities in another entity in exchange for their partnership interests. Partnerships are unincorporated businesses based on contractual relationship between two or more persons who share risks and profits.

For members to participate in rollups, or for rollups to qualify for listing on the Nasdaq National Market, the general partners or sponsors proposing the rollup must provide limited partners under the new rules with alternatives to participation in the rollup. These must include one of the following: the right to receive compensation based on an appraisal of partnership assets; the right to receive or retain a security with rights, privileges, and preferences similar to their partnership units; or other comparable rights.

The rules would also preclude member participation in rollup transactions and listing on the Nasdaq National Market where: the terms of the transaction unfairly reduce or abridge the voting rights of investors; investors are required to bear

an unfair portion of the costs of the rollup transactions; and there are no appropriate restrictions on the conversion of general partner or sponsor compensation resulting from the rollup.

■ ***NASD Manual* Revision Project** — The NASD is working on a revised *NASD Manual* that will be easier to understand and more user friendly. This revision will reflect the general outline (developed earlier this year) in the "Guide to the Manual" on pages 21-24 of the current *Manual*. Because this process will result in mixing together rules that require member vote for approval or change with those that do not, the NASD will soon ask members to vote on a change to the NASD By-Laws and Rules of Fair Practice eliminating the need for members to vote on new or amended Rules of Fair Practice. The changes would state explicitly that the Board, at its discretion, may authorize a member vote on any particular rule change proposal. If approved by the membership, the measure will be submitted to the SEC for its final approval before implementation.

NASD

Disciplinary Actions

National Association of Securities Dealers, Inc. December 1992

Disciplinary Actions Reported for December

The NASD® is taking disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice; securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions will begin with the opening of business on Monday, December 21, 1992. The information relating to matters contained in this Notice is current as of the fifth of this month. Information received subsequent to the fifth is not reflected in this publication.

FIRMS SUSPENDED, INDIVIDUALS SANCTIONED

Jones & Ward Securities, Inc. f/k/a Akers & Jones Securities, Inc. (Wilmington, North Carolina) and **Ivan D. Jones, Jr. (Registered Principal, Coral Springs, Florida)** submitted an Offer of Settlement pursuant to which they were fined $22,500, jointly and severally. In addition, the firm was suspended from membership in the NASD for three business days and required to comply with certain undertakings. Jones was also suspended from association with any NASD member in any capacity for three business days and required to requalify by examination as a general securities principal.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Jones, failed to file accurate FOCUS reports in a timely manner. The NASD also found that the firm, acting through Jones, conducted a general securities business while failing to maintain its required minimum net capital, failed to maintain accurate books and records, and failed to establish and maintain written supervisory procedures.

According to the findings, the firm, acting through Jones, made misrepresentations in a private placement memorandum and failed to make certain disclosures to the investors. The NASD also determined that, in the same offering, the firm, acting through Jones, failed to deposit subscribers' funds into an escrow account and continued to sell the stock subsequent to the offering termination date. In addition, the findings stated that the respondents made misrepresentations in a partnership agreement for another offering of interests.

The NASD determined that the firm, acting through Jones, failed to register a financial and operations principal in a timely manner and paid mutual fund sales commissions to a registered representative who was associated with another member firm. Also, the NASD found that the firm, acting through Jones, failed to respond timely and accurately to NASD requests for information and failed to comply with the terms of its restrictive agreement with the NASD.

FIRMS FINED, INDIVIDUALS SANCTIONED

Chatfield Dean & Co., Inc. (Englewood, Colorado), Frank J. Custable, Jr. (Registered Representative, Glendale Heights, Illinois), and **Kevin C. Grom (Registered Principal, Chicago, Illinois).** The firm and Grom each were fined $25,000. In addition, Grom was suspended from association with any NASD member in any capacity for 14 business days and required to requalify by examination as a general securities principal. Custable was fined $20,000 and barred from association with any NASD member in any capacity.

The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a decision by the District Business Conduct Committee (DBCC) for District 8. The sanctions were based on findings that Custable executed an unauthorized transaction in a customer's account. Furthermore, Custable deceptively and fraudulently induced another customer to purchase stock by guaranteeing the customer a return on his investment within two weeks. In addition, the firm, acting through Grom, failed to prevent the unauthorized transaction by properly supervising

Custable's activities.

The respondents have appealed this action to the Securities and Exchange Commission (SEC), and the sanctions, other than the bar against Custable, are not in effect pending consideration of the appeal.

Dania Securities, Inc. (Newport Beach, California) and **Allan Arthur Brent (Registered Principal, Newport Beach, California)** were fined $76,100, jointly and severally. Brent can reduce the amount to $28,000 if he pays $23,100 in restitution to a public customer. In addition, Brent was barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 2. The sanctions were based on findings that the firm, acting through Brent, received from two public customers funds totaling $32,170 for the purchase of securities. The firm and Brent failed to purchase such securities and, instead, converted the funds to their own use.

In addition, the firm, acting through Brent, participated in a contingent offering of common stock and failed to transmit the funds to a separate escrow account promptly. Instead, customers' funds were deposited into a checking account.

FIRMS AND INDIVIDUALS FINED

Oshima & Associates, Inc. (Boston, Massachusetts) and **Harold H. Oshima (Registered Principal, Boston, Massachusetts)** submitted an Offer of Settlement pursuant to which they were fined $10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Oshima, paid $70,000 to a registered representative of another member firm for referring investors to Oshima, without the knowledge or consent of the representative's member firm.

Rosenkrantz, Lyon & Ross, Inc. n/k/a Josephthal Lyon & Ross, Incorporated (New York, New York) and **Dan D. Purjes (Registered Principal, Armonk, New York)** submitted an Offer of Settlement pursuant to which the firm was fined $225,000 and agreed to comply with certain undertakings, and Purjes was fined $75,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to maintain accurate books and records of customer accounts, operational procedures relating to the transfer of customer accounts or securities, and failed to maintain adequate separations of functions between the corporate finance and retail operations of the firm. Furthermore, the findings stated that the firm and Purjes failed to establish and maintain written supervisory procedures.

Sherman, Fitzpatrick & Co., Inc. (Mineola, New York), Sheldon Paul Prager (Registered Principal, Lynbrook, New York), and **Jack Weinberg (Registered Principal, Flushing, New York)** were fined $15,000, jointly and severally. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 10. The sanctions were based on findings that the firm, acting through Prager and Weinberg, engaged in a securities business while failing to maintain appropriate reserves for customer deposits or credit balances, and failed to maintain its required minimum net capital. The firm, acting through Prager and Weinberg, sold shares of common stock to customers in principal transactions at unfair prices. The mark-ups on these transactions ranged from 10.53 to 18.75 percent above the prevailing market price, in violation of the NASD's Mark-Up Policy.

In contravention of the Board of Governors Free-Riding and Withholding Interpretation, the firm, acting through Prager and Weinberg, sold shares of three "hot" issues to restricted accounts. In addition, the firm, acting through Prager and Weinberg, acted as an underwriter and engaged in the distribution of common stocks without complying with the requirements of SEC Rule 144. In this instance, the respondents did not establish that the subject distributions were exempt from registration nor was there a registration statement in effect for the transactions. Furthermore, the firm, acting through Prager and Weinberg, effected transactions in the accounts of two registered representatives of other member firms but failed to notify the firms in writing that the respondents intended to open or maintain accounts for these individuals. Also, prior to executing any transactions in these two accounts, the respondents failed to use reasonable diligence to ensure that the transactions would not adversely effect the interests of the member firms.

INDIVIDUALS BARRED OR SUSPENDED

Steven Arnold Braker (Registered Representative, Backus, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to

which he was fined $4,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Braker consented to the described sanctions and to the entry of findings that he changed the Wisconsin addresses of public customers to an address in Minnesota, where none of the customers resided. According to the findings, Braker engaged in this activity to sell those customers securities that were neither registered nor exempt from registration in the state of Wisconsin.

Philip Jeffrey Brooks (Registered Representative, Dallas, Texas) was fined $15,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Brooks used his member firm's stationery without authorization to send six persons or entities letters that overstated cash and securities in an account at Brooks' member firm. The amounts of such overstatements ranged from $1 million to more than $20 million.

John Lex Campbell (Registered Representative, Perry, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $1,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Campbell consented to the described sanctions and to the entry of findings that he endorsed and cashed an insurance refund check for $169.50 made payable to a customer. According to the findings, Campbell converted these funds to his own use and benefit without the customer's knowledge or consent.

George Edward Clary (Registered Representative, Wichita, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000, barred from association with any NASD member in any capacity, and required to pay $133,312.74 in restitution to insurance customers. Without admitting or denying the allegations, Clary consented to the described sanctions and to the entry of findings that through unauthorized withdrawals or failures to remit funds properly as instructed by seven insurance customers, he took $133,312.74 intended for the purchase of insurance policies or annuities. According to the findings, Clary converted these funds to his own use and benefit without the customers' knowledge or consent.

Vincent D'Ambrosio (Registered Representative, Scarsdale, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, D'Ambrosio consented to the described sanctions and to the entry of findings that without a customer's knowledge or consent, he applied for a $1,686 cash surrender check against the customer's insurance policy. The check was endorsed and deposited into an account in D'Ambrosio's name. Purchasing a money order on this account, D'Ambrosio used the funds to pay the premium on a new insurance policy in the name of another customer.

William J. Degnan, Jr. (Registered Representative, Concord, Massachusetts) was fined $100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that without a customer's knowledge or consent, Degnan withheld and misappropriated to his own use and benefit $99,597.50, representing proceeds from the sale of shares of common stock for the customer's account. In addition, Degnan failed to respond to NASD requests for information.

James D. Fischer (Registered Representative, Bayonne, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fischer consented to the described sanctions and to the entry of findings that he collected cash insurance premiums totaling $4,000 from customers and used the funds for his own purpose without the customers' knowledge.

Bernd Dieter Gruner (Registered Principal, Winston-Salem, North Carolina) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gruner failed to respond to NASD requests for information.

Kevin Francis Hauser (Registered Representative, Doraville, Georgia) was fined $22,427 and suspended from association with any NASD member in any capacity for one business day. The fine may be reduced by any amounts Hauser repays to a public customer. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 7. The sanctions were based on findings that Hauser recommended the purchase of

growth stocks on margin to a public customer without having reasonable grounds for believing that the recommendations were suitable for the customer.

Thomas M. Hayes (Registered Representative, Howell, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hayes consented to the described sanctions and to the entry of findings that he withdrew insurance dividends totaling $824.90 from the policies of customers to pay premiums on new life insurance policies without the customers' knowledge or consent.

Thomas Joseph Higgins (Registered Representative, Littleton, Colorado) was fined $10,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, a member firm, acting through Higgins, effected as principal for its own account over-the-counter sales of common stock with public customers at unfair prices.

Kim Harmon Johnson (Registered Principal, Sandy, Utah) was fined $5,000, jointly and severally with a member firm, suspended from association with any NASD member as a financial and operations principal for 30 days, and required to requalify by examination in that capacity. The sanctions were based on findings that a member firm, acting through Johnson, conducted a securities business while failing to maintain its minimum required net capital.

Patrick Raymond Kluck (Registered Representative, Chicago Heights, Illinois) submitted an Offer of Settlement pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kluck consented to the described sanctions and to the entry of findings that he exercised discretion in a public customer's account without obtaining prior written discretionary trading authority. The NASD also found that Kluck failed to respond to NASD requests for information.

Gene Charles Lavine (Registered Representative, Kansas City, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000, barred from association with any NASD member in any capacity, and required to pay $68,000 in restitution to insurance customers. Without admitting or denying the allegations, Lavine consented to the described sanctions and to the entry of findings that he took $68,000 intended for the purchase of insurance policies, annuities, or mutual funds and converted the monies to his own use and benefit, without the customers' knowledge or consent.

Shawn J. McCafferty (Registered Representative, N. Babylon, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McCafferty consented to the described sanctions and to the entry of findings that, without the knowledge or consent of two insurance customers, he submitted disbursement request forms on the customers' insurance policies that resulted in the issuance of cash surrender checks totaling $7,473.65. McCafferty then forged the customers' signatures on the checks, second endorsed the checks, and deposited the funds into his personal checking account, thereby converting the funds to his own use.

Deborah Jean Plonski (Registered Representative, Huntington, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Plonski consented to the described sanctions and to the entry of findings that she executed an unauthorized sale of securities in the customer's account. In addition, the findings stated that Plonski withdrew funds from the same customer's account, forged the customer's signature, and took control of the monies for her own use without the customer's approval or knowledge.

Jack W. Pruitte (Registered Representative, Clarksville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Pruitte consented to the described sanctions and to the entry of findings that he prepared and delivered two fictitious account statements indicating that a public customer had $5,000 invested in a bond.

Frederick Carl Pullmann (Registered Rep-

resentative, Hays, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pullmann consented to the described sanctions and to the entry of findings that he obtained seven loans totaling $32,900 from an insurance customer's annuity certificate, endorsed the checks from the loan proceeds, and converted the funds to his own use.

The NASD also found that Pullmann received a $10,000 check from another insurance customer for an initial premium payment and, instead, applied only $5,000 of the funds and retained the balance for his own use. In addition, the findings stated that Pullmann received from a different insurance customer a check intended as payment on a renewal premium and, instead, converted the monies to his own use.

Gregory Willis Radke (Registered Representative, Pierce, Nebraska) submitted an Offer of Settlement pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Radke consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Charles A. Roth (Registered Representative, Denver, Colorado) was fined $105,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a registered representative. The SEC affirmed the findings and modified the sanctions following appeal of a February 1990 NBCC decision. The sanctions were based on findings that Roth conducted business as a broker/dealer without being registered and effected private securities transactions without notifying his member firm properly.

Roth has appealed this action to the United States Court of Appeals, and the sanctions are not in effect pending consideration of the appeal.

Peter Randol Sargent (Registered Representative, Kansas City, Missouri) submitted an Offer of Settlement pursuant to which he was fined $20,000, barred from association with any NASD member in any capacity, and required to pay $8,467.32 in restitution to insurance customers. Without admitting or denying the allegations, Sargent consented to the described sanctions and to the entry of findings that he obtained loans totaling $8,467.32 on the life insurance policies of six customers and converted those proceeds to his own use and benefit without the customers' knowledge or consent. In addition, Sargent failed to respond to NASD requests for information.

Gordon Wesley Sodorff, Jr. (Registered Representative, Spokane, Washington) was fined $86,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following an appeal of an August 1990 NBCC decision. The sanctions were based on findings that Sodorff participated in private securities transactions without providing prior written notice to his member firm. In addition, Sodorff engaged in deceptive sales practices by failing to disclose to investors material information that might have influenced their decision to purchase the common stock. In the aforementioned activity, Sodorff acted as a broker/dealer without the benefit of registration.

Jerome Stanford Stein (Registered Principal, St. Louis, Missouri) was fined $117,660, barred from association with any NASD member in any capacity, and must demonstrate payment of restitution of any customer losses. The sanctions were based on findings that Stein executed transactions in the securities accounts of public customers without their knowledge or consent. In addition, Stein recommended numerous purchase and sale transactions to public customers without having reasonable grounds for believing that such recommendations were suitable, given the customers' financial situations and needs.

Jerry J. Turcan (Registered Representative, Rye, New York) submitted an Offer of Settlement pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for 12 months. Without admitting or denying the allegations, Turcan consented to the described sanctions and to the entry of findings that he accepted from a public customer a sell order without proper registration with the NASD as a representative. The NASD also found that Turcan failed to submit the order for execution and, instead, held it for two months before informing the customer that he was unable to execute the order.

The findings also stated that Turcan gave the same customer a $6,000 personal check that was re-

turned due to insufficient funds and promised to give the customer an additional $2,000 for losses suffered as a result of his failure to execute the customer's sell order. In addition, the findings stated that Turcan asked the same customer to write a letter to Turcan's employer withdrawing the complaint against Turcan, in order to stymie further investigation by the employer and potential disciplinary action by the NASD.

Michael Scott Wheelock (Registered Representative, Edina, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wheelock consented to the described sanction and to the entry of findings that he guaranteed a public customer against losses in the purchase of common stock. The NASD also found that, in contravention of the Policy of the Board of Governors concerning Fair Dealing With Customers, Wheelock executed securities transactions without the knowledge or consent of two public customers. In addition, the findings stated that Wheelock submitted a Form U-4 that failed to disclose the existence of customer complaints.

INDIVIDUALS FINED

Linda Cline Chandler (Registered Principal, Fernandina Beach, Florida) was fined $13,000, jointly and severally with a member firm and required to requalify by examination as principal. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 1. The sanctions were based on findings that the firm, acting through Chandler, participated in sales of limited partnership interests of several best efforts, "all or none" offerings and received funds from investors without depositing the monies into an escrow account.

In addition, the firm, acting through Chandler, represented to investors that limited partnership interests were being offered on an "all or none" basis and the consideration paid by the investors would be refunded if all units were not sold by a specified date when, in fact, funds were disbursed before all units were sold. Furthermore, the firm, acting through Chandler, failed to prepare net capital computations for certain months and engaged in a securities business without maintaining its minimum required net capital.

Also, in contravention of the terms of a voluntary restriction agreement with the NASD, the firm, acting through Chandler, failed to file with the NASD copies of escrow agreements in connection with the offer and sale of limited partnership interests.

David Kippins (Registered Representative, Brooklyn, New York) was fined $10,000. The NBCC imposed the sanction following appeal of a decision by the DBCC for District 10. The sanction was based on findings that Kippins effected transactions in the accounts of public customers without their knowledge or consent.

Kippins has appealed this action to the SEC; therefore, the sanction is not in effect pending consideration of the appeal.

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

Palm Beach Financial, Incorporated, Stuart, Florida

SUSPENSIONS LIFTED

The NASD has lifted suspensions from membership on the dates shown for the following firms, since they have complied with formal written requests to submit financial information.

Butcher Financial Corporation, Philadelphia, Pennsylvania (November 6, 1992)

Worthington & Dunn Securities, Dallas, Texas (November 12, 1992)

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

Robert J. Brown, Jr., Hoboken, New Jersey
Thomas E. Bullock, Coon Rapids, Minnesota
Mark R. Conboy, Jupiter, Florida
Edward B. Daroza, Jr., Redmond, Washington
Ronald J. John, Minneapolis, Minnesota
Ronald E. Lamott, Hayden Lake, Idaho
Michael S. Long, San Diego, California
Bruce E. Mauer, Evergreen, Colorado
Peter S. Smith, Hobe Sound, Florida
Bradley L. Uhlfelder, Owings Mills, Maryland
Darrell J. Williams, Los Gatos, California

NASD ANNOUNCES THREE DISCIPLINARY ACTIONS AGAINST FOUR MEMBERS

The NASD has taken three separate disciplin-

ary actions that were initiated by the NASD's Market Surveillance Committee and affirmed by the NBCC on appeal.

In the first of these actions, Wakefield Financial Corporation of New York, New York and Alexander G. Minella of White Plains, New York were fined $225,000, jointly and severally. The NASD expelled Wakefield from membership and barred Minella from associating with any member in any capacity. In addition, Kelly Trading Co. of New York, New York and Keith Minella of Westport, Connecticut were fined $200,000, jointly and severally, with Kelly Trading expelled from membership and Keith Minella barred from associating with any member in any capacity.

The sanctions were based on findings that the respondents and others engaged in an intentional scheme to effect wash trades (trades involving no change in beneficial ownership) and matched trades (entering a purchase or sale order with knowledge that a corresponding order of substantially the same size and at substantially the same time and price had been or would be entered) in Weaver Arms Corp., a security formerly listed on Nasdaq. These wash and matched trades constituted approximately 75 percent of the volume reported by the media and created a false appearance concerning the activity in and liquidity of Weaver Arms. In addition, Wakefield and Kelly Trading, which functioned as market makers in Weaver Arms at all relevant times, engaged in arbitrary pricing reflected by decreases and increases in quotations for the stock that were not justified by trading activity or any other plausible explanation.

The NASD rejected respondents' argument that there was no proof of harm to public investors, stating: "[A]ll market manipulation is harmful to investors and that the Association's mandate to regulate the securities market extends to the protection of the integrity of the marketplace, as well as to participating investors."

In the second action, Bagley Securities Inc. of Salt Lake City, Utah was fined $162,262, jointly and severally with Edward D. Bagley, its president, also of Salt Lake City. The NASD expelled Bagley Securities from membership and barred Bagley from associating with any member in any capacity. In addition, Thomas Gregg Holloway of Charleston, South Carolina was fined $200,000, and Paul Surmay of Marietta, Georgia was fined $25,000. Holloway and Surmay were also barred from associating with any member in any capacity. The sanctions were based on findings that Bagley Securities, Bagley, and Holloway engaged in manipulative, deceptive, and other fraudulent devices in buying and selling Quantus Capital, Inc. units, an OTC "penny stock," during the initial public offering (IPO) and aftermarket trading of the security.

Quantus was a "blank check" offering underwritten by Bagley Securities which placed over 99 percent of the units with its own customers. Bagley Securities dominated and controlled the market in the units and raised and supported the price at artificially high levels, despite the fact that the offering was not fully subscribed and the firm had a substantial long position in the units during the aftermarket. No corporate developments justified a price increase of more than 100 percent above the public offering price on the first day of trading and the arbitrary pricing continued throughout the period. For his part, Bagley executed trades with another broker/dealer at prices removed from contemporaneous retail prices to create the appearance of inter-dealer interest in Quantus and to justify the higher prices charged to customers. The retail interest in Quantus occurred at the firm's branch offices in Florida that were operated by Holloway and another individual.

Furthermore, Bagley Securities, Bagley, and Holloway sold units to the firm's retail customers at unfair prices with markups ranging from 18 to 121 percent above the prevailing market price, resulting in customers being overcharged more than $43,000. Bagley had loaned $100,000 to finance the startup of the branch offices and admitted that the loan caused him to delay taking action against the branch offices for the excessive markups. Holloway failed to respond to an NASD request for information as required by NASD rules. Finally, Surmay misrepresented the nature of Quantus' business, failed to inform customers that Quantus was a blind pool, and represented that immediate profits would be realized through purchasing Quantus units without any reasonable basis for such statements.

In its third action, the NASD expelled Royce Park Investments, Inc., of Englewood, Colorado from membership and barred its president, Steven Theys of Castle Rock, Colorado, from associating with any member in any capacity and fined him $50,000. Theys has appealed the decision to the

SEC, but the bar is in effect. The sanctions were based on findings that Royce Park underwrote an IPO for LBO Capital Corp. units, an OTC blank-check offering not traded on Nasdaq, and placed over 90 percent of the underwriting with its own customers. In aftermarket trading, Royce Park, acting through Theys, dominated and controlled the market in the security such that there was no independent competitive market in the security. In that capacity, Theys sold LBO units to the firm's retail customers at fraudulently excessive markups ranging from 10 to 33 percent above the prevailing market price in 99 retail transactions.

"These disciplinary actions are indications of the ongoing intense scrutiny by the NASD of member sales and trading practices, and of our commitment to take strong and effective enforcement actions when the interests of the investing public are concerned," said John E. Pinto, Executive Vice President, Compliance.

The NASD investigations were carried out by its Anti-Fraud Department and are part of a continuing nationwide effort by the NASD to eliminate trading and sales-practice abuses. The Market Surveillance Committee, which initiated these disciplinary cases, is a national committee responsible for maintaining the integrity of the Nasdaq and the over-the-counter securities markets, and for disciplining members that fail to comply with relevant NASD rules and federal securities laws.

SEC AFFIRMS NASD DISCIPLINARY ACTION AGAINST FIRM FOR RESTRICTION AGREEMENT VIOLATIONS

The NASD has suspended First Choice Securities Corporation of Englewood, Colorado from membership and has taken disciplinary action against Gregory F. Walsh, president of First Choice Securities. The SEC affirmed the NASD sanctions following appeal of a decision by the NBCC. The firm is suspended from membership in the NASD for 30 days and must close all branch offices not specifically approved in writing by the NASD. In addition, the firm and Walsh were fined $10,000, jointly and severally.

The sanctions were based on findings that the firm, acting through Walsh, violated its restriction agreement with the NASD by opening two branch offices without obtaining prior approval from the NASD district office in Denver, Colorado.

Specifically, the findings stated that a securities firm, Plum Creek Securities, Inc., was incorporated in Colorado in 1985 and became an NASD member on February 12, 1986. On January 12, 1989, Plum Creek entered into a restriction agreement with the NASD in which it agreed, among other things, that it would not "open any branch offices without obtaining prior approval from the district office." In February 1989, control of Plum Creek was transferred to a new group of principals and the firm filed an application with the NASD to change its name to First Choice Securities Corporation. The NASD granted this request and First Choice assumed Plum Creek's membership as a successor organization.

First Choice requested that the firm be "released from the need to obtain staff approval before opening any branch offices," asserting that First Choice was not bound by the restrictive agreement signed by Plum Creek. The NASD staff denied this and a subsequent request. Thereafter, while a third request was pending, First Choice opened two branch offices without first obtaining approval from the district office.

In its decision, the SEC affirmed the NASD's findings that the right of the successor organization to assume the predecessor's membership necessarily includes assumption of any rights, conditions, and obligations attached to that membership, including any pre-existing restrictions. Therefore, by accepting the benefits of Plum Creek's pre-existing NASD membership, First Choice also accepted its restrictions.

The disciplinary action was taken by the DBCC for District 3 in Denver, Colorado, which maintains jurisdiction over members with main and branch offices in Arizona, Colorado, New Mexico, Utah, and Wyoming.

SEC AFFIRMS NASD SANCTIONS AGAINST BLINDER, ROBINSON & CO., INC. OFFICIALS

The SEC has affirmed the NASD's disciplinary findings and sanctions against five former officials of Blinder, Robinson & Co., Inc. (Blinder Robinson), a former nationwide broker/dealer with its main office in Englewood, Colorado. The officials are Meyer Blinder, President; John J. Cox, Vice President of Compliance; Steven B. Theys, Executive Vice President; Harold W. Gorden, Vice President of Trading; and Anthony J. Beshara, Chief Trader.

In April 1988, the NASD found these officials responsible for charging excessive markups in the sale of the common stock of Telephone Express Corporation (Telephone Express). As a result, each was censured, suspended from association with any NASD member in any capacity for 90 days, and fined $250,000, jointly and severally. They appealed the decision to the SEC, and the sanctions were stayed, pending completion of the appeal. On August 26, 1992, the SEC affirmed the findings and sanctions. The sanctions have become effective against Blinder, Cox, Theys, and Beshara. However, the SEC granted Gorden a 60-day stay of the sanctions, pending his appeal to the Federal Court of Appeals.

The NASD action arose from an IPO of 30 million shares (at $.01 per share) of Telephone Express stock, an over-the-counter stock not traded on Nasdaq. Blinder Robinson underwrote and sold the entire offering to its own customers. The NASD and SEC found that during the first month of aftermarket trading, Blinder Robinson dominated and controlled the market for Telephone Express, and that in more than 1,300 sales of the stock to its customers, Blinder Robinson charged egregious markups ranging from 11 to 150 percent in excess of the prevailing market price. These prices were far in excess of markups permitted by NASD rules, which require firms to charge customers reasonable and fair markups, generally 5 percent or less over the prevailing market price.

Both the SEC and the NASD found that the five individuals were responsible for the unfair and fraudulently excessive prices, and both the NASD and SEC rejected the contention that the prevailing market price during the period of the sales was the firm's ask quotation. According to the SEC, as a result of the complete domination and control of the supply of Telephone Express stock by Blinder Robinson and its customers, it was highly improbable that any competitive market in the stock could have developed away from Blinder Robinson. The SEC also held that since Blinder Robinson's bid and ask quotations for the stock were not subject to competition from other dealers, the firm's contemporaneous cost in purchasing the stock was a better measure of the prevailing market price at all relevant times.

The suspension of Blinder, Cox, Theys, and Beshara began with the opening of business on November 2, 1992. Gorden's sanctions were stayed by the SEC, pending a possible appeal.

NASD

For Your Information

National Association of Securities Dealers, Inc. December 1992

Correction to *Notice to Members 92-59* Regarding Prefiling of Advertisements for Collateralized Mortgage Requirements

Please note that there is an error in the rule language reprinted on page 415 of *Notice to Members 92-59* (November 1992). The language contained in Article III, Section 35(c)(2) of the Rules of Fair Practice (17th line in column 1) and Section 8(c)(1)(B) of the Government Securities Rules (19th line in column 2) that reads ". . . until the advertisement or sales literature has been refiled for. . " should instead read ". . . until the advertisement has been refiled for . . . ." Collateralized mortgage obligations sales literature is *not* subject to NASD prefiling requirements. Also, this prefiling requirement will apply until November 15, 1993, *not* November 15, 1992, as was erroneously reported in the Notice.

NASD

SPECIAL

Notice To Members

National Association of Securities Dealers, Inc. December 15, 1992

Number 92-72

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 Adopts Significant Amendments to the Net Capital Rule, Proposes Others for Public Comment

EXECUTIVE SUMMARY

On November 24, 1992, the Securities and Exchange Commission (SEC) announced the adoption of amendments to its Net Capital Rule, Rule 15c3-1 (Rule). Except for the minimum increases scheduled to take effect in three installments beginning June 30, 1993, the changes, explained in Securities and Exchange Release No. 34-31511, will become effective on January 1, 1993. In companion Release No. 34-31512, the SEC proposed for public comment additional amendments to the Rule. The last date for comments is February 5, 1993. The full texts of both releases follow this Notice.

SUMMARY OF ADOPTED CHANGES

I. MINIMUM NET CAPITAL CHANGES

A. Firms That Carry Customer Accounts

■ $250,000 for a firm that (a) carries customer accounts or broker or dealer accounts, or (b) receives or holds funds[1] or securities[2] for customers, brokers, or dealers.

■ $100,000 for a carrying firm that does not hold customer funds or securities, and is exempt from the SEC Customer Protection Rule, Rule 15c3-3, by virtue of paragraph (k)(2)(i).

B. Introducing Firms

The adopted amendments create two classes of introducing firms, each with a different minimum requirement.

■ $50,000 for a firm that introduces transactions and accounts of customers or brokers or dealers to another registered broker or dealer that carries such accounts on a fully disclosed basis, and *receives but does not hold* customer securities for delivery to the clearing broker or dealer. Such a firm could participate in firm-commitment underwritings as a selling dealer but not as a statutory underwriter.

■ $5,000 for a firm that introduces accounts on a fully disclosed basis and does not receive, directly or indirectly, securities from or for, or owe funds or securities to, customers and does not engage in activities that require a higher minimum

[1] *Receives or holds funds* is defined in the Rule as occurring when the broker or dealer "receives checks, drafts, or other evidences of indebtedness made payable to itself or persons other than the requisite registered broker or dealer carrying the account of a customer, escrow agent, issuer, underwriter, sponsor, or other distributor of securities."

[2] *Receives or holds securities* is defined in the Rule as occurring when the broker or dealer "does not promptly forward or promptly deliver all of the securities of customers or of other brokers or dealers received by the firm in connection with its activities as a broker or dealer."

capital requirement, such as market making, wire-order mutual funds, or underwritings.[3] The present prohibition against a $5,000 introducing firm participating in a firm-commitment underwriting in any capacity will continue. The companion release proposes amending this category to a minimum requirement of $25,000.

C. Dealers and Underwriters

■ $100,000 for a firm that endorses or writes non-exchange or non-Nasdaq options or effects more than 10 transactions in a calendar year for its own investment account.

However, a dealer would not include one engaged solely in the sale of mutual funds, best-efforts or all-or-none underwritings using a required Rule 15c2-4(b)(2) escrow account, or an introducing firm with dealer activities limited to those permitted by the Rule.

D. Brokers or Dealers That Transact Business in Mutual Fund Shares and Certain Other Share Accounts

■ $25,000 for a firm engaged in this type of activity on other than a subscription-way basis that does not engage in any other dealer activity except as permitted by the Rule. A firm that does not handle customer funds or securities and is not a direct wire-order firm will have a $5,000 requirement. The SEC has proposed increasing this to $10,000.

E. Market Makers

■ $100,000 for a firm that computes under the basic method. However, a market maker firm that clears and carries customer accounts and is fully subject to the provisions of Rule 15c3-3 has a $250,000 requirement. Another change raises the requirement for each security priced at $5 or less per share to $1,000 from $500. (The current capital requirement of $2,500 per share for securities priced over $5 remains unchanged. However, the SEC is proposing to standardize the per security capital requirement at $2,500 and thereby eliminate the two-tier price distinction.) In addition, the net capital ceiling for a market maker will increase to $1 million **effective June 30, 1993**.

F. All Other Brokers or Dealers

A $5,000 minimum category is maintained for firms that do not handle customer funds and securities, such as firms that sell direct participation programs (DPPs) in real estate syndications or firms that engage exclusively in mergers and acquisitions. However, the SEC is proposing to raise this requirement to $10,000.

II. OTHER ADOPTED AMENDMENTS

A. Securities Haircuts

Equity Securities: Presently there are two methods of calculating haircuts, depending on whether a firm computes under the basic or alternative method. The SEC has established one standardized method for all firms. It would be 15 percent of the market value of the greater of the long or short position, plus 15 percent of the lesser to the extent it exceeds 25 percent of the greater position.

The amendments also adopt the alternative method for computing concentration charges for all firms. For equities, that would be 15 percent, effective immediately, not after 11 business days as in the basic method.

B. Aggregate Indebtedness

In light of the proposed increases in the minimum net capital requirements, the SEC has identified two items of aggregate indebtedness (AI) for which the current 6 ⅔ percent charge is deemed not appropriate. Accordingly, the AI impact is reduced for the following two items:

1. Mutual Funds Payable Offset by Fails to Deliver

When a broker/dealer owes money to a mutual fund for the purchase of shares of the fund offset by a receivable from another broker/dealer (fail to deliver) related to that transaction, rather than subjecting the entire liability to the 6 ⅔ percent charge, the amended rule excludes 85 percent of the liability amount from AI.

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[3] In its companion release the SEC makes clear that "to be considered a fully disclosed introducing firm, the broker/dealer must have in place a clearing agreement that states that, for the purposes of SIPA and the Commission's financial responsibility rules, customers are customers of the clearing, and not the introducing, firm. Furthermore, the clearing firm must issue account statements directly to customers. Such statements must disclose the nature of the relationship between the entities and contain the name and telephone number of a responsible individual at the clearing firm whom a customer can contact with inquiries regarding the customer's account. Finally, the account statement must disclose that customer funds or securities are located at the clearing, and not the introducing, firm. Absent such an arrangement, the introducing firm would be required to comply with greater minimum net capital requirements."

2. Stock Loan and Stock Borrowed

Currently, when a broker/dealer borrows stock for money and, in turn, lends out those securities for money to another broker/dealer, no offset is permitted, and the entire payable amount is included in AI and subject to the 6 2/3 percent charge. The release notes that given " . . . the matched nature of those related payables and receivables, the Commission does not believe that the risk merits a charge of 6 2/3 percent on the dollar amount of the liability." Accordingly, when a security loan liability is related to a corresponding security borrowed asset, the new rule excludes 85 percent of the liability amount from AI.

C. Contractual Charges

Although the adopted equity securities haircuts are standardized at 15 percent, the current open contractual commitment charge of 30 percent haircuts for securities not listed for trading on a national securities exchange or not designated as Nasdaq National Market® remains unchanged. The haircut requirement for equity securities collateralizing a secured demand note will also remain at 30 percent.

With the increase in the capital requirements, the SEC is permitting the use of that additional capital to offset the initial haircut related to a firm-commitment underwriting or any subsequent contractual commitment haircuts on positions associated with that underwriting. The amendment would not require a broker/dealer with more than $250,000 of net capital to apply the contractual commitment haircut charge in circumstances in which that haircut would be $150,000 or less.

These changes are effective January 1, 1993, with the increases in the minimum net capital amounts phased in over a period of 18 months.

III. PROPOSALS NOT ADOPTED

■ The proposed $100,000 minimum requirement for introducing firms that *routinely* receive customer funds and securities has been reduced to $50,000.

■ The additional capital requirement for introducing firms of .25 percent of the debit balance of introduced accounts was dropped.

■ The proposal to prohibit firms that do not carry customer accounts from using the alternative method to compute net capital was not adopted.

■ The 15 percent haircut on zero coupon and stripped securities was deleted.

IV. PROPOSED AMENDMENTS

Even with the adopted changes that become effective on January 1, 1993, the SEC believes that, based on the comments received on the original proposal, there are three matters that require further consideration. Two of these deal with the minimum net capital requirement for firms that do not receive customer funds or securities; the third concerns the security-per-share-price method for determining the net capital requirement for a market maker.

Originally, the SEC proposed a three-tier capital structure for firms that introduce customer accounts on a fully disclosed basis to another broker/dealer. The SEC received many comment letters, including one from the NASD, opposing the three-tier framework. Most cited compliance and enforcement difficulties. In addition, the $100,000 requirement for firms in this category appeared higher than necessary. As an alternative, the NASD proposed two tiers: $50,000 for firms that receive but do not hold customer funds or securities, and a $25,000 requirement for firms that do not receive customer funds or securities. The SEC has adopted the $50,000 requirement and has published for comment a proposal on the $25,000 requirement.

Citing the effect of inflation, the NASD recommended, and the SEC has proposed, an increase from $5,000 to $10,000 in the requirement for other categories of firms who do not handle customer funds or securities, such as subscription-order mutual funds, DPP, and merger and acquisition firms.

Finally, the SEC is proposing to eliminate the distinction, for net capital purposes, between securities selling at $5 or less per share and those over $5 by establishing a standardized per security market-maker capital requirement of $2,500 per security, regardless of the price of the security.

The phase-in of these proposed new requirements is as follows:

Minimum Net Capital Required By Class of Broker/Dealer

Class	Rule Until 6/30/93	7/1/93 Until 12/31/93	1/1/94 Until 6/30/94	After 6/30/94
Introducing firms that do not receive customer funds or securities	$ 5,000	$ 12,000	$ 19,000	$ 25,000
Other	5,000	6,500	8,500	10,000

NASD members that wish to comment on the proposed rule change should do so by February 5, 1993. Send comment letters in triplicate to:

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549.

Comment letters should refer to File No. S7-36-92. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

Members are requested to send copies of their comment letters to:

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

Questions concerning this Notice may be directed to Walter Robertson, NASD Associate Director, Financial Responsibility, at (202) 728-8236 or Samuel Luque, Associate Director, Financial Responsibility at (202) 728-8472.

Analysis of Adopted Changes to Minimum Net Capital Requirements

Class of Broker/Dealer	Present Requirement	The September 1989 Proposed Requirement	Adopted Requirement
A. Firms that carry customer accounts and fully compute under Rule 15c3-3			
Basic Method	Greater of $25,000 or 6 2/3% of aggregate indebtedness (AI)	Greater of $250,000 or 6 2/3% of AI	As Proposed
Alternative Method	Greater of $100,000 or 2% of Rule 15c3-3 Reserve Formula debits	Greater of $250,000 or 2% of Rule 15c3-3 Reserve Formula debits	As Proposed *Use attached form to elect this option
	(In addition, if the broker/dealer is also a market maker, there is a requirement based on the number of markets made. See Class E below.)		
Firms that carry customer accounts, receive but do not hold customer funds or securities, and operate under the paragraph (k)(2)(i) exemption of Rule 15c3-3	Greater of $25,000 or 6 2/3% of AI	Greater of $100,000 or 6 2/3% of AI	As Proposed
B. Firms that introduce accounts on a fully disclosed basis to another broker/dealer	Greater of $5,000 or 6 2/3% of AI	(a) Greater of $100,000 or 6 2/3% of AI plus 1/4 of 1% of customer debits introduced, if firm *routinely* receives customer funds or securities; or (b) Greater of $50,000 or 6 2/3% of AI plus 1/4 of 1% of customer debits introduced, if firm *occasionally* receives customer funds or securities;	Not Adopted (a) Greater of $50,000 or 6 2/3% of AI if firm receives but does not hold customer funds or securities

Class of Broker/Dealer	Present Requirement	The September 1989 Proposed Requirement	Adopted Requirement
		or	
		(c) Greater of $5,000 or 6 2/3% of AI plus 1/4 of 1% of customer debits introduced, if firm *never* receives customer funds or securities	(b) Greater of $5,000 or 6 2/3% of AI if firm does not receive customer funds or securities
C. Broker/dealers that trade solely for their own accounts			
Basic Method	Greater of $25,000 or 6 2/3% of AI	Greater of $100,000 or 6 2/3% or AI	This category has been redefined as Dealers and Underwriters for firms that endorse or write options other than on an options exchange or the Nasdaq market or effect more than 10 transactions a year for their investment account. The adopted requirement is the greater of $100,000 or 6 2/3% of AI.
D. Firms transacting a business solely in mutual fund shares and certain other share accounts	Greater of $2,500 or 6 2/3% of AI	Greater of $25,000 or 6 2/3% of AI	As Proposed
		with	
		Greater of $5,000 or 6 2/3% of AI for firms that do not handle any customer funds or	As Proposed

Class of Broker/Dealer	Present Requirement	The September 1989 Proposed Requirement	Adopted Requirement
		securities and are not direct wire order firms	
E. Market Makers			
Basic Method	Greater of $25,000 or 6 2/3% of AI	Greater of $100,000 or 6 2/3% of AI	As Proposed
Alternative Method	Greater of $100,000 or 2% of Reserve Formula debits	Greater of $250,000 or 2% of Reserve Formula debits	(Because of the $250,000 minimum, firms that do not carry customer accounts will be permitted to elect the alternative method.)
	or	or	
	$2,500 for each security in which a market is made ($500 per security if the price is $5 or less per share	Same, except the requirement will be $1,000 per security at $5 or less per share	As Proposed
	with	with	
	a maximum requirement of $100,000)	a maximum requirement of $1 million	As Proposed
F. Other broker/dealers			
Firms that deal only in direct participation programs (DPPs)	Greater of $5,000 or 6 2/3% of AI	Same	Same
Firms that do not take customer orders, hold customer funds or securities, or execute customer trades, because of the nature of their activities (e.g., mergers and acquisitions)	Greater of $5,000 or 6 2/3% of AI	Same	Same (The SEC is proposing to amend the minimum to $10,000)

The phase-in of these new requirements will be 18 months as follows:

Minimum Net Capital Required By Class of Broker/Dealer

Class	Rule Until 6/30/93	7/1/93 Until 12/31/93	1/1/94 Until 6/30/94	After 6/30/94
A. Carrying Firms:				
Basic	$25,000	$100,000	$175,000	$250,000
Alternative	100,000	150,000	200,000	250,000
(k)(2)(i) Exempt	25,000	50,000	75,000	100,000
B. Introducing Firms:				
Receive	5,000	20,000	35,000	50,000
Do Not Receive	5,000	5,000	5,000	5,000[1]
C. Dealers and Underwriters	25,000	50,000	75,000	100,000
D. Mutual Fund Firms				
Wire-Order Basis	2,500	10,000	17,500	25,000
Subscription Basis	2,500	3,300	4,100	5,000[2]
E. Market Makers				
Basic	25,000	50,000	75,000	100,000
Alternative	100,000	150,000	175,000	250,000
F. Other	5,000	5,000	5,000	5,000[2]

[1] SEC is proposing to increase this requirement to $25,000.
[2] SEC is proposing to increase this requirement to $10,000.

Firms that elect to operate under the Alternative Standard of the Rule, paragraph (a)(1)(ii), are required to give written notice of this election to their Designated Examining Authority (DEA) by January 1, 1993. Firms currently operating under the alternative method of paragraph (f) are also required to give written notice if they intend to use the Alternative Standard after January 1, 1993.

Firms electing the Alternative Standard for whom the NASD is the DEA should use this notification form or a photocopy of it.

Notification of Election
of the
Alternative Standard

NASD, Inc.
Automated Reports Department
9513 Key West Avenue
Rockville, Maryland 20850

_____ _____
(Type Full Name of Firm) (NASD ID#)

hereby gives notification of its election to operate under paragraph (a)(1)(ii) of Rule 15c3-1 (The Alternative Standard).

We understand that to change this election, we must make application to and receive permission of the Securities and Exchange Commission.

_____
(Type Name of Firm's Principal)

_____ _____
(Signature of Principal) (Date)