NASD NOTICE TO MEMBERS 95-33

Mail Vote—NASD Solicits Member Vote On Measures To Discipline Members And Registered Persons For Failing To Honor Arbitration And Mediation Settlement Agreements; **Last Voting Date: June 15, 1995**

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ■ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training

Executive Summary

The NASD invites members to vote on a proposed amendment to Article VI, Section 3 of the NASD By-Laws to permit the NASD to suspend or cancel the membership or registration of a member or associated person for failing to honor a written and executed settlement agreement obtained in connection with an arbitration or mediation conducted under the auspices of the NASD. The NASD is proposing to adopt these amendments, along with amendments to the *Resolution of the Board of Governors—Failure to Act Under Provisions of Code of Arbitration Procedure* (Resolution) to make a failure to honor a written and executed settlement agreement obtained in connection with an arbitration or mediation conducted under the auspices of a self-regulatory organization (SRO) a violation of Article III, Section 1 of the NASD Rules of Fair Practice. By doing this, the NASD is giving settlement agreements the same force and effect as arbitration awards. The last voting date is June 15, 1995. The text of the proposed amendment follows this Notice.

Background

The NASD is proposing to amend the Resolution to make a failure to honor a written and executed settlement agreement obtained in connection with an arbitration or mediation conducted under the auspices of a self-regulatory organization a violation of Article III, Section 1 of the Rules of Fair Practice, and to amend Article VI, Section 3 of the By-Laws to permit the NASD to suspend or cancel the membership or registration of a member or associated person for failing to honor a written and executed settlement agreement obtained in connection with an arbitration or mediation conducted under the auspices of the NASD.

Because only amendments to the By-Laws are required to be approved by the membership, the Board is not seeking member vote on the proposed amendment to the Resolution. The proposed amendments to the Resolution are discussed in this Notice for the membership's information.

Enforcing Settlement Agreements

In connection with the administration of its arbitration program, the NASD has noted that many disputes or claims for damages submitted to arbitration before the NASD, another SRO forum or the American Arbitration Association (AAA), are settled before a hearing on the merits. In addition, the NASD is developing a mediation program where parties will be participating in a process that is intended to increase the number of claims that are settled before a hearing.[1]

The NASD has noted that occasionally parties fail to comply with settlement agreements reached in connection with arbitration proceedings. These settlements may have been reached just before the hearing on the matter and, as a result, the hearing is canceled, only to be rescheduled following a party's failure to honor the settlement. In other cases, matters are settled and claims withdrawn only to be refiled later after a party fails to honor the agreement.

The NASD is concerned that these observed failures to honor settlement agreements impose substantial added costs on the parties in the form of delayed recoveries, actions to enforce the agreements, and additional fees

[1] The NASD will be proposing a rule change to the SEC, for its approval, relating to the establishment of a mediation program in the near future.

connected with short-notice cancelation of hearings. The NASD Arbitration Department also incurs additional costs in rescheduling hearings, and, on occasion, has had to appoint new arbitrators to hear a matter. In addition, the NASD believes that the credibility of the arbitration process suffers if parties are able to derail the resolution of a dispute with impunity by walking away from a settlement agreement.

The Resolution states that "it may be deemed . . . a violation of Article III, Section 1 of the Rules of Fair Practice . . . to . . . fail to honor an [arbitration] award . . . ." The Resolution was adopted in 1973 and has been used to discipline members who fail to pay an arbitration award unless they have moved to vacate the award.[2] The Resolution applies to awards rendered in NASD arbitrations, as well as arbitrations sponsored by other SROs and the AAA.

The Board believes that the failure to honor a settlement agreement entered into in connection with an arbitration proceeding or a mediation should have the same consequences as the failure to pay an arbitration award. Therefore, the NASD is proposing to amend the Resolution to make the failure to honor a written and executed settlement agreement actionable as a violation of Article III, Section 1 of the Rules of Fair Practice. By limiting the amendment to "written" and "executed" settlement agreements, the NASD will not be entertaining arguments that a party "agreed to settle" a case but refused to execute a document reducing the agreement to writing.

Use Of Summary Suspension/ Cancelation Procedures

In 1993 the NASD amended Article VI, Section 3 of the By-Laws to specify that a membership or registration can be suspended or canceled on 15-days' notice for failing to honor an arbitration award rendered in an NASD arbitration. This summary proceeding was limited to awards in NASD-sponsored proceedings because the NASD's oversight of the arbitration process provided greater assurance about the awards to be enforced in such proceedings.

The Board believes that the failure to honor settlement agreements entered into in connection with an arbitration proceeding or mediation sponsored by the NASD should be subject to the same summary suspension/cancelation proceedings as are arbitration awards. Accordingly, the NASD is also proposing to amend Article VI, Section 3 of the By-Laws to specify that membership or registration can be suspended or canceled on 15-days' notice for failing to honor a settlement agreement obtained in connection with an NASD arbitration. Because amendments to the By-Laws require the approval of the membership, the Association is asking the membership to approve the proposed amendments to the By-Laws as set forth below.

The NASD recognizes that even with a written and executed settlement agreement there may arise disputes concerning the terms of the agreement or whether performance under the agreement has occurred as agreed. In such cases, it is expected that the responding party will request a hearing as provided in the procedures specified in Article VI of the Code of Procedure and defend against the allegation of failure to honor a settlement agreement by stating that there exists a dispute over the terms or performance of the agreement. The hearing panel can resolve the dispute or, if the responding party has sought relief from the agreement in court, defer to the courts for a decision. A party aggrieved by a decision of the panel in such a matter can appeal the decision to the SEC as a final action of the NASD.

Request For Vote

The NASD Board of Governors believes the proposed amendments will enhance customer confidence in the arbitration process by providing a mechanism to force parties to honor their settlement agreements. Please mark the attached ballot according to your convictions and mail it in the enclosed, stamped envelope to The Corporation Trust Company. Ballots must be postmarked **no later than June 15, 1995.**

Questions regarding this Notice may be directed to Elliott R. Curzon, Senior Attorney, Office of General Counsel, at (202) 728-8451.

For Member Vote

Text Of Proposed Amendment To Article VI Of The By-Laws

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

Article VI

Dues, Assessments and Other Charges

Sec. 1 No change.

Sec. 2 No change.

Suspension or Cancellation of Membership or Registration

Sec. 3. The Corporation after fifteen

[2] Section 41 of the NASD Code of Arbitration Procedure requires awards to be paid within 30 days. In addition, under the Federal Arbitration Act and many state statutes, a motion to vacate must be filed within 90 days after the award is rendered.

(15) days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments or other charges, or for failure to furnish any information or reports requested pursuant to Section 2 of this Article, or for failure to comply with an award of arbitrators properly rendered pursuant to Section 41 of the Code of Arbitration Procedure, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied[.], or for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation held under the auspices of the Corporation.

For The Members' Information

Text Of Proposed Amendment To The Resolution Of The Board Of Governors—Failure To Act Under Provisions Of Code Of Arbitration Procedure

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

Resolution of the Board of Governors—

Failure to Act Under Provisions of Code of Arbitration Procedure

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Article III, Section 1 of the Rules of Fair Practice for a member or a person associated with a member to: (1) fail to submit a dispute for arbitration under the NASD Code of Arbitration Procedure as required by that Code[, to]; (2) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the NASD Code of Arbitration Procedure[, or]; (3) fail to honor an award [of arbitrators properly rendered pursuant to the Uniform Code of Arbitration], or comply with a written and executed settlement agreement, obtained in connection with an arbitration held under the auspices of the National Association of Securities Dealers, Inc., the New York, American, Boston, Cincinnati, [Midwest] Chicago, Pacific, or Philadelphia Stock Exchanges, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of securities disputes before the American Arbitration Association where timely motion has not been made to vacate or modify such award pursuant to applicable law[.] or (4) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation held under the auspices of the National Association of Securities Dealers, Inc.

NASD NOTICE TO MEMBERS 95-34

Survey Of Members That Transact Business In PORTAL Securities

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ■ Trading
- ☐ Training

Executive Summary

Members that transact business in securities designated in The PORTAL℠ Market, which are not PORTAL participants, must notify the NASD of certain summary information about the volume and frequency of transactions by June 15, 1995.

Introduction

The Nasdaq Stock Market℠ operates The PORTAL Market for the trading of privately placed securities that qualify under Rule 144A under the Securities Act of 1933. The PORTAL Market remains the only SEC-authorized system to provide a trading market for the resale of restricted securities. Securities that are designated PORTAL securities can receive a CUSIP number and settle through the Depository Trust Company (DTC). Participants in The PORTAL Market include PORTAL dealers, PORTAL brokers, and PORTAL qualified investors. Any NASD member that is registered as a general securities firm can become a PORTAL dealer if the member meets the $10 million investment in securities test under Rule 144A, or a PORTAL broker, if the member cannot meet the $10 million test. An investor that meets the $100 million investment in securities test under Rule 144A can be registered as a PORTAL qualified investor. There are currently 115 participants in The PORTAL Market.

The PORTAL Market accepts quotations from PORTAL dealers and PORTAL brokers that are one- or two-sided, firm or indicative. The PORTAL Market does not require firm quotations or market making. NASD members may sell PORTAL securities to any customer, regardless of whether the customer is a participant in The PORTAL Market, so long as the transaction is in compliance with Rule 144A or any other available exemption from registration.

Pilot Program

To date, because of the structure of The PORTAL Market rules in Schedule I to the NASD By-Laws, members of the NASD have not had to submit trade reports of transactions in PORTAL securities and there has been no last-sale display of transactions. Soon the NASD will submit a rule filing to the SEC to propose a pilot to report transactions in PORTAL securities to the NASD. The pilot will help the NASD develop and the SEC review revised PORTAL reporting requirements and help members and the NASD make necessary technology changes to implement such revised requirements. The NASD is currently determining an appropriate pilot start date in 1995 that will take into account the time necessary for the NASD and PORTAL participants and other members to make necessary technological changes.

The pilot will require NASD members that are not PORTAL participants to report monthly to the NASD the previous month's primary and secondary market transactions in PORTAL securities. The transaction report for each transaction requires, in addition to the standard trade-report information, that the member identify whether the contra-party is a "qualified institutional buyer" (QIB) as in SEC Rule 144A, a non-QIB institution, or an individual (the investor status information). In lieu of the foregoing investor status information, where appropriate, the member may indicate that the transaction is to an investor in an offshore market or to an investor in the U.S. public markets.

Request For Submission Of Notification

The NASD has previously communicated details of the proposed pilot directly to NASD members that are PORTAL participants. This Notice is to request NASD members that are not PORTAL participants to notify the NASD of certain summary information about the volume and frequency of transactions in PORTAL securities by June 15, 1995. The notification will help the NASD identify those members that must be contacted to establish procedures for the submission of reports to the NASD on transactions in PORTAL securities. The summary information regarding the volume and frequency of transactions will help the NASD determine the final scope of the reporting obligations to be imposed on NASD members that are not PORTAL participants. Any restricted security that has a CUSIP number and is DTC-eligible is considered a PORTAL security.

The NASD will use the information generated during the pilot to determine whether there is an identifiable group of securities that has sufficient liquidity and volume in the secondary market to permit some form of last-sale or other display of transactions to enhance price discovery. With respect to the reporting of primary transactions, the NASD will review such transaction reports to determine whether they provide sufficient support to the NASD's surveillance function to justify their continued submission.

Questions regarding this Notice should be directed to Peter T. Canada at (202) 728-8479.

FAX this form to (202) 728-8206 by June 15, 1995.

Name of member_____

Address_____

CRD number_____ Contact person_____

In the last six months, estimated average number of:

	Debt	**Equity**
Primary offerings per month	_____	_____
Secondary market transactions per month	_____	_____
Shares traded in secondary market transactions per month	_____	_____
Dollar volume of secondary market transactions per month	_____	_____

NASD NOTICE TO MEMBERS 95-35

Continuing Education Program Update: Regulatory Element Questions And Answers

Suggested Routing

- ■ Senior Management
- □ Advertising
- ■ Corporate Finance
- ■ Government Securities
- ■ Institutional
- □ Internal Audit
- ■ Legal & Compliance
- ■ Municipal
- ■ Mutual Fund
- ■ Operations
- ■ Options
- ■ Registration
- ■ Research
- ■ Syndicate
- □ Systems
- ■ Trading
- ■ Training

Executive Summary

On February 8, 1995, the Securities and Exchange Commission (SEC) approved rules[1] submitted to it by eight self-regulatory organizations (SROs)—the American Stock Exchange, the Chicago Board Options Exchange, the Chicago Stock Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, the New York Stock Exchange, the Pacific Stock Exchange, and the Philadelphia Stock Exchange—for the creation of a Continuing Education Program (the Program). This Program is comprised of two parts—the Regulatory Element and the Firm Element. Both Elements are effective July 1, 1995, with the Firm Element to be implemented in two parts, as described below. This Notice restricts itself to the procedures surrounding the implementation of the Regulatory Element of the Program.

Program Background

In September 1993, the Securities Industry Task Force on Continuing Education recommended implementation of a Continuing Education Program for securities industry professionals. The Task Force called for a two-part program that requires periodic uniform training in regulatory matters (Regulatory Element) and ongoing programs by broker/dealers to keep employees up-to-date on job- and product-related subjects (Firm Element).

The report also proposed the creation of a permanent Securities Industry/ Regulatory Council on Continuing Education, to oversee the implementation of the Program and recommend to the SROs the specific content of the Regulatory Element and the minimum guidelines for complying with the Firm Element requirements (see *Special Notice to Members 95-13*).

In November 1993, the Council was created with individuals from 13 broker/dealers representing a broad cross-section of industry firms, and six SROs—the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, the New York Stock Exchange, and the Philadelphia Stock Exchange. The SEC and the North American Securities Administrators Association each also assigned liaisons to the Council. The Council plays an ongoing role in evaluating the Program and in recommending changes to the SROs as necessary to ensure that the Regulatory and Firm Elements are responsive to industry needs.

The Continuing Education Program

The mandatory Continuing Education Program approved by the SEC on February 8, 1995, is a two-part program. Effective July 1, 1995, the Program requires periodic participation in computer-based training in regulatory matters—the Regulatory Element—and the establishment of ongoing training programs by firms to keep covered employees up-to-date on job- and product-related subjects—the Firm Element. This Program helps ensure that registered persons stay current on products, markets, and rules to the ultimate benefit of the investing public.

Persons Covered By The Continuing Education Program

Every person required to be registered in any capacity with an SRO

[1] The NASD rule is Part XII to Schedule C of the NASD By-Laws.

who has been registered for 10 years or less is covered by the Regulatory Element, and must satisfy the requirements within 120 calendar days after the second, fifth, and tenth anniversaries of his or her initial securities registration. Also covered are those who have been registered more than 10 years and who have been the subject of a significant disciplinary action (suspension, fine of $5,000 or more, or a statutory disqualification) during the most recent 10 years. Those registered more than 10 years who have not been the subject of a significant disciplinary action are not covered by the requirements of the Regulatory Element.

The Firm Element requirements apply to all broker/dealers and their "covered persons." Covered persons are registered salespeople, traders, investment bankers, and others who conduct a securities business with public customers, and the immediate supervisors of such persons. The term "customer" applies to retail, institutional, and investment banking customers, but does not include other broker/dealers.

Registered persons outside the United States are covered by the Program. However, with respect to the Regulatory Element, special administration accommodations are necessary to deliver the computer-based training to them, and firms with registered representatives outside the United States will be advised by their SRO on the method of accommodation when such is developed.

How The Continuing Education Program Will Be Administered

The Regulatory Element of the Program will be delivered through computer-based training in which participants work through problems related to realistic scenarios at computer terminals in an NASD PROCTOR® Certification Testing Center (PROCTOR Center). Individuals will be subject to the Regulatory Element based on their initial registration date or, if applicable, the date of the most recent significant disciplinary action against them. For example, persons registered in October 1993 must first participate in the Regulatory Element within 120 calendar days after their second anniversary of continuous registration in October 1995. In October 1998, they again participate to complete their five-year cycle requirement. In October 2003, they again participate to complete their 10-year anniversary requirement. Thereafter, they are exempt from the Regulatory Element, only if they have no significant disciplinary action in the most recent 10-year period.

The Firm Element is developed and administered by firms and may include written materials, videos, audio tapes, classroom training, direct broadcasts, or other media presentations. Firms must conduct a training-needs analysis and have their written training plans completed by July 1, 1995. The Firm Element will begin for all "covered persons" no later than January 1, 1996, in accordance with their firm's written training plans. The Regulatory and Firm Elements focus on increased education and training, rather than periodic retesting.

Regulatory Consequences For Non-Compliance

Failure to comply with Firm or Regulatory Element requirements may subject the firm and individual to disciplinary action. Non-compliance with Regulatory Element requirements will result in an individual's registration being deemed inactive until he or she fulfills all program requirements. If an individual is inactive, that individual may not engage in, or be paid for, activities requiring registration.

The Role Of The Central Registration Depository In The Implementation Of The Regulatory Element

The Central Registration Depository (CRD) will play an important role in the implementation of the Regulatory Element by keeping track of those affected by the Regulatory Element and by notifying firms of their employees required to satisfy the Regulatory Element. The following series of Questions and Answers will help clarify the procedures necessary to implement the Regulatory Element. Questions about this Notice may be directed to John Linnehan, NASD Director of Continuing Education, at (301) 208-2932 or your CRD Quality and Service Teams at:

CRD Quality and Service Team 1
(301) 921-9499

CRD Quality and Service Team 2
(301) 921-9444

CRD Quality and Service Team 3
(301) 921-9445

CRD Quality and Service Team 4
(301) 921-6664

CRD Quality and Service Team 5
(301) 921-6665

Questions And Answers Regarding The Regulatory Element

Who Is Required To Participate In The Regulatory Element And How Will They Be Notified

1.
Q. Who is covered by the Regulatory Element?

A. Each person registered for 10 years or less is covered by the Regulatory Element and must take the regulatory computer-based training within 120 calendar days after the second, fifth, and tenth anniversaries of his or her initial registration date. In addition, registered persons who have been the subject of a significant disciplinary action during the last 10 years (from July 1, 1995), or become subject to a significant disciplinary action after that date, are subject to the Regulatory Element requirements. See Significant Disciplinary Actions below, for more information.

2.

Q. What is the initial registration date?

A. The initial registration date is the first date an individual became registered with the NASD or NYSE, regardless of the registrations the individual acquired after his or her initial registration. The initial registration date is the date the person's registration was approved, not the date the person took and passed the registration qualifications examination. For this regulation, persons who have a gap greater than two years in their registration history will have their initial registration date reset to the point of entry following the two-year gap.

3.

Q. What types of NASD and NYSE registrations are affected by the Program and the Regulatory Element?

A. Those who hold the following registrations are subject to the Regulatory Element requirements:

4 Registered Options Principal
6 Investment Company Products/Variable Contracts Limited Representative
7 General Securities Representative
7 Securities Trader (NYSE)
7 Trading Supervisor (NYSE)
7a Floor Members Engaged in Public Business with Professional Customers (NYSE)
7b Floor Clerks of Members Engaged in Public Business with Professional Customers (NYSE)
8 General Securities Sales Supervisor
8 Branch Office Manager (NYSE)
11 Assistant Representative—Order Processing
12 General Securities Sales Supervisor (NYSE)
13 Allied Member (NYSE)
14 Compliance Official
15 Foreign Currency Options
16 Supervisory Analyst (NYSE)
17 Limited Registered Representative
22 Direct Participation Programs Limited Representative
24 General Securities Principal
26 Investment Company Products/Variable Contacts Limited Principal
27 Financial Operations Principal
28 Introducing Broker/Dealer Financial and Operations Principal
39 Direct Participation Programs Limited Principal
52 Municipal Securities Representative
53 Municipal Securities Principal
62 Corporate Securities Limited Representative
— Government Securities Representative
— Government Securities Principal
— Securities Lending Representative (NYSE)
— Securities Lending Supervisor (NYSE)

Persons holding *only* a commodities registration with the National Futures Association or state investment-advisor registrations are not tracked by the CRD and are not included.

4.

Q. What if an individual has multiple registrations, such as a Series 6 in 1988 and a Series 7 in 1991? What date determines when that person must participate in the Regulatory Element?

A. The date of the initial registration (1988) applies, provided that the person has remained continuously registered since that time and has had no significant disciplinary action as described below.

5.

Q. What if the above individual had a Series 65 State Investment Advisor registration in 1992 and a Series 6 in 1993? What date determines when that person must participate in the Regulatory Element?

A. The date of the Series 6 NASD registration (1993) applies, provided that the person has remained continuously registered since that time and has had no significant disciplinary action as described below.

6.

Q. Certain municipal securities representatives and principals were registered with one or more bank regulators pursuant to MSRB rules before becoming associated with an NASD member. How is their initial registration date calculated?

A. The CRD may recognize such persons as being registered less than 10 years and send that person's firm a Regulatory Element notice. However, if the person had been previously registered for more than 10 years, and such person has no significant disciplinary history that makes the person subject to the Regulatory Element, he or she is not required to meet the Regulatory Element requirements. The firm receiving a notice for such a person should advise its CRD Quality and Service Team in writing that the person is

exempt because he or she has been registered for more than 10 years. The letter must include the amount of time registered before becoming associated with an NASD firm and the bank regulatory organization or organizations with which the person was registered so that this information can be verified. Unless that person is subsequently covered by the Regulatory Element, he or she will not receive another CRD notice.

7.
Q. What if a person's registration temporarily lapses?

A. If a person ceases to be registered for less than two years, he or she will maintain the original registration date but will have to participate in any Regulatory Element program that he or she may have missed during the lapse period. For example, if a person's registration lapses at four and one-half years, and that person wishes to reactivate at what would be his or her six-year anniversary, he or she must complete the fifth-year Regulatory Element requirement before the registration can be reactivated.

8.
Q. What if the person ceases to be registered for two or more years?

A. That person begins the entire registration process anew. That is, he or she must take the appropriate qualification examination(s) and reenter the Regulatory Element at the beginning of a new 10-year cycle.

9.
Q. What is the initial registration date of the person who was not registered for two or more years and reentered the securities business by waiver rather than by reexamination?

A. The initial registration date of that person is the waiver approval date for this rule.

10.
Q. Is anyone exempt from the Regulatory Element of the Program?

A. Those who have been registered more than 10 years and who have not been the subject of a significant disciplinary action during the most recent 10 years are exempt from the Regulatory Element. However, if an individual incurs a significant disciplinary action at any time in the future, or is ordered by a state securities regulator, an SRO, or the SEC to reenter the Regulatory Element, that person will be subject to the Regulatory Element requirements in a new 10-year cycle. Also exempt from the Regulatory Element requirements are those registered persons whose activities are limited solely to the transaction of business on an exchange floor with members or registered broker/dealers.

11.
Q. Can a firm request a Regulatory Element computer-based training session for an individual registered representative who is not otherwise covered by the Regulatory Element requirements?

A. Yes. To request a computer-based training session for an individual not otherwise covered by the Regulatory Element, a firm submits a request through FAQS (using the EXAM-REQ command) or sends a page one of Form U-4 using the "Other" line to request a session. The firm's CRD account will be charged for the training session when the appointment is requested, rather than after the session is taken, as is the case for those who are covered by the Regulatory Element.

12.
Q. How will firms be notified of those who are required to satisfy the Regulatory Element requirements?

A. Beginning in June 1995, 30 days before the anniversary, the CRD will issue notices to those whose second, fifth, or tenth anniversary of their initial securities registration or posting of a significant disciplinary matter occurs. The notices will state that beginning with the date of the individual's second, fifth, or tenth anniversary, he or she will have 120 calendar days to satisfy the Regulatory Element, by completing a computer-based training session dealing with regulatory matters relevant to conducting a securities business of any kind. The individual must then make an appointment to take the computer-based training at any PROCTOR Center before the end of the 120-day period, or have his or her securities registration be made inactive. A person with an inactive securities registration cannot perform or be paid for any activities that require a securities registration.

13.
Q. If an individual is registered with more than one firm, which firm or firms will receive notifications for that individual?

A. In most instances, only one firm will receive notification for an individual. Determination of the firm to receive the notification will occur as follows:

• If the oldest active registration is with a firm that is non-affiliated with a group of firms, that firm will receive the notification.

• If the oldest active registration is with one or more firms in a group of affiliated firms, CRD will check to determine if the firms are registered as a simultaneous filing group.

—For affiliated firms registered as a simultaneous filing group, the designated firm will receive the notification.

—For affiliated firms not registered as a simultaneous filing group, the notification will be sent to the firm identified as the primary firm by the group of affiliated firms.

The firm that receives notification for an individual will be the firm that has its CRD account debited for the Regulatory Element computer-based training session.

Individual and summary reports that include a change to an inactive status will be sent to *all* firms with which the individual is currently registered.

Significant Disciplinary Actions

14.
Q. What is a significant disciplinary action?

A. A significant disciplinary action occurs when a registered person:

• becomes subject to a statutory disqualification pursuant to the Securities Exchange Act of 1934. Such disqualifications include bars, suspensions, and civil injunctions involving securities matters, any felony convictions, or a misdemeanor conviction that involves investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses; *or*

• becomes subject to suspension or to the imposition of a $5,000 or more fine for violating any provision of any securities law or regulation, or any agreement with, or rule or standard of conduct of, any securities governmental agency, securities SRO, or as imposed by any such regulatory or SRO in connection with a disciplinary proceeding; *or*

• is ordered to reenter the Regulatory Element as a sanction in a disciplinary action by any securities governmental agency or securities SRO.

15.
Q. How does the imposition of a significant disciplinary action affect a person's status in the Regulatory Element?

A. A significant disciplinary action "resets the clock" for an individual who is already covered by, or who has previously met the requirements of, the Regulatory Element. Once a significant disciplinary action has been posted on CRD, there is a 45-day waiting period. The 46th day becomes the *effective date*, and as of this effective date, the individual will have 120 days in which to meet the requirements of the Regulatory Element computer-based training session. Additionally, the individual must successfully complete Regulatory Element sessions within 120 days of the second, fifth, and tenth anniversaries of the effective date associated with that disciplinary action.

16.
Q. How will a final significant disciplinary action that is under appeal affect a person's Regulatory Element requirement status?

A. If an appeal is filed, the Regulatory Element requirement associated with that disciplinary action will be "suspended," and the individual will retain the Regulatory Element status he or she had before the appeal. If the final significant disciplinary action is sustained on appeal, the effective date would become the 46th day after the appeal of the final significant disciplinary action was sustained. The person will then have 120 days in which to complete a Regulatory Element computer-based training session. Additionally, the person must complete Regulatory Element sessions within 120 days of the second, fifth, and tenth anniversaries of the effective date associated with the significant disciplinary action.

17.
Q. What about those individuals with significant disciplinary actions within the last 10 years in their records as of July 1, 1995?

A. Those individuals with significant disciplinary actions within the last 10 years in their records as of July 1, 1995, are subject to the Regulatory Element requirements. However, CRD will send notice for these individuals to their firms after November 1995. This is because sending the notices depends on a phase of the CRD Redesign project that will be complete in October. Once the significant disciplinary records are in the CRD, notices will be sent to those whose second, fifth, or tenth anniversary of such actions has occurred. Although an anniversary may have passed by the time the significant disciplinary records are entered, the individual will have 120 days in which to satisfy the Regulatory Element requirement.

For example, if an individual registered for 15 years has a significant disciplinary action posted to his or her record on August 14, 1990, that individual's fifth anniversary of the significant disciplinary action is August 14, 1995. Ordinarily, a notice would be sent to his or her firm on July 14, 1995, advising of the upcoming anniversary and the Regulatory requirement to be met no later than December 12, 1995. However, due to the capture of this record in October, the notice will go out in November requiring the individual to meet the Regulatory Element requirements between December 1995 and April 1996.

Types Of Reports Issued By CRD To Firms

18.

Q. What types of reports will CRD provide firms to help them track the status of their registered employees subject to the Regulatory Element?

A. CRD will issue several types of individual notifications:

• An Initial Notice is sent 30 days before the registered representative's anniversary date to remind the individual of an approaching registration or disciplinary anniversary, and to inform them of the associated Continuing Education Program requirement. The notification will include the beginning and ending dates of the 120-day window, as well as notice of authorization to schedule a training session for any available date in that window.

• A Second Notice is sent if a registered person has not met his or her obligations by the last 30 days of the 120-day window. The notice will advise the individual of his or her status and will include a reminder of the consequences of not complying with the Regulatory Element requirements.

• A Notice of Inactive Status is sent to inform the registered person that because the Regulatory Element computer-based training is not complete, his or her registration is no longer active and he or she may not perform, or be paid for, any activity that requires a securities registration.

• A Notice of Session Completion is sent when the registered person satisfies the Regulatory Element requirement by completing a computer-based training session, or by approved waiver (see below). If applicable, the notification will indicate that the person completed all pending requirements of the Regulatory Element.

By the middle of each month, CRD will advise firms with summary status reports. The Requirement Summary report will show registered persons who:

• have begun their 120-day window;

• have 90 days remaining in their 120-day window;

• have 60 days remaining in their 120-day window; or

• have 30 days remaining in their 120-day window.

Other summary reports will show registered persons who:

• have completed their requirement within the past 30 days (Completion Summary);

• have had their registration changed to inactive within the past 30 days (Inactive Summary);

• have remained inactive for more than 30 days (Previously Inactive Summary); or

• have had their registration status changed from inactive to another status within the past 30 days (Previously Inactive/Satisfied Summary).

Waivers

19.

Q. Is it possible for an individual to have the Regulatory Element requirements waived?

A. Waivers may be granted only under the *most extraordinary* circumstances.

20.

Q. How does a firm request a waiver from the Regulatory Element requirements?

A. A principal of the firm must address the waiver request to the firm's CRD Quality and Service Team for a decision.

Administration Of The Computer-Based Training Of The Regulatory Element And Scheduling Computer-Based Training Sessions At NASD PROCTOR Centers

21.

Q. Where will a person take the computer-based training of the Regulatory Element and how long will the training last?

A. The computer-based training will be administered at any one of the 55 NASD PROCTOR Centers. A person will have up to three hours to complete the training session.

22.

Q. How does a person make an appointment at a PROCTOR Center?

A. The individual or his or her firm can make an appointment to take the Regulatory Element computer-based training by calling a conveniently located PROCTOR Center. The PROCTOR Center administrator will need to know:

• the person's name and social security number;

• the firm's name; and

• a telephone number where the PROCTOR administrator can reach the individual or his or her firm.

Due to the many computer-based training sessions and qualifications examinations administered at the PROCTOR Centers, individuals should be strongly encouraged to schedule their appointment as soon as possible within their 120-day window. PROCTOR Center addresses, phone numbers, and hours are listed at the end of this Notice.

23.
Q. What will it cost to take the computer-based training at a PROCTOR Center and how will firms be charged?

A. The cost will be $75 for every computer-based training session taken at a PROCTOR Center. A charge will be made against the firm's CRD account. No-shows and those who cancel within 48 hours of a scheduled appointment will be charged $75. If a firm requests a session for an employee who has not received a notification from CRD that he or she is required to satisfy the Regulatory Element, the $75 will be deducted from the firm's CRD account at the time the request is made, and not after the session is complete.

24.
Q. If a person does not complete the Regulatory Element computer-based training, how long must he or she wait before rescheduling another appointment at a PROCTOR Center?

A. A person may reschedule another appointment at a PROCTOR Center after waiting one day. Rescheduling will be done by the PROCTOR Center as soon as the Center's schedule permits. For this reason, it is important that registered persons do not wait until the last minute to schedule an appointment during their 120-day window. There will be another $75 charge for the rescheduled PROCTOR Center appointment.

25.
Q. Can a person schedule or reschedule the Regulatory Element computer-based training after his or her 120-day window closes?

A. Yes. A person who is required to satisfy the Regulatory Element computer-based training requirement can schedule an appointment at a PROCTOR Center, up to two years after the close of his or her 120-day window. Remember, however, that the person whose 120-day window closes without satisfaction of the Regulatory Element requirements will have his or her registration made inactive. This means that the person may not conduct, or be paid for, any activities that require a securities registration. Furthermore, a person whose registration remains inactive for more than two years must requalify for his or her registration by examination and begin a new 10-year Regulatory Element cycle.

26.
Q. Will there be any provisions to accommodate people with disabilities at the PROCTOR Centers?

A. PROCTOR Centers can accommodate people with disabilities. Such persons or their firms should notify the PROCTOR Center of the person's special needs when making the appointment.

27.
Q. Are there any plans to enable delivery of the computer-based training internally at a site provided by the member firm?

A. At this time there are no plans to enable firms to administer the Regulatory Element computer-based training internally. The Council and the SROs believe that delivery of the computer-based training at a neutral site, such as a PROCTOR Center, is the best way to ensure the integrity of the training.

28.
Q. How do the PROCTOR Centers plan to accommodate the additional volume that the Regulatory Element will bring to the Centers?

A. PROCTOR Centers will respond to the increased demand placed on them by the Regulatory Element requirements in three ways:

- extend hours of operation to evenings and weekends when necessary;

- build new centers in areas of high volume, such as Boston, Los Angeles, Manhattan, and others; and

- institute operation of a Mobile PROCTOR Center by July 1995. The Mobile PROCTOR Center will be used initially to meet peak delivery requirements in specific areas near the current PROCTOR Centers. We will publish specific procedures to schedule Mobile PROCTOR Center delivery in areas remote from current PROCTOR Center locations in the near future.

29.
Q. How can a firm schedule delivery of the Regulatory Element computer-based training by a Mobile PROCTOR Center and will the cost still be $75 a session?

A. The Mobile PROCTOR Center will be scheduled centrally by PROCTOR support facilities in Rockville, MD. The cost of delivering the computer-based training by a Mobile PROCTOR Center will be priced to cover actual costs of delivery and therefore will probably be more than $75.

30.
Q. What is the procedure for scheduling a registered representative who resides outside the United States for a Regulatory Element computer-based training session?

A. Registered persons outside the United States are subject to the requirements of the Regulatory Element under the same conditions as persons in the United States. However, such persons cannot attend a computer-based training session outside the United States until

arrangements are made to deliver the training in a computerized and secure setting. The CRD will *defer* covered persons residing outside the United States until the appropriate arrangements can be made. Firms that receive notices for registered persons residing outside the United States should notify their CRD Quality and Service Team in writing of the person's location. The CRD will defer that person's Regulatory Element status and only begin to send notices for that individual when delivery of the computer-based training outside the United States is possible. The status of covered persons residing outside the United States is one of deferment, not exemption.

Subject Matter To Be Covered By The Regulatory Element

31.
Q. What topics will the Regulatory Element computer-based training cover?

A. The Regulatory Element computer-based training will cover topics of general applicability to all registered persons in seven modules during the training session. The areas covered in each module are:

- Registration and reporting;
- Communications with the public;
- Suitability;
- Handling customer accounts;
- Business conduct;
- Customer accounts, trade and settlement practices; and
- New and secondary offerings.

A content outline for the Regulatory Element modules is available from the CRD Quality and Service Teams or from the NYSE.

32.
Q. How will the material be presented in each module?

A. The interactive computer program contains "real-life" scenarios involving a registered person and a customer, and the person will be asked to choose the most appropriate response or responses to the facts in the story. The computer software will assess the individual's understanding of the topic and deliver tutorials about the subject if necessary. As the person works through each module's subject matter, the computer program provides him or her with immediate feedback as to whether each answer is correct or incorrect and why.

33.
Q. Will the Regulatory Element computer-based training be the same for everyone?

A. The content of each training session will be the same for everyone because each person taking the computer-based training must complete all seven modules. However, because there are multiple scenarios in each of the seven modules and the scenarios are selected at random, it is unlikely that any two people will see exactly the same scenarios during the course of their computer-based training session.

Reports To Firms About Performance On The Regulatory Element Computer-Based Training

34.
Q. What type of reports will be made to individuals and their firms regarding performance on the Regulatory Element computer-based training?

A. The computer-based training is not graded. However, as described above, the interactive nature of the computer-based training provides each individual with immediate feedback as he or she works his or her way through the scenarios and problems. There will be no reports made to firms about individual performance, except to notify the firm that a particular individual has satisfied the Regulatory Element requirement.

Firms will receive a quarterly report about the performance of their employees with respect to the subject areas in the Regulatory Element. The information will be aggregated by type of registration. Firms will be expected to use this feedback in the annual analysis of training needs and in the development of written training plans when complying with the Firm Element requirements of the Continuing Education Program.

Status Of Persons Who Fail To Comply With The Requirements Of The Regulatory Element

35.
Q. What are the consequences of not complying with the Regulatory Element?

A. Any person who does not satisfy the Regulatory Element requirements will have his or her securities registration made inactive. This means that he or she may not engage in, or be paid for, activities that require a securities registration. He or she may not solicit or receive commissions on securities sales. If the person is not in sales and his or her duties require a securities registration, for example, as a Financial and Operations Principal, he or she may neither act in the registered capacity nor receive compensation for activities requiring registration.

Thus, it is important to schedule Regulatory Element computer-based training appointments early in the 120-day window in the unlikely event that the person does not complete the required training on the first attempt and has to reschedule.

36.
Q. If a person is deemed inactive, may he or she continue to receive trail or residual commissions?

A. Trail or residual commissions for business completed before the inactive period may be paid unless the person's firm has a policy that prohibits it.

37.
Q. Does the firm have to submit a Form U-5 to report that a person's registration has been made inactive for failure to meet the Regulatory Element requirements?

A. No. A firm does not have to submit a Form U-5 to report that a person's registration has been made inactive for failure to satisfy the Regulatory Element requirements. However, if the person is subsequently terminated by the firm for any reason including refusal to comply with the Regulatory Element requirements, a Form U-5 will have to be filed.

38.
Q. What information will a prospective hiring firm have access to, regarding a person's Regulatory Element status before hiring him or her?

A. A person's Regulatory Element status will be accessible to a prospective hiring firm either by phone from a CRD Quality and Service Team member or by using the Pre-Hire Function in FAQS. Thus prospective firms can know if the person is in an open-window status, has satisfied or completed the Regulatory Element requirements, or is inactive for failure to comply with the Regulatory Element requirements. A person whose registration is inactive and who is hired by a new firm, cannot be registered with that firm until he or she satisfies the Regulatory Element requirement that led to the inactive status. Any person who remains inactive for more than two years, will have to requalify for registration by examination and will reenter a new 10-year Regulatory Element cycle.

Information About PROCTOR Centers

Note: Information current as of April 1, 1995, and subject to change without notice.

Alabama
Birmingham Metropolitan Area
PROCTOR Certification Testing
Lakeshore Park Plaza
2204 Lakeshore Drive
Suite 305
Birmingham, AL 35209
(205) 870–1643
Hours: 8 a.m.–1 p.m. (M,T,Th,F)
8 a.m.–3:30 p.m. (W)
Delivery Stations: 5

Arizona
Phoenix Metropolitan Area
PROCTOR Certification Testing
1717 W. Northern Avenue
Park North II Building
Suite 117
Phoenix, AZ 85021
(602) 870–7522
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 13

Arkansas
Little Rock Metropolitan Area
PROCTOR Certification Testing
11219 Financial Ctr. Pkwy.
Suite 311
Little Rock, AR 72211–2859
(501) 224–5781
Hours: 8:30 a.m.–4 p.m. (M,F)
8:30 a.m.–2 p.m. (T,Th)
8:30 a.m.–1 p.m. (W)
Delivery Stations: 5

California
Emeryville/Berkeley Metropolitan Area
PROCTOR Certification Testing
6425 Christie Avenue
Suite 150
Emeryville, CA 94608
(510) 601–1134
Hours: 8 a.m.–3:30 p.m. (M–F)
Delivery Stations: 8

Los Angeles Metropolitan Area
PROCTOR Certification Testing
Koll Center
1920 Main Street, Suite 230
Irvine, CA 92714
(714) 757–7530
Hours: 8 a.m.–4 p.m. (M–F)
Delivery Stations: 20

Los Angeles Metropolitan Area
PROCTOR Certification Testing
701 N. Brand Blvd., Suite 340
Glendale, CA 91203
(818) 545–7383
Hours: 8 a.m.–4 p.m. (M–F)
Delivery Stations: 20

San Diego Metropolitan Area
PROCTOR Certification Testing
6333 Greenwich Drive
Suite 175
San Diego, CA 92122
(619) 558–1164
Hours: 8 a.m.–3:30 p.m. (M–F)
Delivery Stations: 11

San Francisco Metropolitan Area
PROCTOR Certification Testing
525 Market Street
Suite 390
San Francisco, CA 94105
(415) 882–1212
Hours: 8 a.m.–4 p.m. (M–F)
Delivery Stations: 24

Colorado
Denver Metropolitan Area
PROCTOR Certification Testing
2000 South Colorado Blvd.
Suite 2100
Denver, CO 80222
(303) 692–8745
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 13

Connecticut
Hartford Metropolitan Area

PROCTOR Certification Testing
Glastonbury Corporate Ctr.
628 Hebron Avenue, Suite 210
Glastonbury, CT 06033
(203) 657–3161
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 12

Norwalk Metropolitan Area
PROCTOR Certification Testing
Merritt 7 Corporate Park
501 Bldg., Plaza Level
Norwalk, CT 06851
(203) 845–9655
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 10

District of Columbia
Please see Virginia.

Florida
Miami Metropolitan Area
PROCTOR Certification Testing
The Spessard Holland Building
8000 Governors Square Blvd.
Suite 303
Miami Lakes, FL 33016
(305) 825–7940
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 18

Orlando Metropolitan Area
PROCTOR Certification Testing
601 South Lake Destiny Road
Suite 220
Maitland, FL 32751
(407) 875–8118
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 24

Georgia
Atlanta Metropolitan Area
PROCTOR Certification Testing
900 Ashwood Parkway
Suite 490
Atlanta, GA 30338
(404) 551–0845
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 18

Illinois
Bloomington Metropolitan Area
PROCTOR Certification Testing
211 Landmark Drive, Suite A3
Normal, IL 61761
(309) 452–4788
Hours: 8 a.m.–3:30 p.m. (M–F)
Delivery Stations: 10

Chicago Metropolitan Area
PROCTOR Certification Testing
10 South LaSalle Street
Suite 2101
Chicago, IL 60603
(312) 609–2525
Hours: 8 a.m.–4 p.m. (M–F)
Delivery Stations: 25

ACT Center
River Tree Court
701 N. Milwaukee, Rt. 21
Suite 280
Vernon Hills, IL 60061
(708) 247–4218
Hours: 8 a.m.–8 p.m (M–Th)
8 a.m.–4 p.m. (F, S)
Delivery Stations: 10

Indiana
Indianapolis Metropolitan Area
PROCTOR Certification Testing
Keystone at the Crossing
8900 Keystone Crossing
Suite 990
Indianapolis, IN 46240
(317) 846–8287
Hours: 8 a.m.–3:30 p.m. (M–F)
Delivery Stations: 8

Iowa
Des Moines Metropolitan Area
PROCTOR Certification Testing
3737 Woodland Avenue
Suite 232
West Des Moines, IA 50265
(515) 223–5452
Hours: 8 a.m.–3:30 p.m. (M–F)
Delivery Stations: 8

Kansas
Kansas City Metropolitan Area
PROCTOR Certification Testing
Commerce Plaza II
7400 West 110th Street
Suite 310
Overland Park, KS 66210
(913) 338–4700
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 9

Kentucky
Louisville Metropolitan Area
PROCTOR Certification Testing
10170 Linn Station Road
Suite 550
Louisville, KY 40223
(502) 423–1603
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 5

Louisiana
New Orleans Metropolitan Area
PROCTOR Certification Testing
Energy Centre
1100 Poydras Street
Suite 810
New Orleans, LA 70163
(504) 522–7999
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 7

Maryland
Baltimore Metropolitan Area
PROCTOR Certification Testing
Dulaney Center II
901 Dulaney Valley Road
Suite 502
Towson, MD 21204
(410) 337–5103
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 9

Massachusetts
Boston Metropolitan Area
PROCTOR Certification Testing
1601 Trapelo Road
Building C
Waltham, MA 02154–1046
(617) 890–0466
Hours: 8 a.m.–3:30 p.m. (M–F)
Delivery Stations: 23

Michigan
Detroit Metropolitan Area
PROCTOR Certification Testing
Oakland Towne Square
One Towne Square
Suite 230
Southfield, MI 48076
(810) 351–9088
Hours: 8 a.m.–3:30 p.m. (M–F)
Delivery Stations: 16

Minnesota
Minn./St. Paul Metropolitan Area
PROCTOR Certification Testing
8300 Norman Center Drive
Suite 850
Bloomington, MN 55437
(612) 835–9420
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 18

Missouri
St. Louis Metropolitan Area
PROCTOR Certification Testing
West Park I
12655 Olive Blvd., 3rd Floor
Creve Coeur, MO 63141
(314) 469–6086
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 11

Nebraska
Omaha Metropolitan Area
PROCTOR Certification Testing
Century Building
11213 Davenport Street
Suite 103
Omaha, NE 68154
(402) 333–6278
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 7

New Jersey
West Orange Metropolitan Area
PROCTOR Certification Testing
Eisenhower Office Park
101 Eisenhower Parkway
4th Floor
Roseland, NJ 07068
(201) 228–8777
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 16

New Mexico
Albuquerque Metropolitan Area
PROCTOR Certification Testing
City Center
6400 Uptown Blvd. NE
Suite 476W
Albuquerque, NM 87110
(505) 884–6033
Hours: 8:30 a.m.–4:30 p.m. (M,W,F)
8:30 a.m.–2:30 p.m. (T,Th)
Delivery Stations: 4

New York
Please also see New Jersey.

New York City Metropolitan Area
PROCTOR Certification Testing
225 Broad Hollow Road
Suite 116W
Melville, NY 11747
(516) 845–9063
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 18

New York City Midtown Area
PROCTOR Certification Testing
201 East 42nd Street
Suite 1000, 10th Floor
New York, NY 10017
(212) 809-5509
Hours: 8:30 a.m.–5 p.m. (M–F)
Delivery Stations: 50

N.Y. City Wall Street Area
PROCTOR Certification Testing
33 Whitehall Street
11th Floor
New York, NY 10004
(212) 809–5509
Hours: 8:30 a.m.–5:30 p.m. (M–F)
Delivery Stations: 50

Rochester Metropolitan Area
PROCTOR Certification Testing
Woodcliff I
345 Woodcliff Drive, 1st Floor
Fairport, NY 14450
(716) 383–5630
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 8

North Carolina
Charlotte Metropolitan Area
PROCTOR Certification Testing
9 Woodlawn Green
Suite 219
Charlotte, NC 28217
(704) 523–2773
Hours: 8 a.m.–3:30 p.m. (M–F)
Delivery Stations: 14

Raleigh Metropolitan Area
5540 Centerview Drive
Suite 307
Raleigh, NC 27606
(919) 859–2240
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 8

Ohio
Cincinnati Metropolitan Area
PROCTOR Certification Testing
4445 Lake Forest Drive
Suite 210
Cincinnati, OH 45242
(513) 769–6555
Hours: 8 a.m.–3:30 p.m. (M–F)
Delivery Stations: 9

Cleveland Metropolitan Area
PROCTOR Certification Testing
6450 Rockside Woods Blvd.
Suite 155
Independence, OH 44131
(216) 642–7745
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 7

Columbus Metropolitan Area
PROCTOR Certification Testing
655 Metro Place South
Suite 145
Dublin, OH 43017
(614) 793–1592
Hours: 8 a.m.–3:30 p.m. (M–F)
Delivery Stations: 8

Oklahoma
Oklahoma City Metropolitan Area
PROCTOR Certification Testing
One Lakeview Energy Center
3817 Northwest Expressway
Suite 150
Oklahoma City, OK 73112
(405) 942–1562
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 9

Oregon
Portland Metropolitan Area
PROCTOR Certification Testing
9115 S.W. Oleson Road
Suite 101
Portland, OR 97223
(503) 293–8957
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 7

Pennsylvania
Allentown Metropolitan Area

PROCTOR Certification Testing
7660 Imperial Way
Suite A–101
Allentown, PA 18195
(610) 481–0460
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 5

Harrisburg Metropolitan Area
PROCTOR Certification Testing
Commerce Park
2405 Park Drive, Suite 202
Harrisburg, PA 17110
(717) 652–4821
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 4

Philadelphia Metropolitan Area
PROCTOR Certification Testing
1760 Market Street, 9th Floor
Philadelphia, PA 19103
(215) 564–2980
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 20

Pittsburgh Metropolitan Area
PROCTOR Certification Testing
Foster Plaza, Building 9
750 Holiday Drive
Suite 605
Pittsburgh, PA 15220
(412) 928–2440
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 8

Tennessee
Memphis Metropolitan Area
PROCTOR Certification Testing
Penn Marc Centre
6401 Poplar Avenue, Suite 110
Memphis, TN 38119
(901) 767–1180
Hours: 9 a.m.–4:30 p.m. (M,T)
9 a.m.–3 p.m. (W,Th,F)
Delivery Stations: 5

Nashville Metropolitan Area
PROCTOR Certification Testing
One Lakeview Place
25 Century Blvd., Suite 604
Nashville, TN 37214
(615) 871–9972
Hours: 9 a.m.–3 p.m. (M,W,F)
Hours: 9 a.m.–4:30 p.m. (T,Th)
Delivery Stations: 6

Texas
Dallas Metropolitan Area
PROCTOR Certification Testing
Wellington Centre
14643 Dallas Parkway, Suite 640
Dallas, TX 75240
(214) 385–1181
Hours: 8:30 a.m.–4:30 p.m. (M–F)
Delivery Stations: 20

Houston Metropolitan Area
PROCTOR Certification Testing
Park National Bank Building
10333 Richmond Ave., Suite 680
Houston, TX 77042
(713) 952–5005
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 14

San Antonio Metropolitan Area
PROCTOR Certification Testing
40 North East Loop 410
Suite 431
San Antonio, TX 78216
(210) 349–5900
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 8

Utah
Salt Lake City Metropolitan Area
PROCTOR Certification Testing
560 East 200 South
Suite 360
Salt Lake City, UT 84102
(801) 537–1615
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 10

Virginia
No. Virginia Metropolitan Area
PROCTOR Certification Testing
Tycon Towers I Building
8000 Towers Crescent Drive
Suite 280
Vienna, VA 22182
(703) 821–3695
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 12

Richmond Metropolitan Area
PROCTOR Certification Testing
Culpeper Building
1606 Santa Rosa Road
Suite 113
Richmond, VA 23288
(804) 285–8706
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 6

Washington
Seattle Metropolitan Area
PROCTOR Certification Testing
11400 Southeast 8th Street
Suite 270
Bellevue, WA 98004
(206) 451–9883
Hours: 9 a.m.–4:30 p.m. (M–F)
Delivery Stations: 11

Wisconsin
Milwaukee Metropolitan Area
PROCTOR Certification Testing
10400 West North Avenue
Suite 340
Milwaukee, WI 53226
(414) 774–1378
Hours: 8:30 a.m.–4 p.m. (M–F)
Delivery Stations: 13

NASD NOTICE TO MEMBERS 95-36

SEC Approves T+3-Related Amendments To The NASD Uniform Practice Code And Rules Of Fair Practice

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ■ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ■ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ■ Systems
- ■ Trading
- ☐ Training

Executive Summary

On March 17, 1995, the Securities and Exchange Commission (SEC) approved the NASD's amendments to Sections 5, 6, 12, 46, and 64 of the Uniform Practice Code (the UPC) and Sections 1 and 26 of the Rules of Fair Practice (the RFP) to conform the NASD's rules to the three-day settlement cycle (T+3 settlement) mandated in SEC Rule 15c6-1, scheduled to take effect on June 7, 1995.[1] The amendments to the NASD's rules will also take effect on June 7, 1995.

Description Of Amendments

Following the SEC's adoption of Rule 15c6-1 mandating settlement of securities transactions no later than three days after trade date (T+3), the NASD adopted amendments to the Association's UPC and the RFP. To conform the NASD's rules to the T+3 settlement cycle mandated by Rule 15c6-1, these amendments, which the SEC approved on March 17, 1995, take effect on June 7, 1995. The amendments are described below.

Uniform Practice Code

Sections 5 And 6

The amendments to Sections 5 and 6 of the UPC, which prescribe the formula for establishing ex-dates for securities following dividends or other distributions, shorten all the time frames under the Sections by two business days.

Section 12

Section 12 prescribes delivery dates for various transaction circumstances. Subsection 12(b) states that for a "regular way" transaction, delivery must be made on, but not before, the fifth business day after the trade date. The amendment shortens the delivery requirement to the third business day. In addition, the amendment provides that in "seller's option" transactions delivery may be made by the seller on any business day following the third business day after the trade date, rather than the fifth business day.

Section 46

Section 46 requires the calculation of interest up to, but not including, the fifth business day after the trade date. The amendment shortens the time to the third business day.

Section 64

Subsection 64(a)(4) states that in a transaction whereby payment or delivery is to be made to or by an agent of the customer, the customer must agree to furnish instructions to the agent no later than T+4 if the customer is buying COD, or T+3 if the customer is selling POD. The amendments shorten the time period for furnishing such instructions to T+2 and T+1, respectively.

Rules Of Fair Practice

Article III, Section 1

The Prompt Receipt and Delivery Interpretation requires a member to make an affirmative determination, in connection with a long sale, that the customer owns the security and will

[1] The rule filing also included amendments to Section 65 of the UPC relating to customer account transfers. The SEC approved the amendments to Section 65 on November 30, 1995, to coincide with improvements in the Automated Customer Account Transfer System (ACATS). The amendments to Section 65 are not in this Notice, but were published in the *NASD Manual* and distributed to on-line vendors of the Manual.

deliver it in good deliverable form within five business days of order execution. The interpretation also contains a definition of the term "affirmative determination," which applies to long sales and which requires members to note the customer's ability to delivery the securities within five business days. The amendment changes the time limit to three days.

Article III, Section 26(m)(1)

Article III, Section 26(m)(1) requires members to transmit payments received from customers for the purchase of investment company shares by the fifth business day after receipt of a customer's order, or one business day after receipt of a customer's payment, whichever is later. The amendment shortens the five-day transmittal requirement to three days and leaves the one-day alternative unchanged.

The NASD has agreed to an implementation plan for transition to a T+3 settlement cycle proposed by the National Securities Clearing Corporation (NSCC) for early June 1995.[2]

Questions regarding this Notice may be directed to Nasdaq Market Operations at (203) 375-9609.

Text Of Amendments To The Uniform Practice Code And The Rules Of Fair Practice

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

UNIFORM PRACTICE CODE

Sec. 1 through Sec. 4 No change.

Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"

Sec. 5.

Designation of ex-date

(a) No change.

Normal ex-dividend, ex-warrants dates

(b)(1) In respect to cash dividends or distributions, or stock dividends, and the issuance or distribution of warrants, which are less than 25% of the value of the subject security, if the definitive information is received sufficiently in advance of the record date, the date designated as the "ex-dividend date" shall be the [fourth] second business day preceding the record date if the record date falls on a business day, or the [fifth] third business day preceding the record date if the record date falls on a day designated by the Committee as a non-delivery date.

(2) and (3) No change.

Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"

Sec. 6.

Normal ex-interest dates

(a) All transactions, except "cash" transactions, in bonds or similar evidences of indebtedness which are traded "flat" shall be "ex-interest" as prescribed by the following provisions:

(1) On the [fourth] second business day preceding the record date if the record date falls on a business day.

(2) On the [fifth] third business day preceding the record date if the record date falls on a day other than a business day.

(3) On the [fifth] third business day preceding the date on which an interest payment is to be made if no record date has been fixed.

(b) No change.

Sec. 7 through Sec. 11 No change.

Sec. 12. Dates of Delivery

For "cash"

(a) No change.

"Regular way"

(b) In connection with a transaction "regular way" delivery shall be made at the office of the purchaser on, but not before, the [fifth] third business day following the date of the transaction.

"Seller's option"

(c) In connection with a transaction "seller's option," delivery shall be made at the office of the purchaser on the date on which the option expires; except that delivery may be made by the seller on any business day after the [fifth] third business day following the date of transaction and prior to the expiration of the option, provided the seller delivers at the office of purchaser, on a business day preceding the day of delivery, written notice of intention to deliver.

(d) through (h) No change.

Sec. 13 through Sec. 45 No change.

[2] The NSCC plan is to double-up settlement for two trade dates to move from T+5 to T+4 and then repeat the process to move from T+4 to T+3. Thus, for trade date Friday, June 2, trades will settle on the following Friday, June 9 (T+5), and for trade date Monday, June 5, trades will also settle on Friday, June 9 (T+4). The same doubled-up settlement will be used for trade dates Tuesday, June 6 and Wednesday, June 7, both of which will settle on Monday, June 12.

Computation of Interest

Sec. 46.

Interest to be added to the dollar price

(a) In the settlement of contracts in interest-paying securities other than for "cash," there shall be added to the dollar price interest at the rate specified in the security, which shall be computed up to but not including the [fifth] third business day following the date of the transaction. In transactions for "cash," interest shall be added to the dollar price at the rate specified in the security up to but not including the date of transaction.

(b) through (f) No change.

Sec. 47 through Sec. 63 No change.

Acceptance and Settlement of COD Orders

Sec. 64.

(a) No member shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer unless all of the following procedures are followed:

(1) through (3) No change.

(4) The member shall have obtained an agreement from the customer that the customer will furnish his agent instructions with respect to the receipt or delivery of the securities involved in the transaction promptly upon receipt by the customer of each confirmation, or the relevant data as to each execution, relating to such order (even though such execution represents the purchase or sale of only a part of the order), and that in any event the customer will assure that such instructions are delivered to his agent no later than:

(i) in the case of a purchase by the customer where the agent is to receive the securities against payment (COD) the close of business on the [fourth] second business day after the date of execution of the trade as to which the particular confirmation relates; or

(ii) in the case of a sale by the customer where the agent is to deliver the securities against payment (POD), the close of business on the [third] first business day after the date of execution of the trade as to which the particular confirmation relates.

RULES OF FAIR PRACTICE

ARTICLE III

Sec. 1.

Interpretation of the Board of Governors

Prompt Receipt and Delivery of Securities

(a) No change.

(b) Sales:

(1) Long Sales

(A) and (B) No change.

(C) The member makes an affirmative determination that the customer owns the security and will deliver it in good deliverable form within [five (5)] three (3) business days of the execution of the order; or

(D) No change.

(2) and (3) No change.

(4) "Affirmative Determination"

(a) To satisfy the requirements for an "affirmative determination" contained in subsection (b)(1)(C) above for long sales, the member or person associated with a member must make a notation on the order ticket at the time he takes the order which reflects his conversation with the customer as to the present location of the securities in question, whether they are in good deliverable form and his ability to deliver them to the member within [five (5)] three (3) business days.

(b) and (c) No change.

Investment Companies

Sec. 26.

(a) through (l) No change.

Prompt Payment for Investment Company Shares

(m)(1) Members (including underwriters) that engage in direct retail transactions for investment company shares shall transmit payments received from customers for such shares, which such members have sold to customers, to payees (i.e., underwriters, investment companies or their designated agents) by (1) the end of the [fifth] third business day following a receipt of a customer's order to purchase such shares or by (2) the end of one business day following receipt of a customer's payment for such shares, whichever is the later date.

(2) No change.

NASD NOTICE TO MEMBERS 95-37

SEC Approves NASD Proposal Amending The Foreign-Associate Provisions Of Schedule C To The NASD By-Laws

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ■ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ■ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ■ Training

Executive Summary

On February 13, 1995, in SEC Release No. 34-35361, File No. SR-NASD-94-51, the Securities and Exchange Commission (SEC) approved amendments to Parts VI and X of Schedule C of the NASD By-Laws relating to foreign finders and foreign associates. These amendments will permit the payment of transaction-related compensation to non-registered foreign finders who are not subject to the jurisdiction of U.S. securities laws, subject to certain disclosure and recordkeeping requirements by the U.S. broker/dealer. The rule change was effective February 13, 1995.

Background And Description

The NASD has consistently limited the payment of finders' fees by members. Permission to do so has only been granted in isolated circumstances, where the amount paid has been nominal and the recipient did not routinely engage in making referrals to brokerage firms. The new rule allows members the opportunity to enhance their competitive position in foreign countries where new accounts are opened on a referral basis with ongoing compensation to the foreign finder.

Under the rule as amended, member firms and persons associated with a member may pay transaction-related compensation to non-registered foreign persons, based on the business of customers such persons direct to member firms. The following conditions must be met for this "foreign-finder" exemption to apply:

• the member firm must assure itself that the non-registered foreign person who will receive the compensation (the finder) is neither required to register in the United States as a broker/dealer nor is subject to a disqualification as defined in Article II, Section 4 of the NASD By-Laws;

• the member firm must further assure itself that the compensation arrangement does not violate applicable foreign law;

• the finder must be a foreign national or a foreign entity domiciled abroad;

• the customers directed to the member firm by the finder must be foreign nationals or foreign entities domiciled abroad transacting business in foreign or U.S. securities;

• the customers must receive a descriptive document, similar to that required by Rule 20b(4)-3(b) of the Investment Advisers Act of 1940, that discloses the compensation being paid to the finder;

• the customers must provide written acknowledgement of the existence of the compensation arrangement to the member firm and it must be retained and available for inspection by the NASD;

• records reflecting payments to the finder must be maintained on the member firm's books and the actual agreement between the member firm and the finder must be available for inspection by the NASD; and

• the confirmation of each transaction must indicate that a finder's fee is being paid pursuant to a compensation arrangement.

The amendments also change the requirements with respect to foreign associates. Those persons designated as foreign associates pursuant to Part X of Schedule C of the NASD By-Laws now are subject to Form U-4 registration, but still are not required to pass a qualification examination.

Also, the scope of permissible business activities and the associated regulatory requirements differ between foreign finders and foreign associates. The foreign associate will be registered with the NASD and will be deemed an associated person or employee of the member. The foreign associate, therefore, may act in any registered capacity on behalf of the member, consistent with their designation as a foreign associate. This can include acting as a trader or being the registered person responsible for servicing the accounts of a foreign national. The foreign finder is not considered an associated person of the member and their activities, therefore, are limited to those discussed in the rule. Under the rule as amended, the sole involvement of a foreign finder in the business of a member firm is the initial referral of non-U.S. customers to the firm.

Questions regarding this Notice may be directed to Craig Landauer, Office of General Counsel, at (202) 728-8291.

Text Of Amendments To Parts VI And X Of Schedule C Of NASD By-Laws

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

PART VI

PERSONS EXEMPT FROM REGISTRATION

(1) No change.

(2) Member firms, and persons associated with a member, may pay to nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to member firms if the following conditions are met:

(a) the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in Article II, Section 4 of the NASD By-Laws, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

(b) the finders are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad;

(c) the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;

(d) customers receive a descriptive document, similar to that required by Rule 206(4)-3(b) of the Investment Advisers Act of 1940, that discloses what compensation is being paid to finders;

(e) customers provide written acknowledgement to the member firm of the existence of the compensation arrangement and that such acknowledgement is retained and made available for inspection by the Association;

(f) records reflecting payments to finder are maintained on the member firm's books and actual agreements between the member firm and persons compensated are available for inspection by the Association; and

(g) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

Part VII through Part IX No change.

PART X

FOREIGN ASSOCIATES

All persons associated with a member who are designated as Foreign Associates shall [not] be required to be registered [and] but shall be exempt from the requirement to pass a Qualification Examination.

NASD NOTICE TO MEMBERS 95-38

Treasury Adopts Amendments To Form G-405 And Form G-FIN-4

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ■ Government Securities
- ☐ Institutional
- ■ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ■ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training

Executive Summary

Effective June 12, 1995, the Department of the Treasury (Treasury) is adopting amendments to Form G-405, Report on Finances and Operations of Government Securities Brokers and Dealers (FOGS Report), and to Form G-FIN-4, Disclosure Form for Person Associated with a Financial Institution Government Securities Broker or Dealer. The amendments revise Schedule I of the FOGS Report to require sole government securities broker/dealers (GSBDs) registered pursuant to Section 15C of the Securities Exchange Act of 1934 (Exchange Act), to disclose any affiliations with U.S. banks. The changes to Form G-FIN-4 require associated persons to provide a more complete description of their disciplinary history.

Form G-405—Report On Finances And Operations Of Government Securities Brokers And Dealers

The Government Securities Act of 1986 (GSA) requires firms that are registered under Section 15C of the Exchange Act to use the FOGS Report to make monthly, quarterly, and annual financial reports to the Securities Exchange Commission (SEC) and their self-regulatory organization. To supplement Part II or IIA of the FOGS Report, registered GSBDs also must file Schedule I at the end of each calendar year.

The amendments to the report add a new question asking whether the GSBD is affiliated with, or controlled by, a U.S. bank. If the response is "yes," the GSBD must provide the name of the parent or affiliate and the type of institution. Also, there is an additional change to the Schedule's general instructions, referring to the definition of "bank" in Section 3(a)(6) of the Exchange Act.

These changes are consistent with similar changes made by the SEC to Form X-17A-5, the FOCUS Report, and assure equal treatment for all government securities broker/dealers.

Form G-FIN-4—Disclosure Form For Person Associated With A Financial Institution Government Securities Broker Or Dealer

Form G-FIN-4 is the form used by associated persons of GSBDs that are registered pursuant to Section 15C of the Exchange Act to file information concerning employment, residence, and statutory disqualification with their employer and the appropriate regulatory agencies. Associated persons that have a current Form U-4, Uniform Application for Securities Industry Registration or Transfer, or Form MSD-4, Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer, on file with their employer are not required to file Form G-FIN-4.

The changes to the form include:

• Item 17, Question C is amended by adding paragraph (5), which asks the associated person whether the SEC or the Commodity Futures Trading Commission (CFTC) has ever imposed a civil money penalty on the associated person, or ordered the associated person to cease and desist from any activity.

• Item 17, Question D adds a definition of "foreign financial regulatory authority," and now inquires whether the associated person has ever been the subject of a finding by any federal regulatory agency or "foreign financial regulatory authority."

• Item 17, Questions A and B have been amended to clarify that the inquiries now apply to information

related to foreign and domestic courts.

• Item 5 is modified to reflect the Office of Thrift Supervision as the successor to the Federal Home Loan Bank Board. Thus, the "Director, Office of Thrift Supervision" is now listed as one of the appropriate regulatory agencies with which the financial institutions may be required to file the form.

• Item 3 of the general instructions is changed to correspond with technical changes made by the Government Securities Act Amendments of 1993 to the definition of "appropriate regulatory agency."

These changes are consistent with similar changes that are made to Form U-4 and Form BD, Uniform Application for Broker/Dealer Registration.

Members should note that associated persons that have previously filed Form G-FIN-4 should review their filings to determine whether they contain all of the information required by amended Item 17. If the revisions to the form now require these persons to answer "yes" to a question in Item 17, they must file an amendment to their Form G-FIN-4 by June 12, 1995. Associated persons who continue to answer "no" to all of the questions in amended Item 17 are not required to file an updated form.

The NASD will distribute the amended Form G-405 to members that are sole GSBDs registered pursuant to Section 15C of the Exchange Act. Questions concerning the form should be directed to the NASD Regulatory Systems Department at (800) 321-6273. Copies of the new Form G-FIN-4 will be available through our Member Services Phone Center at (301) 590-6500.

NASD NOTICE TO MEMBERS 95-39

Members Reminded To Report Address, Contact Changes To NASD

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ■ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training

The Membership Department would like to remind members of the importance of keeping the names of executive representatives, as well as mailing addresses for branch offices, up to date. Making certain that the Central Registration Depository (CRD) is kept informed of changes in address and contact people ensures that regular notices and special mailings will be properly directed. It is especially important at this time because we are approaching the period for Fall elections.

Article III, Section 3 of the NASD By-Laws requires each member to appoint and certify to the NASD one "executive representative." The executive representative of your firm must be a registered principal and a senior manager within the firm. The individual designated will represent, vote, and act in all NASD affairs, and will receive NASD mailings, including *Notices to Members, Regulatory & Compliance Alert*, and updates to the *NASD Manual*.

To change the address for mailings sent to *branch offices*, or to update the contact name, a properly executed Schedule E of Form BD must be sent to CRD. Notifications submitted on U.S. Post Office address change cards **cannot** be processed.

To change the executive representative of your firm, you must submit written notification to the NASD Corporate Secretary. The form to use for this purpose is included with this Notice. You may submit the original or a photocopy to:

Joan Conley
Corporate Secretary
National Association of
Securities Dealers, Inc.
c/o Membership Department
9513 Key West Avenue
Rockville, MD 20850-3389.

EXECUTIVE REPRESENTATIVE FORM

Date: _____

NASD Member Firm: _____

Firm CRD #: _____

The NASD Member Firm referenced above designates (name)_____,
Social Security #_____, CRD #_____, as
Executive Representative to the NASD as of (date)_____. This person is a member of the firm's senior management and is a registered principal with the firm.

Name of person preparing this form: _____

Telephone number: _____

Return this form to:

Joan Conley, Corporate Secretary
Executive Representative Program
c/o Membership Department
National Association of Securities Dealers, Inc.
9513 Key West Avenue
Rockville, MD 20850-3389

NASD NOTICE TO MEMBERS 95-40

Nasdaq National Market Additions, Changes, And Deletions As Of April 27, 1995

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ■ Corporate Finance
- ☐ Government Securities
- ■ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ■ Systems
- ■ Trading
- ☐ Training

As of April 27, 1995, the following 53 issues joined the Nasdaq National Market®, bringing the total number of issues to 3,761:

Symbol	Company	Entry Date	SOES Execution Level
SMTC	Semtech Corp.	3/28/95	500
DSTM	Datastream Systems, Inc.	3/29/95	500
ACTM	ACT Manufacturing, Inc.	3/30/95	500
BWFC	Bank West Financial Corporation	3/30/95	200
HBFW	Home Bancorp	3/30/95	500
PERI	Periphonics Corporation	3/31/95	200
VRONY	Videotron Holdings, Plc (ADS)	3/31/95	500
ANLT	Analytical Surveys, Inc.	4/3/95	500
CMRN	Cameron Financial Corporation	4/3/95	500
QCFB	QCF Bancorp, Inc.	4/3/95	500
SSET	SSE Telecom, Inc.	4/3/95	200
ASHC	AmeriSource Health Corp. (Cl A)	4/4/95	200
CARN	Carrington Laboratories, Inc.	4/4/95	500
MALL	Creative Computers, Inc.	4/4/95	200
PBBSF	Pacific Basin Bulk Shipping Ltd.	4/4/95	200
PBBWF	Pacific Basin Bulk Shipping Ltd. (Wts)	4/4/95	200
RENS	Renaissance Solutions, Inc.	4/4/95	200
MSTG	Mustang Software, Inc.	4/5/95	500
ACAR	Aegis Consumer Funding Group, Inc. (The)	4/6/95	200
FNLY	Finlay Enterprises, Inc.	4/6/95	1000
GUSH	Fountain Oil Inc.	4/6/95	200
GACC	General Acceptance Corp.	4/6/95	500
PRMS	Premisys Communications, Inc.	4/6/95	1000
AVND	Avondale Financial Corp.	4/7/95	500
HELO	Hello Direct, Inc.	4/7/95	200
ISBF	ISB Financial Corp.	4/7/95	500
GFED	Guaranty Federal Savings Bank	4/10/95	200
CYPR	Cypros Pharmaceutical Corp.	4/11/95	200
CYPRZ	Cypros Pharmaceutical Corp. (Cl B Wts 11/3/97)	4/11/95	200
XPRT	Expert Software, Inc.	4/11/95	500
WEFC	Wells Financial Corp.	4/11/95	500
CBTSY	CBT Group, Plc (ADR)	4/13/95	500
DIMD	Diamond Multimedia Sytems, Inc.	4/13/95	1000
ESCO	Easco, Inc.	4/13/95	500
FSTH	First Southern Bancshares, Inc.	4/13/95	200
OPEN	Open Environment Corp.	4/13/95	200
SHCID	Salick Health Care, Inc. (New)	4/17/95	1000
GBPW	Great Bay Power Corp.	4/18/95	200
VARL	Vari-L Company, Inc.	4/18/95	200
VARLW	Vari-L Company, Inc. (Wts 4/20/97)	4/18/95	200
RTWI	RTW, Inc.	4/19/95	1000
TAIT	Taitron Components, Inc. (Cl A)	4/19/95	500
GCABY	General Cable, Plc (ADR)	4/20/95	500
ANAD	ANADIGICS, Inc.	4/21/95	200
NMRX	Numerex Corporation	4/21/95	500

Symbol	Company	Entry Date	SOES Execution Level
AGCH	Ag-Chem Equipment Co., Inc.	4/24/95	200
CXSNF	Counsel Corp.	4/24/95	500
FFED	Fidelity Federal Bancorp	4/24/95	200
NETK	Network Express, Inc.	4/24/95	200
REPB	Republic Bank	4/24/95	200
BCYR	Bucyrus-Erie Company	4/25/95	500
PETE	Primary Bank	4/25/95	200
WTZRA	Weitzer Homebuilders Inc. (Cl A)	4/26/95	500

Nasdaq National Market Symbol And/Or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since March 28, 1995:

New/Old Symbol	New/Old Security	Date Of Change
ACCS/ACCS	Access Health, Inc./Access Health Marketing, Inc.	3/30/95
BPIEZ/BPIEZ	BPI Packaging Tech., Inc. (Wts Cl B 10/7/96)/	
	BPI Packaging Tech., Inc. (Wts Cl B 3/31/95)	3/30/95
BPIEL/BPIEL	BPI Packaging Tech., Inc. (Wts Cl A 6/16/95)/	
	BPI Packaging Tech., Inc. (Wts Cl A 3/31/95)	4/3/95
FBAI/DOSK	Doskocil Companies, Inc./Doskocil Companies, Inc.	4/3/95
ASHC/ASHC	AmeriSource Health Corp./AmeriSource Distribution Corp.	4/4/95
SMFR/JBBB	Summit Family Restaurants, Inc./JB's Restaurants, Inc.	4/4/95
WANGW/WANWV	Wang Labs, Inc. (Wts 7/2/00)/Wang Labs, Inc. (Wts 7/2/00 W/I)	4/4/95
CINDF/CINRF	Cinar Films, Inc. (Subordinate Voting Shares)/Cinar Films, Inc.	4/6/95
MUEI/ZEOS	Micron Electronics, Inc./ZEOS International Ltd.	4/10/95
MDCD/PLLN	Meridian Data, Inc./Parallan Computer, Inc.	4/17/95
ATGI/SYNR	Alpha Technologies Group, Inc./Synercom Technologies, Inc.	4/21/95

Nasdaq National Market Deletions

Symbol	Security	Date
MDRXL	Medicis Pharmaceuticals, Inc. (Wts Cl B 3/28/95)	3/29/95
CLBC	Club Car, Inc.	3/30/95
CNCD	Concord Holding Corp.	3/30/95
GBBS	Great Bay Bankshares, Inc.	3/30/95
POLY	PolyMedica Industries, Inc.	3/30/95
CROP	Crop Genetics International Corp.	3/31/95
CROPP	Crop Genetics International Corp. (Conv Exch. Pfd)	3/31/95
COMG	The Commerce Group, Inc.	3/31/95
UNNB	University Bank & Trust Co.	3/31/95
DBRL	Dibrell Brothers, Inc.	3/31/95
AFED	Atlanfed Bancorp, Inc.	4/3/95
ENNI	EnergyNorth, Inc.	4/3/95
MAYF	Mayflower Group, Inc.	4/3/95
AKST	AK Steel Holding Corp.	4/5/95
AKSTP	AK Steel Holding Corp. (Pfd)	4/5/95
APOD	A Pea in the Pod, Inc.	4/6/95
MYTK	Mitek Surgical Products, Inc.	4/6/95

Symbol	Security	Date
USCN	US Can Corp.	4/7/95
AINVS	Ameribanc Investors Group, Inc.	4/10/95
CRARQ	Crescent Airways Corp.	4/10/95
CRAWQ	Crescent Airways Corp. (Wts 1/9/98)	4/10/95
MINSF	MiniStor Peripherals Int'l Ltd.	4/10/95
MINWF	MiniStor Peripherals Int'l Ltd. (Wts 7/29/99)	4/10/95
JENNE	Jennifer Convertibles, Inc.	4/17/95
MDRXZ	Medicis Pharmaceuticals, Inc. (Wts Cl C 4/10/95)	4/18/95
EROQ	ENVIROQ Corp.	4/19/95
OCTA	Octagon, Inc.	4/19/95
OCTAW	Octagon, Inc. (Cl A Wts 2/16/99)	4/19/95
PNCE	PonceBank	4/19/95
LSWY	Leaseway Transportation Corp.	4/26/95
RCAP	Re Capital Corporation	4/27/95
DWLF	The DeWolfe Companies, Inc.	4/27/95

Questions regarding this Notice should be directed to Mark A. Esposito, Nasdaq Market Services Director, Issuer Services, at (202) 728-6966. Questions pertaining to trade-reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

NASD NOTICE TO MEMBERS 95-41

Fixed Income Pricing System Additions, Changes, And Deletions As Of April 27, 1995

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ■ Corporate Finance
- ☐ Government Securities
- ■ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ■ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ■ Systems
- ■ Trading
- ☐ Training

As of April 27, 1995, the following bonds were added to the Fixed Income Pricing System (FIPS℠). These bonds are *not* subject to mandatory quotation:

Symbol	Name	Coupon	Maturity	CUSIP
HMX.GA	Hartmarx Corp.	10.875	1/15/02	417119AC8
TFYP.GA	Thrifty Payless Inc.	11.750	4/15/03	885873AA7
ASHC.GA	Amerisource Distr. Corp.	11.250	7/15/05	03071PAA0
RHR.GB	Rohr	11.625	5/15/03	775416AC4
UAL.GG	United Air	9.760	5/20/06	909279AL5
ANCP.GA	Anacomp Inc.	15.000	11/1/00	032375AH0
SHRG.GA	Sherritt Gordon Ltd.	9.750	4/1/03	824280AA9
MOWC.GA	Motor Wheel Corp.	11.500	3/1/00	620066AC4
STCL.GA	Stone Consolidated Corp.	10.250	12/15/00	86158KAC8
CNM.GC	Continental Med. Sys.	10.375	4/1/04	211642AD5
MHSV.GA	Miles Homes Svcs.	12.000	4/1/01	599271AC7
KEM.GA	Kemper Corp.	8.800	11/1/98	488396AB8
ESTC.GA	Echostar Comm.	12.875	6/1/04	278761AA9
PNH.GB	Pub Savings N.H.	9.170	5/15/98	744482BE9
RGRO.GB	Ralphs Grocery	9.000	4/1/03	751253AD7
TRAM.GC	Transamerican Refining Corp.	0	2/15/02	89351KAB9
TRAM.GD	Transamerican Refining Corp.	16.500	2/15/02	89351KAC7
GRDH.GH	Great Dane Hldgs.	14.500	1/1/06	39031PAA3
CMS.GC	CMS Energy	8.250	2/15/98	12589QCW4
CMS.GD	CMS Energy	8.000	2/15/98	12589QCX2
CMS.GE	CMS Energy	8.500	2/15/00	12589QCY0
CMS.GF	CMS Energy	8.250	2/15/98	12589QCZ7
CMS.GH	CMS Energy	8.000	2/15/98	12589QDA1
CMS.GI	CMS Energy	8.500	2/15/00	12589QDB9
CMS.GJ	CMS Energy	8.000	2/15/98	12589QDC7
CMS.GK	CMS Energy	7.750	2/15/98	12589QDD5
CMS.GL	CMS Energy	8.250	2/15/00	12589QDE3
CMS.GM	CMS Energy	7.750	2/15/98	12589QDF0
CMS.GN	CMS Energy	7.500	2/15/98	12589QDG8
CMS.GO	CMS Energy	8.000	2/15/00	12589QDH6
CMS.GP	CMS Energy	0.933	3/15/98	12589QDJ2
CMS.GQ	CMS Energy	7.500	3/15/98	12589QDK9
CMS.GR	CMS Energy	8.000	3/15/00	12589QDL7
CMS.GS	CMS Energy	7.750	3/15/98	12589QDM5
CMS.GT	CMS Energy	7.750	3/15/98	12589QDN3
CMS.GU	CMS Energy	8.000	3/15/00	12589QDP8
CMS.GV	CMS Energy	7.500	3/15/98	12589QDQ6
CMS.GW	CMS Energy	7.250	3/15/95	12589QDR4
CMS.GX	CMS Energy	7.750	3/15/00	12589QDS2
CMS.GY	CMS Energy	7.500	3/15/98	12589QDT0
CMS.GZ	CMS Energy	7.250	3/15/98	12589QDU7
CMS.HA	CMS Energy	7.750	3/15/00	12589QDV5
CMS.HB	CMS Energy	7.500	3/15/98	12589QDW3
CMS.HC	CMS Energy	7.250	3/15/98	12589QDX1
CMS.HD	CMS Energy	7.625	3/15/00	12589QDY9
CMS.HE	CMS Energy	7.500	4/15/98	12589QDZ6
CMS.HF	CMS Energy	7.250	4/15/98	12589QEA0
CMS.HG	CMS Energy	7.625	4/15/00	12589QEB8

As of April 27, 1995, the CUSIP numbers changed for the following FIPS bonds:

Symbol	Name	Old CUSIP	New CUSIP
BLE.GB	Bradlees	104499AB4	104499AC2
SBSR.GA	Smith Barney Hldgs.	831801AD7	831904AG2
MHSV.GA	Miles Home Svcs.	599271AC7	599271AA1

As of April 27, 1995, the following changes to the list of FIPS symbols occurred:

New Symbol	Old Symbol	Name
U.GB	USAR.GB	U.S. Air Inc.
U.GA	USAR.GA	U.S. Air Inc.
TOVW.GA	STSP.GA	Stratosphere Corp.

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to trade-reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

DISCIPLINARY ACTIONS

Disciplinary Actions Reported For May

The NASD has taken 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, May 15, 1995. 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 edition.

Firm Expelled, Individual Sanctioned

The Biedenharn Investment Group, Inc. (Shreveport, Louisiana) and **James McCurry (Registered Principal, Shreveport, Louisiana)** submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership. McCurry was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that McCurry, acting through a non-registered entity of which he had ownership interest, participated in the distribution of promissory notes issued by another company, and accepted compensation for his participation that was not recorded on the books and records of his member firm. In doing so, McCurry acted in the capacity of an unregistered broker/dealer. The findings also stated that the firm, acting through McCurry, sent misleading correspondence to public customers that misrepresented certain safety features of notes and failed to adequately disclose the risks of offerings. In addition, the NASD found that the firm failed to supervise properly the correspondence transmitted by its employees and failed to supervise properly the activities of an employee.

Firms Fined, Individuals Sanctioned

The Chicago Corporation (Chicago, Illinois) and **James Terrance Kinsella (Registered Principal, Winnetka, Illinois)** submitted an Offer of Settlement pursuant to which they were fined $25,000, jointly and severally, and Kinsella was 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 Kinsella, failed to establish, maintain, and enforce written supervisory procedures and failed to otherwise take reasonable steps to supervise two registered representatives.

Gene Morgan Financial (Los Angeles, California) and **Gene Ray Morgan (Registered Principal, Los Angeles, California)** were fined $50,000, jointly and severally. Morgan was suspended from association with any NASD member in any capacity for 45 days and ordered to requalify by examination in any capacity. In addition, the firm was ordered to file all advertisements and sales literature with the NASD Advertising Department at least 10 days before use for six months. The firm also was ordered to retain an independent consultant to review its advertising procedures and policies and recommend appropriate corrective measures to ensure compliance with the NASD advertising rules for six months, and, at the end of which, to submit to the NASD a report describing all procedures adopted and implemented to ensure compliance with the rules.

The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a Los Angeles District Business Conduct Committee (DBCC) decision. The

sanctions were based on findings that the firm, acting through Morgan, breached the standards for public communications by failing to provide a sound basis for the public to evaluate an initial public offering and by making communications to the public that contained untrue statements of material facts or were otherwise exaggerated, false, or misleading.

Gilford Securities, Inc. (New York, New York), Elias D. Argyropoulos (Registered Representative, Canoga Park, California), and **Ralph Worthington, IV (Registered Principal, New York, New York)** submitted Offers of Settlement pursuant to which the firm and Worthington were fined $30,000, jointly and severally. In addition, the firm agreed to amend and strengthen its supervisory procedures. Argyropoulos was fined $200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Argyropoulos effected, or caused to be effected, transactions in the account of a public customer without obtaining prior written discretionary authority from the customer and without the firm accepting the account.

The findings also stated that Argyropoulos executed purchase transactions in the account of a public customer that were not authorized by the customer, and recommended and purchased stocks for the accounts of public customers without having reasonable grounds for believing these recommendations were suitable for each of the customers in light of the nature and the size of the transactions, the customers' investment objectives, and financial needs. Furthermore, the NASD found that Argyropoulos shared in the losses of public customers by writing checks for trading losses previously suffered in the customers' accounts held at the firm and guaranteed public customers against losses in their accounts held at the firm. The NASD also determined that Argyropoulos solicited, arranged, and effected transactions that involved no change of beneficial ownership and orders to purchase or sell a common stock, with the knowledge of or reckless disregard for, the fact that corresponding orders of the same size, at the same time, and at the same price had been or would be entered, to create a false and misleading appearance. The NASD also found that the firm and Worthington failed to reasonably supervise Argyropoulos to detect and deter his conduct.

Litwin Securities, Inc. (Miami Beach, Florida) and **Harold A. Litwin (Registered Principal, Miami Beach, Florida)** were fined $10,000, jointly and severally. The firm also was prohibited from effecting principal transactions of any nature for one year, and Litwin was suspended from association with any NASD member in any principal capacity for six months and ordered to requalify by examination in any principal capacity. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that the firm, acting through Litwin, violated its restriction agreement with the NASD by executing non-riskless principal securities transactions without authorization.

The firm and Litwin have appealed this action to the Securities and Exchange Commission (SEC), and the sanctions are not in effect pending consideration of the appeal.

The Perkins Group (San Diego, California) and **Randel L. Perkins (Registered Principal, Rancho Santa Fe, California)** were fined $30,000, jointly and severally. Perkins also was suspended from association with any NASD member in any capacity for 30 days and suspended from participating in any underwritings for three months. The sanctions were based on findings that the firm, acting through Perkins, participated in a contingent offering of securities on a minimum-maximum basis and failed to return investors' funds when the terms of the offering were not met. The firm, acting through Perkins, also failed to transmit investor funds promptly to a separate bank escrow account and permitted the offering proceeds to be disbursed from the escrow account before the minimum amount was raised.

Firms Fined

A. J. Michaels & Co., Ltd. (Hauppauge, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $10,400. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to indicate on order tickets whether the sale was a long or short sale. The NASD also found that the firm failed to establish, maintain, and enforce its written supervisory procedures.

Individuals Barred Or Suspended

Charles S. Akers (Registered Representative, Scottsdale, Arizona) was fined $88,500, barred from association with any NASD member in any capacity, and ordered to pay $13,700 in restitution to customers. The sanctions were based on findings that Akers obtained from public customers $13,700 and misappropriated the funds for his own use and benefit. In addition, Akers failed to respond to an NASD request for information.

Richard Allen Anders (Registered Representative, Austin, Texas) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Anders, before opening an account or placing an initial order to purchase or sell securities with a member firm, failed to notify his member firm in writing of his actions. Anders also failed to respond to NASD requests for information.

Kimo N. Andrews (Registered Representative, Shepherd, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $39,250 in restitution to a member firm. Without admitting or denying the allegations, Andrews consented to the described sanctions and to the entry of findings that he wrongfully obtained checks from public customers. The findings stated that Andrews failed to follow the customers' instructions, and used the funds, which totaled $15,900, for other purposes than intended. The NASD also found that Andrews received from customers checks totaling $3,350 as a result of improper billings. The NASD also determined that Andrews participated in private securities transactions and failed to give written notice of his intention to engage in such activity to his member firm and receive the firm's approval before engaging in such activity.

Joseph P. Barry (Registered Representative, Plymouth, Massachusetts) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Barry failed to respond to an NASD request for information concerning his termination from member firms.

Michael L. Beasley (Registered Representative, Tallahassee, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $61,529.25, barred from association with any NASD member in any capacity, and ordered to pay $12,305.85 in restitution to his member firm. Without admitting or denying the allegations, Beasley consented to the described sanctions and to the entry of findings that he received from public customers checks totaling $12,305.85 intended for the purchase of insurance products, but converted the funds for his own use and benefit.

Donald R. Beck (Registered Representative, Westlake, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $33,500, barred from association with any NASD member in any capacity, and required to pay restitution to his member firm. Without admitting or denying the allegations, Beck consented to the described sanctions and to the entry of findings that he obtained from his member firm checks totaling $8,608.56 made payable to public customers that were to be applied to customers' insurance policies. According to the findings, Beck failed to apply $6,696.03 of the funds as requested and used the funds for some purpose other than the benefit of the customers.

Roland J. Bernard (Registered Principal, Charlottesville, Virginia) submitted an Offer of Settlement pursuant to which he was fined $5,000 and barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, Bernard consented to the described sanctions and to the entry of findings that a member firm, acting through Bernard, effected securities transactions while failing to maintain its minimum required net capital and failed to prepare and maintain accurate books and records. The findings also stated that the firm, acting through Bernard, filed inaccurate FOCUS Part I and IIA reports and failed to give timely telegraphic notice of its net capital deficiencies.

Michael David Borth (Registered Representative, Leavenworth, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $7,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Borth consented to the described sanctions and to the entry of findings that he filed a misleading Uniform Application for Securities Industry Registration (Form U-4) with the NASD.

Michael Joseph Butkus (Registered Representative, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,268.96 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Butkus consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he signed the customer's name to an amendment of her life insurance application.

Ying Kit Cheung (Associated Person, New York, New York) 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, Cheung consented to the described sanctions and to the entry of findings that, without his member firm's permission or authorization, he made out a check drawn on his firm's

account for $300, endorsed it, and converted the funds for his own personal use.

Donnye D. Collins, Sr. (Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $55,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Collins consented to the described sanctions and to the entry of findings that he received from a public customer cash totaling $400 to purchase shares of stock, failed to submit the customer's application or the funds to his member firm, and instead, without the customer's knowledge or consent, converted the funds for his own use and benefit. In addition, the findings stated that Collins provided false and misleading information to the NASD and his member firm during their examinations of the customer complaint filed in connection with the aforementioned payment.

Bobby L. Conover (Registered Representative, Gettysburg, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Conover consented to the described sanctions and to the entry of findings that he received from a public customer a request to terminate the customer's policy and to surrender it for its cash value. According to the findings, without the customer's knowledge or approval, Conover completed a disbursement request form in such a manner as to request a policy loan rather than the surrender of the policy and then submitted the form to his member firm. The NASD also determined that Conover delivered to the customer a $1,750 insurance check that he represented as being the surrender proceeds of the policy, but was actually a policy loan check. At the same time, the NASD found that Conover induced the customer to sign a multi-purpose request form by representing that it was needed in connection with the purported surrender of the policy. The findings stated that Conover, without the customer's knowledge or consent, completed the request form in such a manner as to request that ownership of the policy be transferred to him and that he be designated as beneficiary of the policy. Conover then submitted the form to his member firm and became owner and beneficiary of the policy.

Martin David Corr (Registered Representative, Elmhurst, Illinois) submitted an Offer of Settlement pursuant to which he was fined $5,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Corr consented to the described sanctions and to the entry of findings that he submitted to his member firm eight mutual fund account applications on behalf of a public customer and signed the customer's name to each of the account applications without the written or oral authorization of the customer.

David L. Cowan (Registered Representative, North Haven, Connecticut) submitted a Letter of Acceptance, Waiver and Consent 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, Cowan consented to the described sanctions and to the entry of findings that he engaged in private securities transactions outside the regular course or scope of his association with his member firm without providing prior written notice to the firm.

Jed M. Cowdell (Registered Representative, Scottsdale, Arizona) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cowdell failed to respond to NASD requests for information concerning his termination from a member firm.

Paul L. Cunningham (Registered Representative, Cleveland Heights, Ohio) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cunningham failed to respond to NASD requests for information regarding his termination from a member firm.

Joyce M. Desforges (Registered Representative, Fall River, Massachusetts) was fined $10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Desforges withheld and misappropriated customer funds totaling $1,113.39, for her own use and benefit.

Joseph Stephen Diadema (Registered Representative, Port Washington, New York) 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, Diadema consented to the described sanction and to the entry of findings that he hired an individual to take a Series 7 examination on his behalf.

Michael Jack DiMartino (Registered Representative, Huntington Station, New York) was fined $2,500 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that DiMartino, without having obtained the necessary permis-

sion to do so, removed from his member firm's offices qualified leads and Dun and Bradstreet market identifiers that were purchased by, and were the property of, the firm.

Robert Francis Doviak, II (Registered Principal, Dallas, Texas) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that a member firm, acting through Doviak, failed to file its annual certified audit within the time required and failed to maintain a blanket fidelity bond. In addition, Doviak, acting on behalf of the firm, failed to maintain its minimum required net capital and failed to record properly bank deposits on the firm's books and records.

Marcus D. Dukes (Registered Representative, Alexandria, Virginia) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dukes purchased shares of stock for a customer's account without the customer's knowledge or consent. In addition, Dukes failed to respond to NASD requests for information.

Richard G. Dunn (Registered Representative, Navarre, Illinois) was fined $10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dunn forged the signatures of five adult children of a public customer on documents needed for a payment to a joint account.

John E. Emrich (Registered Representative, Lebanon, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $12,500, barred from association with any NASD member in any capacity, and required to pay $2,500 in restitution to a member firm. Without admitting or denying the allegations, Emrich consented to the described sanctions and to the entry of findings that he received from a public customer a $2,500 check for investment purposes. The NASD determined that Emrich negotiated the check, failed to apply the proceeds to their intended purpose, and retained the funds for his own use and benefit.

Robert P. Fairfield (Registered Representative, Scottsdale, Arizona) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fairfield failed to respond to NASD requests for information concerning his termination from a member firm.

Martin L. Fearrington, Sr. (Registered Representative, Irvington, New Jersey) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fearrington failed to respond to NASD requests for information concerning a customer complaint.

Ronald Fussman (Registered Representative, Herzelia Pituach, Israel) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000, barred from association with any NASD member in any capacity, and ordered to pay $45,125 in disgorgement. Without admitting or denying the allegations, Fussman consented to the described sanctions and to the entry of findings that he established and maintained fictitious accounts to effect securities transactions for his own personal benefit. The findings also stated that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, Fussman purchased shares of an initial public offering that traded at a premium in the immediate aftermarket and then sold the securities on the same day the offering went public at a $45,125 profit.

Timothy W. Garrity (Registered Representative, Evanston, Illinois) 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, Garrity consented to the described sanctions and to the entry of findings that he purchased a life insurance policy for a public customer and signed the customer's name to a life insurance application without the customer's knowledge or consent and in the absence of any written or oral authorization from the customer to purchase a life insurance policy on the customer's behalf.

Christian Girodet (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $150,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Girodet consented to the described sanctions and to the entry of findings that he engaged in improper directed trading of a common stock that involved transactions in retail accounts maintained at a member firm. The NASD also found in seven instances, Girodet placed shares into the accounts of public customers without obtaining their authorization. The NASD determined that this conduct caused trade reports to be disseminated that interfered with the natural flow of volume and price information available to the public during the relevant time period.

James T. Grande (Associated Person, Midlothian, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $1,000 and sus-

pended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Grande consented to the described sanctions and to the entry of findings that during a Series 6 examination, he possessed notes and study materials relevant to the examination, which were available for his inspection and review during the examination.

M. Lynn Grinnell (Registered Representative, Liberty, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grinnell consented to the described sanctions and to the entry of findings that he affixed or caused to be affixed, to disbursement request forms and to a request for surrender of paid-up additional insurance, signatures purporting to be those of public customers, without their knowledge or consent, and thereafter submitted such forms to his member firm as genuine.

Yvonne Renee Halsell (Registered Representative, Atlanta, Georgia) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Halsell misappropriated and converted for her own use $10,375 belonging to public customers. Halsell also failed to respond to NASD requests for information.

Waymon Hobdy (Associated Person, Altadena, California) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hobdy failed to respond to NASD requests for information regarding his termination from a member firm.

Duane P. Horan (Registered Representative, Littleton, Colorado) was fined $25,000, barred from association with any NASD member in any capacity, and required to pay $315.12 in restitution to a member firm. The sanctions were based on findings that Horan obtained a $315.12 check from his member firm payable to an insurance customer, endorsed the check in the customer's name without the customer's knowledge or consent, and deposited the proceeds into his personal bank account. Horan also failed to respond to NASD requests for information.

Randall B. Huggins (Registered Representative, Springfield, Illinois) was fined $70,000, barred from association with any NASD member in any capacity, and ordered to pay $10,000 in restitution to a member firm. The sanctions were based on findings that Huggins received from public customers a $10,000 check with instructions to use the funds for investment purposes. Huggins failed to follow the customers' instructions, and used the funds for other purposes. Huggins also failed to respond to NASD requests for information.

June Sheldon Jones (Registered Representative, Portland, Oregon) submitted an Offer of Settlement 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, Jones consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notification of such activities to his member firm.

John P. Kelly (Registered Representative, Pittsburgh, Pennsylvania) 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 $1,775 in restitution to a member firm. Without admitting or denying the allegations, Kelly consented to the described sanctions and to the entry of findings that he forged or caused to be forged a public customer's signature on disbursement request forms and submitted the forms to his member firm as genuine. The findings also stated that Kelly received from two public customers $1,775 to pay insurance premiums, but failed to remit such funds to his member firm.

Thomas P. Kelly (Registered Principal, Pittsburgh, Pennsylvania) 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, Kelly consented to the described sanction and to the entry of findings that he induced public customers to make two separate $450,000 investments with a third party, which was outside the scope of his employment with his member firm. In connection with the above activities, the NASD determined that Kelly failed to conduct a reasonable independent inquiry to determine the legitimacy and soundness of the investments, made representations to customers concerning the investment and which were without basis in fact, and failed to disclose material information concerning certain concurrent financial dealings and agreements between himself and the third party.

William George Krebs, Jr. (Registered Principal, Deephaven, Minnesota) submitted an Offer of Settlement pursuant to which he was fined $20,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Krebs consented to the described sanctions and to the entry of findings that he exercised effective control over the account of a public customer

and recommended for the account numerous purchases and sales of securities without having reasonable grounds for believing that such recommendations were suitable for the account in view of the size and frequency of the transactions and the nature of the account.

Thomas Y. Lanier (Registered Principal, Antioch, Tennessee) 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, Lanier consented to the described sanctions and to the entry of findings that he executed unauthorized purchase and sale transactions of municipal bonds in the accounts of public customers without their knowledge or consent. The findings also stated that Lanier canceled a $73,806.04 sell transaction in municipal bonds in the account of a public customer and re-executed the sale at a price unrelated to the prevailing market price. In addition, the NASD found that Lanier executed purchase and sale transactions in the accounts of public customers at prices that were not reasonably related to the then current market price for the security.

Paul W. Latshaw (Registered Representative, Lilburn, Georgia) was barred from association with any NASD member in any capacity. The sanction was based on findings that, while taking the Series 7 examination, Latshaw possessed notes relating to the subject matter of the examination and reviewed such notes during the examination.

Brian A. Lennon (Registered Representative, Safety Harbor, Florida) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 20 days. Without admitting or denying the allegations, Lennon consented to the described sanctions and to the entry of findings that he failed to respond timely to an NASD request for information concerning allegations that had been made against him by his former member firm regarding a former customer's failure to pay for a trade.

Bernabe M. Leynes (Registered Representative, Renton, Washington) 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, Leynes consented to the described sanction and to the entry of findings that he received from eight public customers $61,502.67 intended for the purchase of securities and failed to remit the funds for their intended purpose. Instead, the NASD found that Leynes used the funds for his own benefit.

Robert J. Lopez, Jr. (Registered Representative, Lawrenceville, New Jersey) was fined $35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lopez caused his member firm to change the address of record for a public customer's annuity policy to his own home address and caused the policy to be surrendered to his member firm for its cash value. Thereafter, the firm issued a $6,934 check to the order of the customer. Lopez forged the customer's signature on the check and deposited it to his personal bank account without the customer's knowledge or consent.

Christopher A. Meier (Registered Representative, Falls Church, Virginia) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Meier failed to respond to NASD requests for information regarding his termination from a member firm.

Arthur Steven Miller (Registered Representative, Highland Park, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he signed a public customer's name to several forms that caused the surrender of an insurance policy owned by the customer, used the proceeds of the policy for the purchase of a variable annuity, and signed the customer's name to the application for variable annuity without the customer's knowledge or consent.

Thaddeus M. Mirochna (Registered Representative, Shelby Township, Michigan) was fined $65,000, barred from association with any NASD member in any capacity, and required to pay $10,000 in restitution to a customer. The sanctions were based on findings that Mirochna participated in a private securities transaction while failing to give written notice of his intention to engage in such activities to his member firm. In addition, Mirochna guaranteed a public customer against a loss in the customer's securities account and failed to respond to NASD requests for information.

Hector Juan Montes (Registered Representative, Miami, Florida) was fined $160,000, barred from association with any NASD member in any capacity, and ordered to pay $329,710 in restitution to a member firm. The sanctions were based on findings that Montes caused his member firm to fail to accurately make certain books and records and

caused the firm to file materially inaccurate FOCUS Part I and IIA reports. Montes also misappropriated and converted for his own use and benefit $329,710 from the operating bank account of his member firm. In addition, Montes failed to respond to NASD requests for information.

Jack Murr, Jr. (Registered Representative, MacClenny, Florida) was fined $35,000, barred from association with any NASD member in any capacity, and ordered to pay $2,894 in restitution to his member firm. The sanctions were based on findings that Murr received from public customers $2,894 for an insurance premium payment and for investment in a growth fund and, without the customers' knowledge or authorization, failed to apply the funds as he had been directed. In addition, Murr failed to respond to NASD requests for information.

Kimitaka Okohara (Registered Representative, Honolulu, Hawaii) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kimitaka failed to respond to NASD requests for information regarding customer complaints.

Vernon L. Pepersack, Jr. (Registered Representative, Belair, Maryland) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pepersack forged the endorsement of two insurance customers on checks totaling $4,929.87, negotiated the checks, and converted the proceeds for his own use and benefit. In addition, Pepersack failed to respond to NASD requests for information.

Andrew T. Poulterer (Registered Representative, Richmond, Virginia) was fined $5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a general securities representative. The sanctions were based on findings that Poulterer accepted oral discretionary authority over the accounts of public customers and used the authority to effect discretionary securities transactions without written authority or his member firm's acceptance. Poulterer also failed to respond to NASD requests for information in a timely manner.

Herbert Josef Radley (Registered Representative, Rancho Cordova, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $323,791.25 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Radley consented to the described sanctions and to the entry of findings that he received from public customers $323,791.25 to purchase certificates of deposit and securities, and misappropriated and converted the proceeds for his own use and benefit.

James L. Rasmussen (Registered Representative, Crescent Springs, Kentucky) 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, Rasmussen consented to the described sanctions and to the entry of findings that he prepared for a public customer false documentation, purporting to establish the existence of an insurance policy that was to collateralize a loan for the customer, which was given to a third-party financial institution.

Ted A. Rice, Jr. (Registered Representative, Little Rock, Arkansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $2,575 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Jackson consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, Rice purchased shares of a new issue that traded at a premium in the secondary market. The findings also stated that Rice failed to notify his member firm, in writing, before executing any transactions, that he had established and maintained a personal securities account with another member firm.

Robert M. Roberts (Registered Representative, Pampano Beach, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Roberts failed to respond to an NASD request for information concerning his termination from a member firm.

Danny Curtis Ross (Registered Representative, Nevada, Missouri) 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, Ross consented to the described sanction and to the entry of findings that he borrowed $25,000 from a public customer, which was withdrawn from the customer's account and caused her to incur a $1,952.88 surrender charge, and made a material misstatement to the customer. Specifically, the NASD found that Ross indicated to the customer that he would purchase a $25,000 insurance policy that named the customer as beneficiary and, instead, he purchased a policy naming his wife as beneficiary.

David Craig Selden (Registered Representative, Brighton,

Colorado) submitted an Offer of Settlement pursuant to which he was fined $5,000, suspended from association with NASD member in any capacity for six months, and required to pay $14,000 in restitution to public customers. Without admitting or denying the allegations, Selden consented to the described sanctions and to the entry of findings that he recommended to public customers numerous purchases and sales of securities without having reasonable grounds to believe that such recommendations were suitable for the customers in view of the size and frequency of the recommended transactions and the customers' financial situations and needs.

Floyd J. Sharpe, Jr. (Registered Representative, Danbury, Connecticut) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sharpe failed to respond to NASD requests for information concerning his termination from a member firm.

Mark A. Sims (Registered Representative, Bloomington, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $75,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sims consented to the described sanctions and to the entry of findings that he requested a loan from a public customer's insurance policy and obtained a $15,000 check payable to the customer. According to the findings, Sims signed the customer's name on the check and deposited the check in an account in which he had a beneficial interest.

William C. Staton, Jr. (Registered Representative, Jackson, Mississippi) submitted an Offer of Settlement pursuant to which he was fined $80,000, barred from association with any NASD member in any capacity, and ordered to pay $9,612.85 in restitution to his member firm. Without admitting or denying allegations, Staton consented to the described sanctions and to the entry of findings that he received from a public customer a $9,612.85 check for investment in a growth fund. According to the findings Staton failed to execute the purchase of the fund and, instead, converted the funds for his own use and benefit without the customer's knowledge or consent. The NASD also determined that Staton failed to establish a brokerage account for the same customer and prepared and sent a falsified account statement to the customer that falsely indicated that he had made an investment in the fund on the customer's behalf. In addition, the NASD found that Staton failed to respond timely to NASD requests for information.

Paul W. Sullivan (Registered Representative, Indian Rocks Beach, Florida) submitted an Offer of Settlement pursuant to which he was fined $35,643.40 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sullivan consented to the described sanctions and to the entry of findings that he caused two public customers to surrender their life insurance policies and give him the proceeds. According to the findings, Sullivan, without the customers' knowledge or authorization, remitted only a portion of the proceeds for premiums on new policies and kept the remaining funds for his own use and benefit. The findings also stated that Sullivan failed to respond to an NASD request for information.

Samuel E. Swain (Registered Representative, Ware, Massachusetts) submitted an Offer of Settlement pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Swain consented to the described sanctions and to the entry of findings that he misappropriated insurance customer funds totaling $8,821 intended for payment of insurance premiums.

Ginger Lee Thomas (Registered Principal, Elizabeth, Colorado) was fined $8,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Thomas caused a check to be issued to her from her member firm through its payroll service that included an unauthorized disbursement of $1,000 in addition to her semi-monthly salary. In addition, Thomas attempted to have another check issued to her from the firm through its payroll service that included an unauthorized $600 vacation pay disbursement.

Idongesit Sunday Udoh (Registered Representative, New York, New York) was fined $100,000, barred from association with any NASD member in any capacity, and ordered to pay $60,730 in restitution to public customers. The sanctions were based on findings that Udoh made investment recommendations to public customers without having a reasonable basis to believe that such recommendations were consistent with the customers' stated investment objectives nor suitable for the customers based on their financial needs. According to the findings, the customers relied upon Udoh's misrepresentations and omissions of material facts in determining to purchase the aforementioned investments. In addition, Udoh engaged in private securities transactions without providing prior written notice to his member firm and failed to respond to NASD requests for information.

Ronald J. Viemont (Registered Principal, Morton, Illinois) submitted an Offer of Settlement pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $200,000 in restitution to customers. Without admitting or denying the allegations, Viemont consented to the described sanctions and to the entry of findings that he obtained letters of authorization to transfer $200,000 from two pension fund investment accounts purportedly signed by members of the public who controlled the accounts, transferred the funds into another account without the customers' knowledge or consent, and used the funds for some purpose other than to benefit the customers. The findings also stated that Viemont participated in private securities transactions while failing to give prompt written notice of his intention to engage in such activities to his member firm and failed to respond to NASD requests for information.

Richard Allen Wheeler (Registered Representative, Stockton, California) submitted an Offer of Settlement pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and ordered to pay $18,345.21 in restitution to a member firm. Without admitting or denying the allegations, Wheeler consented to the described sanctions and to the entry of findings that he received from a public customer $20,000 for the purchase of mutual funds and misappropriated and converted the funds for his own use and benefit. The findings also stated that Wheeler failed to respond to NASD requests for information.

Ian L. Williamson (Registered Representative, Dunedin, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and ordered to pay $50,002 in restitution to his member firm. Without admitting or denying the allegations, Williamson consented to the described sanctions and to the entry of findings that he received from a public customer an $80,000 check, negotiated the check, deposited it into his personal bank account, and converted $50,002 of the funds for his own use and benefit.

Duane R. Wilson (Registered Representative, Library, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wilson failed to respond to NASD requests for information concerning his termination from a member firm.

George Yamada (Registered Representative, Springfield, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $40,000 in restitution to a member firm. Without admitting or denying the allegations, Yamada consented to the described sanctions and to the entry of findings that he received from a public customer a $92,252.80 check with instructions to use the funds to purchase mutual fund shares. The NASD determined that Yamada failed to follow the customer's instructions in that he used $52,252.80 as instructed, but used $40,000 for some purpose other than the benefit of the customer. The findings also stated that Yamada failed to respond to an NASD request for information.

Individuals Fined

Gregory Lee Cornia (Registered Representative, Bellingham, Washington) submitted an Offer of Settlement pursuant to which he was fined $34,000. Without admitting or denying the allegations, Cornia consented to the described sanction and to the entry of findings that he exercised discretion and executed transactions in the account of a public customer without obtaining prior written discretionary authorization from such customer and without written acceptance of such account by his member firm. The findings also stated that Cornia exercised effective control over the account of a public customer and caused purchase and sales transactions to be executed without having reasonable grounds for believing that such recommendations were suitable for the customer in view of the frequency and nature of the recommended transactions and the customer's financial situation, circumstances, objectives, and needs.

Firms Expelled For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

Chatmon Capital Group, Inc., West Orange, New Jersey

South Richmond Securities, Inc., New York, New York

WesStar Securities, Inc., Hurst, Texas

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of Article IV, Section 5 of the NASD Rules of Fair Practice and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after

each entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Cameron, Philipps Securities Group, Inc., New York, New York (April 5, 1995)

Cartwright and Walker Securities, Incorporated, Los Angeles, California (March 31, 1995)

C. Chappellet Securities, Inc., Chicago, Illinois (April 5, 1995)

Diversified Resources Corporation, Waldorf, Maryland (April 5, 1995)

1st Cleveland Securities Corporation, Beachwood, Ohio (April 5, 1995)

First Merchant Securities Corporation, Irvine, California (April 5, 1995)

First Strata Corporation, Austin, Texas (March 31, 1995)

Golden West Securities, Inc., Bakersfield, California (April 5, 1995)

HTL Securities, Inc., City of Industry, California (March 31, 1995)

Hanover, Sterling & Company, New York, New York (April 5, 1995)

Harold Pastron - Funded Investment, Northbrook, Illinois (April 5, 1995)

Meridian, Dunhill & Co., Inc., Sarasota, Florida (March 31, 1995)

N.W. Securities, San Francisco, California (April 5, 1995)

Pacific Securities, Chatsworth, California (April 5, 1995)

Page Capital, Inc., Nashville, Tennessee (March 31, 1995)

Petroleum, Commodities, & Realty, Inc., Plano, Texas (March 31, 1995)

Phoenix Government Investments, Inc., Houston, Texas (April 5, 1995)

Scott Enterprises, Inc., Phoenix, Arizona (April 5, 1995)

Seaport Capital Securities, Inc., New York, New York (April 5, 1995)

WH Securities Group, Inc., New Orleans, Louisiana (April 5, 1995)

Wall Street Investment Corporation, New York, New York (April 5, 1995)

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

David W. Anderson, New Orleans, Louisiana

Howard L. Andrews, Jr., Houston, Texas

Robert W. Berg, New York, New York

Jeffrey D. Berkoff, Tequesta, Florida

Charles L. Bradley, Duluth, Georgia

Dwight M. Caffee, Tulsa, Oklahoma

Kendall W. Cameron, Bellevue, Washington

Warren P. Chatmon, Bedminster, New Jersey

Louis Feldman, Coral Springs, Florida

Terry W. Funk, El Paso, Texas

Richard L. Hess, Scotia, New York

Barbara Hosman, Deer Park, New York

Darryl L. Johnson, Lawrenceville, New Jersey

William R. Kelman, New York, New York

David S. Kendrick, Irving, Texas

Rita H. Malm, Jupiter, Florida

Algie L. McCormick, St. Petersburg, Florida

Keith S. Norris, Hilton Head Island, South Carolina

Gene B. Russell, Galesburg, Illinois

Holly Ann Schuck, Sarasota, Florida

John B. Stafford, Fort Worth, Texas

Charles J. Sullivan, Greenlawn, New York

Gerald R. Swirsky, Sudbury, Massachusetts

Mark J. Unterbach, Tiburon, California

Andrew R. Zodin, Houston, Texas

NASD Imposes Fines Against Government Securities Corporation

The NASD imposed fines of $400,000 against Government Securities Corporation of Houston, Texas (GSC), Chairman and President Christopher Lee LaPorte (LaPorte), and Vice President Gregory Lee Putman (Putman), for failure to adequately supervise GSC salespersons in the sale of mortgage-

backed derivative products to public-fund customers. In addition, GSC is suspended from selling certain derivative products to public-fund customers for two years and Putman is suspended from acting as a principal for 90 calendar days. Public-fund customers, as defined in the settlement, include those entities whose primary source of funding comes from tax revenues or public funds.

Pursuant to the NASD's disciplinary action, GSC, LaPorte, and Putman, without admitting or denying the allegations, consented to findings that from January 1989 to July 1994, in the sale of these mortgage-backed derivative products, certain GSC representatives called public-fund customers and solicited purchases by informing these customers that the instruments could provide an increased yield without disclosing that the products may not have been suitable for certain customers. During this period, GSC sold mortgage-backed derivative securities to about 30 cities, counties, and other public-fund customers. In connection with the recommendation and sale of these derivative securities, certain GSC representatives failed to adequately disclose material facts to public fund customers relative to the nature and risks of these instruments, which included stripped mortgage-backed securities and certain tranches of collateralized mortgage obligations (CMOs), such as Interest Only (IOs), Inverse Interest-Only (Inverse IOs and Inverse IOettes), and Inverse Floaters, all of which are market-sensitive securities subject to liquidity, prepayment, and interest rate risks. Certain instruments may also carry the risk of potential loss of the initial investment.

GSC, LaPorte, and Putman consented to findings that they failed to establish adequate written supervisory procedures, failed to adequately supervise GSC registered representatives in the recommendation and sale of the mortgage-backed derivative products to customers, and failed to adequately review and oversee sales activities to ensure that material facts were disclosed to the public fund customers. The firm was fined $400,000, $25,000 of which is joint and several with LaPorte, and $25,000 joint and several with Putman. In addition, GSC will be suspended from selling certain mortgage-backed derivative products to public fund customers for two years, and Putman will be suspended from acting in a principal capacity for 90 calendar days. The respondents are required to pay $100,000 of the fines within 10 days of the NASD decision accepting the offer of settlement, with the remainder plus accrued interest to be paid within nine months.

The terms of the settlement were accepted by the NASD Dallas DBCC and approved by the NASD NBCC. The matter was investigated by the NASD Enforcement Department in Washington, DC.

NASD Imposes Sanctions Against Greenway Capital Corporation And Associated Persons

The NASD has taken disciplinary action against Greenway Capital Corporation (GWAY) of New York, President Joseph M. Guccione, Executive Vice President Fred R. Luthy, and Associated Person Robert A. Neff.

Pursuant to an Offer of Settlement in which the respondents neither admitted nor denied the allegations, GWAY, Guccione, and Luthy are jointly and severally required to pay up to $500,000 in restitution to the customers who were charged excessive prices due to the manipulation of the market of Pacific Animated Imaging Corporation (PCIM). Neff is also jointly and severally responsible for $166,500 of the restitution. Each month, respondents are required to make deposits into an interest-bearing escrow account under the control of an independent escrow agent to be paid out over two years to customers identified by the NASD as having been harmed by the respondents' misconduct.

Guccione is suspended from association with any member in any capacity for three months and suspended from association with any member in a principal capacity for two years. Luthy and Neff are suspended from association with any member in any capacity for two months and three months, respectively.

GWAY also has undertaken, in consultation with counsel, and/or other advisers, to adopt and implement written supervisory and compliance procedures in connection with all aspects of the NASD's rules, regulations, and interpretations regarding market making, best execution of customers' orders, trading, domination and control, and markups and markdowns. Further, every six months for two years from the date of the decision, the counsel and/or other adviser will conduct a review and prepare a report of any recommendations deemed appropriate with regard to GWAY's policies, practices, and procedures related to trading, sales, compliance, and supervision. Thereafter, GWAY must implement all such recommendations.

The respondents consented to findings that from May 2, 1991, to June 30, 1992, they effected transactions in, or induced the purchase of, the common stock of PCIM by means of manipulative, deceptive, or other fraudulent devices, in violation of Article III, Sections 1 and 18 of the NASD Rules of Fair Practice.

They also consented to findings that

from March 28, 1991, to June 30, 1992, GWAY and Guccione failed to disclose to customers that the prices at which GWAY was selling PCIM common stock and B warrants were not fair and reasonable and were not reasonably related to the prevailing market price for PCIM common stock and B warrants, thus violating Article III, Sections 1, 4, and 18 of the NASD Rules of Fair Practice.

Further, the respondents also consented to findings that Luthy had reason to know, or acted in reckless disregard of the fact, that the prices charged to customers were unfair because, among other things, the compensation received by him and GWAY represented a large percentage of the total purchase price paid by the customers in these transactions, in violation of Article III, Sections 1 and 4 of the NASD Rules of Fair Practice.

The respondents also consented to findings that GWAY, acting through Luthy and Guccione, failed to preserve copies of all communications sent by GWAY (including inter-office memoranda and communications) relating to its business as such, in violation of Article III, Section 1 of the NASD Rules of Fair Practice, Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4). Further, GWAY, Guccione, and Luthy failed to establish and maintain an effective supervisory system and failed to enforce supervisory procedures that would have enabled them to assure compliance with the federal securities laws and NASD rules, and to deter and detect the conduct described above, in violation of Article III, Sections 1 and 27 of the NASD Rules of Fair Practice.

FOR YOUR INFORMATION

T+3 Impact On Short-Interest Reporting

The settlement date for monthly short-interest reporting will remain the 15th of the month, or prior business day if the 15th is a non-settlement day. However, beginning in June, the trade date will be three business days before settlement, in conformance with Securities and Exchange Commission (SEC) Rule 15c6-1, which establishes a standard T+3 settlement period.

The monthly short-interest reporting schedule is:

Trade Date	Settlement Date	Report Due Date
6/12/95	6/15/95	6/19/95
7/11/95	7/14/95	7/18/95
8/10/95	8/15/95	8/17/95
9/12/95	9/15/95	9/19/95
10/10/95	10/13/95	10/17/95
11/10/95	11/15/95	11/17/95
12/12/95	12/15/95	12/19/95

Questions regarding the monthly short-interest reporting schedule may be directed to NASD Regulatory Systems at (800) 321-6273, or your local NASD District Office.

T+3 Changes To Reg. T Extension System

The Reg. T/Rule 15c3-3 Extension Request System has been modified to comply with the change in standard settlement period to three business days after the trade date for most securities, beginning on June 7, 1995, according to SEC Rule 15c6-1. A four-day settlement period will be used for the trade dates of June 5, 1995, and June 6, 1995, during the transition period.

The schedule for extensions during the transition period is:

Trade Date	Settlement Date	Reg. T Date	SEC Rule 15c3-3(m) Date
6/2/95	6/8/95	6/13/95	6/23/95
6/5/95	6/9/95	6/13/95	6/23/95
6/6/95	6/12/95	6/14/95	6/26/95
6/7/95	6/12/95	6/14/95	6/26/95

Questions regarding the submission of extension requests through the ARRS System may be directed to NASD Regulatory Systems at (800) 321-6273, or your local NASD District Office.

Definitions Of DNR And DNI Clarified When Used With Open Orders

On February 7, 1995, the SEC approved an amendment to Article III, Section 46 of the Rules of Fair Practice clarifying the meaning of the terms "Do Not Reduce" (DNR) and "Do Not Increase" (DNI) as used in connection with open orders. Section 46 requires members holding open orders to adjust the price and size of the order in proportion to the dividend or other distribution on the day the security is quoted "ex."

The amendment to Section 46 clarifies that DNR instructions only apply to cash dividends, while DNI instructions apply to stock dividends. The amendment to Subsection 46(e) reads:

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

> (e) The provisions of this rule shall not apply to: (1) orders governed by the rules of a registered national securities exchange; (2) orders marked "do not reduce" where the dividend is payable in cash; (3) orders marked "do not increase[;]" where the dividend is payable in stock, provided that the price of such orders shall be adjusted as required by the Section; (4) open stop orders to buy; (5) open sell orders; or (6) orders for the purchase or sale of securities where the issuer of the securities has not reported a dividend, payment or distribution pursuant to Securities and Exchange Commission Rule 10b-17.

Members should note carefully the scope of the exemptions. Notwithstanding *Notice to Members 94-63*, where a dividend or distribution is payable in stock, such as in a stock split, a DNR instruction will not apply and the order must be adjusted for price and size as required by Section 46.

Treasury Extends Comment Period For Proposal On Large Position Reporting For Government Securities

The Department of the Treasury is extending until May 24, 1995, the deadline for submitting comments on its Advanced Notice of Proposed Rulemaking (ANPR) under the Government Securities Act of 1986 (GSA). Treasury intends to implement rules to require persons holding, maintaining, or controling large positions in to-be-issued or recently issued Treasury securities to keep records and file reports of these large positions. In its ANPR, Treasury requested comment on how these large-position rules should be structured. For additional information about this proposal, please refer to *Notice to Members 95-15*, March 1995.

Persons interested in submitting written comments should submit them **by May 24, 1995,** to:

Kenneth R. Papaj, Director
Government Securities
Regulations Staff
Bureau of the Public Debt
Department of the Treasury
999 E Street, NW, Room 515
Washington, DC 20239-0001

SPECIAL NASD NOTICE TO MEMBERS 95-42

SEC Approves Amendments To Prospectus Delivery Requirements To Accommodate T+3 Settlement

Suggested Routing

- ■ Senior Management
- □ Advertising
- ■ Corporate Finance
- □ Government Securities
- ■ Institutional
- □ Internal Audit
- ■ Legal & Compliance
- □ Municipal
- ■ Mutual Fund
- ■ Operations
- □ Options
- □ Registration
- □ Research
- ■ Syndicate
- ■ Systems
- ■ Trading
- ■ Training

Executive Summary

On May 11, 1995, the Securities and Exchange Commission (SEC or Commission) approved amendments to its rules that would implement two alternative methodologies proposed by the securities industry to expedite the delivery of final prospectuses on public offerings of securities to accommodate the T+3 settlement cycle under SEC Rule 15c6-1. The new amendments will become effective on June 7, 1995, simultaneously with the effective date of Rule 15c6-1.

Discussion

The SEC adopted on May 11, 1995, a number of amendments to its rules that will permit members to more more quickly deliver a prospectus in new offerings of securities after June 7, 1995, when the new T+3 settlement cycle goes into effect pursuant to Rule 15c6-1. The amendments address industry concerns regarding an exemption that was adopted in Rule 15c6-1 to permit new offerings to be settled on a T+5 cycle, while secondary trading in the same securities will be settled in a T+3 cycle. The securities industry expressed concern that a disparate settlement cycle for primary offerings and secondary trading results in operational issues, increased settlement risk, systemic credit risk to members, and market risk as a result of secondary market volatility. The primary reason given by the SEC when it adopted Rule 15c6-1 as to why settlement of primary offerings within the T+3 settlement cycle has not been feasible for many issues was the amount of time it takes to print and deliver prospectuses.

The SEC has approved two approaches proposed by the Securities Industry Association and by a group of four firms: CS First Boston Corporation; Goldman, Sachs & Co.; Lehman Brothers, Inc.; and Morgan Stanley Co. A copy of the descriptive part of the SEC release without the final pages describing the rule language changes is attached to this Notice. The main features of the amendments approved by the SEC are:

• Amendments to Rule 15c6-1 to require that most offerings underwritten on a firm-commitment basis settle on a T+3 cycle. The Rule also permits offerings underwritten on a firm-commitment basis that are priced after the close of the market to settle on a T+4 cycle and permits the managing underwriter to establish an alternative settlement cycle for an entire offering where appropriate.

• Adoption of new Rule 434 under the Securities Act that permits all required prospectus information to be delivered to investors in the preliminary prospectus traditionally disseminated and a "term sheet" delivered after effectiveness of the offering. The amendments require that the term sheet be clearly marked as a supplement to the preliminary prospectus and that copies of the preliminary prospectus be available to investors upon request when the term sheet is distributed. Closed-end investment companies and unit investment trusts also can rely on the new rule.

• Amendment to Rule 430A to extend the time period from five to 15 business days in which a prospectus supplement containing pricing and other related information omitted from the registration statement must be filed.

• Amendments to the SEC's disclosure rules to permit the disclosure items that are subject to change at the time of the offering to be placed at the front or back of the prospectus so that the main part of the final prospectus can be printed in advance of effectiveness of the offering.

• Amendments to the SEC's filing requirements to permit, for all registered offerings:

—the registration of only the title of the securities to be registered, without designation of the number of securities, and the proposed maximum offering price;

—the registration after effectiveness of an increase in the size and price of an offering that together represent no more than a 20 percent increase in the maximum aggregate offering price by using an abbreviated registration statement that will become effective upon filing;

—the filing of size or price changes by fax or EDGAR copy between 5:30 p.m. and 10 p.m. and payment of the filing fee; and

—fax or telephone requests for acceleration of a registration statement.

The SEC also announced that it is making available an information brochure for investors that answers many of the common questions raised by retail investors concerning T+3. Members are encouraged to provide copies of this information brochure to their customers. The brochure can be obtained through the SEC's consumer information telephone line at (800) SEC-0330.

Questions regarding this Notice may be directed to Thomas R. Cassella, Vice President, Compliance, at (202) 728-8237 or Charles Bennett, Director, Corporate Financing Department, at (301) 208-2736.

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 202, 228, 229, 230, 232, 239, 240, 270 and 274

RELEASE NO. 33-7168; 34-35705; IC-21061

FILE NO. S7-7-95

RIN 3235-AG40

PROSPECTUS DELIVERY; SECURITIES TRANSACTIONS SETTLEMENT

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting revisions to its rules and forms and a new rule in order to implement two solutions to prospectus delivery issues arising in connection with the change to T+3 securities transaction settlement. These revisions, among other things, include changes that highlight the location of the risk factor disclosure within the prospectus. In addition, the Commission is eliminating an exemption from T+3 settlement for purchases and sales of securities pursuant to a firm commitment offering, providing a T+4 time frame to firm commitment offerings under certain conditions, and adopting a modified procedure whereby participants in firm commitment offerings may agree to an extended settlement time frame.

EFFECTIVE DATE: The new rule and the revisions to rules and forms are effective June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Anita Klein, Joseph Babits or Michael Mitchell (202) 942-2900, Division of Corporation Finance; and, with regard to questions concerning revisions to the T+3 settlement rule, Jerry W. Carpenter or Christine Sibille, (202) 942-4187, Division of Market Regulation; and, with regard to questions concerning Rule 15c2-8 revisions, Alexander Dill, (202) 942-4892, Division of Market Regulation; and, with

regard to questions concerning the application to investment companies, Kathleen Clarke, (202) 942-0721, Division of Investment Management, U.S. Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION AND BACKGROUND

On October 6, 1993, the Commission adopted Rule 15c6-1 1/ under the Securities Exchange Act of 1934 (the "Exchange Act"). 2/ That rule is scheduled to become effective on June 7, 1995. 3/ Rule 15c6-1 requires that the standard settlement time frame for most broker-dealer trades be three business days after the trade (hereinafter "T+3"). Rule 15c6-1 provides a limited exemption from T+3 for the sale of securities for cash pursuant to a firm commitment offering registered under the Securities Act of 1933 (the "Securities Act"). 4/ Resales of such securities, however, remain within T+3.

Since the adoption of Rule 15c6-1, members of the brokerage community have suggested that the Commission eliminate this exemption because, among other reasons, the bifurcated settlement cycle created for initial sales and resales of new issues 5/ would be disruptive to broker-dealer operations and to the clearance and settlement system.

1/ 17 CFR 240.15c6-1. See Exchange Act Release No. 33023 (Oct. 6, 1993) [58 FR 52891].

2/ 15 U.S.C. § 78a et seq.

3/ See Exchange Act Release No. 34952 (Nov. 9, 1994) [59 FR 59137].

4/ 15 U.S.C. § 77a et seq.

5/ The term "new issues" as used herein refers to both initial public offerings and offerings of additional securities by companies.

According to the brokerage community, the primary reason that settlement within T+3 is not feasible for many new issues is the amount of time it takes to print and deliver prospectuses. 6/

Two proposals to ease prospectus delivery within T+3 were submitted for Commission consideration. One was submitted by the Securities Industry Association ("SIA") and one was submitted by a group of four investment firms: CS First Boston Corporation, Goldman, Sachs & Co., Lehman Brothers Inc. and Morgan Stanley & Co. Incorporated (the "Four Firms"). 7/ These proposals recommended markedly different solutions to accomplishing prospectus delivery within T+3.

On February 21, 1995, the Commission proposed new Rule 434 and amendments to existing rules and forms based upon these two

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6/ Some of these timing difficulties can be expected to be alleviated as markets increasingly rely on non-paper delivery media. In recognition of that development, the staff issued an interpretive letter to facilitate the use of electronic transmission to satisfy prospectus delivery requirements. Brown & Wood (Feb. 17, 1995). The Division of Corporation Finance staff, in addition to issuing the Brown & Wood letter, is considering generally delivery under the Securities Act of prospectuses through other non-paper media (e.g., audiotapes, videotapes, facsimile, directed electronic mail, and CD ROMs). The staff anticipates submitting to the Commission in the near future recommendations intended both to facilitate compliance with the Securities Act's prospectus delivery requirements and to encourage continued technological developments of non-paper delivery media.

7/ See letter from Robin Shelby, CS First Boston Corporation; Goldman Sachs & Co.; Steven Barkenfield, Lehman Brothers Inc.; and John Ander, Morgan Stanley & Co. Inc. to Anita Klein, Securities and Exchange Commission, dated Jan. 24, 1995 and letter from Goldman Sachs to Anita Klein, Securities and Exchange Commission, dated Feb. 3, 1995. See also letter from Joseph McLaughlin, Brown & Wood, on behalf of the Securities Industry Association, to Anita Klein, Securities and Exchange Commission, dated Feb. 1, 1995. Copies of these proposals are available for inspection and duplication at the Commission's Public Reference Room, 450 Fifth St. N.W., Washington, D.C. 20549, File Number S7-7-95.

proposals. 8/ The Commission sought comment regarding which approach should be implemented, or whether the Commission should implement both approaches and thereby allow market participants a choice as to which to use in any given offering. Twenty-nine comment letters were received in response to the Proposing Release. 9/ Most commenters addressing the question of whether to adopt one or both approaches favored the adoption of both of the Commission's approaches.

As described in greater detail below, the Commission is adopting both approaches, largely as proposed, to provide market participants with the flexibility of selecting between alternative methods to expedite prospectus delivery under a T+3 clearance and settlement system. 10/ Because of the concerns expressed by some commenters with respect to the potential for investor confusion, however, the Commission intends to monitor closely disclosure practices that develop under the new rules and will undertake revisions to the rules if necessary to address investor problems.

On February 21, 1995, the Commission also proposed amendments to Rule 15c6-1 to eliminate the current exemption for firm commitment

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8/ See Securities Act Release No. 7141 (Feb. 21, 1995) [60 FR 10724] (hereinafter, the "Proposing Release").

9/ These letters of comment and a summary thereof are available for inspection and duplication at the Commission's Public Reference Room, 450 Fifth Street N.W., Washington, D.C. 20549, File No. S7-7-95.

10/ As adopted, the approaches will apply specifically to certain investment companies registered under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.) (hereinafter, the "Investment Company Act") (i.e., closed-end investment companies and unit investment trusts ("UITs")). See infra Sections II.A.8. and II.B.3.d.

offerings except offerings of asset-backed securities and structured securities, to provide for a T+4 standard settlement period for offerings priced after the close of the markets ("after-market pricings"), and to permit the managing underwriter to establish T+3, T+4, or T+5 as the standard settlement period for an entire offering if certain conditions were met. In general, commenters favored the proposed amendments to Rule 15c6-1. Many commenters, however, objected to the requirements and limitations contained in the T+3, T+4, or T+5 proposal. As described below, the Commission is eliminating the blanket exemption from Rule 15c6-1 for firm commitment offerings, is adopting the T+4 standard for after-market pricings, and is adopting a revised provision authorizing exceptions from T+3 settlement for certain firm commitment offerings. 11/

II. PROSPECTUS DELIVERY APPROACHES

A. The Four Firms Approach

The Four Firms proposal was premised on the view that the process of preparing and delivering prospectuses in new issues could be accelerated sufficiently to comply with T+3 if six steps were taken by the Commission to facilitate the printing of a significant portion of the final prospectus prior to pricing. Those six steps, noted below, are being adopted substantially

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11/ With the help of staff of the Commission's Division of Corporation Finance and Office of General Counsel, the Commission's Advisory Committee on the Capital Formation and Regulatory Processes is examining the relative costs and benefits of the Securities Act's transactional registration scheme, including the prospectus delivery requirements. See Commission File No. 265-20.

as proposed. 12/ Except as otherwise noted, these steps are applicable to any offering.

1. Re-ordering of Prospectuses

As was proposed, the Commission is adopting rule revisions enabling the contents of prospectuses to be re-ordered to expedite the printing process. 13/ All portions likely to be subject to change at the time of pricing may be placed together in the beginning of the prospectus after the front cover page in a "pricing-related information" section, or may be wrapped around the remainder of the prospectus just inside the front and back cover pages. 14/ While summary and risk factors sections must

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12/ For a discussion of the application of the Four Firms approach to investment companies, see infra Section II.A.8.

13/ Certain Commission rules that specify the location of information in the forepart of the prospectus, or in a specified order within the prospectus, are being revised to eliminate certain requirements regarding location. See revisions to Items 503(b) and 503(c) of Regulation S-K, 17 CFR 229.503(b) and 229.503(c); Items 503(b) and 503(c) of Regulation S-B, 17 CFR 228.503(b) and 228.503(c); and Securities Industry Guide 4, 17 CFR 229.801(d). Consistent with the proposal, no revision has been made to order and location rules that relate to specific and limited classes of transactions. See Items 903(a) and 904(a) of Regulation S-K, 17 CFR 229.903(a) and 229.904(a) (summary of a roll-up transaction, reasonably detailed description of each material risk and effect of the roll-up transaction); Securities Act Industry Guide 5, 17 CFR 229.801(e), (real estate limited partnerships suitability standards). In addition, issuers of limited partnership interests and other real estate investment vehicles must continue to comply with the disclosure guidance set forth in Securities Act Release No. 6900 (June 17, 1991) [56 FR 28979].

14/ Commenters noted that, if prospectuses are printed in a folio manner, moving pricing-related information to the front of the prospectus may not result in earlier printing of the remainder of the prospectus. Thus, the Commission is providing the flexibility to "wrap" the "pricing-related information" section. Of course, whether the price-related information is set forth in the front or wrapped, the information set forth in the prospectus must be presented in a clear, concise and understandable fashion, as required by Rule 421(b) under

(continued...)

remain in the forepart of the prospectus, those sections may immediately follow the "pricing-related information" section rather than preceding it. To ensure that investors continue to be able to locate the risk factors section in all offerings with ease, however, rule revisions also provide that the currently required cross reference to that section on the cover page of the prospectus now identify with specificity (e.g. by page number) the location of that section within the prospectus. 15/ In addition, rule revisions require that the risk factors section be captioned within the prospectus as "Risk Factors" and clarify that the table of contents required on the back cover of the prospectus must include a reference to the risk factors section and specify the page number on which it begins. 16/

Further, rule revisions provide that specific information currently required on the prospectus cover pages may be placed under an appropriate

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14/(...continued)
the Securities Act, 17 CFR 230.421(b). See also Rule 421(a) under the Securities Act, 17 CFR 230.421(a), which requires that information in a prospectus be set forth in a fashion so as not to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading; and Securities Act Release No. 6900 (June 17, 1991) [56 FR 28979].

15/ See revisions to Regulation S-K Item 501(c)(4), 17 CFR 229.501(c)(4), and Regulation S-B Item 501(a)(4), 17 CFR 228.501(a)(4). As revised, the rules also require that the cross reference be printed in bold-face roman type at least as high as twelve-point modern type and at least two points leaded.

16/ See revisions to Item 503(c)(1), 17 CFR 229.503(c)(1) and 17 CFR 228.503(c)(1); Item 502(g), 17 CFR 229.502(g); Item 502(f), 17 CFR 228.502(f).

caption elsewhere in the prospectus. 17/ Otherwise, the prospectus cover pages must continue to contain information currently specified by Commission rules. 18/

The "pricing-related information" section may include those portions of a prospectus that may change as a result of pricing, such as use of proceeds, capitalization, pro forma financial information, dilution, selling shareholder information and shares eligible for future sale. 19/ The pricing information portion itself may be included in the price-related information section. These adopted rule revisions which allow re-ordering of information within a prospectus for convenience in printing do not alter existing requirements with respect to the filing of post-effective amendments or supplements with the Commission when material changes or additions affect information set forth in the prospectus contained in an

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17/ See revisions to Item 502(a), (b), (c) and (f) of Regulation S-K, 17 CFR 229.502(a), 229.502(b), 229.502(c) and 229.502(f); revisions to Item 502(a), (b) and (c) of Regulation S-B, 17 CFR 228.502(a), 228.502(b) and 228.502(c); and revisions to the Instruction following Item 502(f) of Regulation S-B, 17 CFR 228.502(f). These revisions relate to disclosure regarding: the availability of Exchange Act information about the registrant, the nature of reports to be given to security holders, undertakings with respect to information incorporated by reference, and the enforceability of civil liabilities against certain foreign persons.

18/ See Item 501(c) of Regulation S-K, 17 CFR 229.501(c) (outside front cover page); Item 502(d), (e) and (g) of Regulation S-K, 17 CFR 229.502(d), 229.502(e), and 229.502(g) (inside front cover page and outside back cover page); Item 501 of Regulation S-B, 17 CFR 228.501 (outside front cover page); and Item 502(d), (e) and (f) of Regulation S-B, 17 CFR 228.502(d), 228.502(e) and 228.502(f) (inside front cover page and outside back cover page).

19/ See Instruction to Item 503(c) of Regulations S-K and S-B, 17 CFR 229.503(c) and 228.503(c).

effective registration statement. However, other rule revisions discussed below do alter existing requirements.

2. Changes in Offering Size and Estimated Price Range

To prevent delays in printing prospectuses that arise when the size of an offering is changed after the effective date of the registration statement, or the pricing of the securities falls outside the estimated range, the Commission under specified conditions is eliminating or streamlining the filings that result. Although originally contemplated only for Rule 430A offerings, the adopted revisions provide the same flexibility for all registered offerings.

a. Registration of Classes of Securities

In order to minimize the instances in which an increase in the offering size would result in the need to file a new registration statement, rule revisions are being adopted to increase registrants' flexibility with respect to the amount of securities being registered in an offering. Under the revised rules, an issuer is permitted to register securities in an offering by specifying only the title of the class of securities to be registered and the proposed maximum aggregate offering price. 20/ Except in the case of

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20/ See revisions to Rule 457(o) under the Securities Act, 17 CFR 230.457(o). The amount of securities to be registered and the proposed maximum offering price per unit are no longer required to be set forth in the "Calculation of Registration Fee" table. Of course, an issuer may continue to specify such information therein if it so chooses and relies upon Rule 457(a). Regardless of the method chosen for the "Calculation of Registration Fee" table, however, the registrant continues to be required to specify in the prospectus the amount of securities being offered and, where the registrant is not a reporting company, a bona fide estimate of the range of the maximum offering price. See Rule 501(c)(6) of Regulation S-K, 17 CFR 229.501(c)(6) and Rule 501(6) of Regulation S-B, 17 CFR 228.501(6).

the unallocated shelf procedure available to Form S-3-eligible companies, the aggregate dollar amount associated with each class of securities offered must be disclosed in the "Calculation of Registration Fee" table. Where issuers register a greater amount of securities than needed in the offering, such additional securities may be carried forward to a subsequent registration statement without incurring an additional registration fee. 21/

b. Increases in Offering Size - Registration of Additional Securities

When the pricing terms of an offering are finalized, it is not unusual for changes to be made in the offering size through adjustments to both price and volume. 22/ Where this process requires registration of additional securities, the revised rules and forms permit the filing of an abbreviated registration statement to register the additional amount of securities to be offered and sold. 23/ Such an abbreviated registration is available to an issuer that is registering additional securities in an amount and at a price

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21/ See revisions to Rule 429, 17 CFR 230.429. Under Rule 429, in a new registration statement filed in the future for another offering of that class of securities, the registrant would indicate in a footnote to the "Calculation of Registration Fee" table that part of the registration fee had been paid previously in connection with an earlier registration statement. The footnote must specify the exact dollar amount of the fee being carried over and the related registration statement file number.

22/ While participants in a registered distribution may only offer the amount of securities registered to be offered, it is possible that indications of interest received in response to such offers may exceed the amount registered to be offered. Sales of securities in excess of the volume initially registered will not result in Section 5 liability if the participants in the distribution did not solicit indications of interest in an amount in excess of that registered and the procedures discussed in this section are followed.

23/ See revisions to General Instructions of Forms SB-1, SB-2, S-1, S-2, S-3, S-11, F-1, F-2 and F-3.

that together represent no more than a 20% increase in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the earlier effective registration statement. 24/ Such registration would consist of: the facing page, a statement incorporating by reference the contents of the earlier registration statement relating to the offering, all required consents and opinions, and the signature page. While not required by the rule, the registrant also may include in the new registration statement, instead of in a filing under Rule 424, any price-related information with respect to the offering that was omitted from the earlier registration statement pursuant to Rule 430A. 25/ The abbreviated registration statement must be filed prior to the time sales are made and confirmations are sent or given, and will become effective automatically upon filing. 26/ As adopted, this abbreviated registration format is available regardless of whether the earlier registration statement was prepared in reliance upon Rule 430A.

In addition to providing an abbreviated registration format for such increases in offering size, rule revisions allow such registration statements to be filed promptly even when pricing occurs after the Commission's

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24/ In the context of an offering from a shelf registration statement, the 20% increase would be measured based upon the amount of securities on the shelf.

25/ Consistent with offerings where a new registration statement is not required to be filed as a result of a change of no more than 20% in the size of the offering, information necessary to update disclosure contained in the earlier registration statement as a result of the increase may be reflected in a form of prospectus filed under Rule 424(b), 17 CFR 230.424(b). See infra Section II.A.2.c.

26/ See Rule 462(b), 17 CFR 230.462(b). The registration statement is deemed to be a part of the earlier registration statement relating to the offering. See, e.g., General Instruction V. to Form S-1.

business hours. 27/ Such a registration statement may be filed with the Commission by persons other than mandated electronic filers by transmitting a single copy of it via facsimile to the Commission's principal office from 5:30 p.m. to 10:00 p.m. 28/ Electronic filers may file such a registration statement from 5:30 p.m. to 10:00 p.m. by transmitting it through EDGAR. 29/ Such filings become automatically effective upon receipt by the Commission of the complete facsimile or EDGAR copy and payment of the filing fee.

To accommodate payment of the filing fee after the close of banking hours, rule revisions provide that payment with respect to such registration statements may be made by: (i) instructing a bank or wire transfer service to transmit a wire transfer to the Commission of the requisite amount as soon as practicable (but in any event no later than the close of the next business day following the date the registration statement is faxed to the

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27/ See revisions to Rule 110, 17 CFR 230.110; Rule 402, 17 CFR 230.402; Rule 455, 17 CFR 230.455; and Rule 472, 17 CFR 230.472; Rule 13, 17 CFR 232.13 and Rule 3a, 17 CFR 202.3a.

28/ Effective June 7, 1995, the telephone number for that facsimile machine is (202) 942-7333 and the telephone number for the staff person that can answer questions regarding such facsimiles between the hours of 5:30 p.m. and 10:00 p.m. (Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect) is (202) 942-8900. Filings (other than electronic filings through EDGAR) between 5:30 p.m. and 10:00 p.m. on Forms SB-1 and SB-2 for this purpose must be sent via this facsimile system to the Commission's principal office rather than to the regional or district offices of the Commission.

29/ The new EDGAR form types for purposes of registration statements under Rule 462 are S-1MEF, S-2MEF, S-3MEF, F-1MEF, F-2MEF, F-3MEF, SB-1MEF and SB-2MEF. A post-effective amendment to any of these new form types should be designated as form type POS462B. With respect to other aspects of the adopted proposals and electronic filers, see also infra Section IV.

Commission); and (ii) providing specific certifications to the Commission with the abbreviated registration statement. 30/ Specifically, the registrant must certify to the Commission that: the registrant (or its agent) has so instructed its bank or a wire transfer service to pay the Commission; that it will not revoke such instructions; and that it has sufficient funds in the relevant account to cover the amount of the filing fee. These instructions may be transmitted on the day of filing the registration statement after the close of business of such bank or wire transfer service, provided that the registrant undertakes to confirm receipt of such instructions by the bank or wire transfer service the following business day.

c. Changes in Offering Size; Deviation from Price Range

Currently, a post-effective amendment is not required to be filed where there is a decrease in volume of securities offered or the actual offering price is outside the disclosed estimated price range, unless such decrease or change would change materially the disclosure included in the registration statement at the time of effectiveness. 31/ Under the revised rules, a post-effective amendment does not have to be filed in connection with any registered offering if there is a decrease or increase in the offering size (if such an increase would not require additional securities to be registered) and/or the actual price is outside the estimated price range if, in

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30/ See revisions to Rule 111, 17 CFR 230.111. This payment certification document accompanying an abbreviated registration statement should be transmitted by electronic filers under EDGAR form type CORRESP.

31/ See Securities Act Release No. 6964 (Oct. 22, 1992) [57 FR 48970] for a discussion of the materiality standard as it applies to these changes.

the aggregate, the new size and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement. 32/

3. Manual Signatures and Incorporation by Reference of Opinions and Consents

Under the proposals, rule revisions would have provided that duplicated or facsimile versions of manual signatures could be included on the signature page in place of the manual signatures currently required in a registration statement to increase the size of the offering. In response to comment, the rule revisions being adopted have been expanded to permit duplicated or facsimile versions of manual signatures in any registration statement or post-effective amendment filed under the Securities Act and any reports filed under the Exchange Act. 33/ These revisions will provide the same flexibility to all paper filers that is accorded EDGAR filers. In addition, under the revised rules, signatures on required opinions and

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32/ See revision to Instruction to Paragraph (a) of Rule 430A, 17 CFR 230.430A and revisions to Item 512(a)(1)(ii) of Regulations S-K and S-B, 17 CFR 229.512(a)(1)(ii) and 228.512(a)(1)(ii). This revision pertains to changes in offering size that occur at pricing and does not extend to changes made after that time. While no post-effective amendment is required to be filed, issuers continue to be responsible for evaluating the effect of a volume change or price deviation on the accuracy and completeness of disclosure made to investors. When there is a change in offering size or deviation from the price range beyond the 20% threshold, a post-effective amendment would continue to be required only if such change or deviation materially changes the previous disclosure. Of course, if an increase beyond the 20% threshold requires registration of additional securities, a new registration statement updated in all respects must be filed.

33/ See revisions to Rule 402, 17 CFR 230.402; Rule 12b-11, 17 CFR 240.12b-11; Rule 14d-1, 17 CFR 240.14d-1; and Rule 16a-3, 17 CFR 240.16a-3.

consents in such filings also may be duplicated or facsimile versions of manual signatures. 34/ In all cases where duplicated or facsimile versions of manual signatures are used, the registrant must maintain the manually signed version in its files for five years after the filing of the related document and provide it to the Commission or the staff upon request.

Rule revisions also allow opinions and consents required in abbreviated registration statements registering an additional 20% to be incorporated by reference to the extent that the opinions and consents contained in the earlier effective registration statement were drafted to apply to any subsequent registration statement filed solely to increase the offering up to a 20% threshold. 35/ Where opinions and consents cannot be incorporated, duplicated or facsimile versions of manual signatures may be included in the new opinion or consent required to be filed in the abbreviated registration statement.

4. Rule 430A Pricing Period

As was proposed, the Commission is extending the period during which a prospectus supplement containing pricing and other related information omitted from a registration statement may be filed pursuant to

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34/ See revisions to Rule 402, 17 CFR 230.402; Rule 439, 17 CFR 230.439; Rule 12b-11, 17 CFR 240.12b-11; Rule 14d-1, 17 CFR 240.14d-1; and Rule 16a-3, 17 CFR 240.16a-3.

35/ See Rule 411(c) under the Securities Act, 17 CFR 230.411(c), new Rule 439(b) under the Securities Act, 17 CFR 230.439(b), and changes to General Instructions of Forms SB-1, SB-2, S-1, S-2, S-3, S-11, F-1, F-2 and F-3. In addition, Items 601(b)(24) of Regulations S-K and S-B, 17 CFR 229.601(b)(24) and 17 CFR 228.601(b)(24), are revised so that a power of attorney included in the earlier registration statement relating to the offering also may relate to the short-form registration statement filed to register the additional securities.

Rule 430A under the Securities Act. 36/ The "pricing" period is extended from five to fifteen business days after the effective date of the registration statement or any post-effective amendment thereto. Although originally proposed as an extended ten-business-day period, the adopted fifteen-business-day period should provide additional flexibility for purposes of complying with T+3, without defeating the purpose of that limitation. 37/

Where a Rule 430A offering is not priced within the fifteen-day period, a post-effective amendment updated in all respects that either restarts the pricing period or contains the Rule 430A pricing information (i.e. similar to a traditional pricing amendment) must be filed and effective prior to sales. While no changes to this requirement are being made, other rule revisions are being adopted to minimize the delay that could result. Such a post-effective amendment, which must be filed prior to the time sales are made and confirmations are sent, will become effective upon filing if the prospectus contained therein contains no material changes from, or additions to, the prospectus previously filed as part of the effective registration statement other than the price-related information omitted from the registration statement in reliance on Rule 430A. 38/ A company filing a post-effective amendment that reflects other material prospectus changes or additions (other than the "20% increase in offering size" changes) would

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36/ See revisions to Rule 430A(a)(3), 17 CFR 230.430A(a)(3).

37/ The principal purpose of the original five-day limitation was to prevent delayed offerings being made under Rule 430A by persons that do not meet the criteria for use of shelf registration. See Securities Act Release No. 6714 (May 27, 1987) [52 FR 21252].

38/ See Rule 462(c), 17 CFR 230.462(c).

follow current procedures under which the post-effective amendment is subject to selective review and is declared effective.

5. Immediate Takedowns from a Shelf Registration

The Four Firms proposal requested that the Commission permit immediate takedowns after a shelf registration statement becomes effective. As indicated in the Proposing Release, immediate offerings from an effective shelf registration statement currently are permitted. At the time of effectiveness, information in the shelf registration statement is required to the extent it is known or reasonably available to the registrant. 39/ Accordingly, if an offering of securities is certain at the time the shelf registration statement becomes effective, the relevant information (e.g., description of securities, plan of distribution and use of proceeds) must be disclosed with respect to the securities subject to the immediate takedown and the Rule 430A undertakings should be included (if the issuer wants Rule 430A pricing flexibility).

6. Acceleration of Effectiveness

As was proposed, adopted rule revisions allow requests to accelerate effectiveness of registration statements to be transmitted to the Commission by fax transmission. In addition, rule revisions permit oral requests for acceleration to be made, 40/ provided that the Commission

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39/ See Rule 409, 17 CFR 230.409.

40/ See Securities Act Rule 461(a), 17 CFR 230.461(a). Both an authorized representative of the registrant and an authorized representative of the managing underwriter will be required to make such request orally. The rule revisions do not adopt a requirement suggested by some commenters that an oral request be followed by transmission to the Commission of a written request, nor are facsimile or duplicate versions required to be followed by transmission to the Commission of the manually signed versions.

previously receives a letter indicating that the registrant and the managing underwriter may make oral requests for acceleration and that they are aware of their obligations under the Securities Act. 41/

In order to facilitate the ability of the Commission staff, pursuant to delegated authority, to reach a determination to accelerate effectiveness based on the public availability of information and other factors set forth in Section 8(a) of the Securities Act, 42/ persons making oral acceleration requests should be prepared to provide orally the prospectus dissemination information that typically is set forth in a written acceleration request. Such information generally includes: the date of the preliminary prospectus distributed, the approximate dates of distribution, the number of prospective underwriters and dealers to whom the preliminary prospectus was furnished, the number of prospectuses so distributed, and the number of prospectuses distributed to others, identifying them in general terms. 43/ In addition, in the case of non-reporting companies, an affirmative statement from the managing underwriter may be requested with regard to whether it has been informed by participating underwriters and dealers that copies of the preliminary prospectus have been or are being distributed to

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41/ See Securities Act Rule 461(a), 17 CFR 230.461(a). The liability of persons who sign the registration statement, the underwriters and others under Section 11(a) of the Securities Act, 15 U.S.C. § 77k(a), is based upon the registration statement at the time it becomes effective.

42/ 15 U.S.C. § 77h(a).

43/ See Rule 418(a)(7), 17 CFR 230.418(a)(7). See also Rule 460, 17 CFR 230.460.

all persons to whom it is then expected to mail confirmations not less than 48 hours prior to the time it is expected to mail such confirmations. 44/

7. T+4 Settlement for Firm Commitment Offerings Priced After the Close of the Market

As discussed elsewhere in this release, the Commission is eliminating the current exemption contained in Rule 15c6-1 for firm commitment offerings, thus bringing those transactions under a T+3 settlement standard. In response to the Four Firms proposal, the Commission proposed an amendment to Rule 15c6-1 that would establish four business days after the trade date ("T+4") as the standard settlement cycle for firm commitment offerings priced after 4:30 p.m. The vast majority of commenters who addressed this proposal expressed support for settlement on a T+4 basis. 45/ Several of these commenters reasoned that it is difficult to print and deliver the final prospectus within a T+3 settlement time frame when the securities are priced late in the day. These commenters also opined that the potential systemic and market risks associated with the T+4 provision should be limited because most of the secondary trading in the subject securities will not begin until the opening of the market on the next business day and, therefore, the primary

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44/ See Rule 418(a)(7)(vi), 17 CFR 230.418(a)(7)(vi) and Securities Act Release No. 4968 (Apr. 24, 1969) [34 FR 7235]. Of course, this information is not applicable to delayed shelf offerings.

45/ One commenter argued that a T+4 standard was unnecessary because the override provision in paragraph of (a) of Rule 15c6-1, if broadly interpreted, would provide sufficient flexibility to after-market offerings. See letter from John Brandow, Davis Polk & Wardwell to Jonathan Katz, Securities and Exchange Commission, dated April 3, 1995. As discussed elsewhere in this release, the Commission is instead adopting a specific override provision for firm commitment offerings.

issuance of securities will be available to settle secondary trading in the security.

The T+4 provision in the Four Firms proposal was intended to provide time to deliver prospectuses by settlement. Establishing T+4 as the standard for this category of offerings also will provide certainty and reduce confusion as to the appropriate settlement cycle. Accordingly, the Commission is adopting the amendment for settlement of specific offerings on a T+4 basis with only minor technical corrections. 46/

8. Investment Companies

The Commission requested comment on whether the Four Firms proposal should apply to investment companies. Commenters did not believe that open-end investment companies would require any special provisions to facilitate T+3 settlement because they are engaged in the continuous offerings of securities with pre-printed prospectuses, but endorsed the application of the Four Firms proposal to closed-end investment companies and unit investment trusts ("UITs"). The revisions to Rule 430A (the extension of the pricing period and changes to offering size and price range), to Rule 461(a) (facsimile or oral accelerations of effective dates), and to Rule 15c6-1 (T+4 settlement for firm commitment offerings priced after 4:30 p.m.) by their terms apply to the registration statements

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46/ See Rule 15c6-1(c), 17 CFR 15c6-1(c). As proposed, this paragraph provided an exemption for securities sold pursuant to a firm commitment offering. This language has been amended to clarify that the exemption applies to contracts for the sale of such securities and that the exemption only applies to sales from the issuer to the underwriter and initial sales by broker-dealers participating in the offering.

of closed-end investment companies and UITs. 47/ The Investment Company Act permits UITs, but not closed-end investment companies, to increase the size of an offering by post-effective amendment. 48/ Therefore, the Commission is adopting rule and form revisions that will permit closed-end investment companies to take advantage of the short-form registration statement that permits an increase in offering size. 49/ Under the rule and form amendments, as adopted, the Commission is not making any changes to re-order investment company prospectuses because the current prospectus requirements appear to provide sufficient flexibility to accommodate expedited printing of prospectuses.

47/ As noted previously, the revised rules permit duplicated or facsimile versions of manual signatures in all reports filed under the Exchange Act, as well as registration statements filed under the Securities Act. The Commission is adopting similar revisions for investment companies. See revisions to Rule 8b-11, 17 CFR 270.8b-11.

48/ See Section 24(e)(1) of the Investment Company Act, 15 U.S.C 80a-24(e)(1); see also Rule 485(b)(1)(i), 17 CFR 270.485(b)(1)(i), which provides for the immediate effectiveness of a post-effective amendment filed by a UIT for the purpose of increasing the amount of securities proposed to be offered under Section 24(e)(1).

49/ Modifications to the registration statement form for closed-end investment companies, Form N-2 (17 CFR 274.11a), provide for the registration of additional securities pursuant to new Rule 462(b). Revisions to (i) paragraph (b) of Rule 483, which sets forth the exhibit requirements for investment company registration statement forms, provide that a power of attorney filed for a registration statement form also relates to a related registration statement form filed pursuant to Rule 462(b), and (ii) paragraph (c) of Rule 483 provide that a consent may be incorporated by reference into a registration statement form filed pursuant to Rule 462(b) from a related registration statement form.

B. The SIA Approach

The second part of the Commission's proposal was based on the proposal submitted by the SIA. The SIA proposal was predicated on the premise that prospectus delivery could be accomplished much more quickly if issuers could convey the Section 10(a) prospectus information in multiple documents delivered to investors at different times, rather than in a traditional, integrated final prospectus prepared through last-minute mass printing, shipping and mailing.

Rule 434 under the Securities Act, 50/ which is based upon the SIA approach, is being adopted largely as proposed. Rule 434 permits participants in registered firm commitment underwritten offerings of securities for cash and specified registered offerings for cash made on an agency basis (hereinafter, "eligible offerings") to convey prospectus information in more than one document and allows such documents to be delivered to investors at separate intervals and in varying manners. Rule 434 does not require that a final, integrated prospectus be delivered to investors. In the aggregate, however, all required information will still be disclosed to investors prior to or at the same time as a confirmation is sent, either through physical delivery or, in the case of short-form registered offerings, 51/ through physical delivery and delivery by publication.

50/ 17 CFR 230.434.

51/ "Short-form" registration is used herein to refer to registration on Commission Forms S-3 or F-3. To be eligible to use short-form registration for a primary offering, an issuer must have a public float of $75 million and must have been reporting with the Commission for one year. See General Instructions I.A.3. and I.B.1. to Form S-3 and General Instructions I.A.1. and I.B.1. to Form F-3.

1. Non-Short-Form Registered Offerings

As adopted, in eligible offerings not using short-form registration, persons may comply with their prospectus delivery obligations by delivering a preliminary prospectus, 52/ a term sheet, if necessary, 53/ and a confirmation. 54/ The term sheet is required to include all information material to investors with respect to the offering that is not disclosed in the delivered preliminary prospectus or the confirmation. 55/

52/ "Preliminary prospectus" is used herein to refer to either a preliminary prospectus used in reliance on Rule 430, 17 CFR 230.430, or a prospectus omitting information in reliance on Rule 430A(a), 17 CFR 230.430A(a).

53/ In order to reflect industry nomenclature, "term sheet" is used in this release to refer to the document called a "supplementing memorandum" in the Proposing Release. In addition, "abbreviated term sheet" is now used in place of "abbreviated supplementing memorandum." Regardless of the nomenclature used, these documents constitute supplements to prospectuses subject to completion.

54/ The preliminary prospectus, the term sheet and the confirmation may be delivered together or separately under Rule 434, provided that the former two are sent or given prior to or with the confirmation. See Rule 434(b)(1), 17 CFR 230.434(b)(1). See also Rule 434(c)(1), 17 CFR 230.434(c)(1) with respect to the preliminary or base prospectus, the abbreviated term sheet and the confirmation. Note that the prospectus delivery obligations pursuant to Rule 15c2-8 under the Exchange Act are independent of those discussed in this section. A term sheet or abbreviated term sheet generally may not be sent or given prior to the preliminary or base prospectus given the limitations set by Section 5(b)(1) of the Securities Act and the definition of "prospectus" set forth in Section 2(10) of the Securities Act. The Commission will raise no objection where a preliminary or base prospectus being delivered separately is sent or given in a manner reasonably calculated to arrive prior to or at the same time with the term sheet or abbreviated term sheet but the term sheet or abbreviated term sheet nevertheless precedes the preliminary or base prospectus.

55/ See Rule 434(b)(3), 17 CFR 230.434(b)(3).

Neither the process of filing registration statements and amendments thereto, nor the Commission's registration statement review process, is intended to be altered in connection with the adoption of Rule 434. 56/ Rule 434 requires that the preliminary prospectus and the term sheet, taken together, not materially differ from the disclosure included in the effective registration statement. 57/ The term sheet must be filed with the Commission within two business days after the earlier of pricing or first use. 58/ Thus, term sheets generally will not be reviewed prior to use. Except in the case of delayed shelf offerings, the term sheet is deemed to be a part of the registration statement as of the time such registration statement was declared effective. 59/ In the case of such delayed offerings, the term sheet is deemed to be a part of the registration statement as of the time the term sheet is filed with the Commission. 60/

56/ As under current practice, the staff will continue to consider whether recirculation of a prospectus is needed when there are material changes in disclosure arising after the prospectus subject to completion has been given to investors. See Rules 460 and 461(b), 17 CFR 230.460 and 230.461(b).

57/ See Rule 434(b)(2), 17 CFR 230.434(b)(2). The disclosure in the preliminary prospectus and term sheet would be measured against the disclosure set forth in the registration statement as of its effective date, including omitted Rule 430A price-related information deemed a part thereof by virtue of Rule 430A(b), 17 CFR 230.430A(b).

58/ See Rule 424(b)(7), 17 CFR 230.424(b)(7). Each filed copy of a term sheet or abbreviated terms sheet, like other filings under Rule 424, must contain in the upper right corner of its cover page a reference to the part of Rule 424 under which the filing is made (i.e. Rule 424(b)(7)) and the file number of the registration statement to which the prospectus relates. See Rule 424(e), 17 CFR 230.424(e).

59/ See Rule 434(d), 17 CFR 230.434(d).

60/ Id.

Several commenters on the Proposing Release suggested that the Commission require that a second preliminary prospectus (either an updated version or another copy of the version previously circulated) be circulated to investors either with the term sheet or shortly before the term sheet is delivered. 61/ Circulation of a second preliminary prospectus is not required by Rule 434 as adopted, but nothing in the Rule precludes offering participants from doing so.

As adopted, Rule 434 is not limited with respect to the amount of time that could elapse between delivery of the preliminary prospectus and the term sheet. Further, the Rule does not contain any limitation on the magnitude of changes from the disclosure set forth in the circulated preliminary prospectus that the term sheet may contain. As noted above, however, the Rule is not available for non-short-form registered offerings if the disclosure in the preliminary prospectus and term sheet materially differ from the disclosure contained in the prospectus filed as a part of the effective registration statement.

2. Short-Form Registered Offerings

In Rule 434 eligible offerings using short-form registration, persons may comply with their prospectus delivery obligations by delivering a

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61/ See, e.g., letter from John Olson et al., American Bar Association to Jonathan Katz, Securities and Exchange Commission, dated April 14, 1995; letter from Edward Adams, Fredrikson & Byron to Jonathan Katz, Securities and Exchange Commission, dated March 31, 1995; and letter from Steven Machov, Merrill Corporation to Jonathan Katz, Securities and Exchange Commission, dated April 3, 1995.

preliminary or base prospectus, 62/ an abbreviated term sheet 63/ and a confirmation. An abbreviated term sheet must contain, unless previously disclosed in the circulated preliminary or base prospectus or in the registrant's Exchange Act filings incorporated by reference into the prospectus: (i) the description of securities required by Item 202 of Regulation S-K, or a fair and accurate summary thereof; 64/ and (ii) information regarding material changes required by Item 11 of Form S-3 or Form F-3. 65/ Under new Rule 434, certain offering-specific disclosure included in a traditional final prospectus 66/ will be required only in the prospectus supplement filed with the Commission. 67/ This information

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62/ "Base prospectus" is used herein to refer to a prospectus contained in a registration statement at the time of effectiveness (or as subsequently revised) that omits information that is not yet known concerning an offering pursuant to Rule 415, 17 CFR 230.415.

63/ The abbreviated term sheet is filed with the Commission in accordance with Rule 424(b)(7), 17 CFR 230.424(b)(7). See Rule 434(d), 17 CFR 230.434(d), with respect to abbreviated term sheets being deemed a part of the registration statement.

64/ 17 CFR 229.202.

65/ See Rule 434(c)(3), 17 CFR 230.434(c)(3).

66/ Offering-specific information required to be filed but permitted not to be delivered physically under Rule 434 short-form registered offerings is set forth in Items 501-510 of Regulation S-K, 17 CFR 229.502-229.510. In addition, a summarized version of the description of securities set forth in Item 202 of Regulation S-K, 17 CFR 229.202, may be delivered physically rather than the full description filed with the Commission.

67/ See Rule 434(c)(2), 17 CFR 230.434(c)(2). For example, the final prospectus traditionally delivered to investors in shelf offerings has included information set forth in both the base prospectus and a prospectus supplement. In shelf offerings relying on Rule 434, information in the prospectus supplement will not be delivered physically to investors, except to the extent it is disclosed pursuant to the abbreviated term sheet. The prospectus supplement in such

(continued...)

could include, for example, use of proceeds and syndicate and specific plan of distribution information.

Registrants will be required to indicate on the cover page of their registration statement, by checking a box, that reliance on Rule 434 for prospectus delivery is intended. Persons checking the box, however, would not be required to rely on Rule 434 if they later determined to deliver prospectus information otherwise in connection with the offering.

Any term sheet or abbreviated term sheet sent or given in reliance upon Rule 434 must state on the top center of the front cover page that it is a supplement to a prospectus and identify that prospectus by issuer name and date. The term sheet or abbreviated term sheet also, in that location, must clearly identify that it is a term sheet or abbreviated term sheet used in reliance on Rule 434, must clearly identify the documents that, when taken together, constitute the Section 10(a) prospectus, and must be dated as of the approximate date of its first use. 68/

3. Scope of the Proposed Rule

a. Underwritten Offerings for Cash

Rule 434, as adopted, extends only to offerings where the sole consideration given in exchange for securities is cash. Offerings such as exchange offers and business combinations are not included. As noted in the Proposing Release, in those offerings, the final prospectus is traditionally used to begin the process of soliciting votes or consents to a

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67/(...continued)
offerings, however, must be filed with the Commission by the time any confirmation is sent or given to investors. See Rule 434(c)(2)(ii), 17 CFR 230.434(c)(2)(ii).

68/ See Rule 434(e), 17 CFR 230.434(e).

transaction. Thus, the logistical difficulties of prospectus delivery are not associated with those offerings.

The adopted Rule also does not extend to offerings that are made other than on a firm commitment basis with underwriters, except for offerings of investment grade debt made in connection with a medium-term note ("MTN") program registered with the Commission on either a continuous or delayed shelf basis. 69/ Concern has been expressed that exclusion of these MTN securities from the Rule would unnecessarily push such transactions out of the T+3 settlement cycle. 70/ Further, while these MTN securities typically are sold through an underwriter on an agency rather than a firm commitment basis, assurance has been given that, once an agreement has been reached between the investor and the MTN program agent, the preparation and delivery of a prospectus occurs in a manner identical to that in a principal transaction. 71/

b. Offerings of Asset-Backed Securities

As adopted, Rule 434 excludes offerings of asset-backed securities ("ABS"). 72/ Settlement in connection with ABS offerings currently takes

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69/ See Rule 434(a), 17 CFR 230.434(a). These MTN offerings rely on Rule 415(a)(1)(ix) or (x), respectively.

70/ See letter from Kevin Moynihan, Merrill Lynch to Jonathan Katz, Securities and Exchange Commission, dated April 7, 1995.

71/ Id.

72/ "Asset-backed security" is defined for purposes of Rule 434 the same way it is defined in General Instruction I.B.5. of Form S-3: a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the securityholders. See Rule 434(f), 17 CFR 230.434(f).

place outside of the T+3 time frame, on approximately a T+10 cycle, and is likely to continue to do so. As noted in the Proposing Release, the existing settlement schedule is the result primarily of factors unique to these offerings, which are the same factors that result in such offerings not lending themselves to use of incremental disclosure. Those factors include: (i) the distinctive structuring process for most ABS offerings, which typically extends almost to the time when the security is priced, whereby a variety of structures may be considered as the sponsor attempts to meet investors' needs; (ii) the time needed for identification of the specific pool of collateral which will support the ABS; and (iii) the necessity of creating shortly before sale of the ABS a prospectus supplement of significant length and complexity that details the characteristics of specific pool assets and the transaction's structure, the summarization of which would not serve as an adequate substitute for the complete description in the prospectus supplement.

c. Offerings of Structured Securities

As adopted, Rule 434 also excludes offerings of structured securities. 73/ "Structured securities," for purposes of Rule 434, are defined to mean securities whose cash flow characteristics depend upon one or more indices or that have imbedded forwards or options or securities where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows. 74/ This definition was

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73/ See Rule 434(a), 17 CFR 230.434(a).

74/ See Rule 434(h), 17 CFR 230.434(h).

proposed to be included in Rule 15c6-1 but is set forth in Rule 434 instead since Rule 15c6-1 as adopted makes no reference to such securities. As noted in the Proposing Release, these securities usually have terms that are highly complex, with many employing one or more indices as a basis for determining the issuer's payment obligations (e.g., coupon, principal, redemption payments). A structured security's value is derived not only from the creditworthiness of its issuer, but also from any underlying assets, indices, interest rates or cash flow upon which the security is predicated. Because of the complexities associated with these securities, investors may not fully understand the investment risks when purchasing structured securities, especially those with complicated structures. A complete description of offering-specific information therefore is of particular importance to investors in making an investment decision, given the market risks resulting from the structure of these securities. Otherwise, as noted in the Proposing Release, the incremental distribution of information under the Rule, when combined with the complex nature of these securities, could result in material disclosure not being readily accessible to investors.

d. Investment Companies

As proposed, Rule 434 would have provided that it would not apply to the offering of any security of any company registered under the Investment Company Act. The Commission requested comment on whether the prospectus delivery modifications in the SIA proposal also should apply to closed-end investment companies and UITs. Commenters endorsed the proposed prospectus delivery method for closed-end

investment companies and UITs, and the Commission is adopting revisions that apply new Rule 434 to these investment companies. 75/

4. Conforming Amendments to Rule 15c2-8

a. Rule 15c2-8 Amendments

The Commission is adopting the amendments to Rule 15c2-8 76/ as proposed. The amendments expand the use of the terms "preliminary prospectus" and "final prospectus," as currently used in the Rule, to include the terms "prospectus subject to completion" and "Section 10(a) prospectus," respectively, to reflect the terminology of Rule 434. Additionally, the term "sending" is substituted for the term "mailing" to accommodate prospectus delivery by means other than traditional mailing.

Six commenters addressed Rule 15c2-8. None of these commenters objected to the proposed changes, although several of them raised other issues regarding Rule 15c2-8, which are discussed below. The Commission may propose further amendments to Rule 15c2-8 based on its experience with Rule 434, or more generally, to reflect market developments and staff interpretations that have occurred since the Rule was last amended. 77/

75/ See revisions to Rule 497, 17 CFR 230.497, which sets forth fund prospectus filing requirements with the Commission, that require, parallel to the changes to the general prospectus filing requirements in Rule 424, 17 CFR 230.424(b), the filing of prospectuses allowed under Rule 434 on or prior to the date a confirmation is sent or given to an investor.

76/ 17 CFR 240.15c2-8.

77/ Rule 15c2-8(d) was last amended in Exchange Act Release No. 25546 (Apr. 4, 1988) [53 FR 11841].

b. Rule 15c2-8 Issues Raised by Commenters

In the case of an offering of securities of an issuer that previously has not been required to file reports under Section 13(a) and 15(d) of the Exchange Act, Rule 15c2-8(b) 78/ requires that a preliminary prospectus be delivered to any person who is expected to receive a confirmation of sale at least 48 hours prior to sending such confirmation. 79/ Two commenters noted that because preliminary prospectuses generally are not used in offerings of asset-backed securities, some broker-dealers have adopted the practice of delivering the final prospectus to purchasers at least 48 hours prior to mailing the confirmation of an asset-backed security. These commenters urged the Commission either to modify Rule 15c2-8 to acknowledge this industry practice or to except asset-backed securities from Rule 15c2-8(b). In the Commission's view, delivery of the final prospectus at least 48 hours prior to sending the confirmation will satisfy the requirement of Rule 15c2-8(b) in the case of offerings of asset-backed securities where no preliminary prospectus is used. 80/

With respect to the obligations of a managing underwriter to provide copies of the prospectus to participating broker-dealers, two commenters sought interpretive guidance with respect to the terms "sufficient copies"

78/ 17 CFR 240.15c2-8(b).

79/ This requirement is satisfied by delivering a preliminary prospectus that is current at the time of its delivery.

80/ This interpretation of paragraph (b) is consistent with the longstanding staff position that delivery of a final prospectus at least 48 hours prior to sending the confirmation is required in cases where no preliminary prospectus is circulated and the offering is sold solely on the basis of a final prospectus.

and "reasonable quantities," as used in Rule 15c2-8(g) and (h), 81/ respectively, in light of the recently issued Brown & Wood letter, 82/ which permits electronic delivery of prospectuses in certain circumstances. 83/ The Brown & Wood letter was not intended to modify any obligation that a managing underwriter currently has pursuant to paragraphs (g) or (h) of Rule 15c2-8 to produce, reproduce, or deliver, in such quantities as requested, a preliminary, amended, or final prospectus to broker-dealers participating in the offering. Accordingly, a managing underwriter may discharge its obligations pursuant to Rule 15c2-8 (g) or (h) by delivering a prospectus (or any portion thereof) electronically to a participating broker-dealer, if the recipient broker-dealer expressly consents to delivery in such form.

81/ 17 CFR 240.15c2-8(g) and (h). Paragraph (g) requires a managing underwriter to take reasonable steps to ensure that all broker-dealers participating in an offering are promptly furnished with "sufficient copies, as requested by them" of each preliminary, amended, or final prospectus to enable such participating brokers-dealers to comply with their obligations under Rule 15c2-8(b), (c), (d), and (e). Similarly, paragraph (h) requires a managing underwriter to take reasonable steps to ensure that any broker-dealer participating in an offering or trading in the registered security is furnished "reasonable quantities of the final prospectus . . . as requested by him" in order to enable the broker-dealer to comply with Sections 5(b)(1) and (2) of the Securities Act.

82/ See supra footnote 6.

83/ These commenters inquired whether Rule 15c2-8(g) and (h) would permit a managing underwriter to deliver the pre-printed portion of the prospectus by traditional methods, followed by the remainder (or "wrap" portion), containing only the pricing and other "last minute" disclosure, by electronic transmission. These commenters advised that the recipient broker-dealers would be expected to duplicate the remainder (or "wrap" portion) and assemble the two parts for delivery to investors.

One commenter suggested revising Rule 15c2-8(b) to require delivery of the preliminary prospectus at least 48 hours, but not more than 60 days, prior to sending the confirmation. Another commenter suggested that the Commission require the managing underwriter to deliver the final prospectus to offering participants by the close of business on T+2, so that such participants may send the prospectus to investors no later than T+3. Consistent with the adoption of both the SIA proposal and the Four Firms proposal, the Commission believes that offering participants should have as much flexibility as possible to determine how to comply with their prospectus delivery obligations within T+3, without the burden of additional restrictions, and therefore has determined not to amend the Rule as suggested at this time. As noted, however, the Commission may propose additional amendments to Rule 15c2-8 based on its experience with Rule 434.

III. REVISION OF THE RULE 15c6-1 EXEMPTION

In the Proposing Release, the Commission proposed to establish T+3 as the presumptive settlement date for firm commitment offerings by eliminating the exemption from T+3 settlement for sales for cash in connection with firm commitment offerings. 84/ However, the Commission proposed to allow managing underwriters flexibility to choose T+3, T+4, or T+5 settlement under specific conditions, including written notice to prospective purchasers and the exchanges prior to pricing. 85/ The

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84/ See 17 CFR 240.15c6-1(b)(2).

85/ Rule 15c6-1(a) contains a general override provision that permits the parties to a contract to specify an alternate settlement cycle if the agreement is made at the time of the trade. Complying with this (continued...)

Commission also proposed exemptions from T+3 settlement for firm commitment offerings of asset-backed and structured securities. These amendments were proposed to reduce the confusion caused by different settlement cycles for new issue and secondary market trades, while also providing flexibility to settle certain firm commitment offerings beyond T+3 when the standard settlement cycle cannot be met.

Most commenters supported elimination of the general exclusion for firm commitment offerings. As one commenter noted, establishing a T+3 settlement standard for these transactions will reduce risk, provide certainty in the form of a written standard, and avoid bifurcation of the settlement cycle. 86/ Several commenters cited specific categories of securities requiring settlement cycles longer than T+3. 87/ Most commenters, however, preferred to resolve difficulties in settling offerings through a general override provision rather than specific exemptions of classes of securities.

The majority of commenters that addressed the merits of the proposed override provision expressed support for a specific override provision for firm commitment offerings but objected to the terms of Rule

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85/(...continued)
provision in the context of a firm commitment offering may be difficult because of the need to obtain the express agreement of all parties participating in the offering.

86/ See letter from Brent Taylor, J.P. Morgan Securities, Inc. to Jonathan Katz, Securities and Exchange Commission, dated March 30, 1995.

87/ In addition to asset-backed securities and structured securities, commenters raised settlement concerns in connection with medium term note programs registered under short-form shelf registration, capital market debt transactions, securities exempt from registration under Section 3(a)(4) or 3(a)(11) of the Securities Act, and certain transactions involving swaps.

15c6-1(e) as proposed. Several commenters asserted that the T+5 maximum settlement period did not provide adequate flexibility for settlement of certain firm commitment offerings. Furthermore, many of the commenters argued that the requirement of written notice to all prospective purchasers on or before pricing was burdensome and should be eliminated. 88/ Commenters disagreed over the manner in which an alternate settlement date should be established, though most commenters concurred that such authority should not be granted solely to the managing underwriter.

To address the various issues raised by the commenters in connection with the proposed modifications of the exemption for firm commitment offerings, the Commission is amending Rule 15c6-1 to eliminate the exemption for firm commitment offerings and to include a specific override provision 89/ which will permit the establishment of an alternate settlement date for the sale of all securities subject to a firm commitment offering upon agreement by the managing underwriter and the issuer of the securities. This override provision does not contain the notice requirements in the proposed override provision and does not limit the settlement period to a maximum of T+5. The Commission has decided not

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88/ Specifically, several commenters asserted that the settlement period may not be known sufficiently in advance of pricing to provide written notice and that such notice is duplicative of the information provided orally and in the confirmation.

89/ See Rule 15c6-1(d), 17 CFR 15c6-1(d). This specific override provision would not extend to offerings of investment grade debt made in connection with a medium-term note program sold through an underwriter on an agency basis. Such transactions may, however, be accomplished in accordance with the general override provision set forth in Rule 15c6-1(a), 17 CFR 240.15c6-1(a).

to adopt a provision exempting offerings of particular classes of securities. Instead, the Commission believes that an alternate settlement cycle can be established for these offerings through the override provision for firm commitment offerings.

In adopting the proposed amendments to Rule 15c6-1, the Commission seeks to provide flexibility for settlement beyond T+3 for certain firm commitment offerings that require such treatment in light of the special characteristics of the subject securities. The Commission is mindful of the concern that lack of certainty in settlement standards may create confusion in the marketplace. Accordingly, the Commission stresses that the override provision is not intended to dilute the presumption in favor of application of the T+3 settlement cycle in connection with firm commitment offerings. Instead, the override provision is intended to be used only in those circumstances when T+3 settlement is not feasible.

Furthermore, the Commission recognizes that it is important that the registered clearing agencies, through which settlement of firm commitment offerings and secondary market trades will occur, receive notice of non-standard settlement dates. The Commission encourages issuers and underwriters to notify promptly the registered clearing agencies of the settlement period of an offering. It may be appropriate for the clearing agencies as self-regulatory organizations under the Exchange Act to modify their rules to require such notice at such times and in such manners as the clearing agencies need to make provision for non-standard settlement cycles. The Commission will monitor the use of the override provision on an ongoing basis.

IV. EDGAR USAGE

After the effective date of these proposals and until the necessary form types are available through the EDGAR system, registrants that are mandated electronic filers should file in paper format those documents relating to the proposals being adopted other than the abbreviated registration form filed pursuant to Rule 462(b). 90/ All other documents unrelated to the proposals being adopted must continue to be filed electronically by mandated electronic filers. The necessary form types are expected to be available with the release of a new version of the EDGARLink software in Autumn 1995. Notice will be provided in the SEC Digest, the Federal Register and on the EDGAR Bulletin Board when the new EDGAR form types are available.

V. COST-BENEFIT ANALYSIS

Five commenters responded to the Commission's request for comments regarding the costs and benefits of the proposed rules. Four of the five commenters expected the cost of printing and shipping of prospectuses to decline as a result of the proposed rules. 91/ The other commenter stated that the increased administrative burdens and costs that

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90/ Only those documents that are filed pursuant to Rule 424(b)(7), Rule 462(c) and Rule 497(h)(2) may be filed in paper format. See supra footnotes 29 and 30 and accompanying text.

91/ See letter from Karl Barnickol, American Society of Corporate Secretaries to Jonathan Katz, Securities and Exchange Commission, dated April 10, 1995; Joel Brenner, Storch & Brenner (on behalf of R.R. Donnelley Financial), to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 31, 1995; W. Scott Jardine, Niké Securities L.P., to Jonathan Katz, Securities and Exchange Commission, dated March 31, 1995; Larry W. Martin, John Nuveen & Co. Incorporated, to Jonathan Katz, Securities and Exchange Commission, dated March 30, 1995.

may be imposed on dealers as a result of multiple or duplicate mailings of various documents could negate the intended benefit of the SIA approach. 92/ One commenter, a financial printer, provided empirical data on the proposals. The printer concluded that, in three basic scenarios regarding the printing and delivery of a Form S-1, a reduction in costs ranging from 8% to 88% would be obtainable as a result of the new delivery alternatives available under the proposed rules. 93/ The Commission believes the new rule and amendments provide market participants with additional flexibility that should result in lower transaction costs, while not diminishing investor protection.

VI. SUMMARY OF FINAL REGULATORY FLEXIBILITY ANALYSIS

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act, 94/ regarding the rule and amendments to existing regulations being adopted. The FRFA notes that the new rule and amendments will provide entities with greater flexibility and efficiency with respect to the timing of printing and delivery of prospectus information, thereby facilitating compliance with Rule 15c6-1 under the Exchange Act and access to the public securities markets. As discussed more fully in the analysis, the new rule and amendments to Securities Act regulations should decrease costs

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92/ See Letter from George Miller, Public Securities Association to Jonathan Katz, Securities and Exchange Commission, dated April 10, 1995.

93/ See letter from Joel Brenner, Storch & Brenner (on behalf of R.R. Donnelley Financial), to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 31, 1995.

94/ 5 U.S.C. § 604 (1988).

associated with fulfilling entities' prospectus delivery obligations under the Securities Act. The amendments to Exchange Act rules and forms are not anticipated to have any significant economic impact on entities. The new rule may impose minimal additional reporting, recordkeeping or compliance requirements, while the amendments do not impose any new reporting, recordkeeping or compliance requirements on any entities. No alternatives to the new rule and amendments consistent with their objectives and the Commission's statutory mandate were found.

The overall effect of the new rule and amendments is to provide entities increased efficiency in raising capital from the public securities markets. The aspects that provide for the incremental delivery of prospectus information will apply to any entity engaged in a public distribution with respect to an eligible offering. The amendments to Securities Act regulations should streamline the registration process and thereby facilitate compliance with prospectus delivery within T + 3. The new rule and amendments to Securities Act regulations also will apply to certain investment companies registered under the Investment Company Act, i.e. closed-end investment companies and unit investment trusts. The amendments to regulations under Section 15(c) of the Exchange Act will reflect the availability of expedited delivery of prospectus information provided by the new rule and amendments to the Securities Act regulations.

A copy of the FRFA may be obtained from Michael Mitchell, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 3-3, Washington, D.C. 20549, (202) 942-2900.

VII. EFFECTIVE DATE

The new rule and the revisions to rules and forms are effective June 7, 1995, in accordance with the Administrative Procedures Act, which allows for effectiveness in less than 30 days after publication, inter alia, for "a substantive rule which grants or recognizes an exemption or relieves a restriction" and "as provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(1) and (d)(3). The adopted rule and revisions primarily lessen restrictions of existing rules in that they either provide a more efficient way for offering participants to accomplish prospectus delivery or they streamline the registration and prospectus preparation and printing processes. In addition, the Commission finds there is good cause for the adopted rule and revisions to become effective on June 7, 1995 since they are designed to allow market participants to accomplish prospectus delivery in eligible offerings in a T+3 settlement cycle. Since the T+3 settlement cycle will become effective on June 7, 1995, the adoption of the rule and revisions on that date will ensure that potential market disruption relating to prospectus delivery prior to settlement of such offerings would be avoided. The exemption from Rule 15c6-1 for certain firm commitment offerings also is being eliminated in this time frame because of its potential for market disruption if allowed to go into effect. Any possible negative effect of eliminating that exemption is offset by the adoption of an expanded provision allowing such offerings to settle outside of the Rule 15c6-1 mandated time frame if the participants in the offering so elect.

SPECIAL NASD NOTICE TO MEMBERS 95-43

SEC Approves Expanded Limit-Order Protection Rule

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ■ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ■ Systems
- ■ Trading
- ☐ Training

Executive Summary

On May 19, 1995, the Securities and Exchange Commission (SEC) approved an expansion of the Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice that prohibits a member firm from trading ahead of customers' limit orders in a firm's market-making capacity (commonly known as Manning II).[1] The effective date for the expanded Interpretation is June 21, 1995.

Approval of the expanded limit-order protection rule expands the coverage of the existing Interpretation, which affected the handling of limit orders from a firm's own customers, to limit orders sent to a market maker from another member firm (member-to-member trades). The enactment of this expanded Limit-Order Protection Interpretation by the NASD reflects the continuing effort of the NASD and The Nasdaq Stock Market, Inc., to ensure investor protection and to enhance market quality. The obligation of a member firm under the new rule to protect all customers' limit orders and to give those same-priced or better-priced limit orders priority over its own market-making activity enhances opportunities for price improvement, which directly benefits public investors. However, until September 1, 1995, a market maker holding a member-to-member limit order greater than 1,000 shares may trade at the same price as such limit order without protecting the limit order.

Background And Description Of Rule Change

On June 29, 1994, the SEC approved an Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice that prohibited a member firm from trading ahead of its own customers' limit orders in the firm's market-making capacity. When it was approved, the NASD examined further the effect that a limit-order protection rule would have on customer limit orders received from other member firms. After consideration of a limit-order task force report, and comments from members regarding a proposed member-to-member limit-order protection rule circulated in *Notice to Members 94-79* (September 1994), the NASD concluded that it was important to ensure investor protection and to enhance the market quality of The Nasdaq Stock Market℠ by expanding the existing limit-order protection rule to cover all customers' limit orders, including member-to-member orders.

The expanded Interpretation builds on the existing rule language to include within its scope not only the member firm's customers' limit orders, but also customers' limit orders that are sent from another member firm to a market maker for execution. The member firm handling those limit orders is obligated under the expanded Interpretation to treat those limit orders the same as its own customers' limit orders. The member firm may not accept and hold a customer limit order in a Nasdaq® security, whether that order comes from one of its own customers or the customers of another member firm, and continue to trade that security for its own market-making account at prices that satisfy the limit order it is holding.

The expanded Interpretation thus requires that a member firm holding a customer limit order must execute that limit order, in full or in part, to the extent that the member firm trades at the limit-order price or at a price lower than a limit order to buy or higher than a limit order to sell. For example, if the member firm is

[1] *See* Securities Exchange Act Release No. 35751 (May 19, 1995).

quoting a market of 20 bid and 20 1/4 offer, and accepts a limit order of 100 shares to buy at 20 1/8, then the firm may not purchase stock for its own account by executing a market order to sell or a limit order to sell at a price of 20 1/8 or lower, without also executing the limit order to buy at 20 1/8.

However, until September 1, 1995, for limit orders greater than 1,000 shares in size that are sent from other member firms, market makers may trade at the same price as the limit order without protecting the limit order. Thus, until September 1, if a market maker accepts a 2,000-share limit order to buy at 20 1/8 and the market is currently 20 bid and 20 1/4 offer, the market maker may execute sell orders at 20 1/8 without having to execute the limit order to buy at 20 1/8. However, if the market maker executes sell orders at 20 1/16 or 20, the limit order to buy at 20 1/8 must be executed at 20 1/8. After September 1, this temporary, limited exception to the Interpretation no longer applies.

As with the existing Interpretation, the new Interpretation does not mandate that a member firm must accept limit orders from its own customers or the customers of another firm. In a significant change from the language of the original limit-order Interpretation, however, member firms may attach terms and conditions only to limit orders that are either: for institutional accounts; or orders that are 10,000 shares or greater, regardless of whether they are for institutional accounts, provided that the order is $100,000 or more in value. Institutional limit orders are orders for institutional accounts as defined in the Rules of Fair Practice, Article III, Section 21(c)(4). Section 21(c)(4) defines an institutional account as an account for:

• banks, savings and loan associations, insurance companies, or registered investment companies;

• investment advisers registered under Section 203 of the Investment Advisers Act of 1940; and

• any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

The Interpretation also permits a member firm to negotiate terms and conditions with customers who place limit orders that are 10,000 shares or greater, unless the value of that order does not exceed $100,000. This holds true even if the customer placing the order does not meet the definition of an institutional account. Accordingly, a member firm that accepts a limit order from a person or entity that does not fall within the definition of institutional account or does not meet the order size requirements above may not impose any terms and conditions on the acceptance of that limit order. However, if the account placing the limit order is an institutional account or is appropriately sized, the firm may negotiate special terms and conditions with the customer of that account that permit the firm to trade ahead of, or at the same price, as the limit order. The new terms and conditions language applies to both the firm's own customers' limit orders and orders received in the member-to-member context.

Questions And Answers

Here are answers to questions frequently asked about the expanded Interpretation:

Q. When is the new Interpretation effective?

A. The new Interpretation is effective on June 21, 1995. However, until September 1, 1995, member firms may trade at the same price as the member-to-member customers' limit orders that are greater than 1,000 shares in size. The firm is not permitted to trade at a price that is superior to the limit order without satisfying that limit order. Moreover, under the terms of the existing Interpretation, the member firm is not permitted to trade at the same price as or at a price superior to its own customers' limit orders. After September 1, 1995, member firms accepting member-to-member limit orders must treat all customer limit orders the same as they treat their own customers' limit orders. Member firms are encouraged, of course, to commence providing full protection even earlier than September 1.

Finally, the restriction regarding the negotiation of terms and conditions on customers' limit orders begins on June 21. This restriction applies to a member firm's own customers and to member-to-member situations.

Q. Are member-to-member limit orders subject to a separate Interpretation?

A. No. The language of the original Interpretation has been revised to reflect the expansion of the Interpretation to cover member-to-member trades. The Interpretation is in the Rules of Fair Practice, Article III, Section 1.

Q. What are member-to-member limit orders?

A. The Interpretation defines member-to-member limit orders as customer limit orders that are received by one member firm and are sent to another member firm, typically a market maker in the security that is the subject of the limit order, for handling and execution. Thus, member-to-member limit orders are customer orders and not proprietary orders

from a member firm. In the Rules of Fair Practice, Article II, Section 1(f), the NASD definition of "customer" does not include a broker or a dealer. In this respect, then, the protections of the Interpretation do not apply if a limit order is placed with a member by another registered broker/dealer for that broker/dealer's proprietary account.

Q. Must a firm accept a customer's limit order?

A. No. The Interpretation specifically provides that the NASD does not impose any obligation upon members to accept and handle limit orders from any or all of its customers.

Q. May a member firm handling a limit order charge the customer special fees or charges for accepting or executing the limit order?

A. Yes. The Interpretation permits a member firm to impose commissions, fees, or separate charges for the handling of a limit order. A customer must be adequately informed by the member firm that such commission, fees, or charges are being imposed. In so assessing a commission, fee, or order-handling charge, the member firm must remain cognizant of Article III, Section 4 of the NASD Rules of Fair Practice and the NASD Guidelines on Markups and Fair Commissions.

Q. Does the Interpretation apply to limit orders placed by large institutions?

A. Yes, but with certain differences from the earlier Interpretation. As institutional-sized orders generally involve best-effort commitments and substantial capital commitments by the market maker, institutional-sized limit orders often have separate execution parameters. As long as the member firm handling the orders has made the terms and conditions clear to the institutional account customer, trading along with the institution should not violate the Interpretation.

Unlike the previous Interpretation, however, the new Interpretation distinguishes between institutional and retail customers; the new Interpretation allows members to establish specific terms and conditions on orders that meet certain new criteria. A member firm may negotiate terms and conditions on the acceptance of a limit order that permits the member firm to continue to trade along side of, or ahead of, the limit order only if the limit order is placed on behalf of an institutional account or is greater than 10,000 shares (unless the value of that order is less than $100,000). The member firm cannot impose terms and conditions on orders for accounts that do not meet the definition of institutional account or are not appropriately sized. This prohibition applies whether they are the accounts of the member firm's own customers or are accounts of another member firm's customers.

Q. As to the terms and conditions that must be disclosed to the customer, how should the member firm disclose such terms and conditions to customers of another member firm?

A. As noted, the new Interpretation allows member firms to accept limit orders subject to terms and conditions only with respect to institutional accounts or orders that are 10,000 shares or more, as long as the value of that order is $100,000 or more. The member firm imposing the terms and conditions on the limit order must ensure that those terms and conditions are clearly communicated to the customer. Because these orders received are from investment professionals typically, the NASD believes that generalized, arms-length disclosure and acceptance procedures will suffice, depending on the customer's level of sophistication with limit orders.

The means for disclosure and communication may be arranged between the market maker holding the limit order and the member firm initially accepting the limit order from the customer. If the firm holding the order chooses to rely on the order-entry firm for disclosing and explaining the terms and conditions and securing the customer's acceptance, the market maker must reasonably believe that an order-entry firm's disclosure and acceptance procedures are effective and being complied with.

Q. How do the restrictions on terms and conditions apply in the convertible bonds context?

A. Although the Interpretation provides that a member firm may negotiate terms and conditions with customers who have limit orders of 10,000 shares or more, so long as the value of the order is $100,000 or more, the Interpretation does not directly address the size limit for convertible bonds. By implication there is a comparable-size restriction for convertible bonds. A unit of trading for convertible bonds quoted on Nasdaq is $1,000 original principal amount. For the purposes of the Interpretation, an institutional-sized convertible bond limit order is $100,000. Therefore, a member firm can negotiate terms and conditions with a customer with a convertible bond limit order of $100,000 or more.

Q. May a customer place special conditions on the handling of a limit order it seeks to place with a member firm?

A. Yes. Although member firms may not seek to negotiate special terms and conditions with non-institutional customers, any customer may seek to

qualify or specify certain conditions regarding the handling of a limit order. Various customers have different needs or expectations in the handling of a limit order and thus, a customer, whether considered an institution or not, placing a limit order may seek special conditions to minimize execution costs. For example, a customer placing a larger-sized limit order, such as 1,000 shares, may determine that he or she is best served if the limit order is handled as an "all-or-none" (AON) order, or is not subject to minimal partial fills as a market maker trades with smaller-sized market orders at the same or inferior price as the limit order. Thus, a customer may seek to have executions in such situations limited to circumstances where the market maker trades at the same price in 500-share increments.

In addition, nothing in this Interpretation prohibits a customer from voluntarily categorizing a limit order as "not held," which permits a member firm to trade at any price without being required to execute the customer order. A broker with a not-held order must use its brokerage judgment in the execution of the order, and if such judgment is properly exercised, the broker is relieved of all responsibility with respect to the time of execution and the price or prices of execution of such an order.

Q. If a customer's limit order resides on the books of a market maker and the market maker, in interacting with a market order from another customer, offers to accept the market order at a price that improves upon the limit-order price, does the limit order have to be executed?

A. No. If the market maker offers to execute a market order at a price that improves the limit-order price, the limit order does not have to be executed. For example, the best inside price is 10 bid and 10 1/4 offer. Customer A sends in a limit order to buy at 10 for 500 shares. Customer B sends to the market maker a market order to sell 500 shares. If the market maker offers to execute the market order at 10 1/16, the market maker need not execute the limit order to buy at 10 because the market maker has offered price improvement at a price that will not trigger the limit order. The increment that will be considered sufficient to qualify for price improvement is the minimum increment that can be permitted for price reporting purposes, that is, 1/64.

Q. Does the member firm that does not intend to impose terms and conditions have to make any affirmative disclosure to a customer placing a limit order?

A. No. There is no need to inform the customer of order-handling techniques as long as the member firm has not attempted to impose terms and conditions on the order. Thus, the member firm is not obliged to inform the customer that odd-lot orders are treated differently or that orders that a customer conditions as AON may be traded ahead of, if the size of the order that the member firm executes at the same or an inferior price is not large enough to fill the AON order.

Q. Does the NASD mandate any particular methodology for limit-order handling priorities, and if so, what disclosure must be made to a customer regarding the priority of same-priced limit orders residing on the member firm's book?

A. The NASD has not mandated any particular limit-order handling priority procedures. Thus, a firm may choose any reasonable methodology for the way in which it chooses to execute multiple limit orders it holds. However, the NASD requires that a firm choose a methodology and consistently apply it. Typically, a firm will choose to award priority to the best-priced order, followed by the time priority of each order, and then establish a ranking based on size of orders held.

The NASD does not consider the priority handling mechanism for same-priced limit orders as a term or condition to a customer's limit order. Accordingly, the NASD does not require that a member firm make an affirmative disclosure to the customer at the time that a customer limit order is accepted regarding the priority that the particular limit order will be provided. Thus, if two customer limit orders for the same size and price in the same security reside on the firm's limit-order book and a firm fills a market order at a price and size that satisfies either limit order but not both, the market maker may fill as much of one order as it is obligated to do under this rule. No allocation between the two limit orders is necessary.

For example, the firm has two limit orders to buy for 500 shares at 10. A market order to sell 400 shares is executed by the market maker at 10. The market maker is obligated to provide an execution of only one of the two limit orders at 10 up to 400 shares. The other limit order will not receive any execution, partial or otherwise.

Q. If a firm assesses commission-equivalent charges on its customers' limit orders, does the Interpretation require that the firm not trade ahead of the limit order at the "gross" limit price (including the commission-equivalent charge), or at the "net" limit price (excluding the commission-equivalent charge)?

A. The Interpretation continues to require that the firm provide protec-

tion for customer limit orders at the "net" limit price, exclusive of any markup, markdown, commission, commission-equivalent, or service fee charged. If a member intends to protect a customer's limit order at a price net of an amount equal to a sales credit or other internal credit charged, then the price at which the limit order is to be protected must be clearly explained to the customer. Any transaction effected by the member at a price equal to or inferior to the price agreed upon with the customer for protection of the limit order will obligate the member to immediately execute such limit order.

Q. How does a member firm determine the price at which it is trading, such that it must protect a customer's limit order?

A. The customer's limit order must be protected when the member firm executes a trade at a reportable price that is the same as, or is inferior to, the limit order price, that is, when the firm buys at a price lower than a buy limit order it holds, or sells at a price higher than a sell limit order it holds. Such reportable prices are the last-sale prices reported to Nasdaq transmitted through the Automated Confirmation Transaction (ACT℠) service. Such prices are not affected by ticket, clearing, or other order-handling charges assessed by a market center in executing the reportable transaction.

For example, a member firm holds a customer limit order to buy at 10. While holding the limit order, the member firm executes an order to buy at 10 in a proprietary trading system. Based on the fees charged for use of the system, the operator of the proprietary trading systems assesses the member firm a $.02 order fee for the execution, based on the number of trades the firm has executed in the system over the previous month. Even though the proprietary trading system assesses the member firm a $.02-share fee for trading in its system, the price reported through the ACT service is $10, not $10.02. Therefore, the trade in the proprietary trading system at $10 triggers the Interpretation requirement that the member firm execute the customer's limit order to buy at $10.

The NASD notes that firms continue to have an obligation to report executions in a timely fashion. Failures to report executed transactions in accordance with Schedule D to the NASD By-Laws will be monitored closely and subject a firm to sanctions.

Q. If a firm holds a customer's limit order to buy 500 shares of XYZ at 20 1/4 and purchases 200 shares of XYZ at 20 1/8 in its market-making capacity, must the market maker execute the full 500 shares at 20 1/4 or only 200 shares at 20 1/4? Would the answer be the same if the limit order were an AON order?

A. The market maker need only execute 200 shares of the limit order in this instance. However, the market maker must continue to protect the remaining 200 shares. If the limit order were an AON order, the market maker would not have to execute the limit order, unless the market maker traded in an amount equal to or greater than the size of the AON limit order.

Q. Does the Interpretation apply to odd-lot orders?

A. No.

Q. Do Small Order Execution System (SOES℠) or SelectNet℠ trades activate the execution of limit orders?

A. Yes. Any transaction effected by a member at a price equal to or inferior to the limit-order price obligates the member to immediately execute such limit order. Thus, if a firm executes a SOES order at a price inferior to a customer's limit order it holds, the firm must immediately provide an execution for the limit order.

Q. If a non-market maker holds a customer's limit order, can it trade ahead of that limit order?

A. No. Even though the Interpretation speaks in terms of members trading in their market-making capacity, it is inconsistent with a member's best-execution obligation if the member were to trade ahead of a customer's limit order when it is not acting as a market maker in the security. It has never been the NASD's position that members can trade ahead of their customer's limit orders when not acting as a market maker.

Q. May a trading desk other than the market-making desk of the firm trade at the same or inferior price to that of a limit order held by the market-making desk?

A. Although the Interpretation speaks in terms of members trading in their market-making capacity, it would be inconsistent with a member's best execution obligations to *knowingly* trade ahead of a customer's limit order in any other capacity in which it may also be trading. Thus, if a firm has a market-making desk, a risk-arbitrage desk and a derivatives desk, among others, it may be trading in a Nasdaq security in a variety of circumstances. As long as a firm implements and utilizes an effective system of internal controls, such as appropriate "Chinese walls," that operate to prevent the non-market-making desk from obtaining knowledge of customers' limit orders, those other desks may continue to trade at prices the same as or inferior to the customers' limit orders. The NASD will carefully monitor firms that develop

such controls and the trading activity of desks subject to such controls to determine if the controls are effective.

Q. Does the Interpretation apply to all Nasdaq securities or just Nasdaq National Market® securities?

A. The Interpretation applies to all Nasdaq National Market and The Nasdaq SmallCap Market℠ securities. It does not apply to other securities traded by means of the OTC Bulletin Board Service or other means.

Q. If a market maker holds a day limit order, may a market maker trade at prices that would satisfy the limit order in an after-market hours trading system without protecting the day limit order?

A. Yes. The day limit order expires at 4 p.m., Eastern Time, the time when official Nasdaq market hours end. Thereafter, because the limit order has expired, the member firm may trade at any price in proprietary trading systems that operate after the close of the market. If the limit order is a good-til-canceled limit order or other such order, however, the member firm may not trade at a price that triggers its limit-order protection requirements without executing the limit order.

Direct questions regarding this Notice to James Cangiano, Senior Vice President, Market Surveillance, at (301) 590-6424 or (800) 925-8156; Glen Shipway, Senior Vice President, Nasdaq Market Operations, at (203) 385-6250; Robert E. Aber, Vice President and General Counsel, Office of General Counsel, at (202) 728-8290; or Eugene A. Lopez, Senior Attorney, Office of General Counsel, at (202) 728-6998.

Text Of Interpretation To Article III, Section 1 Of The NASD Rules of Fair Practice

Effective June 21, 1995

To continue to ensure investor protection and enhance market quality, the NASD Board of Governors is issuing an Interpretation to the Rules of Fair Practice dealing with member firm treatment of customer limit orders in Nasdaq securities. This Interpretation will require members acting as market makers to handle customer limit orders with all due care so that market makers do not "trade ahead" of those limit orders. Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order, provided that, prior to September 1, 1995, this prohibition shall not apply to customer limit orders that a member firm receives from another member firm and that are greater than 1,000 shares. Such orders shall be protected from executions at prices that are superior but not equal to that of the limit order. In the interests of investor protection, the NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.

Interpretation

Article III, Section 1 of the Rules of Fair Practice states that:

> A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

The Best Execution Interpretation states that:

> In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions. Failure to exercise such diligence shall constitute conduct inconsistent with just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice.

In accordance with Article VII, Section 1(a)(2) of the NASD By-Laws, the following interpretation under Article III, Section 1 of the Rules of Fair Practice has been approved by the Board:

> A member firm that accepts and holds an unexecuted limit order from a customer (whether its own customer or a customer of another member) in a Nasdaq security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice, provided that, until September 1, 1995, customer limit orders in excess of 1,000 shares received from another member firm shall be protected from the market maker's executions at prices that are superior but not equal to that of the limit order, and provided further, that a member firm may negotiate

specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (1) for customer accounts that meet the definition of an "institutional account" as that term is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice; or (2) 10,000 shares or more, unless such orders are less than $100,000 in value. Nothing in this section, however, requires members to accept limit orders from any customer.

By rescinding the safe harbor position and adopting this Interpretation of the Rules of Fair Practice, the NASD Board wishes to emphasize that members may not trade ahead of customer limit orders in their market-making capacity even if the member had, in the past, fully disclosed the practice to its customers prior to accepting limit orders. The NASD believes that, pursuant to Article III, Section 1 of the Rules of Fair Practice, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firms' market making capacity does not occur. For purposes of this Interpretation, a member that controls or is controlled by another member shall be considered a single entity so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity and the market making unit may not trade ahead of that customer's limit order.

The Board also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution. As set out above, the best execution Interpretation requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The NASD emphasizes that order entry firms should continue to routinely monitor the handling of their customers' limit orders regarding the quality of the execution received.

NASD NOTICE TO MEMBERS 95-44

Request For Comments On Proposed Amendments To The Exception To The Qualified Independent Underwriter Requirement In Schedule E To The NASD By-Laws; **Comment Period Expires August 1, 1995**

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ■ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ■ Syndicate
- ☐ Systems
- ■ Trading
- ☐ Training

Executive Summary

The NASD® requests member comment on proposed amendments to Section 2 of Schedule E to the NASD By-Laws to amend the exception from the qualified independent underwriter requirement for offerings of securities with a bona fide independent market. The amendment would modify:

• the definition of "bona fide independent market" by providing for a national exchange or The Nasdaq Stock Market℠ listing requirement and per-share price test, and changing the trading volume, public float, and independent market-maker provisions; and

• the definition of "bona fide independent market maker" by requiring registration with The Nasdaq Stock Market, and requiring that it neither be affiliated with the issuer nor receive any portion of the net proceeds of the offering. **Comments must be received by August 1, 1995.**

Background

The NASD adopted Schedule E to the NASD By-Laws (Schedule E) in 1972 to address concerns that public investors be protected adequately when investing in securities issued by an NASD member, its parent, or an affiliate of a member that is going public. To address conflicts of interest regarding the conduct of due diligence and the pricing of the securities, Schedule E requires that a qualified independent underwriter (that is, a member with a background in underwriting and a history of profitable operations) conduct due diligence; participate in the preparation of the prospectus, offering memorandum, or similar document; and provide an opinion that the public-offering price of an equity security is no higher or the yield of a debt security no lower than it recommends. Exceptions are provided to the qualified independent underwriter requirement where the offering is of rated investment grade debt or where the offering is of equity with a bona fide independent market.

The NASD Corporate Financing Committee (Committee) reviewed the bona fide independent market exception from the requirement for a qualified independent underwriter as in Section 3(c) of Schedule E, which was part of the original version of Schedule E adopted in 1972. The Committee reaffirmed its long-held view that the standards for determining a bona fide independent market should be stringent enough to properly regulate public distributions where a member issues its own securities or a conflict or control relationship with a parent or affiliate exists, and provide protection for investors that the conflicts as to pricing and due diligence are properly addressed. The criteria in the definition of bona fide independent market are to assure the public that a market of sufficient depth and duration exists to constitute an efficient pricing mechanism for the securities to be distributed.

The Committee is proposing to revise the definition of bona fide independent market and the related definition of bona fide independent market maker to incorporate more current standards for liquidity in a security. The Committee believes the proposed new requirements for listing, public float, trading volume, price, and number of bona fide independent market makers vastly improve the criteria used for determining the presence of a bona fide independent market. While still focusing on investor protection issues, the Committee believes that the proposed new definitions will permit a significant number of Nasdaq® and exchange-listed issuers to conduct a secondary offering with-

out the unnecessary burden and expense of engaging a qualified independent underwriter, while providing the public with the added protection of a qualified independent underwriter in situations where the market cannot be relied on to price the securities appropriately.

Description Of Proposed Amendments

Bona Fide Independent Market Definition

Listing Test

The Committee believes that listing on a national securities exchange (as defined by the Securities Exchange Act of 1934) or The Nasdaq Stock Market indicates that the security trades in an efficient, regulated, and active market. Therefore, the Committee is proposing that such listing be made part of the definitional requirement of a bona fide independent market. The Committee also believes that a listing requirement brings to the definition the qualitative standards of a regulated trading environment, such as quote transparency, real-time transaction reporting, and corporate governance standards. Securities quoted on the NASD OTC Bulletin Board® service and those traded in the general over-the-counter market, such as the "pink sheets," will be excluded under this test.

Trading Volume Test

The Committee believes that the current aggregate 12-month trading volume of 100,000 shares requirement should be raised to a level that is more indicative of an active, efficient market, and the time period over which trading volume is measured should be adjusted to reflect the minimum period necessary to establish that a bona fide market exists for the security. The Committee is proposing to raise the trading volume requirement to at least 500,000 shares in the 90-calendar-day period before the filing of a registration statement (which is an average of 8,500 shares daily) to establish a better benchmark for justifying an exemption from the requirement that a qualified independent underwriter participate in the offering.

Public Float Test

The Committee is proposing to require a five-million-share public float, as the minimum necessary to assure that the market for an issuer's securities will not suffer undue volatility from the dilution that occurs when a large number of shares is offered to the public. The Committee noted that a typical follow-on offering of a company's stock places between one- and two-million additional shares in public float, which is equal to a 40 percent dilution, even at the five-million-share level.

Price Test

The Committee expressed concern that a public float test without a corresponding standard for the market price of the securities may be detrimental to establishing a valid benchmark for a bona fide independent market. Therefore, the Committee is proposing to adopt a market-price requirement of at least $5 a share as of the close of trading on the day immediately preceding the filing of the registration statement, coupled with the requirement that the security trade at a price of $5 or more per share on at least 20 of the 30 trading days preceding the date on which the registration statement was filed. The Committee believes that these requirements are consistent with the purpose and intent of the SEC's Penny Stock Rules and Rule 10b-6.

Market-Maker Test

The current definition of a bona fide independent market requires a security to have three bona fide independent market makers. Given that a security may be listed on The Nasdaq Stock Market with two market makers, the Committee is proposing to amend the definition to require only two bona fide independent market makers (as defined below), which it believes are sufficient to demonstrate the presence of a bona fide independent market away from any Schedule E affiliate that may also be making a market in the issuer's securities.

Bona Fide Independent Market Maker Definition

The current definition of "bona fide independent market maker" in Schedule E focuses on net capital requirements and the regular publication of two-sided quotations by the market maker. This definition was developed at the time Schedule E was drafted in 1971. The Committee is proposing to modify the definition to provide that a bona fide independent market maker must be unaffiliated with the issuer and beneficially own—together with its associated persons and their immediate family, parent, and affiliates—less than five percent of the outstanding voting securities, common equity, preferred equity, or subordinated debt of an issuer. The bona fide independent market maker will also be prohibited from receiving any of the net proceeds of an offering. The Committee believes these amendments provide investors with greater assurance that the market maker's activities are independent of any influences that may arise when the ownership of an issuer's securities or interest in the offering become material. These standards are largely drawn from the current definition of qualified independent underwriter in Schedule E and from the reporting requirements imposed on beneficial owners by Section 13 of the Securities Exchange Act of 1934.

Questions regarding this Notice may be directed to Richard J. Fortwengler, Associate Director, or Paul M. Mathews, Supervisor, NASD Corporate Financing Department, at (301) 208-2700.

Request For Comments

The NASD requests all members and interested persons to comment on these proposed amendments. Comments should be directed to:

Ms. Joan C. Conley
Corporate Secretary
National Association of
Securities Dealers, Inc.
1735 K Street, NW
Washington, DC 20006-1500.

Comments must be received **no later than August 1, 1995**. Comments will be reviewed by the NASD Corporate Financing Committee. Changes to proposed amendments must be approved by the NASD Board of Governors and filed with and approved by the Securities and Exchange Commission before becoming effective.

Text Of Proposed Amendments To Section 2 Of Schedule E To The NASD By-Laws

(**Note:** New text is underlined; deletions are bracketed.)

Schedule E

Distribution of Securities of Members and Affiliates—Conflicts of Interest

Section 1. General

(a) No member or person associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by the member, the parent of the member, or an affiliate of the member and no member or parent of a member shall issue securities except in accordance with this Schedule.

(b) No member or person associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by a company if the member and/or its associated persons, parent or affiliates have a conflict of interest with the company, as defined herein, except in accordance with this Schedule.

Section 2. Definitions

For purposes of this Schedule, the following words shall have the stated meanings:

(a) and (b) No change.

(c) Bona fide independent market—a market in a security which:

(1) is registered pursuant to the provisions of Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 or issued by a company subject to Section 15(d) of such Act, unless exempt from those provisions;

[(2) has an aggregate trading volume for the 12 months immediately preceding the filing of the registration statement of at least 100,000 shares;]

[(3) has outstanding for the entire twelve-month period immediately preceding the filing of the registration statement, a minimum of 250,000 publicly held shares; and]

[(4) in the case of over-the-counter securities, has had at least three bona fide independent market makers for a period of at least 30 days immediately preceding the filing of the registration statement and the effective date of the offering.]

(2) has a market price as of the close of trading on the trade date immediately preceding filing of the registration statement or offering circular of five dollars or more per share, and which has traded at a price of five dollars or more per share in at least 20 of the 30 trading days, immediately preceding the filing of the registration statement or offering circular; and

(3) (i) for at least 90 calendar days immediately preceding the filing of the registration statement with the Department has been listed on and is in compliance with the listing requirements of a national securities exchange; or

(ii) for at least 90 calendar days immediately preceding the filing of the registration statement with the Department has been listed on and is in compliance with the listing requirements of The Nasdaq Stock Market and has had at least two bona fide independent market makers for a period of at least 30 trading days immediately preceding the filing of the registration statement and the effective date of the offering; and

(4) (i) has an aggregate trading volume of at least 500,000 shares over the 90 calendar day period immediately preceding the filing of the registration statement (Trading Volume Test); or

(ii) has outstanding for the 90 calendar day period immediately preceding the filing of the registration statement or offering circular, a minimum of 5,000,000 publicly held shares.

(d) Bona fide independent market maker—a market maker which:

[(1) continually maintains net capital as determined by Rule 15c 3-1 of the General Rules and Regulations under the Securities Exchange Act of 1934

of $50,000 or $5,000 for each security in which it makes a market, whichever is less;]

[(2) regularly publishes bona fide competitive bid and offer quotations in a recognized interdealer quotation system;]

[(3) furnishes bona fide competitive bid and offer quotations to other brokers and dealers on request; and]

[(4) stands ready, willing and able to effect transactions in reasonable amounts, and at his quoted prices, with other brokers and dealers.]

(1) is registered as a Nasdaq market maker in the security to be distributed pursuant to this Schedule;

(2) is not an affiliate of the entity issuing securities pursuant to Section 3 of this Schedule and together with its associated persons and their immediate family, parent and affiliates, does not in the aggregate beneficially own, at the time of the filing of the registration statement and at the commencement of the distribution, five percent or more of the outstanding voting securities, common equity, preferred equity or subordinated debt of such entity which is a corporation or beneficially own a partnership interest in five percent or more of the distributable profits or losses of such entity which is a partnership; and

(3) is not a recipient of any of the net proceeds of the offering.

NASD NOTICE TO MEMBERS 95-45

SEC Approves Amendments To NASD Interpretation Of Forwarding Of Proxy And Other Materials Under Article III, Section 1 Of The Rules Of Fair Practice

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ■ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ■ Trading
- ☐ Training

Executive Summary

On May 5, 1995, the Securities and Exchange Commission (SEC) approved amendments to the Interpretation of the Board of Governors—Forwarding of Proxy and Other Materials under Article III, Section 1 of the NASD® Rules of Fair Practice[1] (Interpretation). The amendments allow a beneficial owner of stock to designate a registered investment adviser to vote and receive proxy and related issuer material in lieu of the beneficial owner, and to allow certain investment managers of ERISA[2] plans to vote proxies. The rule change took effect May 5, 1995.

Background And Description

The NASD Rules of Fair Practice currently do not permit a beneficial owner of stock to designate a registered investment adviser to vote proxies and receive proxy and related material in lieu of the beneficial owner, except as permitted under rules of a national securities exchange to which the NASD member that is the holder of record also belongs. The New York Stock Exchange, Inc. (NYSE) recently amended its rules to allow a beneficial owner of stock to designate a registered investment adviser to vote proxies and receive proxy and related issuer material in lieu of the beneficial owner. Upon review, the NASD has added similar provisions to the Interpretation. The NASD believes that providing owners with the right to make this type of designation benefits investors, and that uniformity between NASD rules and NYSE rules on this subject is appropriate.

Designated Registered Investment Advisers

The amendments allow the beneficial owner of any issuer's stock to inform an NASD member that the beneficial owner has authorized a designated registered investment adviser to receive and vote proxies and to receive related issuer material in lieu of the beneficial owner.

The amendments provide that a "designated investment adviser" is a person registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to receive and vote the proxy, and to receive annual reports and other material sent to stock holders. The beneficial owner's written designation to the member has to be signed by the beneficial owner; be addressed to the member; and include the name of the designated investment adviser. The beneficial owner has an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission has to be in writing and submitted to the member.

The amendments require that a member who receives a written designation from a beneficial owner must ensure that the beneficial owner's designated investment adviser is registered under the Investment Advisers Act of 1940; is exercising investment discretion pursuant to an advisory contract for the beneficial owner; and is designated in writing by the beneficial owner to receive and vote proxies for stock that is in the possession of the member. Members will be required to keep records substantiating this information.[3]

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[1] SEC Release No. 34-35681 (5/5/95); 60 F.R. 25749 (5/12/95).

[2] *See*, Employee Retirement Income Security Act of 1974.

[3] The NYSE has imposed similar requirements on NYSE members. [*See*, NYSE Information Memo No. 94-41 (September 7, 1994)].

ERISA Investment Managers

The amendments provide that any member designated by a named ERISA plan fiduciary as the investment manager of stock held as assets of the ERISA plan may vote the proxies according to the ERISA plan fiduciary responsibilities, if the ERISA plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset, and has not expressly reserved the proxy voting right for the named ERISA plan fiduciary.

Questions regarding this Notice may be directed to John H. Pilcher, Assistant General Counsel, Office of General Counsel, at (202) 728-8287.

Text Of Amendments To Interpretation

(**Note:** New text is underlined; deletions are bracketed.)

NASD Rules of Fair Practice
Business Conduct of Members

Article III, Section 1

Interpretation of the Board of Governors—Forwarding of Proxy and Other Materials

Introduction

A member has an inherent duty in carrying out high standards of commercial honor and just and equitable principles of trade to forward (i) all proxy material which is properly furnished to it by the issuer of the securities or a stockholder of such issuer, to each beneficial owner (or the beneficial owner's designated investment adviser) of shares of that issue which are held by the member for the beneficial owner thereof and (ii) all annual reports, information statements and other material sent to stockholders, which are properly furnished to it by the issuer of the securities to each beneficial owner (or the beneficial owner's designated investment adviser) of shares of that issue which are held by the member for the beneficial owner thereof. For the assistance and guidance of members in meeting their responsibilities, the Board of Governors has promulgated this interpretation. The provisions hereof shall be followed by all members and failure to do so shall constitute conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice of the Association.

Interpretation

Sec. 1. No member shall give a proxy to vote stock which is registered in its name, except as required or permitted under the provisions of Section 2 or 3 hereof, unless such member is the beneficial owner of such stock.

Sec. 2. Whenever an issuer or stockholder of such issuer soliciting proxies shall timely furnish to a member:

(a)[1] sufficient copies of all soliciting material which such person is sending to registered holders, and

(b)[2] satisfactory assurance that he will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses incurred by such member in connection with such solicitation, such member shall transmit promptly to each beneficial owner (or the beneficial owner's designated investment adviser) of stock of such issuer which is in its possession or control and registered in a name other than the name of the beneficial owner of all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of Rule 17a-4 of the General Rules and Regulations under the Securities Exchange Act of 1934, 17 C.F.R. 240.17a-4. Notwithstanding the provisions of this section, a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the member is also responsible provided that the records of the member clearly indicate which procedure it is following.

This section shall not apply to beneficial owners residing outside of the United States of America though members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

Sec. 3. A member may give a proxy to vote any stock registered in its name if such member holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

A member which has in its possession or within its control stock registered in the name of another member and which desires to transmit signed proxies pursuant to the provisions of Section 2, shall obtain the requisite number of signed proxies from such holder of record.

Notwithstanding the foregoing,

(a) any member designated by a

named ERISA Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary; and

(b) any person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for stock which is in the possession or control of the member, may vote such proxies.

Sec. 4. A member when so requested by an issuer and upon being furnished with:

(a)[1] sufficient copies of annual reports, information statements or other material sent to stockholders, and

(b)[2] satisfactory assurance that it will be reimbursed by such issuer for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit promptly to each beneficial owner (or the beneficial owner's designated investment adviser) of stock of such issuer which is in its possession and control and registered in a name other than the name of the beneficial owner of all such material furnished.

This section shall not apply to beneficial owners residing outside of the United States of America though members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

Sec. 5. For purposes of this Interpretation, the term "designated investment adviser" is a person registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to stock holders. The written designation must be signed by the beneficial owner; be addressed to the member; and include the name of the designated investment adviser. Members who receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the SEC pursuant to the Investment Advisers Act of 1940 and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information. Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the member.

NASD NOTICE TO MEMBERS 95-46

SEC Approves Amendment To UPC To Add New Section 72

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ■ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training

Executive Summary

On May 25, 1995, the Securities and Exchange Commission (SEC) approved an amendment to the Uniform Practice Code (UPC) adding new Section 72 requiring a member or its agent who is a participant in a registered clearing agency to use the facilities of such registered clearing agency for the clearance of eligible transactions in corporate debt securities. The new section is intended to reduce or eliminate the risks and inefficiencies associated with broker-to-broker clearing of transactions in corporate debt securities. The new section takes effect **on June 30, 1995**.

Background

On May 25, 1995, the SEC approved an amendment to the UPC adding new Section 72 requiring a member or its agent who is a participant in a registered clearing agency to use the facilities of such registered clearing agency for the clearance of eligible transactions in corporate debt securities. The new section takes effect on June 30, 1995. The text of the new section follows this Notice.

Recently, the NASD® has observed that a significant percentage of all transactions in corporate bonds is being compared, cleared, and settled broker-to-broker, or ex-clearing; that is, without using the facilities of a registered clearing agency. Clearing such transactions broker-to-broker is labor intensive, requires more time to complete, and results in more fails than transactions processed through a clearing agency. The labor-intensive, manual nature of broker-to-broker processing is error prone; such as, keystroke errors, manual document handling errors, delivery errors, and payment errors, among others. In addition, because such broker-to-broker clearance is labor intensive, it also generally requires more time to complete. All of these factors increase the systemic clearance risk by increasing the number of trade fails and the potential financial exposure to members.

The NASD is concerned that the problems associated with broker-to-broker clearance of corporate bond trades is creating avoidable risks and inefficiencies, as described above, in the clearance and settlement process. In addition, the implementation of T+3 settlement of securities transactions on June 7, 1995, will likely exacerbate the risks and inefficiencies inherent in clearing corporate bond transactions broker-to-broker. Accordingly, the NASD is amending the UPC to add a new Section 72 requiring a member to submit its interdealer transactions in corporate debt securities to a registered clearing agency if the member or its agent is a participant in a registered clearing agency. By doing so, members will be able to view their compared corporate bond trades on T+1 and more readily comply with the accelerated settlement cycle.

The amendment also provides that the NASD may exempt any transaction or class of transactions in corporate debt securities from the provisions of the rule as may be necessary to accommodate special circumstances related to the clearance of such transactions or class of transactions. The NASD anticipates that this provision will be used only if the special pricing and processing problems related to particular corporate debt securities made using the facilities of a registered clearing agency difficult or impossible and outweighed the benefits of using the facilities of a registered clearing agency.

Questions regarding this Notice may be directed to the NASD Uniform Practice Department at (203) 375-9609.

Text Of Amendment To Uniform Practice Code

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

UNIFORM PRACTICE CODE

Clearance of Corporate Debt Securities

Sec. 72

Each member or its agent that is a participant in a registered clearing agency, for purposes of clearing over the counter securities transactions, shall use the facilities of a registered clearing agency for the clearance of eligible transactions between members in corporate debt securities. The Association may exempt any transaction or class of transactions in corporate debt securities from the provisions of this rule as may be necessary to accommodate special circumstances related to the clearance of such transactions or class of transactions.

NASD NOTICE TO MEMBERS 95-47

SEC Approves NASD Proposal To Raise Position Limits For Certain Equity Securities Not Subject To Standardized Options Trading

Suggested Routing

- ☐ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ■ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ■ Trading
- ☐ Training

Executive Summary

On April 20, 1995, the Securities and Exchange Commission (SEC) approved an NASD® proposal to amend Section 33(b)(3) of the NASD Rules of Fair Practice to increase the position and exercise limits for certain equity securities that are not subject to standardized options trading.[1] Specifically, with the amendment, if a security qualifies for a position limit of 7,500 contracts or 10,500 contracts, it will be subject to that higher position limit, regardless of whether it has standardized options traded on it or not.

Background And Description

Pursuant to Section 33(b)(3) of the NASD Rules of Fair Practice, position and exercise limits for exchange-listed options traded by access firms[2] or their customers are determined according to a "three-tiered" system, where, depending upon the float and trading volume of the underlying security, the position limit for options on that security is 4,500, 7,500, or 10,500 contracts.[3] For conventional equity options trading by any NASD member,[4] if the underlying security is subject to standardized options trading, the NASD's position limit for conventional options on that security is the same position limit imposed by the options exchange(s) trading the option. However, if the security underlying the option is not subject to standardized options trading, the applicable position limit for conventional options on the security is the lowest tier, that is, 4,500 contracts.

Thus, in the past, even though a security may have qualified for an options position limit of 10,500 or 7,500 contracts based on its public float and

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[1] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (that is, aggregating long calls and short puts and long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits restrict the number of options contracts that an investor or group of investors acting in concert can exercise within five consecutive business days. Under NASD rules, exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise, during any five consecutive business days, only the number of options contracts set forth as the applicable position limit for those options classes. *See* Sections 33(b)(3) and (4) of the NASD Rules of Fair Practice.

[2] "Access" firms are NASD members that conduct a business in exchange-listed options, but are not members of any of the options exchanges upon which the options are listed and traded.

[3] In this connection, NASD rules do not specifically govern how a specific equity option falls within one of the three position-limit tiers. Rather, the NASD's position-limit rule provides that the position limit established by an options exchange(s) for a particular equity option is the applicable position limit for purposes of NASD rules. Under the rules of the options exchanges, if the security underlying a standardized option has trading volume of 40 million shares over the most recent six months or trading volume of 30 million shares over the most recent six months and float of 120 million, it is subject to a position limit of 10,500 contracts; if the security underlying a standardized option has trading volume of 20 million shares over the most recent six months or trading volume of 15 million shares over the most recent six months and float of 40 million, it is subject to a position limit of 7,500 contracts; and, if the underlying security is ineligible for a 10,500 or 7,500 contract position limit, it is subject to a 4,500 contract position limit. *See,* Interpretation and Policy .02 to Chicago Board Options Exchange (CBOE) Rule 4.11.

[4] Conventional equity options are defined in Section 33(b)(2)(GG) of the NASD Rules of Fair Practice as "any option contract not issued, or subject to issuance, by The Options Clearing Corporation."

trading volume, it was subject to a position and exercise limit of 4,500 contracts because it did not underlie a standardized option. Because these securities qualified for higher position limits but were not eligible for them solely because there was no corresponding standardized option traded on them in the United States, NASD members' legitimate hedging activities were unduly constrained. Accordingly, the NASD proposed, and the SEC approved, an amendment to Section 33(b) that provides that the position limit for an option shall be determined by the position-limit tier the security falls under, regardless of whether the security is subject to standardized options trading. As with any other conventional equity option, if standardized options were subsequently listed on the stock, conventional options positions and standardized options positions overlying that stock would have to be aggregated.

Monitoring And Setting Position-Limit Procedures

Following are the procedures that the NASD will use to monitor and set position limits under the revised position-limit rule. **These procedures only apply to the establishment of position limits for conventional options overlying securities not subject to standardized options trading.**

Notifying Members Before Establishing Conventional Option Position

To ensure that the higher position limits for conventional options overlying securities not subject to standardized options trading are only available for securities qualifying for a position limit of 7,500 or 10,500 contracts, a member must demonstrate to the NASD Market Surveillance Department that the security satisfies the standards for such higher options position limit before establishing an unhedged options position on that security in excess of 4,500 contracts.[5] The member must also demonstrate that the underlying security satisfies the initial listing standards for standardized options trading.[6] Based on this information and after conducting its own review, the NASD will set a higher position limit for the stock or keep the position limit at 4,500 contracts. Thereafter, from the date the NASD establishes the original position limit until the Monday following the third Friday of the next January or July, whichever occurs first, the position limit applicable to that stock will remain the same for all other conventional options positions established on that stock.[7]

Monitoring Position-Limit Levels

In each successive January and July, the NASD will review the trading volume and float of each stock to determine if the applicable position limit should be raised, lowered, or left unchanged.[8] Any changes to the position limits will become effective on the Monday following the third Friday of January or July.[9] In addition, if the periodic review reveals that a position limit for a stock must be changed, each member that has an outstanding conventional option position on that stock will be notified of the change. If a position limit is lowered, while a firm (or its customer) will not be able to increase its conventional option position on that stock if its position is greater than the new limit, it will not be required to liquidate any pre-existing outstanding options position to a level equal to the new position limit. If a position limit is changed as a result of the six-month review, the position limit will remain at such new level until the next review.

In each successive January and July,

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[5] For foreign securities, however, the NASD will not establish a position limit greater than 4,500 contracts (that is, 7,500 or 10,500 contracts) until: (1) it has in place a comprehensive surveillance sharing agreement with the primary exchange in the home country where the foreign security is primarily traded; or (2) the combined trading volume of the foreign security (and other related securities) occurring in the U.S. markets represents at least 50 percent of the combined world-wide trading volume in the underlying security (including other related securities).

[6] The initial listing standards for standardized equity options provide that the underlying equity security must: (1) be listed on a national securities exchange or be a Nasdaq National Market® security; (2) have a public float of at least 7 million shares; (3) have at least 2,000 shareholders; (4) have a trading volume of at least 2.4 million shares during the preceding 12 months; and (5) have a market price per share equal to or greater than $7.50 for the majority of the business days during the three preceding calendar months, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days. In addition, the issuer must be in compliance with any applicable requirement of the Securities Exchange Act of 1934. *See*, CBOE Rule 5.3.

[7] For example, if the NASD determined that the position limit for stock XYZ was 10,500 contracts on March 1, 1995, the position limit would remain at 10,500 contracts until the Monday after the third Friday of July 1995.

[8] In particular, the NASD will use data from July 1 through December 31 to review position-limit levels in January and data from January 1 to June 30 to review position-limit levels in July.

[9] However, if subsequent to a six-month review, an increase in trading volume and/or outstanding shares would make such stock eligible for a higher position limit before the next review, the NASD, at its discretion, may increase immediately such position limit.

the NASD also will review whether the underlying stock continues to meet the options exchanges' maintenance standards for standardized options trading.[10] If a stock fails to meet the maintenance standards, the position limit will become 4,500 contracts effective on the Monday following the third Friday of January or July, regardless of whether the trading volume and float of the stock warrant a higher position limit. If the position limit is lowered, members (or their customers) will not have to liquidate pre-existing outstanding options positions to a level equal to 4,500 contracts.

NASD members and their customers who establish conventional options positions in reliance on the NASD's amended position-limit rule should be aware that they may be in technical violation of an options exchange's position-limit rule, should that exchange introduce standardized options on the same underlying security with a lower position limit subsequent to establishing the conventional options position.[11] While the NASD will most likely provide the market participant with a position-limit exemption in this instance and prohibit the investor from increasing its options position, there is the possibility that an options exchange may not also grant a corresponding exemption from its position-limit rule.

Questions regarding this Notice should be directed to Joseph Alotto, Regulatory Specialist, NASD Market Surveillance, at (301) 590-6845, or Thomas R. Gira, Assistant General Counsel, Office of General Counsel, at (202) 728-8957.

Text Of Amendments To Section 33(b)(3) Of The NASD Rules Of Fair Practice

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

Section 33(b)(3) Position Limits

(A) No change.

(1) No change.

(2) 7,500 options contracts of the put class and the call class on the same side of the market covering the same underlying security, providing that the 7,500 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie[1] Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 7,500 option contracts; or

(3) 10,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security, providing that the 10,500 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie[1] Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 10,500 option contracts; or

(4) and (5) No change.

[1] In order for a security not subject to standardized options trading to be eligible for a higher options position limit of 7,500 or 10,500 contracts, a member must first demonstrate to the NASD Market Surveillance Department that the security meets the standards for such higher options position limit and the initial listing standards for standardized options trading

[10] The maintenance listing standard for standardized equity options provides that the underlying security must have: (1) a public float of at least 6.3 million shares; (2) at least 1,600 shareholders; (3) trading volume of at least 1.8 million shares (in all markets in which the underlying security trades) during the preceding 12 months; and (4) a market price per share equal to or greater than $5 on a majority of the business days during the preceding six calendar months, as measured by the highest closing price reported in any market in which the security traded (basic maintenance standards). However, a stock will continue to meet the maintenance listing standards for an additional six months if it had: (1) a market value of at least $50 million; (2) trading volume of at least 2.4 million shares during the preceding 12 months; (3) a market price per share of $3 or more on a majority of the business days during the preceding six calendar months, as measured by the highest closing price reported in any market in which the security traded; and (4) the market price per share is at least $3 at the time of the review (alternative maintenance standard). Thereafter, if the stock did not satisfy the basic maintenance standards at the next six-month review, it would only retain a position limit greater than 4,500 contracts if it satisfied the alternative maintenance standard using a maintenance price of $4 instead of $3. For subsequent reviews, the stock will have to satisfy the basic maintenance standards. *See*, CBOE Rule 5.4.

[11] For example, a market participant may establish a conventional options position of 10,500 contracts on a stock in February 1996 pursuant to the NASD proposal, and thereafter an options exchange may choose to list options on the stock on May 1, 1996, with a position limit of 7,500 contracts. In this case, the trading volume and/or float of the stock would have declined since February, such that the stock was no longer eligible for the 10,500 contract position limit. Assuming the options exchange takes the position that standardized and conventional options positions must be aggregated for position-limit purposes, the market participant would be in violation of the options exchange's position-limit rule because its conventional options position would be 3,000 contracts in excess of the 7,500-contract-position limit.

NASD NOTICE TO MEMBERS 95-48

Treasury Approves Risk Assessment Rules For Government Securities Broker/Dealers

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ■ Government Securities
- ☐ Institutional
- ■ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training

Executive Summary

The Department of the Treasury (Treasury) recently approved amendments under the Government Securities Act of 1986 (GSA) that establish risk assessment rules for government securities broker/dealers registered under Section 15C (Section 15C broker/dealers) of the Securities Exchange Act of 1934. The rules parallel similar Securities and Exchange Commission (SEC) rules already in place for broker/dealers that conduct a general or municipal securities business. The effective date for the amendments is June 30, 1995, but the rules are being implemented on a multi-month phase-in schedule.

Background And General Description Of Amendments

Risk assessment rules are intended to provide greater warning of situations that can affect significantly the functioning of the markets and investors in general. The Market Reform Act of 1990 (the Reform Act) was passed by Congress to provide authorization for such rules.

Specifically, the Reform Act authorized the SEC to promulgate risk assessment rules for broker/dealers holding company structures and authorized Treasury to promulgate risk assessment rules for registered government securities broker/dealers. The SEC adopted its risk assessment rules in July 1992. Treasury's rules, which were recently approved, incorporate SEC Rules 17h-1T and 17h-2T, with minor modifications.

In general, the recordkeeping amendments require Section 15C broker/dealers to maintain and preserve records concerning the financial and securities activities of affiliates whose business activities are reasonably likely to have a material impact on the financial or operational condition of the Section 15C broker/dealers. The reporting amendments require Section 15C broker/dealers to file with the SEC quarterly summary reports of this information. Treasury's rules also provide exemptions identical to those provided by the SEC. In addition, Treasury is adopting the SEC's special provisions for affiliates that are already subject to supervision by certain U.S. or foreign financial regulatory authorities.

Recordkeeping Requirements

Treasury's rules require that Section 15C broker/dealers keep two general categories of records:

• information concerning the holding company organization, risk management policies, and material legal proceedings; and

• financial and securities information pertinent to assessing risk in the holding company system (such as, consolidating and consolidated financial statements and positions in various financial instruments).

The information required under the recordkeeping rules will be subject to routine inspection by the SEC and self-regulatory organizations.

Reporting Requirements

Under the reporting rules, Section 15C broker/dealers must file with the SEC quarterly summaries of the information maintained under the recordkeeping rules. These quarterly summaries must be filed on SEC Form 17-H.

The information required to be maintained and reported by the firms pertains only to the firms' "material associated persons" (MAPs). Several factors that should be considered when determining which affiliates, or

associated persons, might have a "material" impact on the broker/dealer's financial or operational conditions are incorporated as guidelines in SEC Rule 17h-1T. The initial designation of MAPs will be made by the Section 15C broker/dealers. "Associated persons" is based on the definition at 3(a)(18) of the Exchange Act [(15 U.S.C. 78c(a)(18)], except that natural persons are excluded for the risk assessment rules (which automatically excludes natural persons from the definition of MAPs). Consistent with the SEC approach, partnerships will not be treated as natural persons and, depending on the circumstances, may be deemed to be MAPs. However, Subchapter S corporations may be treated as natural persons for the amendments if the Subchapter S corporation is owned by one natural person.

Exemptions

Treasury's rules exempt a Section 15C broker/dealer if it:

• does not carry customer accounts and maintains capital (equity capital plus subordinated debt) of less than $20 million;

• maintains capital of less than $250,000 (regardless of whether it carries customer accounts or not); and

• has an affiliated registered broker/dealer that is subject to, and in compliance with, the SEC's risk assessment rules, provided that all of the MAPs of the Section 15C broker/dealer are also MAPs of the registered broker/dealer.

A Section 15C broker/dealer that has no affiliates or holding company is not subject to Treasury's risk assessment rules.

Special Provisions

Treasury's rules allow affiliated Section 15C broker/dealers to request in writing that Treasury permit one of the firms (a "Reporting Registered Government Securities Broker/Dealer") to maintain and report risk assessment information on behalf of the other firms.

Treasury also is adopting the SEC's special provisions for affiliates that are already subject to supervision by certain U.S. or foreign financial regulatory authorities. With respect to such affiliates, Section 15C broker/dealers are deemed in compliance with the financial and securities recordkeeping requirements by maintaining copies of reports that such affiliates already submit to other regulators; however, they are required to maintain organizational charts, risk management policies, and records of legal proceedings, and submit that information on Form 17-H to the SEC.

Implementation Schedule

Recordkeeping Requirements

Effective June 30, 1995, Section 15C broker/dealers must maintain records of an organizational chart, written risk management procedures, and a description of material legal or arbitration proceedings. The entire recordkeeping provisions are effective September 30, 1995.

Reporting Requirements

Section 15C broker/dealers must file the organizational chart, the written risk management procedures, and the description of material legal or arbitration proceedings (Part I, Item 1-3 of Form 17-H) **by July 1, 1995**.

The entire reporting provisions (that is, the remaining portion of Form 17-H) are effective for the period ending September 30, 1995. Firms have 60 calendar days after September 30, 1995, to file the remaining portions of Form 17-H. Firms have 60 calendar days after each subsequent fiscal quarter to file Form 17-H.

Members should note that following the first filing of the organizational chart, the written risk management procedures, and the description of material legal or arbitration proceedings, they are not required to include this information in subsequent quarterly filings unless a material change in the information has occurred, except that the organizational chart is required in each year-end filing.

The cumulative year-end financial statements required pursuant to Section 404.2(b)(4) must be filed within 105 calendar days of the end of the fiscal year.

Members interested in reviewing Treasury's release in its entirety should refer to the April 26, 1995, *Federal Register*. Questions concerning this Notice may be directed to Janet Marsh, District Coordinator, NASD® Regulation Department, at (202) 728-8228.

NASD NOTICE TO MEMBERS 95-49

NASD Clarifies Use Of Bank And Financial Institution Logos And Names

Suggested Routing

- ■ Senior Management
- ■ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ■ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ■ Training

Executive Summary

The NASD® is publishing this Notice to clarify its position on the use of logos and names of banks and other financial institutions under the current NASD rules and regulations and the federal securities laws generally.

Discussion

In the November 1994 account statement, the NASD Advertising Regulation Department notified each member currently filing material with the Department of, among other things, the use of bank logos on advertisements and sales literature for member firms. This memorandum is to clarify the NASD's position on the use of logos of banks and other financial institutions under the current NASD rules and regulations and the federal securities laws generally.

The NASD views a logo as representative of the name of an entity. Thus, in communications containing the name of an NASD member, the use of any *logo* of a nonmember (including banks and other financial institutions) is subject to the same rules and regulations that are applicable to the use of the *name* of a nonmember. Article III, Sections 35(d)(1)(D)(i) and (ii) of the NASD Rules of Fair Practice require that, in judging whether the communication, in whole or in part, is misleading, the overall context in which a statement is made and the audience to which a communication is directed must be considered. Article III, Section 35(f)(2) requires that, in communications where a nonmember is named, the relationship between the member and the nonmember shall be clear, no confusion shall be created as to which entity is offering which products and services, and securities products and services must be clearly offered by the member. The existing rules also recognize that the position of any disclosure can create confusion, even if the disclosure is accurate. If in fact such confusion occurs, it will violate NASD rules.

The current NASD rules under Article III, Section 35 of the Rules of Fair Practice on the use of nonmembers' names have been supplemented by the terms and conditions in the Securities and Exchange Commission's (SEC) no-action letter issued to Chubb Securities Corporation in November 1993 (Chubb letter), which was distributed in *Notice to Members 94-47*, dated June 1994. The Chubb letter sets forth the SEC's Division of Market Regulation policy regarding third-party networking broker/dealers operating on the premises of financial institutions. The Chubb letter says that references to the financial institution "will be for identifying the location where brokerage services are available only, and will not appear prominently in such materials." The NASD believes that, consistent with Chubb and the NASD's view that NASD rules have equal applicability to the logos and actual name of the nonmember, the misuse of a logo of a financial institution will raise the same question of prominence as the actual name of the institution.

The logo of a nonmember that is representative *only* of the nonmember entity (such as, a bank logo that is recognized solely as representative of the bank and not of the bank's holding company, affiliates, or other related entities), may be used in a communication on behalf of an NASD member, provided that it is used only to identify the nonmember entity, in accordance with the provisions of the Chubb letter and the applicable NASD Rules of Fair Practice. Additionally, the logo may not be used in a way that is misleading or confusing, such as appearing in a disproportionate size so that it is unclear as to which entity is offering broker/dealer services. This applica-

tion is consistent with the general requirement that the context and audience to which the communication is directed be considered.

The logo of a financial conglomerate, such as a bank holding company, may be used in a communication on behalf of an NASD member, provided, once again, that the logo is not used in a way that is misleading or confusing, consistent with the general requirement above.

While this memorandum specifically addresses the clarification of the use of bank and/or financial institution logos and names, please note that the position set forth applies to the use of logos and names for any non-member entity. Any questions regarding this Notice should be directed to Thomas A. Pappas, Assistant Director, Advertising Regulation Department, (202) 728-8330.

NASD NOTICE TO MEMBERS 95-50

Availability Of New Qualification Examination For Registered Options Limited Representative (Series 42)

Suggested Routing

- ☐ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ■ Options
- ■ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ■ Training

Executive Summary

The Securities and Exchange Commission recently approved a new NASD® qualification examination that may be used to qualify registered representatives for options. The Registered Options Limited Representative (Series 42) is available immediately. This test supplants the Put and Call Questionnaire administered by Senior Registered Options Principals for NASD equity option qualification purposes, and provides an alternative to the Interest Rate Options Examination (Series 5) and the Foreign Currency Options Examination (Series 15) for NASD qualification purposes.

Background

Until this time, the NASD primary qualification examination for options was the General Securities Representative Examination (Series 7). In keeping with its alternative modular representative qualification program, the NASD will now offer the Registered Options Limited Representative Examination (Series 42) as well. Because this is solely an options test, registration as a registered options representative under Section 2(d) in Part III of Schedule C to the NASD By-Laws will require a concurrent registration as a Corporate Securities Limited Representative (Series 62). The Series 62 co-requisite is necessary to demonstrate functional understanding of the securities products underlying the option contracts. The Series 42 examination contains 50 questions with 90 minutes of testing time allowed for its completion. A candidate must answer a minimum of 35 questions correctly (70 percent) for a passing grade.

Questions on handling option accounts, equity, debt, foreign currency, and index options are on each test. Application for registration is made on Form U-4. The fee for the exam is $60. Study outlines may be ordered for $4 each by mailing payment and request to NASD MediaSource℠, PO Box 9403, Gaithersburg, MD 20898-9403; or by credit card by calling (301) 590-6578.

Qualification Requirements

With the availability of the Series 42 examination, the NASD will no longer recognize the Put and Call Questionnaire as continuing to satisfy equity option qualification requirements for NASD representatives. The Put and Call Questionnaire has been administered by Senior Registered Options Principals at member firms. The Series 42 examination will now be required. This requirement, with respect to equity options, only applies to those representatives who qualified as General Securities Representatives before May 1977, have not yet taken the Put and Call Questionnaire, but who now wish to conduct an equity options business. The Interest Rate Options Examination (Series 5) and the Foreign Currency Options Examination (Series 15), however, remain viable qualifying examinations for those option products and alternatives to the Series 42 for NASD qualification purposes. Foreign currency and debt options have been covered on Series 7 since June 1986.

The Series 42 is the last of four NASD and one Municipal Securities Rulemaking Board (MSRB) limited representative examinations to become effective. The following five examinations, when completed as a group, will now convey NASD General Securities Representative status:

• Investment Companies and Variable Contracts Limited Representative

Examination (Series 6)

• Direct Participation Programs Limited Representative Examination (Series 22)

• Registered Options Limited Representative Examination (Series 42)

• MSRB Municipal Securities Representative Examination (Series 52)

• Corporate Securities Limited Representative Examination (Series 62)

Using the Series 7 examination or combining these five modular examinations now offers members more flexibility in satisfying NASD registration requirements.

Questions regarding this Notice should be directed to David Frandina, Qualifications Analyst, NASD Qualifications and Exams, at (301) 208-2787.

NASD NOTICE TO MEMBERS 95-51

Independence Day: Trade Date-Settlement Date Schedule

Suggested Routing

- ☐ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ■ Internal Audit
- ■ Legal & Compliance
- ■ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ■ Syndicate
- ■ Systems
- ■ Trading
- ☐ Training

The Nasdaq Stock Market℠ and the securities exchanges will be closed on Tuesday, July 4, 1995, 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 28	July 3	July 6
29	5	7
30	6	10
July 3	7	11
4	Markets Closed	—
5	10	12

*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 five 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 titled "Reg. T Date."

Brokers, dealers, and municipal securities dealers should use these settlement dates to clear and settle 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 (203) 375-9609.

NASD NOTICE TO MEMBERS 95-52

Nasdaq National Market Additions, Changes, And Deletions As Of May 25, 1995

Suggested Routing

- ■ Senior Management
- ☐ Advertising
- ■ Corporate Finance
- ☐ Government Securities
- ■ Institutional
- ☐ Internal Audit
- ■ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ■ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ■ Systems
- ■ Trading
- ☐ Training

As of May 25, 1995, the following 47 issues joined the Nasdaq National Market®, bringing the total number of issues to 3,781:

Symbol	Company	Entry Date	SOES Execution Level
REPS	Republic Engineered Steels, Inc.	4/28/95	500
PLSIA	Premier Laser Systems, Inc. (Cl A)	5/1/95	500
PLSIW	Premier Laser Systems, Inc. (Cl A Wts 11/30/99)	5/1/95	500
PLSIZ	Premier Laser Systems, Inc. (Cl B Wts 11/30/99)	5/1/95	500
PSIX	Performance Systems International, Inc.	5/2/95	500
TSXX	TSX Corporation	5/2/95	500
ANET	ACT Networks, Inc.	5/3/95	500
CRAA	CRA Managed Care, Inc.	5/3/95	1000
RSTOV	Rose's Stores, Inc. (WI)	5/3/95	200
FNBF	FNB Financial Services Corp.	5/4/95	200
FFOX	Firefox Communications Inc.	5/4/95	200
PGLD	Phoenix Gold International, Inc.	5/4/95	200
AGMIF	Cominco Fertilizers, Ltd.	5/5/95	500
STMD	StorMedia Incorporated (Cl A)	5/5/95	1000
USBN	United Security Bancorporation	5/5/95	200
NALF	NAL Financial Group, Inc.	5/8/95	200
VUPDA	Video Update, Inc. (Cl A)	5/8/95	200
VUPDW	Video Update, Inc. (Cl A Wts 7/20/99)	5/8/95	200
VUPDZ	Video Update, Inc. (Cl B Wts 7/20/99)	5/8/95	200
ACCUF	Accugraph Corporation	5/9/95	200
ALRIR	Allergan Ligand Retinoid Therapeutics, Inc.	5/9/95	200
GRDG	Garden Ridge Corporation	5/9/95	200
OSYS	OccuSystems, Inc.	5/9/95	500
CVBK	Central Virginia Bankshares, Inc.	5/10/95	200
LANPF	Plaintree Systems, Inc.	5/10/95	500
SVRNP	Sovereign Bancorp, Inc. (Cum. Conv. Pfd Ser B)	5/10/95	1000
ASBP	ASB Financial Corp.	5/11/95	200
BMLS	Burke Mills, Inc.	5/11/95	200
BIORF	Biomira Inc. (Rts)	5/12/95	200
PRNS	Prins Recycling Corp.	5/12/95	200
VCNBR	Ventura County National Bancorp (Rts 6/21/95)	5/15/95	200
AGAI	AG Associates, Inc.	5/16/95	500
MFSTP	MFS Communications Company, Inc. (Dep. Shrs.)	5/16/95	1000
ERDI	ERD Waste Corp.	5/17/95	1000
LTUS	Garden Fresh Restaurant Corp.	5/17/95	200
IKOSD	IKOS Systems, Inc. (New)	5/17/95	200
TRAV	Intrav, Inc.	5/18/95	500
OPAL	Opal, Inc.	5/18/95	200
BAANF	Baan Company N.V.	5/19/95	200
ODWA	Odwalla, Inc.	5/19/95	500
PIONA	Pioneer Companies Inc. (Cl A)	5/19/95	200

Symbol	Company	Entry Date	SOES Execution Level
PHNXY	Phoenix Shannon plc (ADR)	5/22/95	200
UNMG	The UniMark Group, Inc.	5/22/95	200
UNMGW	The UniMark Group, Inc. (Wts 8/12/99)	5/22/95	200
HLIT	Harmonic Lightwaves, Inc.	5/23/95	500
INTE	Interactive Group, Inc.	5/23/95	200
SLCMC	The Southland Corp.	5/23/95	200

Nasdaq National Market Symbol And/Or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since April 28, 1995:

New/Old Symbol	New/Old Security	Date Of Change
EBCP/VFBK	Eastern Bancorp, Inc./Eastern Bancorp, Inc.	5/1/95
INSO/INSO	INSO Corporation/InfoSoft International, Inc.	5/1/95
FFPC/FFPC	Florida First Bancorp, Inc./Florida First Federal Savings Bank	5/2/95
GTOS/GTOS	Gantos, Inc./Gantos, Inc. (New)	5/3/95
GNPT/GNPT	GreenPoint Financial Corp./GP Financial Corp.	5/8/95
TUNE/TUNE	DMX Inc./International Cablecasting Tech., Inc.	5/8/95
HAND/HAND	Handex Corp./Handex Environmental Recovery, Inc.	5/9/95
TRFI/TRFI	Trans Financial Inc./Trans Financial Bancorp Inc.	5/10/95
HFSIW/CACSW	Hospitality Franchise Systems, Inc. (Wts 8/10/98)/Casino & Credit Services, Inc. (Wts 8/10/98)	5/11/95
FBAI/FBAI	Foodbrands America, Inc./Doskocil Companies, Inc.	5/17/95
FUND/FUND	All Seasons Global Fund, Inc./America's All Season Fund, Inc.	5/18/95
HAVA/HAVAB	Harvard Industries, Inc. (Cl B)/Harvard Industries, Inc. (Cl B)	5/18/95
KIDD/KIDD	The First Years, Inc./Kiddie Products, Inc.	5/19/95
ACOL/ACOL	AMCOL International Corp./American Colloid Co.	5/22/95
JEFF/SBNP	JeffBanks, Inc./State Bancshares, Inc.	5/22/95

Nasdaq National Market Deletions

Symbol	Security	Date
CSPK	Chesapeake Energy Corporation	4/28/95
PACO	Paco Pharmaceutical Services, Inc.	4/28/95
INVS	Investors Bank Corp.	5/1/95
NREC	NAC Re Corp.	5/1/95
OLCC	Olympus Capital Corp.	5/1/95
RSTOQ	Rose's Stores, Inc.	5/1/95
RSTBQ	Rose's Stores, Inc. (Cl B)	5/1/95
CMBI	Central Mortgage Bancshares, Inc.	5/2/95
GOLD	Goldenbanks of Colorado, Inc.	5/2/95
PXREZ	PXRE Corp. (Dep. Shrs.)	5/2/95
KHGI	Keystone Heritage Group, Inc.	5/5/95
PBBUF	Pacific Basin Bulk Shipping (Uts)	5/5/95
SHUR	Shurgard Storage Centers, Inc.	5/5/95
SKYB	SkyBox International Inc.	5/5/95

Symbol	Security	Date
BWSLE	BioMedical Waste Systems, Inc. (Cl B Wts 6/4/96)	5/11/95
CACS	Casino & Credit Services, Inc.	5/11/95
CCXLA	Contel Cellular Inc.	5/12/95
PARC	Park Communications, Inc.	5/12/95
BPIX	Broadcasting Partners, Inc. (Cl A)	5/15/95
ONCR	Oncor, Inc.	5/15/95
ZLOG	Zilog, Inc.	5/17/95
ENRGB	DEKALB Energy Company (Cl B)	5/18/95
FRMLQ	Freymiller Trucking, Inc.	5/19/95
GLYC	Glycomed Incorporated	5/19/95
WCTI	WCT Communications, Inc.	5/19/95
SCBC	Security Capital Bancorp	5/22/95
VICF	Victoria Financial Corp.	5/23/95

Questions regarding this Notice should be directed to Mark A. Esposito, Nasdaq Market Services Director, Issuer Services, at (202) 728-6966. Questions pertaining to trade-reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

NASD NOTICE TO MEMBERS 95-53

Fixed Income Pricing System Additions, Changes, And Deletions As Of May 31, 1995

Suggested Routing

- ■ Senior Management
- □ Advertising
- ■ Corporate Finance
- □ Government Securities
- ■ Institutional
- □ Internal Audit
- ■ Legal & Compliance
- ■ Municipal
- □ Mutual Fund
- ■ Operations
- □ Options
- □ Registration
- □ Research
- □ Syndicate
- ■ Systems
- ■ Trading
- □ Training

As of May 31, 1995, the following bonds were added to the Fixed Income Pricing System (FIPS℠). These bonds are **not** subject to mandatory quotation:

Symbol	Name	Coupon	Maturity
OTY.GA	Coty Inc.	10.250	5/1/05
SCK.GC	Sea Containers	12.500	12/1/04
OI.GI	Owens - Ill.	10.000	8/1/02
SVN.GB	Spectravision Inc.	11.650	12/1/02
NOE.GA	North Atlantic Energy	9.050	6/1/02
DWCR.GA	Dow Corning	9.375	2/1/08
CMZ.GC	Cincinnati Milacron	8.373	3/15/04
TNC.GA	Town & Country	13.000	5/31/98
CITI.GA	Citicasters Inc.	9.750	2/15/04
KCAS.GA	Kloster Cruise Ltd.	13.000	5/1/03
BDEN.GA	Bordern Chem. & Plas/B	9.500	5/1/05
GAP.GA	Gr Atlantic & Pacific	9.125	1/15/98
GAP.GB	Gr Atlantic & Pacific	7.700	1/15/04
TRCK.GA	Truck Components	12.250	6/30/01
RPMB.GA	Rapap New Brunswick	10.625	4/15/05
RCCA.GC	Rogers Cable System Ltd.	10.000	3/15/05
WAX.GB	Waxman Industries Inc.	13.750	6/1/99
TDY.GA	Teledyne Inc.	10.000	6/1/04
HSRB.GB	HealthSouth Rehabilitation	9.500	4/1/01
MDFG.GB	Midland Fdg Corp. I	10.330	7/23/02
SCAL.GA	Health-O-Meter Inc.	13.000	8/15/02
IHS.GA	Integrated Health Services	10.750	7/15/04
HHI.GA	Home Holdings	8.625	12/15/03
HHI.GB	Home Holdings	7.750	12/15/98
EVI.GA	Energy Venture	10.250	3/15/04
CYCL.GB	Cenntenial Cellular	10.125	5/15/05
CVXP.GK	CVX Power	9.500	5/15/05
DOMP.GA	Doman Industries Ltd.	8.750	3/15/04
CUSI.GA	Consoltex USA Inc.	11.000	10/1/03
CANC.GA	Calmar Inc. Del.	12.000	12/15/97
BALD.GA	The Baldwin Company	10.375	8/1/03
GOU.GB	Gulf Canada Resources Ltd.	9.000	8/15/99
BVID.GA	Blockbuster Entertainment	6.625	2/15/98
PARA.GA	Paramount Communications	7.000	7/1/03
PARA.GB	Paramount Communications	7.000	7/1/03
PARA.GC	Paramount Communications	7.500	1/15/02
PARA.GD	Paramount Communications	8.250	8/1/22
PARA.GE	Paramount Communications	5.875	7/15/00
PARA.GF	Paramount Communications	7.500	7/15/23
PODX.GA	Poindexter (J.B.)	12.500	5/15/04
FD.GA	Federated Department Stores	10.000	2/15/01
WBN.GA	Wanban Inc.	11.000	5/15/04

As of May 31, 1995, the following bond was deleted from FIPS:

Symbol	Name
TNV.GA	Tennessee Valley Authority

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to trade-reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

DISCIPLINARY ACTIONS

Disciplinary Actions Reported For June

The NASD® has taken 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, June 19, 1995. 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 edition.

Firm Expelled, Individual Sanctioned

Patten Securities Corp. (Far Hills, New Jersey) and **John L. Patten (Registered Principal, Far Hills, New Jersey)** submitted an Offer of Settlement pursuant to which they were fined $15,000, jointly and severally. In addition, the firm was expelled from NASD membership and ordered to pay $5,215.64 in restitution to public customers. Patten was suspended from association with any NASD member in any capacity for three years (suspension deemed served). Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they effected transactions and induced the purchase and sale of a stock by means of manipulative, deceptive, and other fraudulent devices and contrivances resulting in a stock price increase of 316 percent over the public-offering price.

Firms And Individuals Fined

Heidtke & Company, Inc. (Nashville, Tennessee) and **Lyman O. Heidtke (Registered Principal, Nashville, Tennessee**) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $25,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Heidtke, failed and neglected to verify pricing for purchase and sales transactions executed by an individual at the firm in the accounts of public customers, at prices that were not reasonably related to the then-current market prices for the securities. The NASD also found that the firm, acting through Heidtke, allowed the same individual to cancel a sell transaction of municipal bonds in the account of a public customer and re-execute the sale at a price unrelated to the then-current market price. Furthermore, the findings stated that the firm, acting through Heidtke, failed and neglected to exercise reasonable and proper supervision over the same individual and failed to supervise properly trades initiated and executed by the individual.

Mitchum, Jones & Templeton, Inc. (Durango, Colorado) and **William A. Lupien (Registered Principal, Durango, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Lupien, participated in a private offering of its parent corporation's securities and failed to deposit investor funds received in connection with the offering into a bank escrow account. Instead, the funds were deposited into a separate special bank account established by the firm's parent corporation that was not the subject of any agreement conditioning the release of the funds upon satisfaction of events stated in the private placement memorandum for the offering.

Individuals Barred Or Suspended

Nathan B. Batalion (Registered Principal, Upper Nyack, New York) and **Joseph Marasciullo (Registered Principal, Flushing, New York)** submitted an Offer of Settlement pursuant to which Batalion was fined $2,500, suspended from association with any NASD member in any capacity for two months, and required to requalify by examination as a principal. Marasciullo was suspended from association with any NASD member in any capacity for 14 days and required to appear for an NASD staff interview. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of finding that Marasciullo executed transactions in and moved the quotes in a common stock that resulted in the price manipulation of the stock from $2.50 to $5.25 per share. The findings also stated that Batalion failed to enforce his member firm's written supervisory procedures and failed to supervise reasonably Marasciullo to detect and deter the above conduct.

Marasciullo's suspension will begin July 1, 1995, and end July 14, 1995.

Larry E. Brewer (Registered Representative, Memphis, Tennessee) submitted an Offer of Settlement pursuant to which he was fined $15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brewer consented to the described sanctions and to the entry of findings that he entered 16 purchase orders to his member firm for shares of a common stock in the accounts of public customers that were not paid for by the customers and subsequently canceled, without having a reasonable basis for entering the orders for eight of the customers.

Gustavo A. Buenrostro (Registered Representative, Chicago, Illinois) was fined $10,000, barred from association with any NASD member in any capacity, and required to pay $591 in restitution to a member firm. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a Chicago District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Buenrostro received $791 in cash from insurance customers with instructions to use the funds to purchase insurance policies. Buenrostro failed to follow the customers' instructions, used only $26.70 as instructed, and used the remaining funds for some purpose other than for the benefit of the customers. In addition, Buenrostro failed to respond to NASD requests for information.

Joseph D. Burleson (Registered Principal, Durango, Colorado) and **Iris Suzanne Burleson (Registered Representative, Durango, Colorado)** J. Burleson was fined $62,250, suspended from association with any NASD member in any capacity for three months, and must requalify by examination in all capacities before reassociation with a member firm. I. Burleson was fined $10,000, suspended from association with any NASD member in any capacity for three months, and must requalify by examination in all capacities. The sanctions were based on findings that J. and I. Burleson were identified as market makers in a common stock that resulted in I. Burleson submitting buy and sell orders to her member firm's agency desk and directing the agency trader to execute the transactions with J. Burleson's member firm. Through the scheme, J. and I. Burleson were able to dominate the market and set arbitrary prices for the stock.

Jon R. Butzen (Registered Representative, Clearwater, Florida) was fined $12,500 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Butzen failed to disclose on his Uniform Application for Securities Industry Registration or Transfer (Form U-4) that he was the subject of a pending NASD complaint. In addition, Butzen executed unauthorized transactions in the account of a public customer without the customer's knowledge or consent and in the absence of authorization to exercise discretion in the account. Butzen also failed to respond timely to NASD requests for information.

Butzen has appealed this action to the Securities and Exchange Commission (SEC), and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

David F. Connare (Registered Representative, Manchester, New Hampshire) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Connare consented to the described sanctions and to the entry of findings that he received from public customers $150,270 intended by the customers for securities investment and, without their knowledge or consent, he misappropriated their funds for his own use and benefit.

Gerald Edward Donnelly (Registered Representative, Lafayette, California) was fined $25,000, suspended from association with any NASD member in any capacity for 16 business days, and required to requalify by examination

before reassociating with any NASD member. The NBCC imposed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Donnelly recommended and effected the purchase and sale of securities in the accounts of public customers that were excessive and unsuitable. In addition, Donnelly exercised discretionary power in the accounts without obtaining prior written authorization from the customers and without his member firm's acceptance of the accounts as discretionary.

Donnelly has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

John F. Fulone (Registered Representative, Mashpee, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fulone consented to the described sanctions and to the entry of findings that he forged disbursement forms requesting a $3,000 loan and a $1,200 dividend from a customer's life insurance policy. The findings also stated that Fulone forged that customer's signature, cashed the checks, and held the monies for four months.

Timothy P. Graham (Registered Representative, Friendship, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000, barred from association with any NASD member in any capacity, and required to pay $315 in restitution to his member firm. Without admitting or denying the allegations, Graham consented to the described sanctions and to the entry of findings that he obtained from a public customer checks and cash totaling $420 that was to be applied to the customer's insurance policy. According to the findings, Graham failed to apply $315 of the funds as requested and used the funds for some purpose other than for the benefit of the customer.

Darrell B. Hall (Registered Representative, Catlettsburg, Kentucky) was fined $2,500 and suspended from association with any NASD member in any capacity for six months. The NBCC affirmed the sanctions following review of a New Orleans DBCC decision. The sanctions were based on findings that Hall received from an insurance customer $10,000 to be invested in life insurance policies. Instead, Hall misappropriated $981 of the customer's funds by applying the funds to three policies of other customers.

Philip M. Hiestand (Associated Person, Villanova, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $2,500 and barred from association with any NASD member in any capacity with a right to apply after five years. Without admitting or denying the allegations, Hiestand consented to the described sanctions and to the entry of findings that, while taking the Series 6 examination, he retained in his possession notes relating to the subject matter of the examination. Hiestand also failed to respond to NASD requests for information.

Richard N. Jensen (Registered Representative, St. Petersburg, Florida) submitted an Offer of Settlement pursuant to which he was fined $10,000, barred from association with any NASD member in any capacity, ordered to disgorge commissions in the amount of $7,650, and required to pay restitution to public customers. Without admitting or denying the allegations, Jensen consented to the described sanctions and to the entry of findings that he engaged in private securities transactions outside the regular course or scope of his association with his member firm, without providing prior written notice to and obtaining approval from the firm.

Daniel Steven Katz (Registered Representative, Woodland Hills, California) was fined $50,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination in any registered capacity in which he intends to function. In addition, Katz must pay $7,000 in restitution to a customer. The NBCC imposed the sanctions following review of a Los Angeles DBCC decision. The sanctions were based on findings that Katz executed unauthorized purchases of stock in the accounts of public customers.

Donald R. Krueger (Registered Representative, Seminole, Florida) was fined $20,000, barred from association with any NASD member in any capacity, ordered to disgorge $31,841.19, and required to pay restitution to public customers. The sanctions were based on findings that Krueger induced public customers to make investments in a security outside the regular course or scope of his association with his member firm without providing prior written notice of his involvement to the firm and without obtaining approval from the firm. In addition, Krueger failed to respond to an NASD request for information.

Richard Arlen Osborne (Registered Representative, San Antonio, Texas) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Osborne failed to respond to NASD requests for information in connection with an investigation regarding transactions made with a public customer.

Thomas A. Pinataro (Registered Representative, Brandon, Florida) submitted an Offer of Settlement pursuant to which he was fined $7,500 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Pinataro consented to the described sanctions and to the entry of findings that he forged the signatures of two public customers on Individual Retirement Account Distribution Request Forms.

Robert A. Shepherd (Registered Principal, Oklahoma City, Oklahoma) 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 30 days (suspension deemed served). Without admitting or denying the allegations, Shepherd consented to the described sanctions and to the entry of findings that, at the request of a public customer, he signed the name of a customer's daughter to an annuity application that was to be submitted to his member firm. In addition, the NASD found that Shepherd, at the request of a public customer, signed the customer's name to a letter authorizing the wire transfer of funds to the customer's account.

Richard Pierce Steele (Registered Representative, Pleasanton, California) submitted an Offer of Settlement pursuant to which he was fined $10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination in any registered capacity in which he intends to function. Without admitting or denying the allegations, Steele consented to the described sanctions and to the entry of findings that he made unsuitable recommendations of securities to public customers.

Ramiro Jose Sugranes (Registered Representative, Miami, Florida) was fined $16,988.38 and suspended from association with any NASD member in any capacity for three months. The SEC affirmed the sanctions following appeal of a May 1994 NBCC decision. The sanctions were based on findings that Sugranes provided an institutional customer with a letter in which he falsely stated that a certificate of deposit the customer purchased was backed by a letter of credit from a bank. In addition, Sugranes provided that same customer with copies of wires indicating that the bank issued irrevocable standby letters of credit for certificates of deposits when, in fact, the wires were prepared by Sugranes and the bank had no such standby letters.

Sugranes has appealed this action to a U.S. Court of Appeals, and the sanctions are not in effect pending consideration of the appeal.

John O. Woodring, Jr. (Registered Representative, York, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Woodring failed to respond to NASD requests for information concerning his financial dealings with customers.

Robert James Yu Loo (Registered Representative, Foster City, California) submitted an Offer of Settlement pursuant to which he was fined $18,000 and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Yu Loo consented to the described sanctions and to the entry of findings that he exercised effective control over the account of a public customer and recommended to the customer purchases and sales of securities that were unsuitable for the customer considering the size and frequency of the transactions and the facts disclosed by the customer as to her other security holdings, financial situation, and needs.

Firms Expelled For Failure To Pay Fines, Cost, And/Or Provide Proof Of Restitution In Connection With Violations

Barrett Day Securities, Inc., New York, New York

Dallas/Park Cities Securities, Inc., Dallas, Texas

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of Article IV, Section 5 of the NASD Rules of Fair Practice and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after each entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Austin Fairchok Incorporated, Puyallup, Washington (May 16, 1995)

Chestnut Hill Securities, Inc., San Francisco, California (May 5, 1995)

Cire Securities, Los Angeles, California (May 5, 1995)

Suspensions Lifted

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

Boston International Group Securities Corp., Boston, Massachusetts (May 17, 1995)

Cameron, Phillips Securities Group, Inc, New York, New York (April 27, 1995)

Harold Pastron–Funded Investment, Northbrook, Illinois (April 25, 1995)

Mayfair Planning Associates, Randolph, New Jersey (April 17, 1995)

N.W. Securities, San Francisco, California (May 2, 1995)

Seaport Capital Securities, Inc., New York, New York (May 10, 1995)

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

James M. Bowen, Boulder, Colorado

Howard M. Crosby, Spokane, Washington

Michael J. DiMartino, Huntington Station, New York

Robert A. Edwards, Garland, Texas

Charles R. Goodbread, Dallas, Texas

William D. Harrison, Delaware, Ohio

Francis Hodsoll, Sommerville, Massachusetts

Louis J. Horkan, Jr., Englewood, Colorado

Donald E. James, Atlanta, Georgia

Michael B. Lavigne, Spokane, Washington

Andrew T. Poulterer, Richmond, Virginia

Joel P. Preston, Phoenix, Arizona

Van Dell Sharpley, Lubbock, Texas

Ronald K. Shimkus, Houston, Texas

Robert C. Symes, Sterling Heights, Michigan

Lincoln T. Tedeschi, Willington, Connecticut

Douglas J. Wilponen, Medical Lake, Washington

FOR YOUR INFORMATION

NASAA Implements New Uniform Combined State Law Exam

Effective July 1, 1995, the North American Securities Administrators Association (NASAA) will implement the Uniform Combined State Law Examination (Series 66). This examination has been developed by a Committee of NASAA representatives to satisfy the agent and investment adviser qualification testing requirements. Before the implementation of the Series 66, candidates required to register as agents of broker/dealers and as investment advisers had to pass two qualifications examinations—the Uniform State Law Examination (Series 63) and the Investment Adviser Law Examination (Series 65). This new test will provide brokerage firms with a way to comply more efficiently with these state qualification requirements. After July 1, candidates will have the option of taking the individual examinations (Series 63 and Series 65) or of taking the combined Series 66.

Candidates may use the Series 63 and Series 65 training materials to prepare for the Series 66. The testing time for this new examination is two and one-half hours and consists of 100 multiple-choice questions based on the Uniform Securities Act and the Uniform Investment Adviser Act. There are four major sections on the Uniform Combined State Law Examination (see box below).

The test will be graded on the basis of two group scores—Group 1 includes Section 1 and Group 2 includes the remaining three sections. Candidates will be required to achieve a score of at least 70 percent in each group to pass the Series 66. Candidates who fail either group or both groups will receive a fail for the entire test and will have to retake the entire Series 66.

The Series 66 will be administered by the NASD® at the 55 PROCTOR® Certification Testing Centers, as well as at the 13 paper-and-pencil locations. Candidates will submit a Page 1 of Form U-4 and the $105 examination fee to request the test. The enrollment period will be valid for 90 days. There will be no waiting period between failed attempts.

Direct any questions to Sheila Cahill, Chair, NASAA Exams Advisory Committee, at (402) 471-3445 or Jeff Himstreet, Associate Counsel, NASAA, at (202) 737-0900.

Also effective July 1, 1995, the examination fee for the Series 63 will increase to $65.

Section	Title	Number Of Questions
1	Uniform Securities Act	54
2	Federal Acts	26
3	SEC Release IA-1092	11
4	Unethical Business Practices of Investment Advisers	9
	Total	**100**

Enhanced Score Report For Series 7

Starting in June, a second page will be added to the score report candidates receive at PROCTOR Certification Testing Centers after completing the General Securities Representative Examination (Series 7). The second page will show a detailed list of the topics in each of the section scores that appear on the first page.

The first page will continue to show the candidate's overall number correct, percentage correct, and a grade. National averages will continue to be shown. Using enhanced scoring statistics, subscores for each section of the test will be reported in a from/to percentage range format.

Questions regarding these changes may be directed to David Uthe, Assistant Director, NASD Qualifications and Exams, at (301) 590-6695.

NASD Manual, *Notices to Members*, and Disciplinary Actions Now Available Through Lexis

To view all documents—the *NASD Manual*, *Notices to Members*, and Disciplinary Actions—through Lexis, users with Lexis accounts can go to the FEDSEC library, and type in the filename NASD. Each document can be accessed directly using its individual filename:

• MANUAL for the *NASD Manual;*

• NOTICE for *Notices to Members*; and

• DISCIP for the Disciplinary Actions.

Users do not have to use all capital letters when typing in filenames.

Direct questions about how to access NASD information via Lexis to the Lexis/Nexis Customer Service Hotline at (800) 543-6862.

Continuing Education Program: $75 Regulatory Element Fee

In February 1995, the SEC approved amendments to Schedule C of the NASD By-Laws to add new Part XII prescribing requirements for the continuing education of certain registered persons subsequent to their initial qualification and registration with the NASD.[1] The rule takes effect on July 1, 1995, and establishes a formal two-part Securities Industry Continuing Education Program for securities industry professionals that require uniform periodic training in regulatory matters (the Regulatory Element) and ongoing programs by firms to keep employees informed of the products, services, and investment strategies of their firms (the Firm Element).

To cover the costs incurred by the NASD for the administration of the Regulatory Element, the NASD filed with the SEC for immediate effectiveness an amendment to Section 2 to Schedule A of the NASD By-Laws to assess a $75 session fee against each individual required to complete the Regulatory Element. The fee will apply to recoup the expenses of the Council and to cover the development, start-up, and on-going operational costs of administering the Regulatory Element. The amendment will be effective July 1, 1995.

New PROCTOR Certification Testing Center Opens In Sacramento, CA

The PROCTOR Certification Testing Center in Emeryville, CA, will be closing on June 30, 1995.

Effective July 10, 1995, a new testing center will open in Sacramento, CA:

American College Testing
555 Capitol Mall
Suite 550
Sacramento, CA 95814

The telephone number will be available in July.

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[1] *See*, Securities Exchange Act Release No. 34–35341 (February 8, 1995); 60 FR 8426 (February 14, 1995).