NASD NOTICE TO MEMBERS 95-54

SEC Approves Amendments To Article III, Section 21 Of The NASD Rules Of Fair Practice Relating To Cold-Calling Requirements

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 June 9, 1995, the Securities and Exchange Commission (SEC) approved amendments to Article III, Section 21 of the NASD Rules of Fair Practice to require members to make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such members or their associated persons.[1] The rule change took effect on June 9, 1995.

Background

Under the Telephone Consumer Protection Act (TCPA), which became law in 1991, the Federal Communications Commission (FCC) developed rules, effective December 20, 1992, to protect the rights of telephone consumers while allowing legitimate telemarketing practices. In addition, the Telemarketing and Consumer Fraud and Abuse Prevention Act (Prevention Act) which became law in August 1994, requires the Federal Trade Commission (FTC) to adopt rules on abusive cold calling within 12 months.

Members that engage in telephone solicitation to market their products and services are subject to the requirements of the FCC and FTC rules relating to telemarketing practices and the rights of telephone consumers and shall refer to FCC rules for specific restrictions on telephone solicitations. This includes, but is not limited to, the requirement to make and maintain a do-not-call list of persons who do not want to receive telephone solicitations.

The Prevention Act also requires the SEC to establish rules, or require the SROs to promulgate telemarketing rules consistent with the legislation. In August 1994, SEC Chairman Arthur Levitt wrote to the NASD and NYSE urging the SROs to adopt a rule similar to the FCC's cold-calling rule. Since then, the SEC and SROs have discussed the structure of a rule or rules to apply with the Prevention Act.

Description

As a first step, the NASD has adopted a rule to implement that portion of the FCC rules that requires establishment and maintenance of a do-not-call list. New Subsection (g) to Section 21 of Article III of the NASD Rules of Fair Practice requires each member, engaged in telephone solicitation to market its products and services, to make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member or its associated persons. The NASD believes that the new rule establishes minimum standards to protect members' customers against abusive telemarketing practices.

To assist members to comply with their obligations under FCC cold-call rules adopted pursuant to the TCPA, members that solicit customers or sales using cold calls are reminded that they must:

• not make cold calls before 8 a.m. or after 9 p.m. at the called party's location;

• provide the called party with the name of the caller, the person or organization for whom the call is made, and a telephone number and address for contacting the caller;

• have a written policy concerning cold calling and do-not-call lists; and

• train all personnel concerning cold-

[1] *See*, Securities and Exchange Act Rel. No. 34–35831 (June 9, 1995); 60 FR 31527 (June 15, 1995).

calling rules and the existence and use of do-not-call lists.

For additional information regarding the FCC rules on telephone solicitations, refer to FCC Public Notice DA 92-1716, January 11, 1993.

Questions regarding this Notice may be directed to Daniel M. Sibears, Regulatory Policy, at (202) 728-6911.

Text Of Amendments To Article III, Section 21 Of The Rules Of Fair Practice

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

Books and Records

Sec. 21.

Cold Call Requirements

(g) Each member shall make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member or its associated persons.

NASD NOTICE TO MEMBERS 95-55

SEC Approves Depository Eligibility Requirements For Nasdaq 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

On June 1, 1995, the Securities and Exchange Commission (SEC) approved amendments to Part II, Section 1(c) of Schedule D to the NASD By-Laws and Section 11 of the NASD's Uniform Practice Code.[1] The amendments require that for a domestic security[2] to be eligible for inclusion in Nasdaq it must have a CUSIP number that is included in the file of eligible securities maintained by a securities depository that is registered as a clearing agency under the Securities Exchange Act of 1934. The rule change took effect June 7, 1995.

Background And Description

The Legal and Regulatory Subgroup[3] of the U.S. Working Committee, Group of Thirty Clearance and Settlement Project[4] has been engaged in continuing efforts to improve the system for the clearance and settlement of securities. In response to a recommendation by the U.S. Working Committee, the NASD and the national securities exchanges adopted rules in 1993 requiring members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another member. The NASD's rule is in Section 11 of the Uniform Practice Code (UPC).

Recently, the Subgroup developed a proposed amendment to the listing requirements of The Nasdaq Stock Market℠ and the national securities exchanges to require the securities of a domestic issuer[5] seeking listing to be depository eligible.[6] The rule change requires that for a security to be eligible for inclusion in Nasdaq it must have a CUSIP number that is included in the file of eligible securities maintained by a securities depository that is registered as a clearing agency under the Securities Exchange Act of 1934. This requirement will

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[1] SEC Release No. 34-35798 (6/1/95); 60 F.R. 30909 (6/12/95).

[2] Section 1 of Part II of Schedule D applies only to domestic and Canadian securities, and the new Subsection 1(c)(23) excludes Canadian securities. Thus, the new requirement applies only to domestic securities.

[3] The rule was developed through the efforts of the Legal and Regulatory Subgroup of the U.S. Working Committee, which included representatives of the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the American Stock Exchange, Inc., the Philadelphia Stock Exchange, the Chicago Stock Exchange Incorporated, the Pacific Stock Exchange, the Boston Stock Exchange, the National Securities Clearing Corporation, the Depository Trust Company, the Municipal Securities Rulemaking Board, and the Commission's Division of Market Regulation.

[4] The Group of Thirty is an independent, non-partisan, non-profit organization established in 1978. In 1988, the Group of Thirty initiated a project to improve the state of risk, efficiency, and cost in the world's clearance and settlement systems. See, *Implementing the Group of Thirty Recommendations in the United States I-1* (November 1990).

[5] The proposed amendment to the Nasdaq listing requirements is being added to Section 1(c) of Part II of Schedule D. Section 1 of Part II of Schedule D applies only to domestic and Canadian securities, and the new Subsection 1(c)(23) excludes Canadian securities. Thus, the new requirement applies only to domestic securities.

[6] Although the exchanges and Nasdaq are adopting substantially the same rule language, in the NASD's case the proposed rule must appear in Section 11 of the UPC, as well as in the Nasdaq rules, because the NASD's depository settlement rule in the UPC applies to all NASD members regardless of where the securities are listed. In comparison, the depository settlement rule of the exchanges only applies to transactions in the securities listed on the exchange.

not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

The new rule sets forth additional requirements that must be met before a security will be deemed to be "depository eligible." The new rule specifies different requirements for depository eligibility depending on whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members (flipping tracking system). Before the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading begins in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible when trading on Nasdaq begins.

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

Text Of Amendments

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

Schedule D To The NASD By-Laws

Part II

Qualification Requirements For Nasdaq Stock Market Securities

Sec. 1. Qualification Requirements for Domestic and Canadian Securities

* * *

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in Subsections (a) or (b), and (c) herein.

(a) and (b) No change.

(c) In addition to the requirements contained in Subsections (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1) through (22) No change.

(23)(a) For initial inclusion, a security, except for the security of a Canadian issuer, shall have a CUSIP number identifying the securities included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 ("securities depository" or "securities depositories"), in accordance with the rules and procedures of such securities depository; except that this paragraph shall not apply to a security if the terms of the security do not and cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

(b) A security depository's inclusion of a CUSIP number identifying a security in its file of eligible issues does not render the security "depository eligible" under Section 11 to the Uniform Practice Code until:

(i) in the case of any new issue distributed by an underwriting syndicate on or after the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on The Nasdaq Stock Market; or

(ii) in the case of any new issue distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on The Nasdaq Stock Market, such later date designated by the managing underwriter in a notification submitted to the securities depository; but in no event more than three (3) months after the commencement of trading in such security on The Nasdaq Stock Market;

Uniform Practice Code

Delivery Of Securities

Book-Entry Settlement

Sec. 11.

(a) A member shall use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another member or a member of a national securities exchange or a registered securities association.

(b) A member shall not effect a delivery-versus-payment or receipt-versus payment transaction in a depository eligible security with a customer unless the transaction is settled by book-entry using the facilities of a securities depository.

(c) For purposes of this rule, the term "securities depository" shall mean a securities depository registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934.

(d) The term "depository eligible securities" shall mean securities that (i) are part of an issue of securities that is eligible for deposit at a securities depository and (ii) with respect to a particular transaction, are eligible for book-entry transfer at the depository at the time of settlement

of the transaction. A determination under Subsection 1(c)(23) to Part II of Schedule D of the NASD By-Laws or under the corresponding rule of a national securities exchange that a security depository has included a CUSIP number identifying a security in its file of eligible issues does not render the security "depository eligible" under this Section of the Uniform Practice Code until:

(i) in the case of any new issue distributed by an underwriting syndicate on or after the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on The Nasdaq Stock Market; or

(ii) in the case of any new issue distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on The Nasdaq Stock Market, such later date designated by the managing underwriter in a notification submitted to the securities depository; but in no event more than three (3) months after the commencement of trading in such security on The Nasdaq Stock Market;

NASD NOTICE TO MEMBERS 95-56

NASD Files With The SEC Proposals Related To Non-Cash Incentive Programs, Disclosure Of Cash Compensation, And Direct Payments To Associated Persons

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 has filed with the Securities and Exchange Commission (SEC) a proposal to amend Article III, Sections 26 and 29 of the NASD Rules of Fair Practice to revise existing rules applicable to the sale of investment company securities and establish new rules applicable to the sale of variable contract securities. Following this Notice is the text of amendments to Sections 26 and 29 (Investment Companies Rule and Variable Contracts Rule, respectively), of Article III of the Rules of Fair Practice, as approved by the Board of Governors of the NASD and filed with the SEC. The rule amendments **will not be effective until approved by the SEC**.

Proposed New Rules

On March 24, 1995, the NASD filed with the SEC a proposed rule change in SR-NASD-95-10, to amend Sections 26 and 29 to Article III of the Rules of Fair Practice to revise existing rules applicable to the sale of investment company securities (Investment Company Rule) and establish new rules applicable to the sale of variable contract securities (Variable Contracts Rule). *Notice to Members 94-67* solicited member comment on proposed amendments to Article III, Sections 26 and 29. In response to comments received, the NASD amended the rules originally published for comment.

The proposed rule change would:

• specifically define "affiliated member," "cash compensation," "non-cash compensation," and "offeror";

• prohibit, except under certain circumstances, associated persons from receiving any compensation, cash or non-cash, from anyone other than the member with which the person is associated;

• require that members maintain records of compensation received by the member or its associated persons from offerors;

• with respect to the Investment Company Rule, prohibit receipt by a member of cash compensation from the offeror unless such arrangement is described in the current prospectus;

• retain the prohibition, only with respect to the Investment Company Rule, against a member receiving compensation in the form of securities; and

• prohibit, with certain exceptions, members and persons associated with members from accepting, directly or indirectly, any non-cash compensation in connection with the sale of investment company and variable contract securities.

The exceptions from the non-cash compensation prohibition would permit:

• gifts of up to $100 per associated person annually;

• an occasional meal, ticket to a sporting event or theater, or entertainment for associated persons and their guests;

• payment or reimbursement for training and educational meetings held by a broker/dealer or a mutual fund or insurance company for associated persons of broker/dealers, as long as certain conditions are met;

• in-house sales incentive programs of broker/dealers for their own associated persons;

• sales incentive programs of mutual funds and insurance companies for the associated persons of an affiliated broker/dealer; and

• contributions by any non-member company or other member to a broker/dealer's permissible in-house sales incentive program.

Focus On Point-Of-Sale Non-Cash Incentives

The NASD believes that the proposed rule change distinguishes between non-cash incentives that act at the *point-of-sale* to the investor and non-cash incentives which are earned on a *delayed basis*. Point-of-sale non-cash incentive programs reward an associated person only if they sell a certain number of shares of a specific mutual fund or variable contract. Such programs are more likely to influence (or at the least give the perception of influencing) the salesperson to sell a specific mutual fund or variable contract or the products of only one offeror and have the potential to undermine the supervisory control of the member over the sales practices of its associated persons.

In comparison, a non-cash incentive earned on a delayed basis rewards an associated person for the sale of any mutual fund or variable contract and only looks at total production—not production with respect to any specific mutual fund or mutual fund family, or variable contract security. Such delayed basis non-cash incentives do not influence the salesperson to recommend a specific mutual fund or variable contract or the products of only one offeror, permitting the associated person to focus on the best interests of the customer. The NASD's proposed rule change, therefore, limits non-cash sales incentives to situations where such non-cash incentives are earned on a delayed basis, because such situations do not contain the potential to impact the point-of-sale recommendation by an associated person to a customer or to undermine the supervisory control of the member firm with respect to its associated persons. Thus, the proposal results in the interests of the sales person being allied to that of the investor.

Disclosure Of Cash Compensation

The NASD is proposing to adopt as new Subsection 26(l)(4) in the Investment Company Rule the requirement currently in Subsection 26(l)(1)(C) that prohibits the acceptance of cash compensation by a member from an offeror unless such compensation is disclosed in the prospectus. In the case where special cash compensation arrangements are made available by an offeror to a member, which arrangements are not made available on the same terms to all members to distribute the securities, the disclosure will include the name of the recipient member and the details of the special arrangements.

The NASD is not proposing to amend the Variable Contracts Rule to adopt a similar prospectus disclosure requirement at this time. Unlike the Investment Company Rule, there is currently no provision in the Variable Contracts Rule requiring disclosure of compensation received by NASD members in connection with the distribution of variable contracts. Arrangements by insurance companies for compensating salespersons for variable product sales are generally part of a total compensation package based on the sale of non-securities insurance products as well as variable contract securities. Further, the Investment Company Act of 1940 does not require such disclosure in the prospectus for variable life and annuity products. As a result, there is no practice for disclosure of any item of compensation in connection with variable life and annuity products, such as commissions and expense reallowances. The NASD believes that insurance companies would be required to make significant modifications to their automated systems to separate, in some manner, compensation for sales of securities products from total compensation for all insurance products.

The NASD has determined, therefore, that before requiring disclosure of all cash compensation for the sale of variable contract securities, more information should be gathered regarding the different kinds of compensation that are paid to broker/dealers for the sale of variable contract securities and the form of any required disclosure. The NASD intends to gather such information in the course of conducting its general study of cash compensation practices in connection with investment company and variable contract securities. It is anticipated that the NASD will develop rule proposals related to the treatment of cash compensation that will be filed with the SEC for approval prior to implementation.

Ministerial Exception Permitting Direct Payments

The NASD proposed rule changes also retain the current prohibition in the Investment Company Rule and adopt as a new requirement in the Variable Contracts Rule that a person associated with a member may not accept any compensation from any person other than the member with which the person is associated, except as permitted elsewhere in the proposed rules.

An exception from this general prohibition is proposed that would allow the receipt of commissions by an associated person directly from a non-member company if the arrangement is agreed to by the member, the receipt is treated as compensation received by the member for purposes of NASD rules, the recordkeeping requirement in the proposed rules is satisfied, and, the member relies on any appropriate rule, regulation, interpretive release or applicable "no-

action" position issued by the SEC that applies to the specific fact situation of the arrangements. Also, the proposed rule change clarifies that the member must treat such direct payments to associated persons as compensation to ensure that the member views such payments in the same manner as payments made directly to the member for purposes of NASD rules and posts such payments to the member's books.

Operation Of Proposed Non-Cash Sales Incentive Prohibition

To provide guidance as to the operation of the non-cash sales incentive provisions of the proposed rules, following are examples of different non-cash incentive arrangements. A matrix is also attached that describes the relationship of the non-cash incentive provisions.

Example 1:

A member broker/dealer conducts a meeting for its associated persons. A non-cash sales incentive contest is used to determine the attendance.

Requirements: This arrangement would be permitted if it complies with the requirements of proposed Section 26(1)(5)(d) of the Investment Company Rule and Section 29(h)(3)(d) of the Variable Contracts Rule. The contest must be based on total sales of all investment company/variable contract products offered by the member broker/dealer and on total production for each associated person. Credit (points) toward the contest must be equally weighted for each security in the contest. Other entities (non-members or other members) may make contributions to the member broker/dealer for this in-house incentive program, provided that the outside entity does not participate, directly or indirectly, in the member's organization of its non-cash program. The outside entity would have no input into the conditions, qualifications, or restrictions placed on those attending. However, the outside entity would not be prohibited from providing a speaker for the meeting. Any cash contribution to the non-cash sales incentive program that is received by the dealer from an outside firm must be recorded on the dealer's books and records.

Example 2:

A non-member affiliate of a broker/dealer firm conducts a meeting attended by the associated persons of its affiliated broker/dealer. A non-cash sales incentive contest is used to determine attendance.

Requirements: Similar to the arrangement addressed in Example 1, the requirements of proposed Section 26(l)(5)(d) of the Investment Company Rule and Section 29(h)(3)(d) of the Variable Contracts Rule must be met. That is, the contest must include sales of all investment/variable contract products offered by the member broker/dealer. The contest must be based on total production for each associated person and credit (points) toward the contest must be equally weighted for each security included in the contest. However, other firms (non-members and other unaffiliated members) may *not* make contributions to or participate in the organization of the non-member affiliate's non-cash sales incentive program. This would not prevent such other firms from providing a speaker at the meeting. The receipt of the non-cash sales incentive by the associated persons of the affiliated broker/dealer must be recorded on the books and records of the affiliated member broker/dealer.

Example 3:

A member broker/dealer conducts a meeting solely for its associated persons. A non-cash sales incentive contest is not used to determine attendance.

Requirements: If no contributions are made by an outside firm toward a member broker/dealer's meeting costs, the member broker/dealer has no obligations to satisfy under the rule. Outside entities are permitted to participate in any manner, so long as there are no contributions or payments for any costs associated with the meeting by such outside entity. If an outside entity makes a contribution toward or reimburses costs of the meeting, the meeting must satisfy the conditions for a training or educational meeting, addressed in proposed Section 26(l)(5)(c) of the Investment Company Rule and Section 29(h)(3)(c) of the Variable Contracts Rule. That is, records must be kept of the names of the participating outside firms, the names of the associated persons attending the meeting, and the amount or nature of compensation. Only those associated persons with prior approval of the member broker/dealer may attend and attendance may not be conditioned by the member broker/dealer upon the achievement of a previously specified sales target or any other form of contest. The location of the meeting must be "appropriate" to the purpose of the meeting. Finally, only expenses of the member (or its associated persons) are eligible for payment. Expenses for guests of associated persons may not be reimbursed and payment may not be conditioned by the outside entity on sales or the promise of sales by the dealer or its associated persons.

Example 4:

A non-member affiliate of a member broker/dealer conducts a meeting solely for the associated persons of its affiliated broker/dealer. A non-cash sales incentive contest is not used to determine attendance.

Requirements: As per proposed Section 26(l)(5) of the Investment Company Rule and Section 29(h)(3) of the Variable Contracts Rule, an outside entity may not make a contribution toward or reimburse costs of the meeting. The meeting must satisfy the conditions for a training or educational meeting as noted in proposed Section 26(l)(5)(c) of the Investment Company Rule and Section 29 (h)(3)(c) of the Variable Contracts Rule.

Example 5:

A member broker/dealer conducts a meeting for the associated persons of another broker/dealer.

Requirements: A non-cash sales incentive contest is prohibited. The conditions for a training or educational meeting must be satisfied as per proposed Section (l)(5)(c) of the Investment Company Rule and Section (h)(3)(c) of the Variable Contracts Rule.

This Notice provides the text of the proposed rules as filed with the SEC. It is anticipated that changes to the rule language may be made in response to comments of SEC staff and the public. This Notice does not, therefore, represent a definitive discussion of the NASD's proposed rule change. A copy of SR-NASD-95-10 is available from the SEC's Public Reference Room. Members should also note that the SEC will be publishing this proposal for comment.

Questions concerning this Notice should be directed to Clark Hooper, Vice President, Advertising/ Investment Companies Regulation Department, at (202) 728-8325; Suzanne E. Rothwell, Associate General Counsel, Office of General Counsel, at (202) 728-8247; and Robert J. Smith, Attorney, Office of General Counsel, at (202) 728-8167.

Text Of Proposed Amendments To The Investment Company Rules And Variable Contract Rules

Article III

Rules of Fair Practice

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

Investment Companies

Sec. 26.

Application

(a) No change.

Definitions

(b)(1) through (6) No change.

[(7) "Associated person of an underwriter," as used in subsection (1) of this section, shall include an issuer for which an underwriter is the sponsor or a principal underwriter, any investment adviser to such issuer, or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such underwriter, issuer, or investment adviser.] The terms "affiliated member", "cash compensation", "non–cash compensation", and "offeror" as used in Subsection (l) of this section shall have the following meanings:

"Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non–member company.

"Cash compensation" shall mean any discount, concession, fee, commission, asset–based sales charge, loan, or override received in connection with the sale and distribution of investment company securities.

"Non–cash compensation" shall mean any form of compensation received in connection with the sale and distribution of investment company securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, and payment of travel expenses, meals, and lodging.

"Offeror" shall mean an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

(8) through (10) No change.

(c) through (k) No change.

[Dealer concessions]

[(l)(1) No underwriter or associated person of an underwriter shall offer, pay or arrange for the offer or payment to any other member in connection with retail sales or distribution of investment company securities, any discount, concession, fee or commission (hereinafter referred to as "concession") which:]

[(A) is in the form of securities of any kind, including stock, warrants, or options;]

[(B) is in a form other than cash (e.g. merchandise or trips), unless the member earning the concession may elect to receive cash at the equivalent of no less than the underwriter's cost of providing the non-cash concession: or]

[(C) is not disclosed in the prospectus of the investment company. If the concessions are not uniformly paid to all dealers purchasing the same dollar amounts of securities from the underwriter, the disclosure shall include a description of the circumstances of any general variations from the standard schedule of concessions. If spe-

cial compensation arrangements have been made with individual dealers, which arrangements are not generally available to all dealers, the details of the arrangements, and the identities of the dealers, shall also be disclosed.]

[(2) No underwriter or associated person of an underwriter shall offer or pay any concession to an associated person of another member, but shall make such payment only to the member.]

[(3)(A) In connection with retail sales or distribution of investment company shares, no underwriter or associated person of an underwriter shall offer or pay to any member or associated person, anything of material value, and no member or associated person shall solicit or accept anything of material value, in addition to the concessions disclosed in the prospectus.]

[(B) For purposes of this paragraph (1)(3), items of material value shall include but not be limited to:]

[(i) gifts amounting in value to more than $50 per person per year.]

[(ii) gifts or payments of any kind which are conditioned on the sale of investment company securities.]

[(iii) loans made or guaranteed to a non-controlled member or person associated with a member.]

[(iv) wholesale overrides (commissions) granted to a member on its own retail sales unless the arrangement, as well as the identity of the member, is set forth in the prospectus of the investment company.]

[(v) payment or reimbursement of travel expenses, including overnight lodging, in excess of $50 per person per year unless such payment or reimbursement is in connection with a business meeting, conference or seminar held by an underwriter for informational purposes relative to the fund or funds of its sponsorship and is not conditioned on sales of shares of an investment company. A meeting, conference or seminar shall not be deemed to be of a business nature unless: the person to whom payment or reimbursement is made is personally present at, or is en route to or from, such meeting in each of the days for which payment or reimbursement is made; the person on whose behalf payment or reimbursement is made is engaged in the securities business; and the location and facilities provided are appropriate to the purpose, which would ordinarily mean the sponsor's office.]

[(C) For purposes of this paragraph (l)(3), items of material value shall not include:]

[(i) an occasional dinner, a ticket to a sporting event or the theater, or comparable entertainment of one or more registered representatives which is not conditioned on sales of shares of an investment company and is neither so frequent nor so extensive as to raise any question of propriety.]

[(ii) a breakfast, luncheon, dinner, reception or cocktail party given for a group of registered representatives in conjunction with a bona fide business or sales meeting, whether at the headquarters of a fund or its underwriter or in some other city.]

[(iii) an unconditional gift of a typical item of reminder advertising such as a ballpoint pen with the name of the advertiser inscribed, a calendar pad, or other gifts amounting in value to not more than $50 per person per year.]

[(4) The provisions of this subsection (1) shall not apply to:]

[(A) Contracts between principal underwriters of the same security.]

[(B) Contracts between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.]

[(C) Compensation arrangements of an underwriter or sponsor with its own sales personnel.]

Member Compensation

(l) In connection with the sale and distribution of investment company securities:

(1) Except as described below, no associated person of a member shall accept any compensation, cash or non–cash, from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements where a company pays compensation directly to associated persons of the member, provided that:

(a) the arrangement is agreed to by the member;

(b) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no–action" letter issued by the Securities and Exchange Commission or its staff that applies to the specific fact situation of the arrangement;

(c) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of NASD rules; and

(d) the recordkeeping requirement in Subsection (l)(3) is satisfied.

(2) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(3) Except for items described in Subsections (l)(5)(a) and (b), a member shall maintain records of all compensation, cash and non–cash, received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, and the amount of cash, and the value or nature of non–cash compensation received.

(4) No member shall accept any cash compensation from an offeror unless such compensation is described in a current prospectus of the investment company. When special cash compensation arrangements are made available by an offeror to a member, which arrangements are not made available on the same terms to all members who distribute the investment company securities of the offeror, a member shall not enter into such arrangements unless the name of the member and the details of the arrangements are disclosed in the prospectus. Prospectus disclosure requirements shall not apply to cash compensation arrangements between:

(a) principal underwriters of the same security; and

(b) the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.

(5) No member or person associated with a member shall directly or indirectly accept any non–cash compensation offered or provided to such member or its associated persons, except as provided in this provision. Notwithstanding the provisions of Subsection (l)(1), the following items of non–cash compensation may be accepted:

(a) Gifts to associated persons of members that do not exceed an annual amount per person fixed periodically by the Board of Governors[1] and are not preconditioned on achievement of a previously specified sales target.

(b) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment for persons associated with a member and, if appropriate, their guests, which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a previously specified sales target.

(c) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the recordkeeping requirement in Subsection (l)(3) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not based by the member on the achievement of a previously specified sales target or any other non–cash compensation arrangement permitted by paragraph (d);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not conditioned by the offeror on the achievement of a previously specified sales target or any other non–cash compensation arrangement permitted by paragraph (d).

(d) Non–cash compensation arrangements between a member and its associated persons or a non–member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non–member's non–cash compensation arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member;

(ii) the non–cash compensation arrangement requires that the credit received for each investment company security is equally weighted;

(iii) no unaffiliated non–member company or other unaffiliated member directly or indirectly participates in the member's or non–member's organization of a permissible non–cash compensation arrangement; and

(iv) the recordkeeping requirement in Subsection (l)(3) is satisfied.

(e) Contributions by a non–member company or other member to a non–cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (d).

Variable Contracts of an Insurance Company

Sec. 29.

Application

(a) No change.

Definitions

(b)(1) through (2) No change.

[1] The current annual amount fixed by the Board of Governors is $100.

(3) The terms "affiliated member", "cash compensation", "non–cash compensation" and "offeror as used in Subsection (h) of this Section shall have the following meanings:

"Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non–member company.

"Cash compensation" shall mean any discount, concession, fee, commission, loan or override received in connection with the sale and distribution of variable contracts.

"Non–cash compensation" shall mean any form of compensation received in connection with the sale and distribution of variable contracts that is not cash compensation, including but not limited to merchandise, gifts and prizes, and payment of travel expenses, meals and lodging.

"Offeror" shall mean a separate account of an insurance company, an adviser to a separate account of an insurance company, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

(c) through (g) No change.

Member Compensation

(h) In connection with the sale and distribution of variable contracts:

(1) Except as described below, no associated person of a member shall accept any compensation, cash or non–cash, from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements where a company pays compensation directly to associated persons of the member, provided that:

(a) the arrangement is agreed to by the member;

(b) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no–action" letter issued by the Securities and Exchange Commission that applies to the specific fact situation of the arrangement;

(c) the receipt by associated persons of such commission checks is treated as compensation received by the member for purposes of NASD rules; and

(d) the recordkeeping requirement in Subsection (l)(2) is satisfied.

(2) Except for items as described in Subsections (h)(3)(a) and (b), a member shall maintain records of all compensation, cash and non–cash, received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, and the amount of cash, and the value or nature of non–cash compensation received.

(3) No member or person associated with a member shall directly or indirectly accept any non–cash compensation offered or provided to such member or its associated persons, except as provided in this provision. Notwithstanding the provisions of Subsection (h)(1), the following items of non–cash compensation may be accepted:

(a) Gifts to associated persons of members that do not exceed an annual amount per person fixed periodically by the Board of Governors[2] and are not preconditioned on achievement of a previously specified sales target.

(b) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment for persons associated with a member and, if appropriate, their guests, which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a previously specified sales target.

(c) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the recordkeeping requirement in Subsection (h)(2) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not based by the member on the achievement of a previously specified sales target or any other non–cash compensation arrangement permitted by paragraph (d);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a

facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not conditioned by the offeror on the achievement of a previously specified sales target or any other non–cash compensation arrangement permitted by paragraph (d).

(d) Non–cash compensation arrangements between a member and its

[2] The current annual amount fixed by the Board of Governors is $100.

associated persons or a non–member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non–member's non–cash compensation arrangement, if it includes variable contract securities, is based on the total production of associated persons with respect to all variable contract securities distributed by the member;

(ii) the non–cash compensation arrangement requires that the credit received for each variable contract security is equally weighted;

(iii) no unaffiliated non–member company or other unaffiliated member directly or indirectly participates in the member's or non–member's organization of a permissible non–cash compensation arrangement; and

(iv) the recordkeeping requirement in Subsection (h)(2) is satisfied.

(e) Contributions by a non–member company or other member to a non–cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (d).

REQUIREMENTS FOR NON-CASH SALES INCENTIVE PROGRAMS

						TRAINING/EDUCATIONAL MEETING REQUIREMENTS		
EXAMPLE	CONTEST o Include sales of All IC/VC Products o Based on Total Production o Credits are Equally Weighted Consistently Across Vendors	OUTSIDE CONTRIBUTIONS ALLOWED Must be booked and recorded	OUTSIDE PARTICIPATION IN STRUCTURE OF MEETING REQUIREMENTS	OUTSIDE SPEAKER ALLOWED	RECORD-KEEPING	ATTENDANCE CONTROLLED BY MEMBER AND NOT CONDITIONED ON SALES TARGET	LOCATION APPROPRIATE	PAYMENTS BY OUTSIDE FIRM ONLY FOR ASSOCIATED PERSONS AND NOT CONDITIONED ON SALES TARGET
#1 - In-house meeting held by dealer with non-cash sales incentive program	YES	YES	PROHIBITED	YES	YES	N/A	N/A	N/A
#2 - In-house meeting held by non-member affiliate with non-cash sales incentive program	YES	PROHIBITED	PROHIBITED	YES	YES	N/A	N/A	N/A
#3 - In-house meeting held by dealer without non-cash sales incentive program (a) if outside contributions accepted (b) if outside contributions NOT accepted	N/A N/A	YES N/A	NO N/A	YES YES	YES NO	YES N/A	YES N/A	YES N/A
#4 - In-house meeting held by non-member affiliate without non-cash sales incentive program	N/A	PROHIBITED	PROHIBITED	YES	YES	YES	YES	YES
#5 - Training or educational meeting held by outside firm for associated persons of another member	PROHIBITED	YES	YES	YES	YES	YES	YES	YES

NASD NOTICE TO MEMBERS 95-57

Nasdaq National Market Additions, Changes, And Deletions As Of June 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 June 27, 1995, the following 57 issues joined the Nasdaq National Market®, bringing the total number of issues to 3,804:

Symbol	Company	Entry Date	SOES Execution Level
IBNJ	Independence Bancorp, Inc.	5/26/95	200
NINE	Number Nine Visual Technology Corp.	5/26/95	500
CLCX	Computer Learning Centers, Inc.	5/31/95	200
JRBK	James River Bankshares, Inc.	6/1/95	200
BHIX	Belmont Homes, Inc.	6/1/95	500
FEIC	FEI Company	6/1/95	500
MURXF	International Murex Technologies Corp.	6/1/95	1000
RESM	ResMed, Inc.	6/2/95	500
USOR	US Order, Inc.	6/2/95	500
ALRZV	Allergan Ligand Retinoid Therapeutics, Inc.	6/5/95	200
GFIN	Game Financial Corp.	6/6/95	200
SDNBR	SDNB Financial Corp. (Rts Exp. 7/7/95)	6/6/95	200
ARCS	ArcSys, Inc.	6/7/95	1000
LFIIF	Laser Friendly Inc.	6/7/95	200
ENVYV	New Envoy, Inc. (WI)	6/7/95	1000
SBGI	Sinclair Broadcast Group, Inc.	6/7/95	1000
ORVX	OraVax, Inc.	6/8/95	500
SITL	SITEL Corporation	6/8/95	500
AMRD	American Radio Systems Corp. (Cl A)	6/9/95	1000
NYNCY	NYNEX CableComms Group, Plc (ADR)	6/9/95	500
TLTN	Teltrend Inc.	6/9/95	200
YANB	Yardville National Bancorp	6/9/95	200
GFCO	Glenway Financial Corporation	6/12/95	200
LASE	LaserSight Incorporated	6/12/95	500
MAENF	Miramar Mining Corp.	6/12/95	1000
AORI	American Oncology Resources, Inc.	6/13/95	1000
ECTL	Elcotel, Inc.	6/13/95	200
LECO	Lincoln Electric Co. (The)	6/13/95	200
LECOA	Lincoln Electric Co. (The) (CL A)	6/13/95	200
MXSBP	Maxus Energy Corp. ($4.00 Cum. Conv. Pfd)	6/13/95	200
UCFCP	United Companies Financial Corp. (Pfd)	6/13/95	1000
TXCC	TranSwitch Corp.	6/14/95	500
WPEC	Western Power & Equipment Corp.	6/14/95	200
DLGX	Datalogix International Inc.	6/15/95	1000
MYSW	MySoftware Company	6/15/95	200
SERO	Serologicals Corp.	6/15/95	500
CHML	Chicago Miniature Lamp, Inc.	6/16/95	200
EGPT	Eagle Point Software Corporation	6/16/95	200
CRMLF	Champion Road Machinery, Ltd.	6/19/95	200
USDCR	USDATA Corporation (Rts)	6/19/95	200
USDCV	USDATA Corporation (WI)	6/19/95	200
BIOC	Biocircuits Corp.	6/19/95	1000
BWAY	Brockway Standard Holdings Corp.	6/21/95	200

Symbol	Company	Entry Date	SOES Execution Level
CPCL	C.P. Clare Corp.	6/21/95	1000
DISH	EchoStar Communications Corp.	6/21/95	1000
HNCS	HNC Software, Inc.	6/21/95	500
SPHI	Studio Plus Hotels, Inc.	6/21/95	1000
VIDA	VidaMed, Inc.	6/21/95	200
SPYN	Spine-Tech, Inc.	6/23/95	1000
HWYM	HighwayMaster Communications, Inc.	6/23/95	1000
DANBV	Dave & Buster's, Inc.(WI)	6/26/95	200
CBMD	Columbia Bancorp	6/27/95	200
FWSH	First Washington Realty Trust, Inc.	6/27/95	200
FWSHP	First Washington Realty Trust, Inc.(Ser A Pfd)	6/27/95	200
MRET	Merit Holding Corp.	6/27/95	200
RMRPP	Resource Mortgage Capital, Inc.(Ser A Conv Pfd)	6/27/95	1000
SPYG	Spyglass, Inc.	6/27/95	200

Nasdaq National Market Symbol And/Or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since May 26, 1995:

New/Old Symbol	New/Old Security	Date of Change
CDPT/CDPT	Ovid Technologies, Inc./CDP Technologies, Inc.	5/26/95
WCOM/LDDS	WorldCom, Inc./LDDS Communications, Inc.	5/26/95
NBTY/NBTY	NBTY, Inc./Nature's Bounty, Inc.	5/26/95
AGMIF/AGMIF	Agrium, Inc./Cominco Fertilizers, Ltd.	5/30/95
FFRV/FFRV	Fidelity Financial Bankshares Corporation/ Fidelity Federal Savings Bank	5/30/95
PTREF/PTREF	PartnerRe Ltd./PartnerRe Holdings Ltd.	5/30/95
RUSAF/FILAF	Russell Metals, Inc. (Conv. Cl A)/Federal Industries, Ltd. (Conv. Cl A)	5/31/95
FUND/FUND	All Seasons Global Fund, Inc./America's All Season Fund, Inc.	6/1/95
ORCL/ORCL	Oracle Corporation/Oracle Systems Corp.	6/1/95
OVID/CDPT	Ovid Technologies, Inc./Ovid Technologies, Inc.	6/1/95
TRCR/TRCR	Transcend Services, Inc./TriCare, Inc.	6/1/95
UNEWY/UNEWY	United News & Media, Plc/United Newspaper, Plc	6/1/95
GABC/GABC	German American Bancorp/GAB Bancorp	6/6/95
CYNRW/CYNRW	Canyon Resources Corporation (Wts 9/30/95)/ Canyon Resources Corporation (Wts 6/30/95)	6/7/95
INTFW/INTFW	Interface Systems, Inc. (Wts 12/29/95)/ Interface Systems, Inc. (Wts 6/30/95)	6/14/95
KRSC/KRSC	Kaiser Ventures, Inc./Kaiser Resources, Inc.	6/21/95
WFSB/WFSB	1st Washington Bancorp, Inc./Washington Federal Savings Bank	6/22/95
BHWKW/BHWKW	Black Hawk Gam & Dev Co Inc (Wts A 12/31/96)/ Black Hawk Gam & Dev Co Inc (Wts A 6/30/95)	6/23/95
BHWKZ/BHWKZ	Black Hawk Gam & Dev Co Inc (Wts B 12/31/96)/ Black Hawk Gam & Dev Co Inc (Wts B 6/30/96)	6/23/95
IPICZ/IPICZ	Interneuron Pharmaceuticals (Wts B 3/15/96)/ Interneuron Pharmaceuticals (Wts B 6/30/95)	6/26/95
SEQU/LTIZ	SEQUUS Pharmaceuticals, Inc./Liposome Technology, Inc.	6/26/95

Nasdaq National Market Deletions

Symbol	Security	Date
NDCOP	Noble Drilling Corp. (Conv. Exch. Pfd)	5/26/95
VIRO	ViroGroup, Inc.	5/26/95
LDAKZ	LIDAK Pharmaceuticals (Wts C 5/26/95)	5/30/95
GLDN	Golden Systems, Inc.	5/31/95
ITRN	Intertrans Corporation	5/31/95
ACTNW	Action Performance Companies, Inc. (Wts 4/27/98)	6/1/95
CGFC	Coral Gables Fedcorp, Inc.	6/1/95
IRDVE	Int'l Research & Development Corp.	6/1/95
PTSF	Petstuff, Inc.	6/2/95
FSOU	First Southern Bancorp, Inc.	6/5/95
NUVI	NuVision, Inc.	6/5/95
ALRIR	Allergan Ligand Retinoid Therapeutics, Inc. (Rts)	6/6/95
BIORF	Biomira, Inc. (Rts)	6/8/95
STUSQ	Stuarts Department Stores, Inc.	6/8/95
FLAR	Flair Corp.	6/9/95
XPLR	Xplor Corporation	6/9/95
BPIEL	BPI Packaging Technologies, Inc. (Wts A 6/16/95)	6/14/95
BPTI	Best Power Technology, Inc.	6/15/95
EASL	Easel Corporation	6/15/95
UNRIW	UNR Industries, Inc. (Wts 6/14/95)	6/15/95
ADDDF	Alias Research, Inc.	6/16/95
WAVE	Wavefront Technologies, Inc.	6/16/95
TNEL	Thomas Nelson, Inc.	6/19/95
HCCH	HCC Insurance Holdings, Inc.	6/20/95
OSHM	Oshman's Sporting Goods, Inc.	6/21/95
STAF	CareerStaff Unlimited, Inc.	6/22/95
CTEKE	ChinaTek, Inc.	6/22/95
ELPAQ	El Paso Electric Co.	6/22/95
TBAQE	Gotham Apparel Corp.	6/22/95
INFTA	Infinity Broadcasting Corp. (Cl A)	6/22/95
INNN	Interactive Network, Inc.	6/22/95
VCNBR	Ventura County National Bancorp (Rts 6/21/95)	6/22/95
ALGH	Allegheny & Western Energy Corp.	6/23/95
PHTX	Photonics Corp.	6/23/95

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 95-58

Fixed Income Pricing System Additions, Changes, And Deletions As Of June 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 June 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
DOHJ.GA	Doehler-Jarvis	11.875	6/1/02
TEXN.GC	Tex-N.M. Power	10.000	7/1/17
DAL.GW	Delta Air	8.540	1/2/07
VIA.GB	Viacom Inc.	7.750	6/1/05
SCTT.GA	Scotts Company	9.875	8/1/04
AFIN.GD	AmFinl	9.750	4/20/04
RT.GC	Resorts Int'l Hotel Fin	11.000	9/15/03
SGH.GA	Surgical Health	11.500	7/15/04
MCU.GB	Magma Coper	8.700	5/15/05
GHU.GB	Genesis Health Ventures	9.750	6/15/05
MA.GA	Advance Medical	15.000	7/15/99
CMS.HH	CMS Energy	7.500	4/15/98
CMS.HI	CMS Energy	7.250	4/15/98
CMS.HJ	CMS Energy	7.625	4/15/00
CMS.HK	CMS Energy	7.250	4/15/98
CMS.HL	CMS Energy	7.125	4/15/98
CMS.HM	CMS Energy	7.500	4/15/00
CMS.HN	CMS Energy	7.375	4/15/98
CMS.HO	CMS Energy	7.250	4/15/98
CMS.HP	CMS Energy	7.625	4/15/00
CMS.HQ	CMS Energy	7.125	5/15/98
CMS.HR	CMS Energy	7.000	5/15/98
CMS.HS	CMS Energy	7.375	5/15/00
CMS.HT	CMS Energy	7.125	5/15/98
CMS.HU	CMS Energy	7.000	5/15/98
CMS.HV	CMS Energy	7.375	5/15/00
CMS.HW	CMS Energy	7.000	5/15/98
CMS.HX	CMS Energy	7.000	5/15/98
CMS.HY	CMS Energy	7.250	5/15/00
CMS.HZ	CMS Energy	6.875	5/15/98
CMS.IA	CMS Energy	6.650	5/15/98
CMS.IB	CMS Energy	7.000	5/15/00
CMS.IC	CMS Energy	7.000	5/15/98
CMS.IG	CMS Energy	7.000	6/15/98
CMS.IF	CMS Energy	7.000	6/15/98
CMS.ID	CMS Energy	7.000	6/15/98
CMS.IE	CMS Energy	6.875	6/15/98
WAB.GA	Westinghouse Air Brake	9.375	6/15/05
TRTX.GB	TransTexas Gas	11.500	6/15/02
IK.GB	Interlake	12.000	11/15/01
CAFC.GA	Carolina First	9.000	9/1/05
BKFT.GA	Berkeley Fed'l B&T	12.000	6/15/05

As of June 27, 1995, the following bond was deleted from FIPS:

Symbol	Name
SHRG.GA	Sherritt Gordon Ltd

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 July

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, July 17, 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.

Firms Suspended, Individuals Sanctioned

Atlanta-One, Inc. (Irvine, California), Kevin Michael McCarthy (Registered Principal, Newport Beach, California), and **Thomas William Blodgett (Registered Principal, Irvine, California)**. The firm was fined $100,000 and suspended from membership in the NASD for 30 days. McCarthy was fined $75,000 and suspended from association with any NASD member in any capacity for 30 days. Blodgett was fined $50,000 and suspended from association with any NASD member in any capacity for 30 days. In addition, McCarthy and Blodgett must requalify by examination before again acting in any capacity requiring qualification. Furthermore, the fines will be reduced by any amounts of restitution that the respondents have paid to customers. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a March 1992 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through McCarthy and Blodgett, charged unfair commissions in 353 foreign-currency options transactions. Specifically, the respondents charged commissions ranging from $50 to $89 per options contract, which represented between 16 and 89 percent of the customers' investments.

This action has been appealed to a U.S. Court of Appeals, and the sanctions are not in effect pending consideration of the appeal.

Firms Fined, Individuals Sanctioned

Alcan Securities Corporation (Fort Wayne, Indiana) and **Kenneth Robert Edelbrock (Registered Principal, Fort Wayne, Indiana)** submitted an Offer of Settlement pursuant to which they were fined $10,000, jointly and severally, and Edelbrock was barred from association with any NASD member as a financial and operations 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 Edelbrock, effected transactions in securities while failing to maintain its minimum required net capital and failed to maintain accurate books and records. In addition, the NASD found that the firm, acting through Edelbrock, submitted inaccurate FOCUS Parts I and II reports. The findings also stated that the firm, acting through Edelbrock, failed to abide by the terms of its restrictive agreement with the NASD in that the firm received customer funds on approximately 12 occasions.

Escalator Securities, Inc. (Tarpon Springs, Florida) and **Howard A. Scala (Registered Principal, Tarpon Springs, Florida)** were fined $50,000, jointly and severally. The firm was also ordered to pay $119,335.90 in restitution and barred from executing principal transactions in equity securities with retail customers except for unsolicited liquidating transactions. Scala was barred from association with any NASD

member in any principal, proprietary, or supervisory capacity. The NBCC imposed the sanctions following appeal of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm and Scala charged excessive prices to its public customers in the sale of equity securities and debentures. The prices charged included markups ranging from 5 to 350 percent above the prevailing market price. In addition, the firm, acting through Scala, charged fraudulently excessive markups in excess of 10 percent above the prevailing market price.

The firm and Scala have appealed this action to the SEC. The bar against Scala acting in a principal or supervisory capacity, and the bar imposed on the firm, are in effect pending consideration of the appeal. The other sanctions are not in effect pending consideration of the appeal.

Flemming, Anderson, Cohen and Lee, Inc. (Littleton, Colorado), Fred S. Altberger (Registered Principal, Englewood, Colorado), and **G. David Marin (Registered Principal, Littleton, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $5,000, jointly and severally, and the firm was required to submit a fully executed Form BDW to withdraw from membership in the NASD. In addition, the firm and Altberger were fined $20,000, jointly and severally, and the firm and Marin were fined $10,000, jointly and severally. Altberger was suspended from association with any NASD member as a financial and operations principal for 30 days and required to requalify by examination as a financial and operations principal prior to acting in such a capacity. Marin was suspended from association with any NASD member as a general securities principal for 15 business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Altberger, conducted a securities business while failing to maintain its minimum required net capital and filed inaccurate FOCUS reports with the NASD. The findings also stated that the firm, acting through Marin, failed to comply with the firm's restriction agreement in that it exceeded the inventory parameters set forth in this agreement on at least eight occasions. The NASD also determined that the firm, acting through Marin and Altberger, allowed an unregistered person to function as a representative in contravention of Schedule C of the NASD By-Laws.

Sound Advice Investments (Danville, California), Gray Emerson Cardiff (Registered Principal, Moraga, California), and **Leland Stanford Bright, III (Registered Principal, Sonoma, California)** submitted an Offer of Settlement pursuant to which they were fined $15,000, jointly and severally, and Cardiff was suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Cardiff and Bright, issued a sales literature communication to the public that was not based upon principles of good faith and fair dealing and did not provide a sound basis for evaluating the facts in regard to the security described in the communication. The findings also stated that the communication contained exaggerated, unwarranted, and misleading statements.

Firms And Individuals Fined

Dallas Securities Investment Corporation (Dallas, Texas), Steven Craig Christenson (Registered Principal, Plano, Texas) and **Charles Kenneth Maretzky, Jr. (Registered Principal, Dallas, Texas)** submitted an Offer of Settlement pursuant to which they were fined $5,000, jointly and severally, and ordered to disgorge $14,000 in commissions, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Christenson and Maretzky, failed to purchase or sell securities at prices that were fair, taking into consideration all relevant circumstances including market conditions at the time of such transactions.

The Equitable Life Assurance Society of the United States (New York, New York), Lawrence Edward Zupancic (Registered Principal, Barrington, Illinois), and **James Alan Schlesinger (Registered Principal, Northbrook, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally. As part of a 1991 Membership Continuance proceeding, the firm, Zupancic, and Schlesinger agreed, on behalf of a statutorily disqualified individual, to establish and maintain a supervisory plan with respect to that individual which required on-site supervision by Zupancic and/or Schlesinger at the firm's Chicago branch office. Further, as part of that 1991 proceeding, the firm, Zupancic, and Schlesinger also agreed that any change in the statutorily disqualified individual's location would be subject to prior notice and approval by the NASD.

Without admitting or denying the allegations, respondents Equitable Life, Zupancic, and Schlesinger consented to the described sanction and to the entry of NASD findings that the respondents did not act in accor-

dance with the terms of the above referenced Membership Continuance agreement in that the statutorily disqualified individual changed branch office locations and on-site supervisors without the required prior notice to and approval by the NASD.

Grady and Hatch & Company, Inc. (New York, New York), Raymond A. Hatch (Registered Principal, New York, New York) and **Robert E. Grady (Registered Principal, Dix Hills, New York**) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally. Hatch was also required to requalify as a financial and operations 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 Hatch, failed to maintain its required minimum net capital while conducting a securities business. In addition, the findings stated that the firm, acting through Grady, failed to establish an escrow account in connection with a best efforts underwriting of a stock.

Weatherly Securities Corp. (New York, New York) and **Michael Taglich (Registered Principal, Northport, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $16,040, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that, in connection with the sale of bonds, the firm and Taglich charged its retail customers unfair markups ranging from 5.86 to 10.93 percent above the prevailing market price.

Firms Fined

Penn Capital Financial Services, Inc. (Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which the firm was fined $15,000, jointly and severally with other respondents. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected securities transactions while failing to maintain its minimum required net capital and failed to give notice on a timely basis of its net capital deficiency. The findings also stated that the firm failed to notify the NASD in writing of an action taken against three associated persons by the SEC, failed to update supervisory procedures, and effected municipal securities transactions without having a properly registered municipal securities principal. Furthermore, the NASD determined that the firm allowed an individual actively to manage the firm's securities business without being registered as a general securities principal and failed either to ensure he was properly registered or preclude him from acting in a manner that required registration as a principal.

Individuals Barred Or Suspended

Jose Alamil Acuna (Registered Representative, Fairfield, California) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Acuna consented to the described sanction and to the entry of findings that he forged customer signatures to checks totaling $6,488.50 and deposited the checks to his personal bank account.

John L. Augustine, Jr. (Registered Principal, Mountaintop, Pennsylvania) submitted an Offer of Settlement 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, Augustine consented to the described sanctions and to the entry of findings that he opened an account at his member firm under a fictitious name and thereafter effected transactions in the account in connection with which he created or caused to be created various inaccurate records. According to the findings, Augustine also failed to disclose that the name on the account was fictitious and that he controlled, or had a beneficial interest in, the account.

Furthermore, the NASD found that Augustine participated in private securities transactions and effected transactions or caused them to be effected at prices that were not reasonably related to the current market prices of the securities. In addition, the NASD determined that Augustine violated Regulation T of the Federal Reserve Board. Augustine credited or caused to be credited to a customer's account his own check to pay for a securities purchase in the account and then credited the customer's check, when it arrived, to his personal securities account. The NASD also found that Augustine forged a customer's endorsement on checks payable to the customer and caused them to be deposited to a bank account maintained by a member firm and failed to fully respond to an NASD request for information.

In addition, the findings stated that Augustine, acting for a member firm, prepared inaccurate books and records in that, in connection with numerous checks and other instruments received at the firm, Augustine failed to credit the funds properly to the account of the customer for whose benefit they were received and failed to reflect properly on the firm's books and records from whom or for whose benefit the funds were received.

Daniel Joseph Avant (Registered Representative, Spring Texas) was fined $2,500 and suspended from association with any NASD member in any capacity for seven days. The NBCC imposed the sanctions following appeal of a Dallas DBCC decision. The sanctions were based on findings that Avant failed to pay a $28,000 NASD arbitration award timely.

Avant has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Michael Bonacci (Registered Representative, Brooklyn, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bonacci failed to respond to NASD requests for information regarding his association with a member firm.

Gerald W. Bradford (Limited Registered Representative, Rockton, Illinois) 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, Bradford consented to the described sanctions and to the entry of findings that he participated in 27 private securities transactions by assisting members of the public in the purchase of stock without first notifying his member firm in writing and before receiving written approval from his member firm to engage in such activities.

Richard Cedrone (Registered Representative, Boca Raton, Florida) was fined $27,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cedrone guaranteed public customers against loss in connection with their purchases of securities. In addition, Cedrone failed to respond to NASD requests for information.

James Arthur DeJon (Registered Representative, Bend, Oregon) was fined $5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DeJon completed and submitted to a member firm a Uniform Application for Securities Industry Registration or Transfer (Form U-4) that failed to disclose his arrest for first degree theft.

Dan Patrick Dougherty (Registered Representative, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000, 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, Dougherty consented to the described sanctions and to the entry of findings that he recommended and sold common stock to public customers without performing due diligence and investigating and understanding the securities that he was recommending to his customers.

Kent Robert Feldsted (Registered Representative, Arlington, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $17,778 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Feldsted consented to the described sanctions and to the entry of findings that he exercised discretion granted pursuant to oral authority and executed at least 62 transactions in the account of public customers without obtaining prior written discretionary authorization from such customers and without written acceptance of such discretionary account by his member firm.

Herman Ralph Garcia, Jr. (Registered Principal, Staten Island, New York), Paul Thomas Russo (Registered Principal, New York, New York) and **Barbara Hosman (Registered Principal, Deer Park, New York)** were each fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Garcia, Russo, and Hosman each failed to provide testimony in response to NASD requests.

Curt Gearen (Registered Representative, Lomita, California) 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 60 days. Without admitting or denying the allegations, Gearen consented to the described sanctions and to the entry of findings that he participated in private securities transactions with a public customer while failing to give his member firm written notice describing in detail the proposed transactions and his proposed role in them. The findings also stated that Gearen failed to obtain prior written authorization from his member firm to share in profits in the same customer's account.

Robert J. Goetz (Registered Representative, Homewood, Illinois) was fined $100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Goetz signed an insurance customer's name to Disbursement Request Forms without the customer's knowledge or consent, resulting in dividends or loans from the customer's insurance policy totaling $2,491.71. Goetz applied the funds to pay for other insurance policies, for the customer, without the

customer's knowledge or consent. Goetz also participated in a private securities transaction without providing prior written notice of his intention to engage in such activities to his member firm and receiving written approval from the firm prior to engaging in such activities. In addition, Goetz failed to respond to NASD requests for information.

David D. Gruel (Registered Representative, Kaukauna, Wisconsin) 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, Gruel consented to the described sanctions and to the entry of findings that he received from a public customer an $800 check with instructions that the check be deposited as a premium payment on a life insurance policy. The NASD found that Gruel deposited the check in an account in which he had a beneficial interest and used the funds for some purpose other than for the benefit of the customer.

Harold H. Hammer, Jr. (Registered Representative, Palm Harbour, 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 60 days. Without admitting or denying the allegations, Hammer consented to the described sanctions and to the entry of findings that, while associated with a member firm, he acted as vice president and treasurer of an unrelated corporation but failed to give written notification of his association to his member firm. The findings also stated that Hammer engaged in private securities transactions outside the scope of his regular employment with a member firm without providing written notice to and obtaining written approval from the firm.

Robert S. Holland-Stanley, Sr. (Registered Representative, Yarmouth, Maine) was fined $100,000 and barred from association with any NASD member in any capacity. However, Holland-Stanley's fine may be reduced by any amount of restitution he makes to a public customer. The NBCC imposed the sanctions following review of a Boston DBCC decision. The sanctions were based on findings that Holland-Stanley caused a public customer's bond account to be redeemed and that Holland-Stanley obtained, endorsed, and deposited the customer's check for $55,707.05 into his personal checking account.

Mark Dale Kaufman (Registered Representative, Clinton, 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, Kaufman consented to the described sanctions and to the entry of findings that he received a $960 check issued by his member firm to a public customer, for the return of the premium on a life insurance policy. According to the findings, Kaufman misused the customer's funds in that he endorsed and cashed the check, without the customer's knowledge or consent.

James Barrie Maes (Registered Representative, Seattle, Washington) 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 required to pay $125,271.88 in restitution to a member firm. Without admitting or denying the allegations, Maes consented to the described sanctions and to the entry of findings that he borrowed from a public customer on four separate occasions funds totaling $102,521. According to the findings, Maes failed to provide the customer with any loan documentation or collateral for such loans and failed to repay any portion of the loans to the customer.

Ronald Lee Mikkelson (Registered Representative, Madison, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $60,000, barred from association with any NASD member in any capacity, and required to pay $47,307 in restitution to customers. Without admitting or denying the allegations, Mikkelson consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give his member firm written notice of his intention to engage in such activities and to obtain written permission from the firm prior to engaging in such activities.

J**ohn E. Moore (Registered Representative, Reeseville, Wisconsin)** was fined $10,000, barred from association with any NASD member in any capacity, and required to pay $82 in restitution to a bank. The sanctions were based on findings that Moore took $82 in coins from coin bags owned by and located at a bank he was employed by and used the funds for his personal benefit, without the knowledge or consent of the bank.

Bruce W. Moulds (Registered Representative, Fort Collins, Colorado) submitted an Offer of Settlement pursuant to which he was fined $12,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Moulds consented to the described sanctions and to the entry of findings that he sent inaccurate and misleading correspondence to five customers of his former member

firm and sent to public customers letters containing recommendations concerning mutual funds when he knew or should have known that the letters failed to comply with applicable requirements. The findings also stated that Moulds made unsuitable recommendations to customers concerning mutual funds and failed to respond truthfully and accurately to an NASD request for information.

Parvin Namaki (Registered Representative, San Diego, California) was fined $30,000, barred from association with any NASD member in any capacity, and ordered to reimburse a member firm $6,773.33. The sanctions were based on findings that Namaki engaged in numerous purchase and sale transactions of securities for the account of a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions and the customer's financial situation and needs. Namaki also failed to respond to NASD requests for information.

Irma T. Parks (Registered Representative, Chicago, Illinois) was fined $11,582 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 Parks received from public customers $1,771.56 in checks and cash with instruction to use the funds as payment for insurance policies. Parks failed to follow the customers' instructions and used $1,316.37 of the amount for some purpose other than for the benefit of the customers.

Danny G. Pinkerton (Registered Principal, Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and suspended from association with any NASD member for 10 business days. Without admitting or denying the allegations, Pinkerton consented to the described sanctions and to the entry of findings the he entered or caused to be entered orders to sell shares of stock from the accounts of five customers without their authorization.

Gregory Sheil Pipeson (Registered Representative, San Francisco, California) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pipeson, pledging shares of stock to obtain a loan from an issuer, falsely represented to the issuer that he had not, nor would he mortgage, pledge, or otherwise encumber such shares, when in fact he had pledged the same shares in support of a loan from another individual.

Jennifer H. Robertson (Registered Representative, Denham Springs, Louisiana) submitted an Offer of Settlement pursuant to which she was fined $45,000, barred from association with any NASD member in any capacity, and ordered to pay $1,777.01 in restitution to her member firm. Without admitting or denying the allegations, Robertson consented to the described sanctions and to the entry of findings that, without the knowledge or consent of public customers, she forged the signatures of customers to applications for annuity contracts that caused her member firm to pay her $1,777.01 in commissions.

Cheryl Ann Rodgers (Registered Representative, Dallas, Texas) submitted an Offer of Settlement pursuant to which she was fined $22,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Rodgers consented to the described sanctions and to the entry of findings that, by means of manipulative, deceptive, or other fraudulent devices or contrivances, Rodgers effected unauthorized and excessive transactions in the accounts of public customers at losses totaling $378,000, without having reasonable grounds for believing that such transactions were suitable for the customers based on their other security holdings, financial situations, and needs.

Charles Todd Sanders (Registered Representative, Bogota, New Jersey) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sanders failed to appear for two on-the- record interviews at the NASD regarding his association with a member firm.

Robert Lloyd Scharnhorst (Registered Representative, Twin Falls, Idaho) submitted a Letter of Acceptance, Waiver and Consent 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, Scharnhorst consented to the described sanctions and to the entry of findings that he received from two public customers two checks for $10,133 each, made payable to a life insurance consulting firm with which he was associated. The findings stated that the customers understood that these sums would be used to pay premiums on policies they owned if they chose not to purchase a new variable life policy and if they chose the new policy, the customer funds would be applied to advisory fees the majority of which would go to Scharnhorst. The NASD determined that Scharnhorst deposited into his personal bank account a check from the insurance company that included $16,000 of the customer's funds which he considered payment of advisory fees. Although the customers chose not to purchase

the new variable life policy, the NASD found that Scharnhorst did not refund the $16,000 advisory fee payment until a later date.

Michael F. Sckipp (Registered Representative, Nesconset, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for four months. Without admitting or denying the allegations, Sckipp consented to the described sanction and to the entry of findings that he entered the examination room of the PROCTOR Certification Testing Center while having in his possession a folded sheet of study material containing financial formulas.

Jamie W. Senaratna (Registered Representative, Green Bay, Wisconsin) was fined $95,000, barred from association with any NASD member in any capacity, and required to pay $14,360 in restitution to a member firm. The sanctions were based on findings that Senaratna made cash withdrawals totaling $14,360 from his investment account maintained by his member firm and paid for these withdrawals and other expenses on his account by giving his member firm a check for $15,000. Senaratna subsequently stopped payment of the check and used the $14,360 for some purpose other than the benefit of the member firm and failed to compensate the member for the cash withdrawals. Senaratna also failed to respond to NASD requests for information.

Nicholas A. Sepe (Registered Representative, Howell, New Jersey) 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, Sepe consented to the described sanctions and to the entry of findings that he arranged or conspired to have an imposter appear to take the Series 7 qualification examination on his behalf. The findings also stated that Sepe failed to respond to NASD requests for information.

Brian Evan Shapiro (Registered Representative, Brooklyn, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Shapiro failed to respond to NASD requests for information regarding customer complaints.

Donald Eugene Smith (Registered Representative, San Antonio, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $206,639 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he made improper use of customer funds in that he obtained loans against insurance policies totaling $36,639, forged the customers' signatures on 54 checks, and converted the proceeds for his own use and benefit. The findings also stated that Smith failed to respond to NASD requests for information.

Terry Herron Stringer (Registered Representative, Houston, Texas) submitted an Offer of Settlement pursuant to which she was fined $20,845.15 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stringer consented to the described sanctions and to the entry of findings that Stringer converted $4,169.03 from a bank at which she was employed by authorizing debits to two bank general ledger accounts and depositing those funds to checking accounts under her control.

Donald K. Stunoff (Registered Representative, Scottsdale, Arizona) was fined $125,000, barred from association with any NASD member in any capacity, and required to pay $45,250 plus interest in restitution to a customer. The sanctions were based on findings that Stunoff withdrew approximately $45,250 from the securities account of a public customer using an automated teller machine access card without the authority of the customer. These funds were not used for the benefit of the customer. Furthermore, in response to an NASD request for information, Stunoff provided false documentation which purportedly authorized his withdrawal of funds from the customer's account and bore signatures allegedly belonging to the customer's daughters. Based on information obtained from the customer's daughters, neither of them signed the aforementioned document, nor did they authorize anyone to make withdrawals from their father's securities account.

Raymond Trentacost (Registered Representative, Basking Ridge, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $79,243.80 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Trentacost consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he applied for two policy loans in the customer's name, and upon receipt of checks totaling $15,848.76 from his member firm, he forged the customer's signature, negotiated the checks, and deposited the funds.

Charles Sanford Turner (Registered Representative, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined

$75,000, barred from association with any NASD member in any capacity, and required to pay $12,216 in restitution. Without admitting or denying the allegations, Turner consented to the described sanctions and to the entry of findings that he obtained from a public customer a total of $12,216 from six different insurance policies owned by the customer by submitting to his member firm various forms requesting policy loans, dividend withdrawals, and surrender values from the policies. Without the customer's knowledge or consent, Turner signed or caused to be signed the customer's name to the forms, and to the checks payable to the customer issued by his member firm, and retained the funds for his own use and benefit. The findings also stated that Turner obtained from a public customer $941.80 in cash with instructions to apply the funds as payment on the customer's insurance policy. The NASD determined that contrary to the customer's instructions, and without his knowledge or consent, Turner retained the funds for his own use and benefit.

Hugo E. Urrea (Registered Representative, Mandeville, Louisiana) submitted an Offer of Settlement pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the allegations, Urrea consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer, in that he purchased shares of stock for the account, without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

James D. Utz (Registered Representative, Maybee, Michigan) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Utz failed to respond to NASD requests for information.

Edward S. Walters (Registered Representative, Storrs, Connecticut) was fined $100,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Boston DBCC decision. The sanctions were based on findings that Walters withheld and misappropriated for his own use and benefit $45,645.11 representing funds intended for insurance premium payments and investments in securities without the knowledge or consent of his member firm or the customers. In addition, Walters failed to respond to NASD requests for information.

Rodney R. Welsh (Registered Representative, Bloomfield, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Welsh consented to the described sanctions and to the entry of findings that he was employed by and/or accepted compensation from five entities outside the scope of his employment with his member firm and failed to provide prompt written notice to his member firm of his activities. The findings also stated that Welsh failed to respond to NASD requests for information.

Mark Alan Williams (Registered Representative, Malvern, Iowa) was fined $66,000, barred from association with any NASD member in any capacity, and ordered to pay restitution of $13,200 plus interest to entitled parties. The sanctions were based on findings that Williams made improper use of insurance customer funds totaling $13,200 by signing the customers' names to checks, and endorsing the checks to himself without the knowledge or consent of the customers. In addition, Williams failed to respond to NASD requests for information.

Kenneth Robert Winton (Registered Representative, Redding, California) submitted an Offer of Settlement pursuant to which he was fined $11,728, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination. Without admitting or denying the allegations, Winton consented to the described sanctions and to the entry of findings that he recommended to public customers the purchase of securities without having reasonable grounds for believing such recommendations were suitable for the customers in light of their other securitiy holdings, financial situations, and needs.

Individuals Fined

Alberto Van Der Mije (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $7,500 and ordered to disgorge $3,740 in profits. Without admitting or denying the allegations, Van Der Mije consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, Van Der Mije purchased shares of a new issue that traded at a premium in the immediate aftermarket. In addition, the NASD found that Van Der Mije failed to notify his member firm and the executing member firm, in writing, of his association with the other member, prior to opening an account or placing an initial order for the purchase or sale of securities with the executing member.

FOR YOUR INFORMATION

FBI Alerts Members, Seeks Leads

U.S. Department of Justice
Federal Bureau of Investigation
One Center Plaza, Suite 600
Boston, MA 02108
June 14, 1995

Willis Riccio Director
NASD
260 Franklin Street, 16th Floor
Boston, MA 02110

Dear Mr. Riccio:

Within the last few months, the Boston Division of the Federal Bureau of Investigation (FBI) has undertaken fraud investigations concerning Boston investment firms that have been victimized by out-of-state parties posing as potential investors. In an effort to prevent further losses and to solicit information that could assist in apprehending the individuals responsible, the following generalized method of operation, names and addresses, are being furnished to your agency for dissemination to member organizations:

In each instance under investigation shareholder accounts were opened by mail utilizing corporate checks which were stolen after being issued by the payor. The accounts were opened in the name of the payee, which in nearly every instance was another corporation or business entity. False identification was presented in the applications opening the accounts and the checks were fraudulently endorsed and deposited. The individual opening the account requested check writing privileges, and withdrawal checks were written depleting the account balance.

Investigation has determined that addresses and telephone numbers provided for the account holders are either mail drops or voice mail answering businesses whose services have been subscribed to by those engaged in the alleged criminal activity. These businesses are not subjects of this investigation and are not alleged to have engaged in any criminal conduct. The addresses utilized are identified as:

1126 Kings Highway
Brooklyn, NY 11229

1204 Ave. 1, Apt. 1280
Brooklyn, NY 11229

7014 13th Ave., Suite 187
Brooklyn, NY 11228

1611 73rd Street
Brooklyn, NY 11204

1230 Hempstead Turnpike
Franklin Square, NY 11010

1019 Beach 20th Street, #117
Far Rockaway, NY 11691

191 Victory Blvd.
Staten Island, NY 10301

244 W. 54th Street, Suite 235
New York, NY 10018

960 S. 3rd Street
Louisville, KY 40203

186-09 Jamaica Ave.
Jamaica, New York 11423

100 Henry Street, Apt. 222
New York, NY 11201

The above information is furnished for your attention and dissemination. The Boston Division FBI Special Agent assigned to these matters is Robert A. Keane and he may be contacted at (617) 223-6464.

Sincerely,

Richard S. Swensen
Special Agent In Charge

By: Robert E. Schlabach
Supervisory Special Agent

Pennsylvania And CBOE Increase Fees

Effective July 1, 1995, Pennsylvania's agent registration and re-registration fees increased to $77. In addition, effective with the 1995-96 renewal program, PA's agent renewal fee will increase to $62.

Also effective July 1, 1995, the Chicago Board Options Exchange increased its agent registration fee to $25 and the agent re-registration and renewal fee to $20.

If you have any questions regarding these changes, please call the NASD Member Services Phone Center at (301) 590-6500 or your firm's assigned Quality and Service Team.

Corporate Financing Rule Change Ups Non-Cash Limit To $100

On June 16, 1995, the Securities and Exchange Commission (SEC) approved amendments to Article III, Section 44 (c)(6)(B)(xi) of the NASD Rules of Fair Practice to raise the value of non-cash sales incentives that an issuer or its affiliates may provide NASD members from $50 to $100 per person, annually. [See, Securities Exchange Act Rel. No. 34-35853 (June 16, 1995); 60 FR 32722 (June 23, 1995)]. Such non-cash sales incentives are typically de minimis in nature, such as small souvenir or gift items provided by issuers to a member or associated persons of a member. The amendment makes the value-limitation provisions of the Rule consistent with similar provisions in Article III, Sections 10 and 34 of the Rules of Fair Practice, with proposed amendments to Sections 26 and 29 now pending SEC approval, and with Rule 350(a) of the New York Stock Exchange.

NASD Material Now Available On C-Text

NASD Manual, *Notices to Members*, and *NASD Guide to Rule Interpretations* are now published on C-Text by Compliance International, Inc.

Further information regarding the C-Text service can be obtained directly from Compliance International Inc., at (201) 808-0955.

Participants Receive State Surety Bond Program Refunds

The NASD recently sent refund checks to those members who are participants in the NASD State Surety Bond Program. The letter to participants that accompanied the refund checks is reprinted below.

Dear NASD Member:

Over 90% of NASD member firms have less than 100 registered representatives. These firms often do not have the individual leverage needed to negotiate advantageous terms with insurance companies and other service providers. The NASD Member Benefits Department, under the guidance of the Membership Committee, uses the group buying power of our members to deliver services that are unavailable in the commercial market or that outperform available services. We are pleased to be able to send you the enclosed refund check for the State Surety Bond program as one of the first fruits of their labors.

The Membership Committee, NASD Member Benefits staff and Seabury & Smith, the program's broker, have been working with insurance carriers since November 1994 to reduce the costs to members of state surety bonds. The result of their combined efforts is a **40% reduction in premium rates** charged to participating members and the establishment of one of the lowest bond premium rates in the surety industry. This rate reduction will save our industry over $500,000 in 1995. Your refund check represents 40% of your December 1994 and April 1995 bond renewal premiums, as applicable.

A key element to achieving these types of program savings is your participation. The greater the participation in a program, the greater the opportunity to leverage our combined purchasing power. The Membership Committee is working with Member Benefits staff to improve existing NASD *Benefits by Association* programs and to offer new benefits to reduce your operating costs and enhance your risk management. These programs are offered as a member service. They are not used to fund other NASD activities, nor are they subsidized by the NASD.

We encourage you to consider the other *Benefits by Association* programs so you can realize the cost savings and enhanced risk management they offer. If you would like information on these programs, please call Dean Boyle, Director, Member Benefits, at (301) 590–6525.

Sincerely,

Joseph R. Hardiman
President

Carl E. Lindros
Chairman, Membership Committee

SPECIAL NASD NOTICE TO MEMBERS 95-59

Temporary Fee Increase For Agent Registration Filings; **Effective 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

At its July 1995 meeting, the NASD® Board of Governors approved temporary fee increases for certain agent registration filings to help fund the redesign and implementation of the Central Registration Depository (CRD). The following fee increases are effective August 1, 1995:

	Current Fees	Fees Effective 8/1/95–12/31/96	Fees Effective 1/1/97–12/31/97	Fees Effective 1/1/98
Registration Fee	$65	$85	$70	$65
Termination Fee	25	40	35	25
Late Termination Fee	50	65	60	50
Special Registration Review Fee	85	95	95	85

The NASD has a major systems development project underway to completely redesign the CRD. The CRD is a computerized system for one-stop registration and licensing of NASD members and their associated persons. The original system was developed in 1981 to standardize and streamline the registration process by accommodating a single filing and payment of fees for registration in multiple jurisdictions. Today the system processes filings for 50 states, the District of Columbia, Puerto Rico, seven self-regulatory organizations, and the Securities and Exchange Commission (SEC).

The redesigned CRD, scheduled for a staged implementation from 1996 to 1997, will feature electronic filings, re-engineered work processes, expedited relicensing, and a highly structured, relational database to better serve the information requirements of regulators, members, and investors. In addition, the new system will include investment adviser registration for the SEC and states; an E-mail communication capability for system participants; and a document imaging, storage, and retrieval service for support documents required in certain filing situations.

The NASD had originally intended to fund the CRD redesign effort from the current registration filing fees based on expected activity levels from 1995 to 1997. In 1995, registration activity declined significantly, however, and the resulting lower revenue levels are now expected to continue through 1997. The NASD Board believes it is necessary to institute the temporary fee increase to continue the investment in this important systems project. The temporary fees will be implemented on August 1, 1995, and will apply to all filings received on or after that date.

Direct questions about this Notice to your Quality and Service Team (see below) in the Membership Department. If you do not know your assigned team, please contact the Membership Phone Center at (301) 590-6500 and ask to be transferred to your team.

Quality and Service Teams

Team 1	(301) 921-9499
Team 2	(301) 921-9444
Team 3	(301) 921-9445
Team 4	(301) 921-6664
Team 5	(301) 921-6665

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

Fundclear, Inc., New York, New York

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.

Four Seasons Securities, Inc., San Diego, California (June 6, 1995)

Jeferson Capital, Inc., Newport Beach, California (June 6, 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.

Chestnut Hill Securities, Inc., San Francisco, California (May 26, 1995)

Moorgate Investments, Ltd., Chicago, Illinois (April 5, 1995)

Public Fidelity Corporation, Costa Mesa, California (June 2, 1995)

Firm Suspended Pursuant To Article VI Section 2 Of The NASD Code Of Procedures For Failure To Pay An Arbitration Award

The date the suspension commenced is listed after the entry.

Robert Scott Securities, Inc., Irvine, California (June 1, 1995)

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

Thomas A. Bradley, New York, New York

Nicholas J. Camadeca, Dolton, Illinois

John Austin Leech, Jr., Houston, Texas

Marc Davie Lieber, Dallas, Texas

SPECIAL NASD NOTICE TO MEMBERS 95-60

NASD Solicits Member Comment On Refined N•Aqcess Proposal; **Comment Period Expires August 30, 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

On July 14, 1995, the NASD® Board of Governors approved the issuance of a *Notice to Members* to solicit comment on the refined proposal for a nationwide limit-order protection and price improvement facility. Referred to as N•Aqcess℠ (pronounced nack-cess), the new proposed trading service of The Nasdaq Stock Market℠ will automate the matching of individual investors' limit and market orders, and provide market-wide price protection of investor's limit orders. The original proposal for the national limit-order facility set forth in *Notice to Members 95-20* (March 21, 1995) provided a conceptual overview of the system that was the subject of refinement based upon the comments received. A total of 74 commenters expressed a variety of views concerning the original proposal. After consulting with member firms, individual investors, market makers, academics, and others, the NASD made modifications to and provided further detail regarding the N•Aqcess proposal as set forth below. The Board now seeks comment on the specific elements embodied in the amended proposal.

The NASD will consider comments received on the proposal and resubmit the proposal to the Board in mid-September. If the Board thereafter approves the system and its rules, the NASD will promptly file the proposal with the Securities and Exchange Commission (SEC) for approval.

Background

In *Notice to Members 95-20* (the original proposal), the NASD circulated for comment a proposal for significant modifications to The Nasdaq Stock Market represented by development of a national limit-order facility that would provide investors market-wide price protection of their limit orders and the opportunity to seek price improvement in Nasdaq stocks. The key elements of the original proposal were:

• A facility for displaying and executing investor limit orders of 3,000 shares or less in Nasdaq National Market® securities (1,000 shares or less for The Nasdaq SmallCap Market℠ securities);

• The public dissemination of the best-priced orders in the facility;

• A requirement that eligible-sized limit orders either be entered into the facility or be guaranteed executions equivalent to what they would receive if they were entered in the facility;

• Automated execution of market orders of 1,000 shares or less in Nasdaq National Market securities (500 shares or less for The Nasdaq SmallCap Market securities) against orders in the facility or market-maker quotes based upon price and time priority; and

• An exposure mechanism for market orders of 1,000 shares or less in Nasdaq National Market securities (500 shares or less for The Nasdaq SmallCap Market securities) to achieve price improvement.

The NASD received 74 comment letters on the original proposal. The comment letters came from member firms, including wholesale and integrated market makers and order-entry firms, individual investors, academics, and organizations representing market makers. The NASD also met extensively with a broad cross-section of market participants to obtain their views on the key features of the proposed system. A sizeable number of commenters expressed support for the underlying investor protection features in the proposal, in particular the limit-order

protection and order-interaction features. On the other hand, a number of commenters expressed concern with the market-order handling and price-improvement proposal, as well as the proposed size of eligible limit orders. Many commenters believed that the proposed means of handling market orders could result in unacceptable queues or was otherwise unworkable. Other comments questioned the basis on which the NASD selected 3,000 shares as the appropriate size for limit orders eligible for entry into the system. Certain of these commenters believed that because N•Aqcess should be structured for retail customer order entry, the size of limit orders eligible for the system should more closely reflect the average retail order size. These commenters believed that the average size of such orders was under 500 shares and thus the limit-order size should not be larger than 1,000 shares. Other commenters argued the NASD should remove any limitation size of limit orders and that any customer, retail or otherwise, should be permitted to have orders placed in the system.

Additionally, certain commenters recommended that firms should be permitted to enter proprietary orders into N•Aqcess. These commenters believed that allowing member firm proprietary orders in N•Aqcess could encourage professional order flow to remain in Nasdaq and would be fairer on the basis of equal treatment of all market participants.

Finally, many commenters believed that while the proposal set forth meritorious concepts, it was difficult to provide meaningful comment because of the lack of detail in the proposal. These commenters recommended that before submitting any proposal to the SEC, the NASD should provide the membership a further opportunity to comment when greater detail was available.

The Revised N•Aqcess System And Companion Rules

After reviewing the comments and conferring with various market participants, the NASD has made several modifications to the original proposal and articulated the details of the regulatory structure to govern the proposed system. The new proposal, which includes many of the key features of the original proposal, may be subject to further revision based on the comments received.

Overview

The NASD and the Nasdaq Stock Market, Inc. are proposing rules of operation and procedure and companion Rules of Fair Practice for a new service that would provide retail investors market-wide price protection of their limit orders, the opportunity to obtain price improvement in buying and selling Nasdaq stocks, and increased access to the Nasdaq market. The new facility, to be named N•Aqcess and operated by The Nasdaq Stock Market, will permit significant opportunity for retail investors in Nasdaq securities to enter limit orders inside the Nasdaq dealer quotation and enhance the opportunity for investors to receive executions between the best dealer bid and offer without such orders interacting with market makers.

The best price limit orders in N•Aqcess limit-order file will be available for display through information vendors, thereby providing new levels of transparency, increased price efficiency, and greater investor protection. Further, the companion rule and Interpretations accompanying the new system will provide retail customers with enhanced price protection of their limit orders, a significant expansion over current limit-order protection in Nasdaq.

Finally, N•Aqcess will provide customers that choose to enter market orders into the system with the opportunity to obtain price improvement over the dealer quotation through interaction with customer limit orders in the N•Aqcess file. In sum, N•Aqcess will provide investors with an increased opportunity to receive a prompt, cost-effective execution at the best price available in the market at any particular point in time.

Scope Of System

N•Aqcess will be available for all Nasdaq issues. It will completely replace the Small Order Execution System (SOES℠) which will operate until the effective date for operation of N•Aqcess and will be discontinued as of that date. N•Aqcess participation will be mandatory for market makers in all Nasdaq National Market securities. N•Aqcess participation for The Nasdaq SmallCap Market market makers will be voluntary, as is SOES participation today for such market makers.

Order-Entry Requirements

Agency orders may be entered into N•Aqcess only by member firms on behalf of customers. The term "customers" excludes any broker, dealer, person associated with a member, or a member of the immediate family of such person associated with a member. Because the purpose of the system is to provide small retail customers with access to The Nasdaq Stock Market, member firms, with one limited exception, may not enter proprietary orders.

The only exception to the proprietary order prohibition is an order designated by a market maker as a "marker order." A marker order is a principal order entered by a market maker in a transaction that is functionally the equivalent of a riskless principal transaction. The firm may

place a principal account limit order in N•Aqcess, and if an execution is obtained, immediately pass along the benefit of such execution to a retail customer order it holds. Because the order is part of a principal transaction for the benefit of the retail customer, the NASD believes that it is appropriate to permit this limited exception to the prohibition of proprietary orders in N•Aqcess. The NASD will require member firms entering such orders to mark their order tickets accordingly, and will examine a firm's trading activities carefully to determine that such proprietary orders are being effected for the purposes of engaging in a riskless principal-like transaction.

Member firms may enter so-called "takeout" orders for their own accounts or for a customer. A takeout order results in an immediate automatic execution of a limit order or orders in the N•Aqcess limit-order file at the limit-order price(s). There is no size limitation on the takeout order. Thus, if the N•Aqcess file displays limit orders at a price with an aggregate size of 15,000 shares, a single takeout order of 15,000 shares may be entered and executed. Similarly, a firm may enter a takeout order to immediately execute multiple limit orders at multiple prices in N•Aqcess. When there are multiple limit orders being taken out, each limit order will execute at each limit order's price.

N•Aqcess will accept customer limit orders up to 1,000 shares in Nasdaq National Market and The Nasdaq SmallCap Market issues, except for the Nasdaq 100 Index® issues, in which case a limit order may be 3,000 shares. This represents a difference from the original proposal of 3,000 shares for all Nasdaq National Market issues.[1] Many commenters believed that because N•Aqcess is intended to provide small retail customers with limit-order protection, the initial approach should reflect more closely that the average retail-order size is well under 1,000 shares. These commenters urged that N•Aqcess could significantly affect market-maker participation, particularly in less active securities. As a result, they suggested that the N•Aqcess order size should be set at lower levels at least until the NASD had thoroughly evaluated the effect of the system on market liquidity.

While the NASD believes that N•Aqcess will have overall positive effect on market quality, we believe that it is prudent in this start-up period to scale back the limit-order size eligibility to 1,000 shares, except for those securities that comprise the Nasdaq 100 Index, where there are high levels of volume, greater market-maker participation and significant market liquidity. The NASD proposes to monitor the limit-order size requirement carefully in the initial operation of N•Aqcess and may choose to expand the eligible size of limit orders, if experience demonstrates that such expansion has merit.

Market orders in Nasdaq National Market issues may be 1,000, 500, or 200 shares depending upon tier size determination made in the same manner as done in SOES today. Similarly, market orders in The Nasdaq SmallCap Market issues will be tiered at 500 shares as is done in SOES.

The NASD will permit market makers to establish minimum exposure limits that are equal to the maximum market-order tier size. In addition, N•Aqcess will contain an automated update feature that will automatically change the market maker's quotation by a minimum increment set by the market maker after the market maker has executed a trade at a price level and has exhausted its minimum exposure limit for non-directed orders. The NASD believes that these aspects of N•Aqcess are critical to effective operations that permits a market maker to manage its risk capital, and are consistent with the SEC firm quote rule as applied to all other registered markets.

Customers may choose to enter "marketable limit orders." A marketable limit order is a limit order that is priced at the time of entry at the current inside quotation or better on the opposite side of the market, i.e., a marketable limit order to buy is equal to or higher than the current inside offer, while a marketable limit order to sell is equal to or lower than the inside bid. For example, if the current inside quotation is 20 - 20 1/4, the entry of limit orders to sell priced at 20 or 19 7/8 would be considered marketable limit orders. Marketable limit orders will be treated as market orders. Thus, if a firm enters a customer limit order to sell at 20 at the time the inside bid is 20, the limit order will be passed over the limit order file and if no match occurs, it will be treated as a market order and executed as discussed in the market order handling section. If a marketable limit order, however, is greater than 1,000 shares, the order will be returned to the order-entry firm for handling outside of N•Aqcess.

Neither a limit order nor a market order may be split to meet the size parameters of N•Aqcess. The NASD will examine order-handling practices of order-entry firms to determine compliance with this requirement.[2]

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[1] The Nasdaq SmallCap Market issues have a limit-order size of 1,000 shares.

[2] In this regard, the NASD notes that order-entry firms may only enter agency orders. The rules continue in effect the definition of agency orders as found in the current SOES Rules and the new rules carry forward the existing principles regarding the aggregation of orders based on a single investment decision entered by an order-entry firm.

Display Of Limit Orders

To enhance the transparency of The Nasdaq Stock Market and to assist in the price discovery process, the NASD will provide for the display of limit orders entered into N•Aqcess. There will be two separate approaches to the display: the Top of the File Display and the Full Limit Order File Display.

Top Of The File Display

The Top of the File Display consists of the best limit-order price to buy, the best limit-order price to sell, and the aggregate sizes at both such prices. The top of the file will be displayed contiguous with, and separate from, the inside-dealer quotation. A number of commenters on this issue urged that the NASD maintain separate displays, because The Nasdaq Stock Market has a competing dealer market structure. Further, although there will be two separate displays, they will be viewable together, and thus the limit-order file information will assist in the price discovery process. Indeed, NASD member firm obligations for price protection will be triggered by the limit-order file as displayed.

The Top of the File will be dynamically updated on Nasdaq Workstations® and will be made available to securities information processors.

Full Limit Order File Display

The Full Limit Order File Display for a particular security will be made available on a query basis over Nasdaq Workstations only to Nasdaq market makers in that security. The NASD believes that, as with other U.S. market centers, display of the entire limit-order file should be reserved to market makers in a particular security to assist in price discovery and to provide the market maker with an incentive to provide liquidity by risking its capital. In fact, no U.S. exchange registered with the SEC publicly disseminates any display (full or partial) of a limit order book maintained by an exchange specialist. Because of the accompanying rules described below that the NASD has proposed, customer limit orders in the file will be protected from inferior executions.

Limit-Order Processing

N•Aqcess will provide significant improvements over SOES in the way that customer limit orders and market orders will be handled. N•Aqcess will attempt to match all incoming orders, limit or market, directed or non-directed, against limit orders already resident in N•Aqcess on a price and time priority basis. If a match is found, the orders will be automatically executed against each other without the participation of a market maker. For example, assume the current inside quotation for a security is 20 - 20 1/2 and the N•Aqcess Top of the File Display contains a 1,000-share limit order to buy at 20 1/8 and a 1,000-share limit order to sell at 20 3/8. If a customer enters a 1,000-share limit order to sell at 20 1/8, the incoming limit order to sell will match against the 1,000-share limit order to buy in N•Aqcess at 20 1/8 and will be executed against that order. If a customer next sends in a market order to buy, the market order will match against the limit order to sell at 20 3/8, rather than the dealer offer of 20 1/2. Thus, the market order will be automatically executed immediately at 20 3/8. In both cases, the orders received price improvement and immediate execution without the participation of a market maker.

The system will only execute such matches when the execution prices would equal or better the inside market. Nevertheless, limit orders priced away from the inside market, i.e., limit orders to sell priced higher than the inside offer and limit orders to buy priced lower than the inside bid, will be stored in N•Aqcess. When the inside market moves to a price so that the limit order equals or betters the inside market, the limit order will become eligible for matching as described in this section.

When a limit order in N•Aqcess equals the inside market, the time priority of the limit order compared with the inside market will govern which price interacts first with incoming orders. The NASD believes that this well-understood approach is a reasonable means for determining the interaction of such orders and provides a further incentive to market makers to provide liquidity and narrow spreads.

Market Order Handling

In an important change from the original proposal, the NASD has significantly revised the market order handling features of N•Aqcess. Because the original proposal suggested a price-improvement feature that would have distributed one order at a time, commenters expressed concern that significant queues could develop. The revised proposal does away with the market-order-stop feature and now provides for immediate distribution of an order when received, unless all available market orders have already been assigned an order. Thus, if no limit orders reside in N•Aqcess, market orders will be immediately assigned and distributed to market makers at the inside market. This rapid distribution should minimize the potential for queues that the original proposal could have caused.

From the time the order is first assigned to a market maker, the system will provide the market maker up to 20 seconds to decline a non-directed order, if such action is con-

sistent with the SEC's firm-quote rule, Rule 11Ac1-1. In other words, if the market maker, immediately before the presentation of the N•Aqcess order effected a trade and was in the process of updating its quotation to reflect that transaction, the market maker is permitted to decline the N•Aqcess order. A N•Aqcess order declined by a market maker will be presented to the next available market maker. If that market maker is at the same price as the market maker that originally declined the order, the market maker also has 20 seconds to react to the order. If, however, the order is presented a second time at a different price level from that when the order first entered N•Aqcess, it is automatically executed without any decline capability.

The NASD believes that 20 seconds is appropriate because it ensures that the market maker will have a full 15 seconds to react to the order especially when the system experiences peak usage. The extra five seconds is accounted for by the system time required to process both the presentation of the order and the market maker reaction to it.

The NASD is developing an automated surveillance capability to monitor on a real-time basis whether an order was properly declined. The NASD believes that this capability is crucial to engendering investor confidence in the firmness of Nasdaq market-maker quotations and should alleviate any concerns regarding "backing away" questions.

Order-entry firms have two alternatives when entering N•Aqcess orders—they may direct the order to a particular market maker with whom they have established a directed order arrangement, or they may enter a non-directed order. In either circumstance, market orders and marketable limit orders will first pass over the limit-order file to obtain a match with a limit order before execution against a market maker, directed or not. If an order is directed pursuant to a valid agreement between the order-entry firm and the market maker, the market maker may not decline the order.[3]

Opening Procedures

N•Aqcess will have special opening procedures that are consistent with the order matching and price improvement opportunities provided intra-day by N•Aqcess.

N•Aqcess's operating hours are from 9:30 a.m. to 4 p.m. Eastern Time (ET). However, limit orders may be entered and stored in N•Aqcess from 4 to 6 p.m., ET, and limit and market orders may be entered from 8:30 a.m. to 9:28 a.m., ET. At 9:28 a.m., ET, no further orders for opening purposes will be accepted.[4] At 9:30 a.m., ET, Nasdaq will rank all limit orders stored as of 9:28 a.m., ET, according to price and time of entry. Limit orders will be matched against each other to obtain the largest number of executions possible and their prices will be reported. When all available limit-order matches are effected, any remaining limit orders within the inside dealer quote will be matched against market orders stored as of 9:28 a.m., ET, and will be executed at such limit order prices. Any remaining orders will be subject to the normal intra-day, order distribution and execution procedures.

Rules Of Fair Practice

The NASD is also proposing three major changes to the Rules of Fair Practice in conjunction with N•Aqcess. Under the proposed new rule and Interpretations, the treatment of limit orders will be significantly changed to promote price protection of such orders throughout The Nasdaq Stock Market. These proposed rule changes provide greatly enhanced limit-order treatment over current practices. Together with existing limit-order protections already in place (e.g., the so-called "Manning" rule), the new proposals provide investors placing limit orders with significantly enhanced protections against trade-throughs throughout The Nasdaq Stock Market.

Customer-Order Handling

The NASD is proposing a new Interpretation under Article III, Section 1 of the Rules of Fair Practice that provides, if a customer requests that his or her order be entered into N•Aqcess, the member firm must do so. While the Interpretation permits a firm to charge for such services and to recommend the use of its own execution system, the member is not permitted to discriminate against customers that choose N•Aqcess over an internal system by imposing unfair commissions or charges. The proposed Interpretation covers both market and limit orders.

Price Protection

The NASD is also proposing to prohibit a member firm, whether acting as a principal or as an agent, from executing any order at a price inferior to any limit orders that the firm is able to see in N•Aqcess.[5] An inferior price means an execution price that is

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[3] Odd lot orders in N•Aqcess will be executed automatically at the inside quotation. Market makers will received an execution report.

[4] Orders entered from 9:28 a.m. to 9:30 a.m., ET, will be stored and handled after the opening in line with ordinary matching and handling procedures described above.

[5] It should be noted that placement of a customer limit order in N•Aqcess does not relieve a member firm of its obligation under the Limit-Order Protection Interpretation of Article III, Section 1 of the Rules of Fair Practice that prohibits a member firm from

lower than a buy limit order or higher than a sell limit order that a member firm is able to see in the N•Aqcess limit order file. This prohibition means that limit orders in the N•Aqcess file will not be traded through elsewhere in Nasdaq in most circumstances. For example, if N•Aqcess has a 1,000-share limit order to buy at 20 1/8 displayed at the top of the file, no member firm is permitted to execute any transaction below 20 1/8 without first satisfying the 20 1/8 N•Aqcess limit order. If the transaction that the firm wanted to do was 1,000 shares at 20, the firm would have to execute the 1,000 share N•Aqcess limit order at 20 1/8 and then it could execute its order at 20. If the order that the firm wanted to execute was for 10,000 shares at 20 1/16, under the proposed new rule, the firm could execute and report the 10,000-share trade at 20 1/16, as long as it contemporaneously executed all 1,000 shares of the N•Aqcess order at 20 1/8.

The price-protection obligation is related to the ability of the firm to view the orders in the limit-order file. Thus, limit orders at the top of the file must be protected by all member firms. Under N•Aqcess rules, limit orders ranked below the top of the file are viewable only by market makers in the particular security. Accordingly, market makers in a particular security would be obligated to protect all limit orders in that security in N•Aqcess from inferior executions that they may effect. Thus, if a market maker in a security sought to execute a 1,000-share trade at 20, when the N•Aqcess file displayed limit orders to buy at 20 1/16, 20 1/8, and 20 1/4, the market maker would be required to execute the limit orders.[6]

Equivalent Price Protection

As noted earlier, the NASD, to encourage competition and to enhance the liquidity of The Nasdaq Stock Market, has determined that market makers should continue to operate their own internal execution systems and to handle limit orders outside of N•Aqcess. However, the NASD also believes it is important to provide limit orders held outside of N•Aqcess with price protection substantially equivalent to that which N•Aqcess orders would have. Accordingly, the NASD will propose an Interpretation to Article III, Section 1 of the Rules of Fair Practice to provide substance to the term equivalent price protection.[7]

First, a member firm holding a protectible customer limit order outside of N•Aqcess must provide such order with print protection, if any transaction at a price inferior to the customer limit order occurs. A "protectible" order is a customer order of a size that would be eligible for entry into N•Aqcess. Accordingly, the Interpretation requirements do not extend to customer limit orders that are larger than 1,000 shares (or larger than 3,000 shares for Nasdaq-100 Index). Thus, any firm holding a protectible customer limit order is required to contemporaneously execute, up to the size of the reported transaction, the customer limit order at the limit order price if an inferior-priced execution is reported in that security. For example, firms A and B each hold 1,000 share customer limit orders to buy priced at 20 1/8. A 1,000 share trade is reported at 20. Both firms A and B are obligated to execute their limit orders at 20 1/8. If the triggering trade report had been 500 shares at 20, each firm owed their customers executions of at least 500 shares at 20 1/8.

Next, if the firm holds a protectible

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trading ahead of a customer limit order that it is holding. Under the "Manning" Interpretation, if a member firm holding a customer limit order, whether from its own customer or as a result of a member-to-member order, places that order into N•Aqcess, the member firm is nevertheless prohibited from trading at the same price or at an inferior price as the customer order. Thus, while the newly proposed price-protection rules speak in terms of protecting N•Aqcess orders from inferior priced transactions, if the N•Aqcess order is the firm's customer's order or a member-to-member order it placed, the firm may not trade at the same price without protecting that order.

[6] The price-protection rule will not apply to member firms that operate passively priced crossing systems, such as POSIT and Instinet's Crossing Network. Generally speaking, such systems execute prices at the dealer quotation spread midpoint and would not likely trade through a N•Aqcess order. The proposed rule would apply to, however, all continuous trading systems operated by NASD members. Because trades handled through such continuous trading systems could occur at prices that could be inferior to limit orders in N•Aqcess, the NASD believes it appropriate that NASD member firms operating continuous trading systems should protect N•Aqcess customer limit orders as would any other registered broker/dealer member firm. Orders placed in SelectNet℠ that trade through N•Aqcess are also subject to the price-protection rule.

[7] The equivalent price-protection Interpretation would not apply to continuous trading systems operated by member firms, because such customers are generally sophisticated and have deliberately opted to trade in an alternative trading system. Such customers are institutions and broker/dealers that seek other advantages in trading in these alternative systems. Because of their sophistication and their direct control of their orders, the NASD preliminarily does not believe that application of the equivalent price-protection requirement is appropriate. The NASD would consider an exemption from the Interpretation to brokers operating such systems if they sought one.

customer limit order at a price that would match a limit order in N•Aqcess, the firm must either execute its limit order or direct its limit order to N•Aqcess for matching. "Matching" means that the N•Aqcess limit order is the same price or lower than the firm's customer's limit order to buy or higher than the limit order to sell.

The same matching would be required if the firm holds offsetting limit orders within its own file. If the firm holds a limit order to sell at 20 1/4 and accepts a limit order to buy at 20 1/4 or higher, the firm must execute the two orders against each other. Finally, if the firm holds a limit order that equals or betters the inside quotation in Nasdaq, if the firm accepts a customer market order for automated execution at the inside quotation, the firm must first match the market order against the limit order before it can execute the market order for its own account. The last requirement is consistent with a member firm's limit-order protection obligations under the Manning rule.

Conclusion

N•Aqcess and the accompanying new Rules of Fair Practice provide multiple benefits to retail investors that were heretofore unavailable. Retail investors will be able to have limit orders placed in a central file where they can interact directly with other customer orders entered into the system. N•Aqcess will provide increased transparency of the best-priced limit orders in N•Aqcess because Nasdaq will make available to securities information processors a data feed consisting of the best-priced limit orders and their aggregate sizes in a particular security. This increased transparency will enhance the Nasdaq price-discovery process. N•Aqcess will match incoming limit and market orders against limit orders resident in the N•Aqcess file so as to permit customer orders to interact directly with each other without the participation of a market maker. The N•Aqcess proposal will also provide market-wide price protection to customer orders.

Questions regarding this Notice should be directed to Robert E. Aber, General Counsel, at (202) 728-8290 or Eugene A. Lopez, Assistant General Counsel, at (202) 728-6998.

Request For Comments

The NASD requests all members and interested parties to comment on this proposal. Comments must be received no later than August 30, 1995, and should be directed to:

Joan C. Conley, Secretary
NASD
1735 K Street, N.W.
Washington, DC 20006-1500.

Text Of Proposed Amendments To Rules Of Fair Practice Related To N•Aqcess

Interpretations Related To Member Firm Responsibilities Regarding Orders In N•Aqcess

In its efforts to maximize the protection of investors and to enhance the quality of the marketplace, the NASD and The Nasdaq Stock Market, Inc. have developed a nationwide limit-order protection, price-improvement, and market-order handling facility of The Nasdaq Stock Market. This nationwide facility is herein referred to as "N•Aqcess."

The NASD Board of Governors is issuing these Interpretations to the Rules of Fair Practice to provide: (1) customers the right to have their orders entered and protected in N•Aqcess; and (2) member firm provision of equivalent protection for limit orders held in a member firm's proprietary limit order system. These Interpretations are based upon a member firm's obligation to provide best execution to customer orders under Article III, Section 1 of the Rules of Fair Practice and a member firm's obligations in dealing with customers as principal or agent to buy and sell at fair prices and charge reasonable commissions or service charges under Article III, Section 4 of the Rules of Fair Practice. Accordingly, it shall be deemed a violation of Article III, Section 1 of the Rules of Fair Practice for a member or a person associated with a member to violate the following provisions:

1. Member Firm Obligation Regarding Investors Directions On Order Handling

N•Aqcess will provide individual investors with significant opportunities to achieve limit order protection and price improvement. The NASD recognizes that member firms operating as market makers also operate trading systems which offer significant protection and execution opportunities for customer limit orders. Accordingly, nothing herein is intended to limit a member's ability to recommend use of its own or another member firm's proprietary system for handling limit and market orders where equivalent protection is afforded. In light of the significant benefits offered to customers by the N•Aqcess system, however, members must abide by the directions of its customers who request that the firm enter their orders in N•Aqcess.

Further, nothing in this Interpretation requires a member firm to accept any or all customer limit orders. Member firms accepting limit orders that are placed in N•Aqcess or otherwise may charge fair and reasonable commissions, commission-equivalents, or service charges for such handling,

provided that such commissions, commission-equivalents, or service charges do not violate Article III, Section 4 of the Rules of Fair Practice. In no event, however, shall a member impose any fee or charge that effectively operates as a disincentive to the entry of orders in the nationwide facility and thereby interferes with the investor's ability to choose order handling alternatives.

2. Equivalent Protection For Orders Held Outside of N•Aqcess

As a further adjunct to a member firm's best execution obligations, the NASD Board of Governors has interpreted Article III, Section 1 of the Rules of Fair Practice to require member firms that do not enter customer limit orders into N•Aqcess, but hold such protectible orders in their own proprietary system, to provide such orders with price protection at least equivalent in substance to that which the order would have received had the order been entered into N•Aqcess. For the purposes of this Interpretation, a "protectible limit order" shall mean a limit order that meets the maximum limit-order size criteria as set forth in the Rules of Operation and Procedure for N•Aqcess at Section I(m). For the purposes of this Interpretation, equivalent price protection shall mean:

A. Print Protection

If a transaction in a Nasdaq security is reported via the Automated Confirmation Transaction (ACT℠) Service at a price inferior to the price of customer limit order(s) that the firm is holding (i.e., if the reported price is a price lower than a buy limit order or higher than a sell limit order being held by the firm), the firm holding the limit order(s) is required on a contemporaneous basis to execute the limit order(s) at the limit price(s) up to the size of the reported transaction.

B. Matching Limit Orders

If the firm holds a customer buy (sell) limit order in its proprietary limit order file and that limit order matches a sell (buy) limit order in N•Aqcess, the firm holding the limit order must either provide its customer with an immediate execution at the limit order price or must immediately direct the order to N•Aqcess. A limit order held by a firm would match a limit order in N•Aqcess when the limit order in N•Aqcess is at the same price or is priced lower than the firm's customer's limit order to buy or higher than the firm's customer's limit order to sell ("offsetting limit orders").

C. Matching Limit Order Interaction Within A Firm's File

If the firm holds two or more offsetting customer limit orders within its own proprietary file, the firm must execute the offsetting limit orders.

D. Interaction Between Limit and Market Orders Held Within A Firm's File

While holding a customer limit order that is priced equal to or better than the best bid or offer in the security disseminated in Nasdaq, if a firm accepts customer market orders for automated execution against the best bid or offer in the security disseminated in Nasdaq, the firm, pursuant to its obligation set forth in the Interpretation to the Rules of Fair Practice, Article III, Section 1, (the so-called "Manning Interpretation"), must first permit the market orders to execute against any applicable limit orders it holds before the firm may execute the market orders for its own account.

E. Examples of Equivalent Protection

The NASD Board of Governors has provided the following examples to further explain a member firm's equivalent protection obligation for orders held outside of N•Aqcess:

Print Protection—The best dealer bid and offer in Nasdaq ("the inside price") is 20 bid - 20 1/4 offer. Firm ABCD holds a customer limit order of 1,000 shares to buy at 20 1/8 in its own proprietary file. Firm MNOP reports a transaction in the subject security via the ACT Service, disseminating a price of 20 1/16 for 500 shares. Contemporaneous with the dissemination of the trade report, firm ABCD is required to provide an execution of its customer limit order for at least 500 shares at 20 1/8.

Matching Limit Orders—The inside price is 20 bid - 20 1/4 offer. N•Aqcess is displaying a 1,000 share customer limit order to buy at 20 1/8 for customer X. Firm ABCD thereafter receives from customer Y a 1,000 share limit order to sell at 20 1/8 that the firm ABCD retains for handling outside of N•Aqcess. Upon receipt of the limit order, firm ABCD must execute customer Y's limit order for 1,000 shares at 20 1/8.

Matching Limit Order Interaction Within A Firm's File—The inside price is the same as above. Firm ABCD holds a customer limit order to buy 1,000 shares at 20 1/8. Firm ABCD thereafter receives a customer limit order to sell 1,000 shares at 20 1/8. Firm ABCD must match the orders and execute the trade.

Interaction Between Limit And Market Orders Held Within A Firm's File—The inside price is the same as above. Firm ABCD holds a customer limit order to buy 1,000 shares at 20 1/8. Firm ABCD thereafter receives a customer market order to sell 1,000 shares. Firm ABCD must match the two orders and execute the trade at 20 1/8. Similarly, if the limit order to buy were priced at 20, the firm would

have to execute the market order against the limit order at 20.

* * *

Text Of Proposed Section 50 To Article III Of The Rules of Fair Practice

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

Price Protection For N•Aqcess Limit Orders

No member firm shall execute an order as principal or as agent at a price inferior to any limit order(s) viewable in N•Aqcess to the member firm, provided however, that a member firm executing a transaction that is larger than the limit order(s) viewable in N•Aqcess at an inferior price must contemporaneously satisfy the limit order(s) viewable in N•Aqcess. An "inferior price" means an execution price that is lower than a buy limit order or higher than a sell limit order that is viewable in N•Aqcess. The term "limit orders viewable in N•Aqcess" shall mean those orders that the member firm is able to view in either the Top of the File Display or the Full Limit Order File Display as the firm is authorized to view under the Rules of Operation and Procedure.

NASD NOTICE TO MEMBERS 95-61

Mail Vote—NASD Solicits Member Vote On Amendments To The By-Laws To Include Statutory Disqualification Provisions Adopted By Congress; **Last Voting Date: September 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

Executive Summary

The NASD® invites members to vote on proposed amendments to Article II, Section 4 of the NASD By-Laws that will conform the NASD's eligibility criteria to changes adopted by Congress in 1990 to the statutory disqualification provisions found in Sections 3(a)(39) and 15(b)(4) of the Securities Exchange Act of 1934 (the Act). **The last voting date is September 25, 1995.**

The text of the proposed amendments follows this Notice.

Background

Section 15(A)(g)(2) of the Act gives the NASD the authority to bar a person from becoming or remaining associated with an NASD member if the person is or becomes subject to a statutory disqualification as defined in Sections 3(a)(39) and 15(b)(4) of the Act. The NASD's eligibility criteria in Article II, Section 4 of the By-Laws have followed the statutory disqualification provisions in the Act. In November 1990, Congress amended the statutory disqualification provisions of the Act to include all felony convictions for 10 years from the date of the conviction and to include various foreign regulatory actions. The NASD, in the interest of uniformity and consistency, is proposing to amend Article II, Section 4 of the By-Laws to add the changes that were adopted by Congress in 1990.

Request For Vote

The NASD Board of Governors believes the proposed amendments will promote uniformity and consistency with existing Securities Exchange Act of 1934 provisions. Please mark the attached ballot according to your convictions and mail it in the enclosed, stamped envelope to The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware, 19801. Ballots must be postmarked no later than September 25, 1995.

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

For Member Vote—Text Of Proposed Amendments To Article II, Section 4 Of The By-Laws

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

ARTICLE II, SECTION 4

Definition of Disqualification

Sec. 4. A person is subject to a "disqualification" with respect to membership, or association with a member, if such person:

Commission and Self-Regulatory Organization Disciplinary Sanctions

(a) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market or foreign equivalent designated pursuant to Section 5 of the Commodity Exchange Act, or futures association, registered under Section 17 of such Act, or any substantially equivalent foreign statute or regulation or futures association registered under Section 17 of such Act, or any substantial equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market;

(b) [is subject to an order of the

Commission or other appropriate regulatory agency denying, suspending for a period not exceeding twelve months, or revoking his registration as a broker, dealer, municipal securities dealer (including a bank or department or division of a bank), or government securities broker or dealer or barring or suspending him from being associated with a broker, dealer, or municipal securities dealer (including a bank or department or division of a bank), or is subject to an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act;]

is subject to:

(1) an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority:

(i) denying, suspending for a period not exceeding twelve months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or

(ii) barring or suspending for a period not exceeding twelve months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or foreign person performing a function substantially equivalent to any of the above;

(2) an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(3) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(c) by his conduct while associated with a broker, dealer, municipal securities dealer (including a bank or department or division of a bank), or government securities broker or dealer, or while associated with an entity or person required to be registered under the Commodity Exchange Act has been found to be a cause of any effective suspension, expulsion or order of the character described in subsections (a) or (b) of this Section; or

(d) by his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (a) or (b) of this paragraph;

[(d)](e) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described in subsections (a), (b), [or] (c), or (d) of this Section;

Misstatements

[(e)](f) has willfully made or caused to be made in any application for membership in a self-regulatory organization, or to become associated with a member of a self-regulatory organization, or in any report required to be filed with a self-regulatory organization, or in any proceeding before a self-regulatory organization, any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein;

Convictions

[(f)](g) has been convicted within ten years preceding the filing of any application for membership in the Corporation, or to become associated with a member of the Corporation, or at any time thereafter, of any felony or misdemeanor which;

(1) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(2) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, or government securities broker or dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, foreign person performing a function substantially equivalent to any of the above, or any entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation;

(3) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conver-

sion, or misappropriation of funds or securities; substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(4) involves the violation of Sections 152, 1341, 1342 or 1343 or Chapters 25 or 47 of Title 18, United States Code [;], or a violation of a substantially equivalent foreign statute; or

(5) involves any other felony;

Injunctions

[(g)](h) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or government securities broker or dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, (or) entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, municipal securities dealer (including a bank or department of division of a bank), or government securities broker or dealer or as an affiliated person or employee of any investment company, bank or insurance company, foreign entities substantially equivalent to any of the above, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

NASD NOTICE TO MEMBERS 95-62

SEC Approves New NASD Mediation Rules That Take Effect 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

On July 19, 1995, the Securities and Exchange Commission (SEC) approved new NASD Mediation Rules (Rules) to take effect August 1, 1995. The new Rules provide a structure for the NASD to administer a Mediation Program as an informal and less adversarial alternative to arbitration for the resolution of securities-related disputes between and among investors and securities industry professionals.

Generally, mediation is quicker and less expensive than arbitration or litigation, and it gives the disputing parties a chance to work out their own solutions with the help of a trained and impartial intermediary. Through mediation, the parties involved retain complete control of the process, the costs, and the outcome of the effort—the impartial mediator has no authority to impose decisions or settlement on the parties. Mediation is voluntary and non-binding until the parties execute a settlement to which they both or all agree, and parties do not give up their rights to arbitrate the same matter if the mediation efforts are unsuccessful. Under the Rules, all matters eligible for arbitration under the NASD Code of Arbitration will be eligible for the Mediation Program. The NASD plans to solicit participation in the Mediation Program by approaching parties to arbitration cases and exploring the merits of mediation to determine whether this option might meet their needs. Standard administrative fees for the mediation of a dispute will be waived for cases that are pending arbitration. The text of the new Rules follows this Notice.

Background

The NASD is the premier arbitration forum for the securities industry. More than 5,500 cases filed with the NASD in calendar year 1994 represented 86 percent of all arbitrations filed with self-regulatory organizations that year and 82 percent of all securities arbitrations filed in all forums combined (including the American Arbitration Association). The volume of arbitration cases has grown dramatically since the U.S. Supreme Court recognized in 1987 the enforceability of predispute arbitration agreements with respect to securities law claims. The NASD hopes that a mediation program will help to relieve the weight of this growing number of arbitration cases.

While volume has grown, the arbitration process has become more complex, costly, and time-consuming—bearing an increased resemblance to court litigation. This has renewed interest in alternative forms of dispute resolution that would recapture the informal, low-cost, time-saving advantages that arbitration once provided. The NASD believes that mediation can meet this need.

The goal of mediation is to permit the disputing parties to explore and work out their own settlements with complete control over the process and without resorting to adversarial adjudication. The NASD believes this can save investors and member firms time and money, and the relationships between the disputing parties can often be saved. Additionally, if the dispute is not fully resolved in mediation, the process is still valuable for narrowing the issues of conflict and finding common grounds, resulting in a faster, simpler arbitration.

The NASD is adopting a new Part IV to the Code of Arbitration Procedure (Code) setting forth rules to govern the mediation of disputes administered by the NASD. The NASD is also adopting several other amendments to the Code relating to fees for mediations and the records of a mediation proceeding.

Description Of Mediation Rules

NASD *Notice to Members 95-01* (January 1995) requested comment on proposed Mediation Rules. The new Mediation Rules were revised in response to the comment letters received and have been structured, by subject, as follows:

- General Scope and Authority;
- Submission of Eligible Matters;
- Pending Arbitration Proceedings;
- Mediator Selection;
- Limitation of Liability for Mediators and the NASD; and
- Ground Rules.

The Mediation Rules will be incorporated into the Code as a new Part IV, with provisions corresponding to the structure referred to above, and numbered consecutively with the current provisions of the Code. This structure permits reference in the Mediation Rules to the subject matter jurisdiction of the Code and the arbitrator disclosure provisions as they apply to mediators.

Record Of Sessions

Section 37 of the Code is amended to add a new paragraph (b) to prohibit the keeping of a verbatim record of any mediation session conducted pursuant to the Rules. The NASD believes that a verbatim record is not consistent with the goals or methods of mediation; a free-flowing and confidential exchange of views, opinions, proposals, and admissions.

Fees

Sections 43 and 44 of the Code are amended to include mediation fees. Under the amendments adding Subsections 43(i) and 44(j) mediations will be administered at no charge to the parties when there is an arbitration matter pending before the Association. When there is no arbitration pending with the Association, under Subsection 43(i) the NASD will charge each party $150 for the mediation of a matter involving public customers and, under Subsection 44(j), the NASD will charge each party $250 for the mediation of a matter involving industry parties.

However, even when there is no charge for administering the mediation, Subsections 43(j) and 44(k) provide that the parties will pay all of the mediator's charges, including travel and other expenses. The NASD will set forth the mediator's charges in the Submission Agreement and they will be apportioned equally among the parties, unless they agree otherwise. The NASD will also make an initial estimate of the mediator's charges based on the anticipated length of the session or sessions. The parties will be required to deposit their proportional share of such estimated charges with the NASD before the first mediation session.

The NASD's standard mediator charges will be $150 per hour, although the parties may agree to pay different charges for a particular mediator. While the NASD intends to make its best efforts to make mediators available at the specified hourly rate, some qualified mediators may decline to serve unless compensated at a higher rate.

The fees will be assessed for each matter submitted to mediation. Pursuant to Section 51, discussed below, a matter is deemed submitted to mediation when the Director of Mediation has received an executed mediation Submission Agreement from all parties.[1]

Finally, the NASD will assess the mediator's hourly fee for joint sessions and separate sessions on the basis of each half hour or portion thereof. The mediator's hourly rate for separate meetings will be apportioned equally among all parties without regard to the actual amount of time each party spent with the mediator. The NASD believes that all parties benefit equally from the mediator's efforts in meeting with each party, even if the mediator spends more time with one than the other.

General Scope And Authority

New Section 50 establishes the scope and authority of the Rules. Section 50 provides that the Rules apply to mediations administered by the Association and calls for the designation of a Director of Mediation to administer mediations. Section 50 also specifies that the Director of Mediation will consult the National Arbitration Committee (Committee) on the administration of the Mediation Program and the Committee, as necessary, may make recommendations concerning the administration of the Mediation Program to the Director and recommend amendments to the Rules to the Board. Finally, Section 50 states that neither any mediator nor the NASD shall have the authority to compel a party to submit to mediation or to settle a matter. This last provision is intended to clarify the voluntary nature of mediation.[2]

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[1] The NASD is developing a standard form mediation Submission Agreement containing terms essential to the NASD. A copy of the Submission Agreement will be provided to all parties.

[2] The NASD will solicit participation in mediation by approaching parties to arbitration cases to advise them about mediation, explain the program and its merits, and explore whether mediation might meet the needs of the parties. The NASD believes an outreach program such as this will increase the mediation use and reduce the number of cases going to hearing.

Submission Of Eligible Matters

New Section 51 provides that any matter, or part of a matter (such as procedural issues), eligible for arbitration under the Code may be mediated. Any uncertainty about the eligibility of a matter for mediation will be resolved by the Director. Section 51 also states that a matter will be deemed submitted when the Director has received an executed mediation Submission Agreement from each party. The submission of a matter triggers the obligation to pay applicable fees and initiates the NASD's activities in finding a mediator and making arrangements for facilities for the mediation.

The NASD anticipates that indications of interest in mediation will be solicited by the Director, as well as expressed informally by parties. When an indication of interest is expressed, the Director will seek commitments to participate from other parties. Once those commitments are obtained, oral or written, the Director will forward a mediation Submission Agreement to the parties for execution.

Pending Arbitration Proceedings

New Section 52 provides that any arbitration pending at the time of a mediation will not be stayed or delayed unless the parties agree. The NASD believes this provision is important to prevent the use of mediation as a delaying tactic.

Mediator Selection

New Section 53 provides for the appointment of mediators and permits the parties to select a mediator from a list supplied by the Director, or to obtain, on their own, a non-NASD mediator. If the parties do not act to select a mediator, the Director will assign a mediator. The parties will also be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator. Section 53 also requires mediators to comply with the same background disclosure requirements as arbitrators.

Finally, Subsection 53(c) prohibits a mediator from serving as an arbitrator or from representing any party to a mediation in any subsequent arbitration proceeding relating to the subject matter of the mediation. The NASD believes that mediators, having served as a neutral in a position of trust and confidence with the parties, should not be permitted to serve as an arbitrator or as an advocate of one party with respect to matters that he or she has knowledge of due to interaction with both parties. The NASD also believes that state law, attorney codes of ethics, and mediator codes of conduct[3] provide sufficient protection for parties in judicial forums.

Limitation Of Liability For Mediators And The NASD

New Section 54 limits the liability of mediators, the Association, and its employees, for any act or omission in connection with a mediation administered by the NASD under the Rules.

Ground Rules

New Section 55 establishes Ground Rules for mediation. Subsection 55(a) describes standard Ground Rules governing mediations and permits the parties to amend any of the Ground Rules at any time. The Subsection also provides that the Ground Rules are intended to be standards of conduct for the parties and the mediation. The NASD intends that the parties should feel free to tailor the Ground Rules to meet their needs.

Subsection 55(b) states that mediation is voluntary and that parties may withdraw from a mediation at any time before executing a settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director. This provision clarifies that, while the goal of mediation is to explore and settle outstanding disputes, if possible, the Rules are process oriented, not results oriented. The NASD does not intend that any party will be subject to any compulsion or coercion to come to a particular conclusion of a mediation. The process is completely voluntary and any party may withdraw from a mediation for any reason. If at any time a party feels that continuing with a mediation is not in their interests, he or she is free to terminate the mediation.

Subsection 55(c) establishes that the mediator's role is to act as a neutral, impartial facilitator, without authority to impose decisions or a settlement on the parties.

Subsection 55(d) provides that the parties and their representatives meet jointly with the mediator, in person or by conference call as determined by the mediator or by mutual agreement of the parties. The mediator will facilitate through joint sessions, caucuses, and/or other means discussions between the parties on the subject matter of the mediation.

Subsection 55(d) also provides that the mediator will determine the pro-

[3] The American Bar Association (ABA) has draft mediator standards of conduct under consideration. It is anticipated that the draft standards will be approved by the ABA at its next meeting. Draft Standard III states in pertinent part that "[w]ithout the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process."

cedure for the mediation and the parties agree to cooperate with the mediator in conducting the mediation expeditiously, to make reasonable efforts to be available for mediation sessions, and to be represented at all sessions, in person or by someone with authority to settle the matter. This Subsection is to ensure that common obstacles to expeditious, effective mediation are avoided and sets forth rules that will discourage dilatory conduct and prevent gamesmanship. Parties failing to adhere to these standards send a strong signal that they are not interested in mediating in good faith.

Subsection 55(e) permits the mediator to meet with and communicate separately with each party, provided the mediator notifies the other parties. This permits the mediator to take steps to keep the mediation on track, if necessary, by initiating separate communications. These private caucuses allow the mediator to explore candidly each party's underlying interests and the strengths and weaknesses of their positions; however, the mediator will not disclose confidential information in violation of the confidentiality provisions. The mediator cannot disclose one party's confidential information to another party without authorization, see Subsection 55(g), below.

Subsection 55(f) describes the goal of mediation—to negotiate a settlement in good faith. The Subsection also permits direct negotiations between the parties outside of the mediation process.

Subsection 55(g) makes mediation private and confidential. The parties and the mediator are obligated not to disclose or otherwise communicate anything disclosed during the mediation in any other proceeding, unless authorized by all other parties involved in the mediation. Disclosure is permitted if compelled by law, which provides for situations where a party is subpoenaed or where there are regulatory requirements, such as the disclosures required in Form U-4 or under Article IV, Section 5 of the Rules of Fair Practice.

The fact that a mediation occurred is not confidential. The confidentiality provisions do not shield from disclosure information the Association or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities. Thus, a party cannot refuse to disclose information to the NASD or an opposing party in civil litigation under the confidentiality clause by disclosing the information during the course of a mediation and then claiming that it is confidential. The mediator also cannot disclose one party's confidential information to another party without authorization.

While the proposed mediation rules are process oriented, the NASD expects that mediation will often settle a dispute. At the conclusion of a mediation where the parties have agreed to a settlement, the parties will be responsible for a written agreement that effectuates their mutual agreement reached in mediation.

Direct questions about this Notice to Kenneth Andrichik, Director of Mediation, at (212) 858-4400.

Text Of Amendments To Code Of Arbitration Procedure

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

CODE OF ARBITRATION PROCEDURE

Sec. 1 through 36 No change.

Record of Proceedings

Sec. 37. (a) A verbatim record by stenographic reporter or tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.

(b) A verbatim record of mediation conducted pursuant to Part IV of this Code shall not be kept.

Sec. 38 through 42 No change.

Schedule of Fees for Customer Disputes

Sec. 43.

(a) through (h) No change.

(i) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of $150.

(j) The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: $600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator; and

(2) Additional Mediation Sessions: $150 per hour, or such other hourly rate agreed to by the parties and the mediator.

Schedule of Fees for Industry and Clearing Controversies

Sec. 44.

(a) through (i) No change.

(j) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of $250.

(k) The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: $600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator; and

(2) Additional Mediation Sessions: $150 per hour, or such other hourly rate agreed to by the parties and the mediator.

Sec. 45 and 46 No change.

Sec. 47. Reserved.

Sec. 48. Reserved.

Sec. 49. Reserved.

PART IV—MEDIATION RULES

Scope and Authority

Sec. 50. (a) The NASD Mediation Procedures ("Procedures") set forth in this Part shall apply to the mediation of any dispute, claim or controversy ("matter") administered by the Association.

(b) A Director of Mediation shall be designated by the Association to administer mediations under these Procedures. The Director will consult the Association's National Arbitration Committee on the administration of mediations and the Committee shall, as necessary, make recommendations to the Director and recommend to the Board of Governors amendments to the Procedures. The duties and functions of the Director may be delegated by the Director, as appropriate. For purposes of this Part, the term "Director" refers to the Director of Mediation.

(c) Neither the NASD nor any mediator appointed to mediate a matter pursuant to these Procedures shall have any authority to compel a party to participate in a mediation or to settle a matter.

Submission of Eligible Matters

Sec. 51. Any matter eligible for arbitration under this Code, any part thereof, or any issue related to the matter, including procedural issues, may be submitted for mediation under these Procedures upon the agreement of all parties. A matter will be deemed submitted when the Director has received an executed Submission Agreement from each party. The Director shall have the sole authority to determine if a matter is eligible to be submitted for mediation.

Arbitration Proceedings

Sec. 52. Unless the parties agree otherwise, the submission of a matter for mediation shall not stay or otherwise delay the arbitration of a matter pending under this Code.

Mediator Selection

Sec. 53. (a) A mediator may be selected: (1) by the parties from a list supplied by the Director; (2) by the parties from a list or other source of their own choosing; or (3) by the Director if the parties do not act to select a mediator after submitting a matter to mediation.

(b) With respect to any mediator assigned or selected from a list provided by the Association, the parties will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator. Any mediator selected or assigned to mediate a matter shall comply with the provisions of Sections 23(a), (b) and (c) of the Code, unless, with respect to a mediator selected from a source other than the Association's lists, the parties elect to waive such disclosure.

(c) No mediator shall be permitted to serve as an arbitrator of any matter pending in NASD arbitration in which he served as a mediator, nor shall the mediator be permitted to represent any party or participant to the mediation in any subsequent NASD arbitration proceeding relating to the subject matter of the mediation.

Limitation on Liability

Sec. 54. The Association, its employees, and any mediator named to mediate a matter under this Part, shall not be liable for any act or omission in connection with a mediation administered pursuant to these Procedures.

Mediation Ground Rules

Sec. 55. (a) The following Ground Rules are established to govern the mediation of a matter. The parties to a mediation may agree to amend any or all of the Ground Rules at any time. The Ground Rules are intended to be standards of conduct for the parties and the mediator.

(b) Mediation is voluntary and any party may withdraw from mediation at any time prior to the execution of a written settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director.

(c) The mediator shall act as a neutral, impartial facilitator of the mediation process and shall not have any authority to determine issues, make decisions or otherwise resolve the matter.

(d) Following the selection of a mediator, the mediator, all parties and their representatives will meet in person or by conference call for all mediation sessions, as determined by the mediator or by mutual agreement of the parties. The mediator shall facilitate, through joint sessions, caucuses and/or other means, discussions between the parties, with the goal of assisting the parties in reaching their own resolution of the matter. The mediator shall determine the procedure for the conduct of the mediation. The parties and their representatives agree to cooperate with the mediator in ensuring that the mediation is conducted expeditiously, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through a person with authority to settle the matter.

(e) The mediator may meet with and communicate separately with each party or their representative. The mediator shall notify all other parties of any such separate meetings or other communications.

(f) The parties agree to attempt, in good faith, to negotiate a settlement of the matter submitted to mediation. Notwithstanding that a matter is being mediated, the parties may engage in direct settlement discussions and negotiations separate from the mediation process.

(g) Mediation is intended to be private and confidential. The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential.

Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this subsection shall not operate to shield from disclosure to the Association or any other regulatory authority, documentary or other information that the Association or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities.

The mediator will not transmit or otherwise disclose confidential information provided by one party to any other party unless authorized to do so by the party providing the confidential information.

NASD NOTICE TO MEMBERS 95-63

SEC Approves Amendments To Article III, Section 34 Of The NASD Rules Of Fair Practice Relating To Freely Tradeable Direct Participation Program 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

On July 11, 1995, the Securities and Exchange Commission (SEC) approved amendments to Article III, Section 34 of the NASD Rules of Fair Practice to exclude initial placements and secondary market transactions in direct participation program (DPP) securities that are listed or for which an application has been submitted to The Nasdaq Stock Market℠ (Nasdaq®) or a registered national securities exchange from the prohibition on transactions in discretionary accounts without written approval.[1] The rule change became effective on July 11, 1995. The exclusion is not available to a member that is an affiliate of the DPP.

Background

Article III, Section 34 of the Rules of Fair Practice regulates participation by members and persons associated with a member in DPP and limited partnership rollup transactions (rollup) and generally prohibits a member or a person associated with a member from participating in a public distribution of a DPP or a rollup unless the distribution or transaction conforms to certain suitability and disclosure requirements and standards of fairness and reasonableness (DPP rule). The DPP rule required that all DPP securities are subject to the discretionary account prohibitions in subsection (b)(3)(D) of the DPP rule, which state, in part, that ". . . no member shall execute any transaction in a direct participation program in a discretionary account without prior written approval of the transaction by the customer." The NASD considers discretionary transactions in DPP securities that are illiquid and for which no ready market exists to be an improper use of discretionary power.

Since the adoption of the DPP rule in 1982,[2] an increasing number of DPPs, such as master limited partnerships, have issued partnership units, depositary receipts for such units, or assignee units of limited partnership units that are freely tradeable in a manner analogous to common stock and are quoted on Nasdaq or listed on registered national stock exchanges.

Recently, the NASD considered whether DPP securities listed on Nasdaq or a registered national stock exchange ought to be subject to the discretionary account restrictions in the DPP rule. The NASD determined that the concerns that attach to the use of discretionary authority for illiquid, unmarketable DPP securities are not present with freely tradeable DPP securities.

Description Of Amendments

The NASD has adopted amendments that reverse the order of current Subsections (b)(3)(C) and (D) to Section 34 of the DPP rule and add a reference to Subparagraph 3(C) in new Subparagraph 3(D) to exclude from the prohibition on transactions in discretionary accounts without written approval:

• secondary public offerings of, or secondary market transactions in, a DPP security for which quotations are displayed on Nasdaq or which is listed on a registered national securities exchange, and

• primary offerings of a DPP for which an application for inclusion on

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[1] *See*, Securities Exchange Act Rel. No. 35954 (July 11,1995); 60 FR 36845 (July 18, 1995).

[2] The DPP rule was initially approved by the Securities and Exchange Commission as Appendix F to Article III, Section 34 on September 16, 1982 (Securities Exchange Release No. 19054).

Nasdaq or listing on a registered national securities exchange has been approved. The exclusion for such freely tradeable DPP securities in newly designated Subparagraph (3)(D) is available only to members that are not an affiliate of the DPP, as the concept of "affiliate" is defined in Section (2)(a)(1) of Schedule E to the NASD By-Laws. Where such an affiliation is present, the NASD believes that substantial conflicts of interest and regulatory concerns continue to exist and the exclusion should not be made available.

Recognizing the use of discretionary authority for transactions in such freely tradeable DPP securities is consistent with the current provisions in the DPP rule, which exempt freely tradeable DPP securities from the suitability and disclosure requirements of the DPP rule. Such suitability and disclosure requirements, which are necessary where DPP securities lack liquidity and marketability, are unnecessary where a ready, liquid market exists.

Discretionary transactions in freely tradeable DPP securities remain subject to the general discretionary account requirements contained in Article III, Section 15 of the Rules of Fair Practice.

Questions regarding this Notice may be directed to Robert J. Smith, Attorney, Office of General Counsel, at (202) 728-8176.

Text Of Amendments To Article III, Section 34 Of The Rules Of Fair Practice

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

Direct Participation Programs

Sec. 34.

(a) through (b)(2) No change.

Suitability

(3)(A) A member or person associated with a member shall not underwrite or participate in a public offering of a direct participation program unless standards of suitability have been established by the program for participants therein and such standards are fully disclosed in the prospectus and are consistent with the provisions of subparagraph (B) of this section.

(B) In recommending to a participant the purchase, sale or exchange of an interest in a direct participation program, a member or person associated with a member shall:

(i) have reasonable grounds to believe, on the basis of information obtained from the participant concerning his investment objectives, other investments, financial situation and needs, and any other information known by the member or associated person, that:

a. the participant is or will be in a financial position appropriate to enable him to realize to a significant extent the benefits described in the prospectus, including the tax benefits where they are a significant aspect of the program;

b. the participant has a fair market net worth sufficient to sustain the risks inherent in the program, including loss of investment and lack of liquidity; and

c. the program is otherwise suitable for the participant; and

(ii) maintain in the files of the member documents disclosing the basis upon which the determination of suitability was reached as to each participant.

(C) [(D)] Notwithstanding the provisions of subparagraphs (A) and (B) hereof, no member shall execute any transaction in a direct participation program in a discretionary account without prior written approval of the transaction by the customer.

(D) [(C)] Subparagraphs 3(A) and 3(B), and, only in situations where the member is not affiliated with the direct participation program, Subparagraph 3(C), shall not apply to:

(i) a secondary public offering of or a secondary market transaction in a unit, depositary receipt, or other interest in a direct participation program for which quotations are displayed on the NASDAQ System or which is listed on a registered national securities exchange, or

(ii) an initial public offering of a unit, depositary receipt or other interest in a direct participation program for which an application for inclusion on the NASDAQ System or listing on a registered national securities exchange has been approved by NASDAQ or such exchange and the applicant makes a good-faith representation that it believes such inclusion on NASDAQ or listing on an exchange will occur within a reasonable period of time following the formation of the program.

NASD NOTICE TO MEMBERS 95-64

SEC Approves Amendments To Article III, Section 34 Of The NASD Rules Of Fair Practice And Part I Of Schedule D To The NASD By-Laws Relating To Limited Partnership Rollup Transactions

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 July 3, 1995, the Securities and Exchange Commission (SEC) approved amendments to Article III, Section 34 of the NASD Rules of Fair Practice and Part I of Schedule D to the NASD By-Laws to exclude investment companies and business development companies from the definition of "limited partnership rollup transaction."[1] The rule change became effective on July 3, 1995.

Background And Description

Federal legislation regulating limited partnership rollups (Rollup Reform Act) was signed into law on December 17, 1993, and contained a mandate for the NASD to adopt its own rollup rule. The NASD's rule regulating rollups (Rollup Rule) was approved by the SEC on August 15, 1994[2] and amended Article III, Section 34 of the NASD Rules of Fair Practice to prohibit NASD members and associated persons from participating in a limited partnership rollup transaction unless the transaction includes specified provisions to protect the rights of limited partners.

The Rollup Rule further amended Part III of Schedule D to the By-Laws to prohibit the authorization for quotation on the Nasdaq National Market® of any security resulting from a limited partnership rollup transaction unless the transaction is conducted in accordance with certain specified procedures designed to protect the rights of dissenting limited partners. The NASD Rollup Rule was designed to conform to the federal rollup legislation.

Subsequent to approving the NASD Rollup Rule, the SEC adopted new Rule 3b-11 to exclude from the definition of limited partnership rollup transaction, among other things, transactions involving entities registered under the Investment Company Act of 1940 (the Act) or any Business Development Company as defined in Section 2(a)(48) of the Act.[3] In its adopting release, the SEC stated that it was adopting the new rule to define related terms used in the federal rollup definition "...for purposes of, among other things, the SRO rules." Subsequently, the SEC requested that the NASD amend the Rollup Rule to conform the NASD's definition of limited partnership rollup transaction to the definition adopted by the SEC.

The amendments add an exclusion for investment companies and business development companies to the definition of limited partnership rollup transaction in new paragraph 7 to Subsection (b)(2)(B)(vii)d to Article III, Section 34 of the Rules of Fair Practice and new paragraph (vii) to Subsection 14(D) to Part I of Schedule D. Thus, the amendments exclude investment companies and business development companies from the purview of the Rollup Rule. Investment companies and business development companies are already subject to extensive regulation under the Act and have not been perceived as entities connected with the types of abusive limited partnership rollup transactions for which the investor protection provisions of the rollup rules were sought.

Questions regarding this Notice may be directed to Robert J. Smith, Attorney, Office of General Counsel, at (202) 728-8176.

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[1] *See*, Securities Exchange Act Rel. No. 35934 (July 3, 1995); 60 FR 35977 (July 12, 1995).

[2] *See*, Securities Exchange Act Rel. No. 34533 (August 15, 1994); 59 FR 43147 (August 22, 1994).

[3] *See*, Securities Act Release No. 33-7113; Exchange Act Release No. 34-35036 (December 2, 1994); 59 FR 63676 (December 8, 1994).

Text Of Proposed Amendments To Article III, Section 34 Of The NASD Rules Of Fair Practice And Part I Of Schedule D To The NASD By-Laws

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

Direct Participation Programs

Sec. 34.

(a) No change.

(b)

Application

(1) No member or person associated with a member shall participate in a public offering of a direct participation program or a limited partnership rollup transaction except in accordance with this subsection.

Definitions

(2)(A) No change.

(B) The following terms shall have the stated meaning when used in this subsection:

(i) through (vi) No change.

(vii) Limited Partnership Rollup Transaction—a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which:

a through c No change.

d. any of such investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

Notwithstanding the foregoing definition, a "limited partnership rollup transaction" does not include:

1 through 6 No change.

7. a transaction involving only entities registered under the Investment Company Act of 1940 or any Business Development Company as defined in Section 2(a)(48) of that Act.

Schedule D, Part 1 Definitions

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

(1) through (13) No change.

(14) "Limited Partnership Rollup Transaction" means a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which:

(A) through (C) No change.

(D) any of such investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

Notwithstanding the foregoing definition, a "limited partnership rollup transaction" does not include:

(i) through (vi) No change.

(vii) a transaction involving only entities registered under the Investment Company Act of 1940 or any Business Development Company as defined in Section 2(a)(48) of that Act.

NASD NOTICE TO MEMBERS 95-65

NASD Files *NASD Manual* Revisions With The SEC For Review And Approval

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 will soon file its proposed revision of the *NASD Manual* with the Securities and Exchange Commission (SEC) for approval, which is expected later this year. Following SEC approval, the NASD will direct the Commerce Clearing House and vendors providing electronic versions of the *NASD Manual* to convert the *NASD Manual* to the new version and to provide new-to-old and old-to-new conversion charts. This should be accomplished by April 1996.

Background

Many users of the *NASD Manual* have commented that it is difficult for the casual reader to use, citing in particular its use of such categories as Articles, Sections, Schedules, Codes, Guidelines, Interpretations, Resolutions, and others; the difficulty in finding all rules on a particular subject; and familiar phrases not found in the Topical Index.

In response to such comments, the NASD Legal Advisory Board produced a topical *Guide to the Manual* that has been printed in the *NASD Manual* (at page 21) for several years. NASD senior management subsequently decided to rearrange the actual text of the *NASD Manual*.

The *NASD Manual* revision project has focused on reorganizing the text of the *NASD Manual*, and creating an expanded Key Word Index. The Board approved the necessary By-Law amendments at its meeting in March to accomplish the final stages of this project and the finished product will be filed with the SEC for approval this month.

NASD Manual Reorganization

The new *NASD Manual* will be divided into four major sections: Administrative, Corporate Organization, Rules of the Association, and Regulation T and SEC Rules. A common numbering scheme will extend through the Rules, while allowing space for additional Rules to be added without the use of decimal or letter extensions. Highlights of the revised *NASD Manual* include:

• The Rules of the Association are divided into four sections: Membership and Registration Rules, Conduct Rules, Marketplace Rules, and Procedural Rules. The Guide to the *NASD Manual* is attached for your information.

• The term Rules of Fair Practice will be changed simply to Rules, and will include the material currently contained in the Rules of Fair Practice as well as other provisions that have the effect of rules, such as the membership and qualification rules of Schedule C, the Nasdaq® rules of Schedule D, and all other Schedules except Schedule A (fees) and B (District boundaries), which will remain with the By-Laws.

• There is consistency in the numbering and lettering of paragraphs and subparagraphs within the Rules. Interpretations to the Rules are now called Interpretive Material, and numbered with an "IM" followed by the number of the Rule or Rules they interpret.

• The Code of Procedure, Code of Arbitration Procedure, and Uniform Practice Code will keep their current names, and will be in the overall Rules-numbering convention.

• Duplicate definitions were deleted.

• References to the SEC, the Securities Exchange Act of 1934, and the NASD were conformed to ensure that they are consistent throughout the *NASD Manual*.

Attached to this Notice is a Guide to the *NASD Manual* with provisions listed in substantially the order that they will appear in the revised *NASD Manual*. Any developments in the status of this project will be reported in regular editions of *Notices to Members*.

Please direct your questions or concerns about these proposed changes to T. Grant Callery, Vice President and General Counsel, Office of General Counsel, at (202) 728-8285 or Joan C. Conley, Corporate Secretary, at (202) 728-8381.

Guide To The *NASD Manual*

Administrative

Guide To The Manual
History And Organization Of The NASD
Officials
Telephone Inquiries
List Of Selected *Notices To Members*
Publications Order Form
Clearing Corporation And Depository References
Members
Changes To List Of Members; Disciplinary Actions

Corporate Organization

Certificate Of Incorporation
By-Laws
Schedule A—Assessments And Fees
Schedule B—Districts: Number And Territorial Boundaries

Rules Of The Association

0100 General Provisions (Rules of Fair Practice, Articles I and II)

Membership And Registration Rules

1000 Membership, Registration, And Qualification Requirements (Schedule C)

Conduct Rules
(Schedule D, Part VII; Schedule E; Government Securities Rules; Rules of Fair Practice, Article III)

2000 Business Conduct
- 2100 General Standards
- 2200 Communications With Customers And The Public
- 2300 Transactions With Customers
- 2400 Commissions, Markups, And Charges
- 2500 Special Accounts
- 2700 Securities Distributions
- 2800 Special Products
- 2900 Responsibilities To Other Brokers Or Dealers
- 3000 Responsibilities Relating To Associated Persons, Employees, And Others' Employees
- 3100 Books And Records And Financial Condition
- 3200 Settlements
- 3300 Trading

Marketplace Rules

4000 The Nasdaq Stock Market℠ (Schedule D)
- 4100 General
- 4200 Definitions (Part I)
- 4300 Qualification Requirements For The Nasdaq Stock Market Securities (Part II)
- 4400 Nasdaq National Market® Issuer Designation Requirements (Part III)
- 4500 Issuer Listing Fees (Part IV)
- 4600 Market-Maker Requirements (Parts V, X, XI, XII)
- 4700 Small Order Execution System (SOES℠)

5000 Other Nasdaq® And NASD Markets
- 5100 Nasdaq International® Service Rules
- 5200 Intermarket Trading System/Computer Assisted Execution System (ITS/CAES)
- 5300 The PORTAL℠ Market (Schedule I)

6000 NASD Systems And Programs
- 6100 Automated Confirmation Transaction (ACT℠) Service
- 6200 Fixed Income Pricing System (FIPS®)
- 6300 Consolidated Quotations Service (CQS) (Schedule D, Part VI)
- 6400 Reporting Transactions In Listed Securities (Schedule G)
- 6500 OTC Bulletin Board (OTCBB®)
- 6600 Reporting Transactions In Over-The-Counter Equity Securities (Schedule D, Part XII)

6700 Reporting Transactions In Certain Non-Nasdaq Securities (Schedule H)
6800 Mutual Fund Quotation Program (Schedule D, Part XIV)

7000 Charges For Services And Equipment (Schedule D, Part VIII)

Procedural Rules

8000 Complaints, Investigations And Sanctions
8100 Complaints (Article IV, Secs. 1-4, RFP)
8200 Investigations (Article IV, Sec. 5, RFP)
8300 Sanctions (Article V, RFP)

9000 Code Of Procedure
9100 Administrative Provisions (Article I And X)
9200 Disciplinary Actions By District Business Conduct Committees, The Market Surveillance Committee, And Others (Article II)
9300 Review Of Disciplinary Actions By The National Business Conduct Committee And The Board (Article III)
9400 Imposition Of Sanctions And Costs (Article IV)
9500 Limitation And Approval Procedures Under Rules 3130 And 3140 (Article V)
9600 Summary Suspension (Article VIII), Revocation (Article VI) Expedited Remedial (Article XI), And Eligibility (Article VII) Procedures
9700 Procedures On Grievances Concerning The Automated Systems (Article IX)
9800 Corporate Financing And Direct Participation Program Matters (Article XII)

10000 Code Of Arbitration Procedure
10100 Administrative Provisions
10200 Industry And Clearing Controversies
10300 Uniform Code Of Arbitration

11000 Uniform Practice Code

Regulation T And SEC Rules

Key Word Index

NASD NOTICE TO MEMBERS 95-66

PROCTOR Adds PRO System To Automate Regulatory Element Training

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

To provide better geographic coverage to accommodate the delivery of the Continuing Education Program Regulatory Element, NASD has designed the PROCTOR® PRO system. This system provides computerized delivery of the Regulatory Element at remote locations. The PRO system is currently scheduled at the following remote delivery locations:

• Amarillo, Texas—August 17-18, 1995, and October 25-27, 1995;

• Casper, Wyoming—August 23-24, 1995;

• Boise, Idaho—September 6-8, 1995, and November 8-10, 1995; and

• Anchorage, Alaska—September 13-15, 1995, and November 29-December 1, 1995.

Additional locations not yet secured but pending are:

• Las Vegas, Nevada;

• Honolulu, Hawaii; and

• Spokane, Washington.

To schedule an appointment to complete the Continuing Education Program Regulatory Element call (800) 999-6647 and select option 1.

NASD NOTICE TO MEMBERS 95-67

NASD Clarifies The Expanded Limit-Order Protection Interpretation

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 June 5, 1995, the NASD issued *Special Notice to Members 95-43* (Special Notice) discussing the expansion of the Limit-Order Protection Interpretation (Interpretation) to Article III, Section 1 of the NASD Rules of Fair Practice that prohibits member firms from trading ahead of customer limit orders (commonly known as Manning II). The expanded Interpretation extends the scope of limit-order protection in The Nasdaq Stock Market (Nasdaq) to ensure that all customers' limit orders are afforded the same protection throughout Nasdaq.

Previously, the Interpretation required that member firms only protect their own customers' limit orders. Under the expanded Interpretation, a member firm may not accept and hold a limit order from a customer of the firm *or* a customer of another firm that has directed the limit order to the member (member-to-member limit orders) and continue to trade that security for its own account at prices that would satisfy the limit order it is holding. The expanded Interpretation thus requires that a member firm handling a customer's limit order must execute that limit order, in full or in part, to the extent that the member firm trades at a price equal or inferior to the limit-order price. For example, if a firm accepts a limit order to buy (sell) 100 shares of XYZ at 10 1/8, then the firm may not purchase (sell) XYZ for its own account at a price equal to or lower (greater) than 10 1/8, without also executing the limit order to buy (sell) at 10 1/8.

The expanded Interpretation also has a phase-in schedule for the treatment of member-to-member orders greater than 1,000 shares and provisions governing the attachment of terms and conditions to the execution of limit orders placed by institutions and limit orders that are 10,000 shares or greater and have a value of $100,000 or more.

Since the Special Notice was issued, the NASD has received numerous questions concerning the implications under Manning II of reporting trades on a net basis (that is, transactions where the customer pays no fees or commissions). To enhance member firm compliance with the expanded Interpretation, this Notice provides a further discussion on this issue and responds to other issues raised since the Special Notice was published.

Questions And Answers

Q. 1: Assuming the market for XYZ is 50 - 50 1/2 and a firm is holding a limit order to sell 100 shares of XYZ at 50 1/4, if the firm were to sell 1,000 shares of XYZ to another customer on a "net" basis, whereby it reported the trade at 50 3/8 and provided a sales credit of a 1/4 point/share to its salesperson, would the firm have to execute the limit order to sell?

A: Yes. The reported price is the "benchmark" price to determine whether a member's obligation to execute a limit order has been activated. The member reported a trade in which it sold XYZ at 50 3/8, therefore it is obligated to execute the limit order priced at 50 1/4.

However, the 1/4 point sales credit could constitute a form of remuneration. In such case, the member could have reported the trade at 50 1/8 with the 1/4-point sales credit disclosed on the confirmation statement required to be furnished to the customer pursuant to SEC Rule 10b-10. In this case, the member would not have been obligated to execute the limit order because it would not have reported a trade at a price inferior to the limit-order price.

Even though a member's trade-reporting practices may have implications for its obligations under the Interpretation, the NASD emphasizes that implementation of the Interpretation has in no way modified, altered, or amended the NASD's trade-reporting rules or SEC Rule 10b-10. The Interpretation does not constrain or preclude members from executing and reporting trades on a "net" basis. However, to the extent members choose to report trades on a "net" basis, they must protect limit orders based on the reported prices of such trades, not the reported prices of such net trades inclusive or exclusive of any markup, markdown, commission, sales credit or commission-equivalent charge.

(See attached chart.)

Q. 2: If a member firm accepts limit orders from its retail customers that incorporate a commission, commission-equivalent, mark-up, or mark-down in the limit-order price (collectively referred to as remuneration), may the firm protect the limit orders at their "stated" limit-order price instead of at their "actual" limit-order price (that is, excluding the remuneration for limit orders to buy and including the remuneration for limit orders to sell)?

A: The Interpretation requires member firms to protect retail customers' limit orders at their "stated" limit-order price. Member firms may protect retail customers' limit orders at the "actual" limit-order price if instructed to do so by the customer. In this connection, the SEC specifically addressed this issue in its release approving Manning II:

> The Commission believes it is permissible for a customer to instruct a market maker to purchase (sell) a security for it such that the total costs (proceeds) to the customer (including any commissions, markups or other charges) are not greater (less) than a single net price per share. Thus, for example, if a customer enters a limit order to purchase security XYZ and requests that its total costs not exceed $10 per share, and the customer is informed that the market maker charges a markup of 1/4, then a market maker may continue to purchase for its own account at $10 without also executing the customer order. The customer order would be deemed a limit order at $9-3/4. The Commission emphasizes that 'the price at which the limit order is to be protected must be clearly explained to the customer.'[1]

If a member intends to protect a retail customer's limit order at the "actual" limit-order price pursuant to the customer's instructions, then the "actual" limit-order price must be clearly explained to and understood by the customer.

It necessarily involves a fact-and-circumstances analysis to determine whether a retail customer instructed a member firm to protect its limit order at the "actual" limit-order price instead of the "stated" limit-order price. In this connection, a member firm bears the burden of establishing that its retail customer attached such instructions to the execution of its limit order and that the customer clearly understood what the protectable limit-order price was.

In addition, with respect to limit orders placed by institutional accounts[2] and limit orders that are for 10,000 shares or more and greater than $100,000 in value (collectively referred to as institutional limit orders), the amended Interpretation permits member firms to negotiate terms and conditions on the acceptance and handling of such limit orders. Accordingly, for institutional limit orders, member firms can negotiate and arrange to protect them at their "actual" limit-order price instead of their "stated" limit-order price. If a member firm imposes terms and conditions on the execution of an institutional limit order (such as, protecting it at the "actual" limit-order price), it must be able to demonstrate that the customer clearly understood such terms and conditions. If the actual limit-order price for an institutional limit order is different than its stated limit-order price, the member must be able to demonstrate that the customer knew what the actual limit-order price was.

Q. 3: Does the Interpretation require members to protect limit orders 24 hours a day or only during regular trading hours?

A: The Interpretation is in effect during regular Nasdaq trading hours, from 9:30 a.m. to 4 p.m., Eastern Time, unless a particular trading day is shortened by Nasdaq due to a holiday or other event. In such cases, the time that the rule is in effect corresponds to the hours that Nasdaq is open.

Q. 4: May a firm afford its own customers' limit orders priority

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[1] *See* Securities Exchange Act Rel. No. 35751 (May 22, 1995), 60 FR 27997, at note 42.

[2] For the Interpretation, institutional accounts are as defined in Article III, Section 21(c)(4) of the NASD Rules of Fair Practice. Specifically, Section 21(c)(4) defines institutional accounts as accounts for: (1) banks, savings and loan associations, insurance companies, or registered investment companies; (2) investment advisers registered under Section 203 of the Investment Advisers Act of 1940; and (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of a least $50 million.

over limit orders received from another member?

A: No. A member may not knowingly favor its own customers' limit orders in determining the priority of limit orders accepted by the firm from its own customers and customers of other members.

Q. 5: Once a member is obligated to execute a limit order, how quickly must it execute the limit order?

A: If a member trades through a limit order that it has accepted, the Interpretation provides that it must contemporaneously execute such limit order. To meet this obligation, a member must execute the limit order as quickly as possible. Absent reasonable justification that is adequately documented by the member firm, a limit order must at least be executed within a general time parameter of one minute after it has been activated.

Q. 6: Assuming the market for XYZ is 20 - 20 1/2 and a firm holds a limit order to buy priced at 20 1/4 and a limit order to sell priced at 20 1/4, if the firm purchases XYZ at 20 and immediately thereafter executes the limit order to buy, would the firm then also have to execute the limit order to sell because it sold XYZ at a price equal to the price of the limit order to sell?

A: No. Once the firm has executed the limit order it has traded through, it has satisfied its obligation under the Interpretation. The execution of a limit order pursuant to the Interpretation does not trigger an obligation to execute another limit order on the opposite side of the market.

Q. 7: Does the Interpretation require members to protect limit orders preferenced to them through the Small Order Execution System (SOES℠) or directed to them via the Advanced Computerized Execution System (ACES®)?

A: Yes. Once a member firm has agreed to accept preferenced SOES orders from another member, it must protect limit orders preferenced to it from that firm. In addition, a firm receiving limit orders through ACES must protect such limit orders under the Interpretation.

Q. 8: If a firm is facilitating a "buy/write" transaction for a customer whereby it seeks to execute a short-call transaction and a corresponding stock-purchase transaction at specified prices or at a specified spread, does the stock component of such combination order have priority over other limit orders held by the firm?

A: No. Limit orders that are part of combination orders involving multiple transactions in related financial instruments are not accorded any special priority under the Interpretation. Limit orders that are part of combination orders should be handled and processed just like any other limit order received by the firm. Thus, such limit orders should be subject to the same limit-order priority procedures as the firm applies to other limit orders. In addition, the execution of the equity component of a combination order would activate the execution of a limit order to the same extent as any other equity transaction.

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; Thomas R. Gira, Assistant General Counsel, Office of General Counsel, at (202) 728-8957; or Eugene A. Lopez, Assistant General Counsel, Office of General Counsel, at (202) 728-6998.

The following chart illustrates the limit order protection obligation resulting from particular transactions in XYZ stock. In all examples the inside market for XYZ is 50 - 50 1/2.

Trades in XYZ Stock	Trading Department			Confirmed to Customer	Mark-up[1]	Sales Credit	Reported Price	Limit Order Protection Obligation
	Beginning Inventory	Position Costs	Proceeds/ Share					
MM Sells 1,000 Shares	Long 1,000 Shares	N/A	50 1/8	As Principal the firm **SOLD** Customer **BOT 1,000** Shares @ **50 1/2 Net** Gross **$50,500**	N/A	3/8	50 1/2	Limit Orders to Sell Priced at 50 1/2 or Below
MM Sells 20,000 Shares	0 Shares	BUYS 10,000 @ 50	50 3/16	As Principal the firm **SOLD** Customer **BOT 20,000** Shares @ **50 1/4 Net** Gross **$1,005,000**	N/A	1/16	50 1/4	Limit Orders to Sell Priced at 50 1/4 or Below
MM Sells 1,000 Shares	Short 5,000 Shares	N/A	50 1/8	As Principal the firm **SOLD** Customer **BOT 1,000** Shares @ **50 3/8 Net** Gross **$50,375**	N/A	1/4	50 3/8	Limit Orders to Sell Priced at 50 3/8 or Below
MM Sells 1,000 Shares	Long 1,000 Shares	N/A	50 3/8	As Principal the firm **SOLD** Customer **BOT 1,000** Shares @ **50 3/8** w/Comm. equivalent of **$250** Gross **$50,625**	N/A	$250	50 3/8	Limit Orders to Sell Priced at 50 3/8 or Below
MM Sells 1,000 Shares	Long 1,000 Shares	N/A	50 1/4	As Principal the firm **SOLD** Customer **BOT 1,000** Shares @ **50 5/8 Net** inclusive of a **Markup of 1/8 point** Gross **$50,625**	1/8	3/8	50 1/2	Limit Orders to Sell Priced at 50 1/2 or Below

[1] Members are directed to Notice-to-Members 92-16 for guidance concerning compliance with the NASD's Policies and Procedures relating to markups/markdowns in equity securities.

NASD NOTICE TO MEMBERS 95-68

Fed. Proposes Changes To Reg. T; **Comment Period Expires: August 28, 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 Board of Governors of the Federal Reserve System (Fed.) is requesting comments on proposed changes to Regulation T (Reg. T), which covers extensions of credit by and to broker/dealers. The proposed amendments address a number of topics, including options, foreign securities, the special memorandum account, and cash accounts. Many of the proposed changes place increased reliance on the rules of the Securities and Exchange Commission (SEC) and self-regulatory organizations (SROs). **Comments are due on or before August 28, 1995.**

Explanation Of Proposed Changes

Reprinted below is a section-by-section explanation of the proposed changes as published in the June 29, 1995, *Federal Register*. A more detailed discussion of these changes is found in that release, which follows this Notice.

Section 220.2 Definitions

The following new definitions are being proposed: cash equivalent, covered option transaction, exempted securities mutual fund, foreign person, money market mutual fund, non-U.S. traded foreign security, and permitted offset position. The following definitions will be modified; escrow agreement, in the money, margin security, OTC margin bond, OTC margin stock, short call or short put, and underlying security. The definition of "in or at the money" will be deleted and SEC-approved rules of the appropriate SRO will govern permitted offsets for specialists.

Section 220.3 General Provisions

Section 220.3(e)(4), "Receipt of funds or securities," is used by creditors to temporarily finance the exercise of a customer's employee stock option. The section will be reworded to permit such short-term financing for anyone entitled to receive or acquire any securities pursuant to an SEC-registered employee benefit plan.

Section 220.3(i) "Variable annuity contracts issued by insurance companies," will be deleted, although no substantive change is intended.

Section 220.4 Margin Account

Section 220.4(b) will contain all provisions of Section 220.5, except for those covering specific options transactions. The options provisions will be deleted and SEC-approved rules of the SROs will apply to these transactions.

Section 220.4(c) will no longer prohibit a margin excess in a foreign currency subaccount from offsetting a margin deficiency in another foreign currency subaccount.

Section 220.5 Special Memorandum Account

This account will be moved from Section 220.6. No substantive changes are proposed.

Section 220.6 Government Securities Account

This account will be moved from Section 220.18. No substantive changes are proposed.

Section 220.8 Cash Account

Section 220.8(a), "Permissible transactions," will be amended in two ways:

• Cash account will recognize industry practice and specifically permit the sale to a customer of any asset on a cash basis.

• Covered options transactions per-

mitted under Section 220.8(a)(3) will be broadened to include any eligible transaction designated by the SEC-approved rules of the SROs.

Section 220.8(b), "Time periods for payment, cancellation or liquidation," will permit creditors to accept full cash payment from customers for the purchase of foreign securities up to one day after the regular-way settlement date.

Section 220.11 Broker/Dealer Credit Account

Three substantive changes are being proposed to Section 220.11(a), "Permissible transactions:"

• Foreign broker/dealers will be permitted to use the account for delivery-versus payment transactions with U.S. broker/dealers.

• Joint back-office arrangements will require a reasonable relationship between the owners' equity interest and the amount of business effected or financed by the joint back office.

• "Prime broker" arrangements set up under SEC guidelines will be able to use this account for transactions effected at executing broker/dealers.

Section 220.12 Market Functions Account

Section 220.12(b), "Specialists," will be amended to allow SEC-approved rules for the SROs to determine which permitted offsets can be effected on a good-faith basis.

Section 220.13 Arranging For Loans By Others

Changes are proposed for this section in two areas:

• The provision allowing U.S. broker/dealers to arrange for customers to obtain credit from a foreign lender to purchase foreign securities will be expanded to cover short sales, while the overall coverage of this provision will be limited to foreign securities that are not publicly traded in the United States.

• The regulation will explicitly permit U.S. broker/dealers to sell their customers foreign securities with installment features, if the offering has only a small U.S. component.

Section 220.16 Borrowing And Lending Securities

Two changes are proposed for this section:

• The required collateral will be expanded to include marginable foreign sovereign debt securities and any collateral that is acceptable to the SEC when a broker/dealer borrows securities from its customer.

• U.S. broker/dealers will be able to lend foreign securities to a foreign person for any legal purpose and against any legal collateral.

Section 220.18 Supplement: Margin Requirements

Several changes are being proposed. Options will be given 50 percent loan value if listed on a national securities exchange. Mutual funds whose portfolio is limited to exempted securities will be given good-faith loan value, as will money market mutual funds.

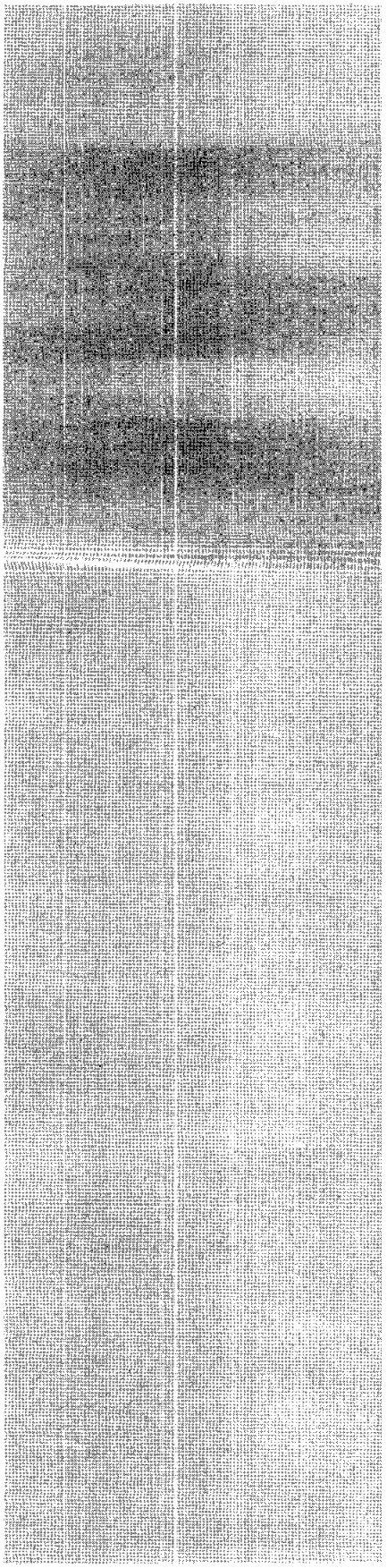
NASD members are urged to review the Fed.'s proposal in its entirety. Members that wish to comment on this proposal should do so by August 28, 1995. Comment letters should refer to Docket No. R-0772 and be sent to:

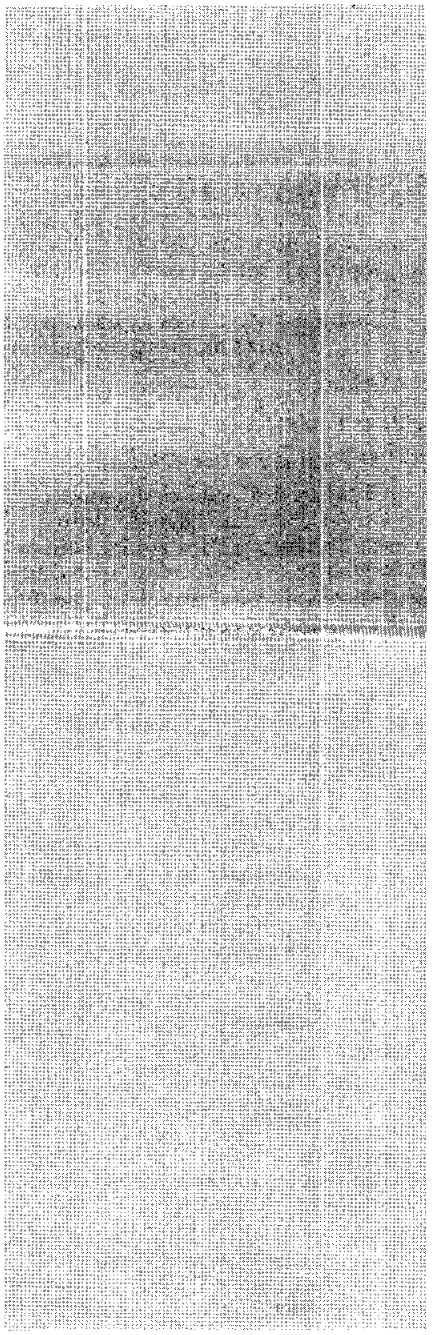
William W. Wiles
Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave., NW
Washington, DC 20551

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

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

Questions concerning this Notice may be directed to Anne Harpster, Compliance Department, at (202) 728-8092.





FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R–0772]

RIN 7100–AB28

Securities Credit Transactions; Review of Regulation T, "Credit by Brokers and Dealers"

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: As part of a program to periodically review its regulations, the Board is proposing amendments to Regulation T, the regulation that covers extensions of credit by and to broker and dealers (also known as creditors). These amendments reflect consideration of the comments submitted in response to the Board's Advance Notice of Proposed Rulemaking. Many of the proposed amendments feature increased reliance on rules of the Securities and Exchange Commission (SEC) and self-regulatory organizations (SROs) and others would make Regulation T consistent with Regulation G and Regulation U, the regulations covering securities credit by lenders other than broker-dealers. Proposed changes in the options area include permitting loan value for long positions in exchange-traded options and increasing reliance on the margin rules of the exchange that trades the option for customer and specialist transactions. These changes would also allow creditors to recognize the offsetting nature of financial futures in calculating margin for securities options. Proposed amendments in the international area will reduce restrictions on transactions involving foreign securities that are not publicly traded in the United States and foreign securities being sold on an installment basis if the U.S. component is a relatively small percentage of the offering. Broker-dealers would also be given more flexibility in computing overall margin requirements for customer accounts with securities denominated in one or more foreign currencies. In addition to these and other amendments, technical changes are being proposed to clarify areas that have raised questions, update references, or restore language inadvertently deleted. The Board is also soliciting comments on a number of specific proposals. Finally, a number of questions regarding the existing regulation raised by commenters are being answered.

DATES: Comments should be received on or before August 28, 1995.

ADDRESSES: Comments should refer to Docket No. R–0772, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street, N.W.) at any time. Comments received will be available for

inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney, or Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation (202) 452–2781; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: In 1992, the Board issued an advance notice of proposed rulemaking and request for comment concerning a general review of Regulation T.[1] Comments were received from 31 respondents, some of whom commented more than once. The comments have been analyzed to help prepare proposed amendments to the regulation. These proposed amendments are consistent with the current tenor of the regulation and statutory requirements; however, the comments raised broad issues as to purposes that Regulation T serves in light of the current regulatory environment and market practices. One comment questioned the continuing need for the Regulation T requirements, noting that possible purposes for the regulation, such as broker dealer financial integrity and customer protection, also are addressed by SEC oversight of brokers and dealers by means of net capital and customer protection rules. Comments also suggested broad changes to Regulation T that the commenters believe are appropriate in the current environment. These changes included, but were not limited to: (1) Delegating all responsibility for margins and related requirements to the self-regulatory organizations under the oversight of the SEC; (2) applying the restrictions on arranging credit only to credit that otherwise violates margin rules; (3) eliminating margin requirements on loans to brokers and dealers; (4) exempting from the margin rules transactions in all exempt securities; (5) exempting transactions with sophisticated customers; (6) expansion of permissible arrangements for borrowing and lending securities; and (7) exempting transactions in investment grade securities. While the Board believes that it is important to proceed with the proposed amendments in order to address particular problems, the Board also believes regulatory structures should be reviewed continually, not merely to update them, but also to assess whether different structures would better meet regulatory objectives and even whether regulation is still necessary. Accordingly, the Board requests comments including particular proposals and supporting legal and policy rationale, not only on the specific changes to Regulation T set forth in this notice, but also on the proposals enumerated above, the continuing need for Regulation T, and appropriate changes to its scope and architecture. The supplementary information that follows explains what is being proposed and reasons therefor.

[1] 57 FR 37109, August 18, 1992.

I. Options

A. Exchange-Traded Options

1. Loan Value for Long Options

All securities listed on a national securities exchange have loan value under Regulation T except for options. The Board proposes to eliminate this disparate treatment, which was adopted in the early 1970s, and allow exchange-traded options the same 50 percent loan value currently afforded other margin equity securities. In light of the successful growth of standardized options trading since the 1970s, the positive performance of the Options Clearing Corporation, and the development of new types of options, other securities and financial futures, the Board is proposing to treat long positions in exchange-traded options the same as other registered equity securities for margin purposes.

Granting 50 percent loan value to exchange-traded options would also address a disparity that has arisen in the past few years with the listing of so-called index warrants. Although index warrants resemble long-term options, the use of the word "warrant" to describe this product has led many broker-dealers to allow 50 percent loan value for these instruments while long-term options, such as LEAPs, are not permitted any loan value under the current regulation. Treating exchange-traded options the same as other exchange-traded equity securities would eliminate this disparity.

2. Increased Reliance on SRO Rules

When Regulation T was adopted in 1934, the amount of margin required for writing a put or call was the amount "customarily required" by the creditor. In the 1970s the Board adopted specific requirements based on existing rules of one of the self-regulatory organizations (SROs). Starting in the 1980s, the Board has on more than one occasion amended Regulation T to incorporate by reference SRO margin rules for options transactions. The Board is proposing to continue this process by increasing reliance on SRO options margin rules for customers and specialists.

a. Margin account. The margin account currently specifies positions which may serve in lieu of the margin required for writing an option on an equity security, while incorporating the rules of the SROs for options written on anything other than an equity security (such as a securities index). The Board proposes to allow SRO rules, which must be approved by the SEC, to prescribe appropriate cover for all short options positions.

Many commenters expressed support for a risk-based options margin system and/or a recognition of the offsetting nature of financial futures based on similar indexes, rates, or assets. Under the Board's proposal, the SROs would be able to further these goals in setting cover requirements for all types of securities options.

b. Cash account. Although the writing of an option creates a short position which is normally carried in the margin account, the cash account section was amended in the early 1980s to allow certain covered options transactions to be effected in this account. Board staff has since indicated that the cash account can be used for additional options transactions. These transactions are not "covered" in the sense that the account holds the underlying security However, the transactions involve a quantifiably limited risk and the cash account in which the transaction is effected contains specified assets of sufficient value to cover this amount or an escrow receipt representing such assets.[2] The Board proposes to adopt generic language under which a "covered option transaction" would be eligible for the cash account under specified conditions. The Board is also adding money market mutual funds to the list of cash equivalents that may be used to cover a put written in the cash account.

c. Market functions account. Regulation T permits the extension of credit on a good faith basis to a specialist for transactions in its specialty security. In addition, options specialists can obtain good faith financing for the underlying security and other specialists can obtain good faith credit for options overlying their specialty securities. These positions are known as "permitted offsets." The regulation specifies which positions must be held in the account to allow permitted offsets and does not provide for offsets in the case of specialists in

[2] See, e.g., Staff Opinion of July 12, 1991, Federal Reserve Regulatory Service (*FRRS*) 5–666.251 and Staff Opinion of October 11, 1991, *FRRS* 5–666.26.

index options. The Board proposes to adopt generic language permitting the extension of good faith credit for permitted offsets, provided the position has been designated as a permitted offset under SEC-approved rules of the appropriate SRO.

B. OTC Options

In 1991, Board staff raised no objection to a broker-dealer that sought to "arrange" for its customer to write an OTC option on foreign securities.[3] This position would be codified by the proposed amendments to the arranging section concerning foreign securities. The Board is not proposing to extend this position to OTC options on securities which are publicly traded in the United States. Allowing broker-dealers to arrange for customers to write OTC options without collecting margin would not be consistent with the requirements of the organized options exchanges. Rules of the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD) both provide that margin is required for the "issuance, guarantee or sale (other than a 'long' sale) for a customer of a put or call." The Board is proposing to add the word "sell" to the language in the cash account to make clear that the Board's rules cover the same situations covered by NYSE and NASD rules.

C. Employee Stock Options and Other Benefit Plans

Section 220.3(e)(4) of Regulation T was added in 1988 to allow creditors to help customers with valuable employee stock options exercise their options by providing short-term financing of the exercise price. The short-term loan is either paid off from the sale of the securities received pursuant to the employee stock option or replaced with a conventional margin loan extended against those securities. This practice has come to be known in the industry as "cashless exercise." Over the last five years, Board staff has not objected to the expansion of the application of § 220.3(e)(4) to other types of securities customers receive under employee benefit plans, such as certain employee stock warrants. In addition, Board staff has allowed brokers to temporarily finance withholding taxes due on stock received under employee benefit plans. New language is being proposed to reflect these staff opinions. The new language would also allow the use of § 220.3(e)(4) for outside directors and consultants who are eligible to participate in employee benefit plans under SEC rules.

II. International Transactions

A. Foreign Broker-Dealers

Any entity required to register as a broker or dealer with the SEC under section 15(a) of the Securities Exchange Act of 1934 (the Act) is a creditor under Regulation T. Although the definitions of "broker" and "dealer" in the Act do not refer to nationality, the SEC's policy is to require registration of foreign broker-dealers only when they are physically operating in the United States.[4] The Board generally follows the SEC in this area and does not consider foreign broker-dealers not required to register with the SEC as creditors under Regulation T.

Although the commenters were mixed on whether the definition of creditor should be amended to include or exclude foreign broker-dealers, there was general agreement that U.S. broker-dealers purchasing securities from or selling securities to a foreign broker-dealer on a DVP basis should be able to effect the trades on a broker-to-broker basis. Proposed language is being added to the Broker-Dealer Credit Account that will make clear that foreign broker-dealers may use this account for DVP transactions with U.S. broker-dealers.

B. Foreign Currency

Since 1990, creditors have been able to extend margin credit denominated in foreign currency if it is secured by foreign margin securities denominated or traded in the same foreign currency. If a customer has securities of various denominations, margin subaccounts (and, if desired, SMA subaccounts) are set up so that credit computed in U.S. dollars and each separate currency can be isolated. Under the current rule, an increase in the value of securities used to support specific foreign currency-denominated debt cannot be used to offset a deficiency in another margin subaccount. At the request of commenters, the Board is proposing to delete this limitation and permit margin requirements denominated in any currency to be offset by equity in any marginable security or a foreign currency deposit made in connection with a security denominated in that currency. Creditors would be free to retain the current system of separate SMAs for each foreign currency denomination.

Another comment concerning foreign currency comes from the Securities Industry Association (SIA), which believes that any freely convertible currency should be able to be treated at its U.S. dollar equivalent for all purposes of Regulation T. Under the current version of Regulation T, foreign currency received in connection with the purchase, sale or loan of a security denominated in that currency may be accounted for in that currency or at its U.S. dollar equivalent. If there is no security denominated in that currency, creditors should convert the currency into its U.S. dollar equivalent upon receipt. The conversion can be effected in a customer's cash or margin account, with the resulting balance maintained in U.S. dollars.

C. Foreign Securities

1. Arranging

In 1990, the Board added an exception concerning foreign stocks to the arranging section of Regulation T which permits a creditor to arrange for its customer to receive more credit than the creditor could extend when its customer is purchasing a foreign security with credit from a foreign lender. The exception, found in section 220.13(d), was based on the theory that transactions involving foreign securities do not require the same strictness of regulation because they do not have a substantial effect on the U.S. securities market. Commenters have asked for the Board to expand the foreign stock exception to cover short sales as well. The Board agrees that equal treatment in the arranging area should be afforded to both long and short sales.

In gaining experience with the 1990 amendment, however, it has been noticed that there is an increasing trend for corporations that have issued stock abroad to list the securities for trading in the United States. Therefore, the Board is proposing a somewhat more restricted definition of what constitutes a foreign security for purposes of this section to assure equal treatment of foreign and domestic securities that are publicly traded in the United States. For example, the German conglomerate Daimler-Benz recently listed its shares on the New York Stock Exchange, thereby enabling U.S. broker-dealers to extend 50 percent credit against the stock. Under the current arranging exception for foreign securities, a creditor can arrange for its customer to borrow more than 50 percent on Daimler-Benz stock if the credit is extended by a foreign lender (often a foreign affiliate of the creditor). In contrast, a creditor may not arrange for its customer to buy AT&T stock with less than 50 percent margin, even if the credit were extended by a foreign

[3] Staff Opinion of October 22, 1991, *FRRS* 5–666.27.

[4] SEC Release No. 34–27017; 54 FR 30013 (July 18, 1989).

lender. Proposed language would address this situation and ensure equal treatment for all stocks that are publicly traded in the United States by permitting a creditor to arrange for the purchase or short sale of a "non-U.S. traded foreign security," defined as a security issued abroad that does not trade on a national securities exchange or NASDAQ.

2. Lending Foreign Securities

Under Regulation T, a creditor may borrow or lend securities for the purpose of making delivery pursuant to a short sale or "fail" transaction. In addition, the regulation limits the type of collateral that must be pledged to secure a loan of securities. Several commenters, such as the SIA and the SIA–Credit Division, request an amendment to permit U.S. broker-dealers to lend foreign securities to a foreign person for any purpose that is lawful in the foreign country. The NYSE would like to ensure that foreign securities loaned abroad do not come back to the U.S. to cover short sales or fails. The Board is therefore proposing to allow loans of foreign securities for any lawful purpose if the securities are "non-U.S. traded foreign securities." This should prevent these securities from being used for transactions in the United States. In addition, the SIA notes that many securities lending transactions occurring outside the U.S. would not meet the collateral requirements of Regulation T. The proposed amendment would allow a creditor to accept any collateral that may be pledged in the foreign country for loans of securities, providing the collateral's value is at least equal to 100 percent of the market value of the securities borrowed.

3. Installment Sales

The United Kingdom began a series of privatizations of state-owned companies in the late 1970s. Investors in the shares of these companies paid for them on an installment basis over a period of at least six months. Installment sales are not uncommon in the U.K., but are generally prohibited in this country under section 11(d) of the Act.[5] The practice is also prohibited under Regulation T if the first installment is less than the initial margin requirement.

Participation of U.S. investors in the U.K. privatizations was accommodated by letters written by Board staff.[6] The Board proposes to amend the arranging provision of Regulation T to state that a creditor is not deemed to have arranged for credit subject to the margin regulations if it sells a foreign security that is being offered on an installment basis, provided that less than 15 percent of the issue is offered to U.S. persons. This generic language would allow U.S. investors to participate in installment sales of foreign securities when the U.S. component of the offering is a relatively small portion of the overall offering and would cover offerings by foreign governments and other foreign issuers.

4. Foreign Margin Stocks

In 1990, the Board amended Regulation T to establish a List of Foreign Margin Stocks (the "Foreign List"). These stocks are treated in the same manner as domestic margin equity securities. The Board established criteria for initial inclusion on the Foreign List and for continued listing. U.S. broker-dealers certify to an SRO that specific foreign securities meet the criteria. The Board uses the information submitted by the SRO in publishing the Foreign List. The Foreign List has grown from approximately 40 stocks in August 1990 to over 700 stocks this year.

Many commenters state that the system is cumbersome and results in all broker-dealers benefitting from the research done by a small number of firms. Some commenters have suggested that a stock included in a major foreign stock index should be automatically marginable if it meets two criteria: (1) the SEC or CFTC has approved trading in the United States of options, warrants, or futures on a foreign securities index that contains the foreign equity security and (2) the SEC has determined that the stock has a "ready market" for purposes of its net capital rule.[7] The Board is soliciting comment whether such a test should be adopted, which securities would be covered under the criteria, and suggestions on how this information could be integrated into the Board's Foreign List.

III. Other Customer Transactions

A. Margin Account/SMA

Most customer transactions involving credit take place in a margin account, which may be maintained in conjunction with a special memorandum account (SMA). Several commenters recommend that more than one customer, such as members of a family, be permitted to share a single SMA. One broker-dealer notes that this would allow the individual customers' accounts to be cross-collateralized and cross-guaranteed. The Board is not proposing to change the SMA at this time. In addition to operational problems raised by linked SMAs, Regulation T and the Board's other margin regulations do not allow a guarantee to have loan value for securities credit transactions.

The SIA-Credit Division suggests elimination of the provision in § 220.4(f)(2)(ii) concerning withdrawals of securities received as part of a distribution attributed to securities already in the margin account. This section is permissive in that it permits some withdrawals which create or increase a margin deficiency. Nevertheless, the Board is soliciting comment on whether such an exception is still warranted.

1. Convertible Bonds

Under Regulations G and U (12 CFR Parts 207 and 221), a debt security convertible into a margin stock is considered a margin stock. Although no comparable rule exists in Regulation T, in 1990 the Board defined foreign margin stock to include a debt security convertible into a margin security. The SIA-Credit Division and several broker-dealers recommend applying this concept to all convertible debt securities in Regulation T and the Board is proposing language to accomplish this.

2. Mutual Funds

a. Exempted securities mutual funds. Since 1968, the definition of margin stock in Regulations G and U has excluded mutual fund shares of companies whose assets are at least 95 percent invested in exempted securities. The exclusion of these funds (exempted securities mutual funds) from the definition of margin stock is equivalent to giving them good faith loan value at lenders other than broker-dealers. The Investment Company Institute has asked the Board to amend Regulation T so that exempted securities mutual funds will be entitled to good faith loan value at broker-dealers as well as other lenders. The Board is proposing to use the regulatory language found in Regulations G and U in Regulation T.

b. Money market mutual funds. In addition to exempted securities mutual funds, the Board is proposing to give good faith loan value to money market mutual funds. Money market mutual funds are subject to additional SEC regulation and are recognized as cash equivalents by the industry and the general public.

3. OTC Margin Bonds

Several commenters suggest that the Board adopt a rating requirement for all

[5] 15 U.S.C. 78k(d).

[6] See, e.g., Staff Opinion of October 24, 1984, *FRRS* 5–615.92.

[7] 17 CFR 240.15c3–1(c)(11).

debt securities as an alternative to the current requirement that domestic debt securities be registered with the SEC. The Board has adopted the rating requirement for foreign securities because the concept of comity argues against requiring SEC registration. The fact that "mortgage-related securities" require a rating but not SEC registration was Congressionally mandated in the Secondary Mortgage Market Enhancement Act of 1984.

The Board is proposing to strike the word "mortgage" from the second section of the definition of "OTC margin bond" to clarify that all pass-through securities can meet this definition. The Board also confirms that the minimum principal amount required for "OTC margin bonds" applies to shelf registrations of a single issue once the minimum amount has been issued, even though some of the individual tranches sold may be smaller.

Although a 1984 staff opinion took the position that privately-issued Treasury receipts were not exempted securities and not entitled to loan value,[8] the Board, SEC and Treasury Department have become more comfortable over time with viewing these securities as equivalent to exempt securities. For example, a 1994 Board staff opinion concerning the Glass-Steagall Act concluded that the holder of a privately-issued Treasury receipt is, for virtually all purposes, a holder of an interest in the underlying Treasury security.[9] The Board therefore does not object to the treatment of privately-issued Treasury receipts as exempted securities for purposes of Regulation T. The staff opinion to the contrary will be deleted.

4. OTC Margin Stock

A comment was received from an investor who believes stock which does not trade on NASDAQ should be marginable if the issuer has another class of marginable stock whose price is used to determine the sale price of the nonmargin stock. This situation is not being addressed by the proposed amendments. In addition to the complexity of covering such a limited group of stocks, this type of stock cannot be purchased by the general public and therefore no bid prices are available.

5. Nonsecurities Instruments

The Public Securities Association (PSA) and a broker-dealer comment that creditors should be able to extend credit on commercial paper, certificates of deposit (CDs), and bankers acceptances (BAs). All of these instruments may be used collateral for a nonpurpose loan (i.e., a loan that is not made for the purpose of purchasing, carrying, or trading in securities). Section 7(c) of the Act[10] prohibits the Board from permitting broker-dealers to accept nonsecurities as collateral in a margin account. Although commercial paper is a security and can be held in a margin account, Regulation T denies loan value to domestic debt securities that are not SEC-registered. Therefore, commercial paper is a nonmargin, nonexempted security and the Supplement to Regulation T requires a margin of 100 percent if held in a margin account.

B. Cash Account

1. Permissible Transactions

Proposed changes to the cash account concerning options are discussed in this preamble in section I.B.2. In addition, one commenter would like confirmation that customers may purchase CDs and other nonsecurities products in the cash account. A 1988 staff opinion confirmed that industry practice is to use the cash account to record the purchase of both securities and nonsecurities,[11] and the Board is proposing to add language to the cash account section of the regulation to codify this position.

2. Net settlement

In order to guard against free-riding, net settlement of trades in a cash account generally is not permitted. Customers are required to pay for all purchases in full without netting sale proceeds from securities purchased and sold on the same day in order to avoid imposition of the 90-day freeze described in § 220.8(c) of Regulation T. In 1988, Board staff confirmed two statutory exceptions to this general rule for transactions in mortgage-related securities[12] and exempted securities.[13] Some broker-dealers comment that customers should be able to net settle all transactions in a cash account as long as the regulation states that day trading is not permitted in that account. No changes are being proposed in this area as allowing net settlement of all trades in the cash account would complicate a creditor's ability to prevent free-riding in the cash account.

3. 90-Day Freeze

A customer who sells a security purchased in a cash account before making full cash payment must have sufficient funds in the account by trade date for any purchases during the next 90 days. This restriction is known as the "90-day freeze." One broker-dealer suggested the freeze should not apply if the cash account holds marginable securities with sufficient loan value to pay for the securities that have been sold before having been paid for. This suggestion is contrary to the nature of the cash account. A customer who contemplates the need for credit to settle securities purchases should be using a margin account and not a cash account.

Another broker-dealer believes the freeze should not apply if a customer decides to liquidate a purchase made on a DVP basis when the customer is ready to make full payment but the selling broker does not make timely delivery and the security is otherwise unavailable. The Board agrees that a customer should not be subject to the 90-day restriction when it decides to liquidate a transaction that the counterparty cannot complete.

C. Other Accounts

1. Arbitrage Account

Transactions effected in the arbitrage account are not subject to Regulation T margin requirements. The SIA and a broker-dealer have requested that the arbitrage account no longer require that the transactions be entered into to take advantage of a concurrent disparity in prices. However, elimination of the requirement that the two transactions yield an immediate gain would expand this special provision beyond those transactions which perform a market function by bringing together the prices of securities or markets which should be the same. Therefore no changes are being proposed to the arbitrage account.

2. Broker-Dealer Credit Account

The broker-dealer credit account is normally available only for broker-dealers.[14] However, the brokerage industry has developed a service known as "prime brokerage" in which a customer maintains a cash and/or margin account with a "prime broker" to record transactions executed at one or more executing brokers. Industry practice has been for the executing broker to use the broker-dealer credit account to record the transactions sent

[8] Staff Opinion of December 13, 1984, *FRRS* 5–628.13.

[9] Staff Opinion of January 10, 1994, *FRRS* 4–655.5.

[10] 15 U.S.C. 78g(c).

[11] *FRRS* 5–615.955.

[12] *FRRS* 5–615.952.

[13] *FRRS* 5–628.17.

[14] As noted in the section on foreign broker-dealers, the Board is proposing to allow foreign broker-dealers to use the broker-dealer credit account when purchasing securities on a DVP basis.

to the prime broker (who enforces Regulation T vis-a-vis the customer). After discussions with Board staff and an SIA committee, the SEC issued a no action letter last year describing requirements that must be followed in connection with prime brokerage.[15] The Board is proposing to add language to the broker-dealer credit account to officially acknowledge its use in prime brokerage transactions.

D. Other Transactions

1. Repurchase Agreements

A repurchase agreement from a broker-dealer's point of view may be viewed as a borrowing by the creditor and should not generally be covered by the Board's margin regulations as long as the security is not subject to the restrictions imposed by section 8(a) of the Act. The repurchase agreements addressed herein are reverse repurchase agreements in which a customer sells a security to a creditor with an agreement to repurchase from the creditor at a later time. Repurchase agreements in government securities are permitted in the government securities account created last year.[16]

In addition to repurchase agreements on government securities the PSA, SIA and several broker-dealers request an amendment that would permit repurchase agreements on all fixed income securities with good faith loan value, although the PSA acknowledges that it may be appropriate to treat these transactions as margin loans. However, broker-dealers traditionally require 20 percent margin when financing nonexempted debt securities and do not lend the 100 percent implied in structuring the transaction as a repurchase agreement. Although the PSA acknowledges the resemblance between repurchase agreements and margin loans, it states that practical problems make the cash account or a new account more appropriate. Although the collection of margin from a customer by a broker-dealer would seem to indicate that the transaction is properly recorded in the margin account, the Board is soliciting comment on the advisability of creating a new account for repurchase agreements on securities other than government securities in which margin would be collected as if the transaction were a conventional margin loan. The PSA, SIA, and a law firm also request creation of a new account to allow forward transactions, which are not permitted under Regulation T unless the security is trading on a when-issued basis or is a government or mortgage-related security. Comment is also invited on the advisability of accommodating forward transactions accompanied by the deposit required for a conventional margin loan in an account other than a margin account.

The PSA and SIA would also like creditors to be able to effect repurchase agreements on money market instruments that may not qualify as securities. Such transactions are permissible in the nonsecurities credit account as long as the proceeds are not used for purpose credit.

2. Two-Tiered Market

The SIA and several broker-dealers believe the Board should establish an account or subaccount where creditors may effect and finance all securities transactions on a good faith basis for customers who meet some level of financial sophistication. In the past, the Board has amended the arranging section of Regulation T to permit creditors to arrange for certain types of credit for sophisticated customers.[17] No further relaxation of the regulation is being proposed in this area at this time.

3. Use of Money Market Funds

As noted above,[18] the Board is proposing to add money market mutual funds to the list of cash equivalents available to cover a put written in the cash account and give the fund shares good faith loan value in a margin account. The SIA-Credit Division and two other broker-dealers believe money market mutual funds should be treated as cash without having to be liquidated. Although the Board recognizes that money market shares are often viewed as cash equivalents, they are not cash. A customer who is required to deposit cash pursuant to Regulation T must liquidate the shares to realize cash.

IV. Broker-Dealer Transactions

A. Credit Extended to Other Broker-Dealers

1. All Broker-Dealers

The commenters were split on the question of whether broker-dealers should continue to be treated as customers under Regulation T. The principal argument in favor of special treatment for broker-dealers is that they are subject to minimum net capital requirements that impose a limit on leverage, albeit greater leverage than that permitted public customers. The Board continues to believe special credit (i.e., lower margin) is appropriate when broker-dealers perform a market function, but is not proposing treatment that differs from that for public customers for reasons of equity.

2. Specialists and Market-Makers

Regulation T permits special credit for broker-dealers performing a market function. The Board is proposing clarifying language to the provisions describing OTC market makers and third-market makers to respond to questions that have arisen since the regulation was last revised.

The SIA would like the Board to permit deficit financing of specialists, eliminate restrictions on their permitted offsets and eliminate the restriction in § 220.12(b)(4) of Regulation T concerning free-riding by specialists. As discussed in this preamble in section I.A.2.c., the Board is proposing to allow any permitted offset that is permissible under SEC-approved rules of the creditor's examining authority. Although the Board supports the concept of good faith credit for specialist transactions, deficit financing is a form of unsecured credit, which is prohibited by section 7(c) of the Act.[19] The restriction on free-riding by specialists by its terms does not apply to any specialist on an exchange that has an SEC-approved rule on the same subject.

One broker-dealer suggested expanding the definition of OTC market-maker to include market makers of convertible bonds who post their prices in the "yellow sheets" or deal in convertible bonds traded pursuant to SEC Rule 144A.[20] Convertible bonds are equity securities under the Act[21] and the Board has designated convertible bonds as OTC margin stock when they meet the criteria in section 220.17 of Regulation T. OTC market-makers are registered with NASDAQ as such and are required to engage in a certain level of market-making, as are specialists. The Board does not permit good faith credit for broker-dealers making a market in equity securities via the "pink sheets." Consistency argues against permitting such credit for broker-dealers making a market in convertible bonds via the

[15] Letter of January 25, 1994, from Brandon Becker, Esq. to Mr. Jeffrey C. Bernstein, reprinted in CCH Federal Securities Law Reporter at ¶ 76,819.

[16] See 59 FR 53565 (October 25, 1994).

[17] For example, the exemption in section 220.13(b) requires that the sale of securities be effected pursuant to the SEC's private placement exception from registration. Such sales must be made to sophisticated investors.

[18] See section I.A.2.b. on the cash account under options and section III.A.2.b. on mutual funds above.

[19] 15 U.S.C. 78g(c).

[20] 17 CFR 230.144A.

[21] Section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) defines equity security to include any security convertible into an equity security.

"yellow sheets" or those trading pursuant to SEC Rule 144A.

3. Joint Back Office Arrangements

Section 220.11(a)(2) of Regulation T allows broker-dealers to set up a joint back office (JBO). The owners of the JBO are not considered customers of the clearing organization and therefore no Regulation T margin is required, although the clearing firm generally obtains the appropriate securities haircut from its participants. When the JBO section was adopted, the Board assumed there would be a reasonable relationship between the creditors' ownership interests and the amount of business conducted and did not adopt an explicit requirement for the amount of ownership each broker-dealer should have in the JBO. Since adoption of the provision, several stock exchanges have expressed concern that JBOs are permitting credit far in excess of the participant's interest. Much of the activity was attributed to index options specialists seeking good faith financing for stock baskets, which is not otherwise permitted under Regulation T. As discussed in the section on the market functions account under options, the Board is proposing to permit such financing under SEC-approved rules of the exchanges and this change should reduce the pressure on JBOs to extend credit greatly disproportionate to the amount of equity ownership. Nevertheless, the Board is also proposing to state explicitly that the participants' ownership interest in the JBO should be reasonably related to the amount of business conducted through it. Three stock exchanges and one other commenter support changes along these lines.

4. Credit to Other Types of Broker-Dealers

Several commenting broker-dealers suggest additional classes of creditors that should be entitled to good faith credit. One broker-dealer suggests creating a new category of broker-dealers entitled to beneficial margin treatment that would be under some affirmative obligation to add liquidity to the market but would not be required to be present on the trading floor. The Board has traditionally allowed good faith credit for specialists engaged in specialist transactions and deferred to the SEC to determine who is a specialist under the Act. It is unclear what the effect would be on specialists if other broker-dealers with lesser market-making obligations were permitted good faith credit on certain transactions.

The SIA-Credit Division believes that self-clearing broker-dealers who choose to go through another broker-dealer should not be required to post customer margin. Board staff has addressed this issue several times[22] and reiterated that the treatment of a broker-dealer depends on whether it clears the transaction itself and not whether it *could* clear the transaction. In addition, a broker-dealer suggested that affiliated broker-dealers should not be treated as customers. Board staff has indicated that affiliated (sister) firms are treated as customers[23] and no policy reasons for changing this have been presented.

B. Borrowing and Lending Securities

Section 220.16 of Regulation T covers the borrowing and lending of securities. Securities may be borrowed or lent in connection with the need to make delivery in short sales and fails to receive. The section covers the borrowing and lending of all types of securities,[24] including those with good faith loan value, and requires enumerated types of collateral worth at least 100 percent of the market value of the securities on a daily basis. Although stock loans are economically equivalent to repurchase agreements, the former are based on the need to make delivery and are not meant to be financing arrangements for the owner of the securities being lent.[25]

1. Collateral

a. *Foreign sovereign debt.* In 1988, the Board amended Regulation T to give good faith loan value to highly rated foreign sovereign bonds. Shortly thereafter, Board staff indicated that these securities should be acceptable as collateral for stock loans if the currency of the lent security is the same as the sovereign bond.[26] The Board is proposing explicitly to add foreign sovereign bonds to the list of collateral in § 220.16 of Regulation T without restriction as to currency. This change was supported by the SIA, SIA-Credit Division, NYSE and several broker-dealers.

b. *SEC customer protection rule.* While § 220.16 of Regulation T covers all borrowing and lending of securities by creditors, the SEC's customer protection rule[27] also applies if the creditor is borrowing securities from its customer. Both rules specify permissible types of collateral. In 1989 the SEC proposed expanding the types of acceptable collateral specified in its rule[28] and its staff issued a no action letter in the interim. Regulation T currently expressly provides for all of these types of collateral, with the exception of foreign sovereign debt, which is being proposed as part of this package. To ensure that acceptable collateral under § 220.16 of Regulation T is always at least as broad as that required by the SEC when creditors borrow securities from their customers, the Board is proposing to refer to the SEC's customer protection rule in § 220.16 of Regulation T.

c. *Other collateral.* The SIA and a broker-dealer seek confirmation that any freely convertible currency may be treated as cash collateral for borrowings of securities. Although this may present a currency risk not originally anticipated, the Board believes that this is permissible, given that such loans are marked-to-market daily with collateral equal to at least 100 percent of the market value of the securities being borrowed.

Several commenters support expanding acceptable collateral to include options or some or all types of marginable securities, while the NYSE is opposed to this concept. Although the Board has gradually expanded the types of acceptable collateral over the years, it has always required collateral with high liquidity and low volatility.

2. Permitted Purposes

a. *Pre-borrowing.* Although Regulation T currently permits borrowing of securities for short sales that have been effected or are in immediate prospect, several commenters support the concept of "pre-borrowing," the borrowing of securities in anticipation of a short sale that may or may not take place in the near future. Pre-borrowing can lead to an attempt to "squeeze" the market for a security by locking up all available shares and hindering the ability of others to sell that security short.[29]

[22] See, e.g., Staff Opinion of August 18, 1986, *FRRS* 5–621.16.

[23] Staff Opinion of December 16, 1988, *FRRS* 5–621.18.

[24] The government securities account can be used to conduct all types of permissible transactions involving government securities, including borrowing and lending.

[25] The Financial Accounting Standards Board (FASB) is currently debating the differing treatment of repurchase agreements and stock loans and has tentatively concluded that repurchase agreements should be accounted for as collateralized borrowings if the repurchase agreement entitles the party receiving financial assets subject to repurchase to repledge them but not sell them. Most securities lending transactions that entitle the party receiving the financial assets to sell them would be accounted for as sales. Staff plans to review the Regulation T treatment in this area once FASB reaches a decision on the matter.

[26] Staff Opinion of September 23, 1988, *FRRS* 5–615.15.

[27] SEC Rule 15c3–3, 17 CFR 240.15c3–3.

[28] SEC Release No. 34–26608, 54 FR 10680 (March 15, 1989).

[29] Board staff has indicated that a permissible alternative to pre-borrowing is the payment of a

Continued

b. *Dividend reinvestment and stock purchase plans.* In addition to pre-borrowing, commenters such as the NYSE and several broker-dealers suggest that broker-dealers be permitted to borrow securities in order to participate in an issuer's dividend reinvestment and stock purchase plan. These plans allow dividends, and often additional funds, to be used to purchase additional shares of the issuer, usually at a discount from the current stock price. Board staff opinions and SEC enforcement actions have made clear that Regulation T as currently written does not permit the borrowing of securities for this purpose.[30]

The Board is not proposing to include dividend reinvestment and stock purchase plans as a permitted purpose for borrowing securities. Permitting such borrowing would not be consistent with existing Board policy concerning borrowing and lending securities. The Board has permitted securities lending where it is needed for the smooth operation of the securities markets, i.e. short sales and fails to receive securities. This view was echoed by the Group of Thirty when they recommended removing impediments to securities lending to allow delivery of securities. Participation in dividend reinvestment and stock purchase plans does not help the securities markets complete transactions as broker-dealers do not actually want or need possession of the securities. Nevertheless, in light of comments received indicating that many issuers view these programs as a less costly means of raising capital, the Board is soliciting comment on whether section 220.16 of Regulation T should be amended to accommodate these plans.

c. *Other purposes.* The PSA, SIA and a broker-dealer recommend adding repurchase agreements to the list of permitted purposes. Since a repurchase agreement represents the sale of a security with a promise to repurchase it at a later date, a creditor who does not own the security subject to the repurchase agreement is engaging in a short sale and therefore may borrow the security pursuant to section 220.16 of Regulation T.[31]

One broker-dealer believes institutions such as banks and insurance companies should be able to borrow securities from a creditor if they say it is for a permitted purpose. However, Regulation T and the U.S. securities markets in general presume that the borrowing of securities will be effected by the broker-dealer that executes the trade. Permitting an entity other than a broker-dealer to borrow securities for a transaction effected by a broker-dealer would permit circumvention of the Board's margin requirements.

C. Borrowing by Creditors

All of the commenters addressing section 8(a) of the Act, which limits the source of certain loans to broker-dealers to member banks and some nonmember banks, support expansion of the types of lenders described in section 8(a) or a reduction in the types of transactions subject to the restriction. The SEC has recently exempted all listed debt securities from the scope of section 8(a) of the Act,[32] with the result that only loans secured by exchange-traded equity securities are still subject to the restriction.

A wide variety of commenters recommend legislation be introduced to loosen the restrictions of section 8(a). Such legislation is currently pending in Congress.[33]

V. Section-by-Section Explanation of Proposed Changes

Section 220.2 Definitions

The following new definitions are being proposed: *cash equivalent, covered option transaction, exempted securities mutual fund, foreign person, money market mutual fund, non-U.S. traded foreign security, and permitted offset position.* The following definitions would be modified: *escrow agreement, in the money, margin security, OTC margin bond, OTC margin stock, short call or short put, and underlying security.* The definition of in or at the money would be deleted and SEC-approved rules of the appropriate SRO would govern permitted offsets for specialists.

Section 220.3 General Provisions

Section 220.3(e)(4), "Receipt of funds or securities," is used by creditors to temporarily finance the exercise of a customer's employee stock option. The section would be reworded to permit such short-term financing for anyone entitled to receive or acquire any securities pursuant to an SEC-registered employee benefit plan.

Section 220.3(i), "Variable annuity contracts issued by insurance companies," would be deleted, although no substantive change is intended.

Section 220.4 Margin Account

Section 220.4(b) would contain all provisions of section 220.5, except for those covering specific options transactions. The options provisions would be deleted and SEC-approved rules of the SROs would apply to these transactions.

Section 220.4(c) would no longer prohibit a margin excess in a foreign currency subaccount from offsetting a margin deficiency in another foreign currency subaccount.

Section 220.5 Special Memorandum Account

This account would be moved from section 220.6. No substantive changes are proposed.

Section 220.6 Government Securities Account

This account would be moved from section 220.18. No substantive changes are proposed.

Section 220.8 Cash Account

Section 220.8(a), Permissible transactions," would be amended in two ways. First, the cash account would recognize industry practice and specifically permit the sale to a customer of any asset on a cash basis. Second, the covered options transactions permitted under section 220.8(a)(3) would be broadened to include any eligible transaction designated by the SEC-approved rules of the SROs.

Section 220.8(b), "Time periods for payment; cancellation or liquidation," would permit creditors to accept full cash payment from customers for the purchase of foreign securities up to one day after the regular way settlement date.

Section 220.11 Broker-Dealer Credit Account

Three substantive changes are being proposed to section 220.11(a), "Permissible transactions." First, foreign broker-dealers would be permitted to use the account for delivery-versus-payment transactions with U.S. broker-dealers. Second, joint back office arrangements would require a reasonable relationship between the owners' equity interest and the amount of business effected or financed by the joint back office. Third, "prime broker" arrangements set up under SEC guidelines would be able to use this

commitment fee to a stock lender. See staff opinion of October 22, 1990, FRRS 5–615.18.

[30] Staff Opinions of March 2, 1984, FRRS 5–615.1 and July 6, 1984, FRRS 5–615.01; see also In re RFG Options, SEC Administrative Proceeding File No. 3–6370, September 26, 1988.

[31] As noted in footnote 29, all transactions involving government securities may be effected in the government securities account without regard to other provisions of Regulation T.

[32] SEC Rule 3a12–11, 17 CFR 240.3a12–11, published at 59 FR 55342, November 7, 1994.

[33] H.R. 1062, 104th Cong., 1st Sess.

account for transactions effected at executing broker-dealers.

Section 220.12 Market Functions Account

Section 220.12(b), "Specialists," would be amended to allow SEC-approved rules of the SROs to determine which permitted offsets can be effected on a good faith basis.

Section 220.13 Arranging for Loans by Others

Changes are proposed for this section in two areas. First, the provision allowing U.S. broker-dealers to arrange for customers to obtain credit from a foreign lender to purchase foreign securities would be expanded to cover short sales while the overall coverage of this provision would be limited to foreign securities that are not publicly traded in the United States. Second, the regulation would explicitly permit U.S. broker-dealers to sell its customers foreign securities with installment features if the offering has only a small U.S. component.

Section 220.16 Borrowing and Lending Securities

Two changes are proposed for this section. First, the required collateral would be expanded to include marginable foreign sovereign debt securities and any collateral that is acceptable to the SEC when a broker-dealer borrows securities from its customer. Second, U.S. broker-dealers would be able to lend foreign securities to a foreign person for any legal purpose and against any legal collateral.

Section 220.18 Supplement: Margin Requirements

Several changes are being proposed. Options would be given fifty percent loan value if listed on a national securities exchange. Mutual funds whose portfolio is limited to exempted securities would be given good faith loan value, as would money market mutual funds.

VI. Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

VII. Paperwork Reduction Act

No additional reporting requirements or modification to existing reporting requirements are proposed.

List of Subjects in 12 CFR Part 220

Banks, banking, Bonds, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investment companies, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Part 220 as follows:

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

2. The table of contents for part 220 is amended by revising the entries for §§ 220.1–220.18 and renaming the entry for § 220.19 to read as follows:

Sec.
220.1 Authority, purpose, and scope.
220.2 Definitions.
220.3 General provisions.
220.4 Margin account.
220.5 Special memorandum account.
220.6 Government securities account.
220.7 Arbitrage account.
220.8 Cash account.
220.9 Nonsecurities credit and employee stock ownership account.
220.10 Omnibus account.
220.11 Broker-dealer credit account.
220.12 Market functions account.
220.13 Arranging for loans by others.
220.14 Clearance of securities, options, and futures.
220.15 Borrowing by creditors.
220.16 Borrowing and lending securities.
220.17 Requirements for the list of marginable OTC stocks and the list of foreign margin stocks.
220.18 Supplement: Margin requirements.

* * * * *

3. Sections 220.1 through 220.18 are revised to read as follows:

§ 220.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation T (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a *et seq.*). Its principal purpose is to regulate extensions of credit by and to brokers and dealers; it also covers related transactions within the Board's authority under the Act. It imposes, among other obligations, initial margin requirements and payment rules on securities transactions.

(b) *Scope.* (1) This part provides a margin account and eight special purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special account shall be recorded in a margin account.

(2) This part does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.

(3) This part does not apply to transactions between a customer and a broker or dealer registered only under section 15C of the Act.

§ 220.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

Cash equivalent means securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, bankers acceptances issued by banking institutions in the United States and payable in the United States, or money market mutual funds.

Covered option transaction means:

(1) In the case of a short call, the underlying security (or a security immediately convertible into the underlying security, without the payment of money) is held in or purchased for the account on the same day, and the option premium is held in the account until cash payment for the underlying or convertible security is received; or

(2) In the case of a short put, the creditor obtains cash in an amount equal to the exercise price or holds in the account cash equivalents with a current market value at least equal to the exercise price and with one year or less to maturity; or

(3) Any other transaction involving options or warrants in which the customer's risk is limited to a fixed amount and is not subject to early exercise if:

(i) The amount at risk is held in the account in cash, cash equivalents, or via an escrow receipt; and

(ii) The transaction has been defined as eligible for the cash account by the rules of the registered national securities exchange authorized to trade the option or warrant, provided that all such rules have been approved or amended by the SEC.

Credit balance means the cash amount due the customer in a margin account after debiting amounts transferred to the special memorandum account.

Creditor means any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the Act), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the Act), except for business entities controlling or under common control with the creditor.

Customer includes:

(1) Any person or persons acting jointly:

(i) To or for whom a creditor extends, arranges, or maintains any credit; or

(ii) Who would be considered a customer of the creditor according to the ordinary usage of the trade;

(2) Any partner in a firm who would be considered a customer of the firm absent the partnership relationship; and

(3) Any joint venture in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

Debit balance means the cash amount owed to the creditor in a margin account after debiting amounts transferred to the special memorandum account.

Delivery against payment, Payment against delivery, or a C.O.D. transaction refers to an arrangement under which a creditor and a customer agree that the creditor will deliver to, or accept from, the customer, or the customer's agent, a security against full payment of the purchase price.

Equity means the total current market value of security positions held in the margin account plus any credit balance less the debit balance in the margin account.

Escrow agreement means any agreement issued in connection with a call or put option under which a bank or any person designated as a control location under paragraph (c) of SEC Rule 15c3–3 (17 CFR 240.15c3–3), holding the underlying security, foreign currency, certificate of deposit, or required cash, is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying security, foreign currency, or certificate of deposit against payment of the exercise price upon exercise of the call or put.

Examining authority means:

(1) The national securities exchange or national securities association of which a creditor is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

Exempted securities mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), provided the company has at least 95 percent of its assets continuously invested in exempted securities (as defined in section 3(a)(12) of the Act).

Foreign margin stock means: (1) A foreign security that is an equity security and that appears on the Board's periodically published List of Foreign Margin Stocks based on information submitted by a self-regulatory organization under procedures approved by the Board. *Foreign person* means a person other than a United States person as defined in section 7(f) of the Act.

Foreign security means a security issued in a jurisdiction other than the United States.

Good faith margin means the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

In the money means the current market price of the underlying security or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

Margin call means a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.

Margin deficiency means the amount by which the required margin exceeds the equity in the margin account.

Margin excess means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in § 220.18 (Supplement: Margin requirements).

Margin security means:

(1) Any registered security;

(2) Any OTC margin stock;

(3) Any OTC margin bond;

(4) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);

(5) Any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(6) Any foreign margin stock; or

(7) Any debt security convertible into a margin security.

Money market mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) that is considered a money market fund under SEC Rule 2a–7 (17 CFR 270.2a–7).

Nonexempted security means any security other than an exempted security (as defined in section 3(a)(12) of the Act).

Nonmember bank means a bank that is not a member of the Federal Reserve System.

Non-U.S. traded foreign security means a foreign security that is neither a registered security nor one listed on NASDAQ.

OTC margin bond means:

(1) A debt security not traded on a national securities exchange which meets all of the following requirements:

(i) At the time of the original issue, a principal amount of not less than $25,000,000 of the issue was outstanding;

(ii) The issue was registered under section 5 of the Securities Act of 1933(15 U.S.C. 77e) and the issuer either files periodic reports pursuant to section 13(a) or 15(d) of the Act or is an insurance company which meets all of the conditions specified in section 12(g)(2)(G) of the Act; and

(iii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or

(2) A private pass-through security (not guaranteed by an agency of the U.S. government) meeting all of the following requirements:

(i) An aggregate principal amount of not less than $25,000,000 (which maybe issued in series) was issued pursuant to a registration statement filed with the SEC under section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

(ii) Current reports relating to the issue have been filed with the SEC; and

(iii) At the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering; or

(3) A mortgage related security as defined in section 3(a)(41) of the Act; or

(4) A debt security issued or guaranteed as a general obligation by the government of a foreign country, its provinces, states, or cities, or a supranational entity, if at the time of the extension of credit one of the following is rated in one of the two highest rating categories by a nationally recognized statistical rating organization:

(i) The issue;

(ii) The issuer or guarantor (implicitly); or

(iii) Other outstanding unsecured long-term debt securities issued or guaranteed by the government or entity; or

(5) A foreign security that is a nonconvertible debt security that meets all of the following requirements:

(i) At the time of original issue, a principal amount of at least $100,000,000 was outstanding;

(ii) At the time of the extension of credit, the creditor has a reasonable

basis for believing that the issuer is not in default on interest or principal payments; and

(iii) At the time of the extension of credit, the issue is rated in one of the two highest rating categories by a nationally recognized statistical rating organization, except that an issue that has not been rated as of the effective date of this provision shall be considered an OTC margin bond if a subsequent unsecured issue of at least $100,000,000 of the same issuer is rated in one of the two highest rating categories by a nationally recognized statistical rating organization.

OTC margin stock means any equity security traded over-the-counter that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an OTC margin stock unless it appears on the Board's periodically published list of OTC margin stocks.

Overlying option means:

(1) A put option purchased or a call option written against a long position in an underlying security in the specialist record in § 220.12(b); or

(2) A call option purchased or a put option written against a short position in an underlying security in the specialist record in § 220.12(b).

Payment period means the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6–1 (17 CFR 240.15c6–1), plus two business days.

Permitted offset position means a position in securities or other assets underlying options in which a specialist makes a market or a position in options overlying the securities in which a specialist makes a market, provided the positions qualify as permitted offsets under the rules of the national securities exchange with which the specialist is registered, provided that all such rules have been approved or amended by the SEC.

Purpose credit means credit for the purpose of:

(1) Buying, carrying, or trading in securities; or

(2) Buying or carrying any part of an investment contract security which shall be deemed credit for the purpose of buying or carrying the entire security.

Registered security means any security that:

(1) Is registered on a national securities exchange; or

(2) Has unlisted trading privileges on a national securities exchange.

Short call or short put means a call option or a put option that is issued, endorsed, guaranteed or sold in or for an account.

(1) A short call that is not cash-settled obligates the customer to sell the underlying asset at the exercise price upon receipt of a valid exercise notice.

(2) A short put that is not cash-settled obligates the customer to purchase the underlying asset at the exercise price upon receipt of a valid exercise notice.

(3) A short call or a short put that is cash-settled obligates the customer to pay the holder of an in the money long put or call who has exercised the option the cash difference between the exercise price and the current assigned value of the option as established by the option contract.

Specialist joint account means an account which, by written agreement, provides for the commingling of the security positions of the participants and a sharing of profits and losses from the account on some predetermined ratio.

Underlying security means:

(1) the security that will be delivered upon exercise of an option; or

(2) In the case of a cash-settled option, the securities which comprise the index in the same proportion or any other asset from which the option's value is derived.

§ 220.3 General provisions.

(a) *Records.* The creditor shall maintain a record for each account showing the full details of all transactions.

(b) *Separation of accounts.* Except as provided for in the margin account and the special memorandum account, the requirements of an account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under the regulation, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(c) *Maintenance of credit.* Except as prohibited by this part, any credit initially extended in compliance with this part may be maintained regardless of:

(1) Reductions in the customer's equity resulting from changes in market prices;

(2) Any security in an account ceasing to be margin or exempted; or

(3) Any change in the margin requirements prescribed under this part.

(d) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of this part.

(e) *Receipt of funds or securities.* (1) A creditor, acting in good faith, may accept as immediate payment:

(i) Cash or any check, draft, or order payable on presentation; or

(ii) Any security with sight draft attached.

(2) A creditor may treat a security, check or draft as received upon written notification from another creditor that the specified security, check, or draft has been sent.

(3) Upon notification that a check, draft, or order has been dishonored or when securities have not been received within a reasonable time, the creditor shall take the action required by this part when payment or securities are not received on time.

(4) To temporarily finance a customer's receipt of stock pursuant to an employee benefit plan registered on SEC Form S–8, a creditor may accept, in lieu of the securities, a properly executed exercise notice and instructions to the issuer to deliver the stock to the creditor. Prior to acceptance, the creditor must verify that the issuer will deliver the securities promptly and the customer must designate the account into which the securities are to be deposited.

(f) *Exchange of securities.* (1) To enable a customer to participate in an offer to exchange securities which is made to all holders of an issue of securities, a creditor may submit for exchange any securities held in a margin account, without regard to the other provisions of this part, provided the consideration received is deposited into the account.

(2) If a nonmargin, nonexempted security is acquired in exchange for a margin security, its retention, withdrawal, or sale within 60 days following its acquisition shall be treated as if the security is a margin security.

(g) *Valuing securities.* The current market value of a security shall be determined as follows:

(1) Throughout the day of the purchase or sale of a security, the creditor shall use the security's total cost of purchase or the net proceeds of its sale including any commissions charged.

(2) At any other time, the creditor shall use the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

§ 220.4 Margin account.

(a) *Margin transactions.* (1) All transactions not specifically authorized for inclusion in another account shall be recorded in the margin account.

(2) A creditor may establish separate margin accounts for the same person to:

(i) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors; or

(ii) Clear transactions through other creditors if the transactions are cleared by separate creditors; or

(iii) Provide one or more accounts over which the creditor or a third party investment adviser has investment discretion.

(b) *Required margin*—(1) *Applicability.* The required margin for each long or short position in securities is set forth in § 220.18 (Supplement: Margin requirements) and is subject to the following exceptions and special provisions.

(2) *Short sale against the box.* A short sale "against the box" shall be treated as a long sale for the purpose of computing the equity and the required margin.

(3) *When issued securities.* The required margin on a net long or net short commitment in a when issued security is the margin that would be required if the security were an issued margin security, plus any unrealized loss on the commitment or less any unrealized gain.

(4) *Stock used as cover.* (i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (b)(1) of this section as the amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued at no greater than the exercise price of the short call.

(5) *Accounts of partners.* If a partner of the creditor has a margin account with the creditor, the creditor shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of the partner's margin account.

(6) *Contribution to joint venture.* If a margin account is the account of a joint venture in which the creditor participates, any interest of the creditor in the joint account in excess of the interest which the creditor would have on the basis of its right to share in the profits shall be treated as an extension of credit to the joint account and shall be margined as such.

(7) *Transfer of accounts.* (i) A margin account that is transferred from one creditor to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this part has been satisfied.

(ii) A margin account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this part, may be treated as if it had been maintained for the transferee from the date of its origin, if the creditor accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(8) *Credit denominated in foreign currency.* A creditor may extend credit denominated in a foreign currency secured by foreign margin securities denominated or traded in the same foreign currency and specifically identified on the creditor's books and records as securing the foreign currency debit.

(c) *When additional margin is required*—(1) *Computing deficiency.* All transactions on the same day shall be combined to determine whether additional margin is required by the creditor. For the purpose of computing equity in an account, security positions are established or eliminated and a credit or debit created on the trade date of a security transaction. Additional margin is required on any day when the day's transactions create or increase a margin deficiency in the account and shall be for the amount of the margin deficiency so created or increased.

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

(3) *Time limits.* (i) A margin call shall be satisfied within one payment period after the margin deficiency was created or increased.

(ii) The payment period may be extended for one or more limited periods upon application by the creditor to its examining authority unless the examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the payment period or the expiration of any subsequent extension.

(4) *Satisfaction restriction.* Any transaction, position, or deposit that is used to satisfy one requirement under this part shall be unavailable to satisfy any other requirement.

(d) *Liquidation in lieu of deposit.* If any margin call is not met in full within the required time, the creditor shall liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less. If the margin deficiency created or increased is $1000 or less, no action need be taken by the creditor.

(e) *Withdrawals of cash or securities.* (1) Cash or securities may be withdrawn from an account, except if:

(i) Additional cash or securities are required to be deposited into the account for a transaction on the same or a previous day; or

(ii) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency.

(2) Margin excess may be withdrawn or may be transferred to the special memorandum account (§ 220.5) by making a single entry to that account which will represent a debit to the margin account and a credit to the special memorandum account.

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin account on the day it is payable and withdrawal would not be permitted under paragraph, (e) of this section, a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

(f) *Interest, service charges, etc.* (1) Without regard to the other provisions of this section, the creditor, in its usual practice, may debit the following items to a margin account if they are considered in calculating the balance of such account:

(i) Interest charged on credit maintained in the margin account;

(ii) Premiums on securities borrowed in connection with short sales or to effect delivery;

(iii) Dividends, interest, or other distributions due on borrowed securities;

(iv) Communication or shipping charges with respect to transactions in the margin account; and

(v) Any other service charges which the creditor may impose.

(2) A creditor may permit interest, dividends, or other distributions credited to a margin account to be withdrawn from the account if:

(i) The withdrawal does not create or increase a margin deficiency in the account; or

(ii) The current market value of any securities withdrawn does not exceed 10 percent of the current market value of the security with respect to which they were distributed.

§ 220.5 Special memorandum account.

(a) A special memorandum account (SMA) may be maintained in conjunction with a margin account. A single entry amount may be used to represent both a credit to the SMA and a debit to the margin account. A transfer between the two accounts may be effected by an increase or reduction in the entry. When computing the equity in a margin account, the single entry amount shall be considered as a debit in the margin account. A payment to the customer or on the customer's behalf or a transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

(1) Dividend and interest payments;

(2) Cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;

(3) Proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may be withdrawn under § 220.4(e); and

(4) Margin excess transferred from the margin account under § 220.4(e)(2).

§ 220.6 Government securities account.

In a government securities account, a creditor may effect and finance transactions involving government securities, provided the transaction is not prohibited by section 15C of the Act or any rule thereunder.

§ 220.7 Arbitrage account.

In an arbitrage account a creditor may effect and finance for any customer *bona fide* arbitrage transactions. For the purpose of this section, the term "*bona fide* arbitrage" means:

(a) A purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets; or

(b) A purchase of a security which is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.

§ 220.8 Cash account.

(a) *Permissible transactions.* In a cash account, a creditor, may:

(1) Buy for or sell to any customer any security or other asset if:

(i) There are sufficient funds in the account; or

(ii) The creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security or asset before selling it and does not contemplate selling it prior to making such payment;

(2) Buy from or sell for any customer any security or other asset if:

(i) The security is held in the account; or

(ii) The creditor accepts in good faith the customer's statement that the security is owned by the customer or the customer's principal, and that it will be promptly deposited in the account;

(3) Issue, endorse, guarantee, or sell an option for any customer as part of a covered option transaction; and

(4) Use an escrow agreement in lieu of the cash or underlying security position if:

(i) In the case of a short call or a short put, the creditor is advised by the customer that the required securities or cash are held by a person authorized to issue an escrow agreement and the creditor independently verifies that the appropriate escrow agreement will be delivered by the person promptly; or

(ii) In the case of a call issued, endorsed, guaranteed, or sold on the same day the underlying security is purchased in the account and the underlying security is to be delivered to a person authorized to issue an escrow agreement, the creditor verifies that the appropriate escrow agreement will be delivered by the person promptly.

(b) *Time periods for payment; cancellation or liquidation*—(1) *Full cash payment.* A creditor shall obtain full cash payment for customer purchases—

(i) Within one payment period of the date:

(A) Any nonexempted security was purchased;

(B) Any when issued security was made available by the issuer for delivery to purchasers;

(C) Any "when distributed" security was distributed under a published plan;

(D) A security owned by the customer has matured or has been redeemed and a new refunding security of the same issuer has been purchased by the customer, provided:

(*1*) The customer purchased the new security no more than 35 calendar days prior to the date of maturity or redemption of the old security;

(*2*) The customer is entitled to the proceeds of the redemption; and

(*3*) The delayed payment does not exceed 103 percent of the proceeds of the old security.

(ii) In the case of the purchase of a foreign security, within one payment period of the trade date or within one day after the date on which settlement is required to occur by the rules of the foreign securities market, provided this period does not exceed the maximum time permitted by this part for delivery against payment transactions.

(2) *Delivery against payment.* If a creditor purchases for or sells to a customer a security in a delivery against payment transaction, the creditor shall have up to 35 calendar days to obtain payment if delivery of the security is delayed due to the mechanics of the transaction and is not related to the customer's willingness or ability to pay.

(3) *Shipment of securities, extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the payment period by the number of days required for shipment, but not by more than one additional payment period.

(4) *Cancellation; liquidation; minimum amount.* A creditor shall promptly cancel or otherwise liquidate a transaction or any part of a transaction for which the customer has not made full cash payment within the required time. A creditor may, at its option, disregard any sum due from the customer not exceeding $1000.

(c) *90 day freeze.* (1) If a nonexempted security in the account is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of sale of the security. Cancellation of the transaction other than to correct an error shall constitute a sale.

(2) The 90 day freeze shall not apply if:

(i) Within the period specified in paragraph (b)(1) of this section, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or

(ii) The purchased security was delivered to another broker or dealer for deposit in a cash account which holds sufficient funds to pay for the security. The creditor may rely on a written statement accepted in good faith from the other broker or dealer that sufficient funds are held in the other cash account.

(d) *Extension of time periods; transfers.* (1) Unless the creditor's examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) Grant a waiver from the 90 day freeze.

(2) Applications shall be filed and acted upon prior to the end of the payment period, or in the case of the purchase of a foreign security within the period specified in paragraph (b)(1)(ii) of this section, or the expiration of any subsequent extension.

§ 220.9 Nonsecurities credit and employee stock ownership account.

(a) In a nonsecurities credit account a creditor may:

(1) Effect and carry transactions in commodities;

(2) Effect and carry transactions in foreign exchange;

(3) Extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (b) of this section; and

(4) Extend and maintain credit to employee stock ownership plans without regard to the other sections of this part.

(b) Every extension of credit, except as provided in paragraphs (a)(1) and (a)(2) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall conform to the requirements established by the Board. To accept the customer's statement in good faith, the creditor shall be aware of the circumstances surrounding the extension of credit and shall be satisfied that the statement is truthful.

§ 220.10 Omnibus account.

(a) In an omnibus account, a creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the Act and who gives the creditor written notice that:

(1) All securities will be for the account of customers of the broker or dealer; and

(2) Any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(b) The written notice required by paragraph (a) shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

§ 220.11 Broker-dealer credit account.

(a) *Permissible transactions.* In a broker-dealer credit account, a creditor may:

(1) Purchase any security from or sell any security to another creditor or person regulated by a foreign securities authority under a good faith agreement to promptly deliver the security against full payment of the purchase price.

(2) Effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors, provided that the owners' interest is reasonably related to the amount of business they transact through the joint back office.

(3) Extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation or another creditor.

(4) Extend and maintain, with the approval of the appropriate examining authority:

(i) Credit to meet the emergency needs of any creditor; or

(ii) Subordinated credit to another creditor for capital purposes, if the other creditor:

(A) Is an affiliated corporation or would not be considered a customer of the lender apart from the subordinated loan; or

(B) Will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the creditor, its firm or corporation or an affiliated corporation.

(5) Effect transactions for a customer as part of a "prime broker" arrangement in conformity with SEC guidelines.

(b) *Affiliated corporations.* For purposes of paragraphs (a)(3) and (a)(4) of this section "affiliated corporation" means a corporation all the common stock of which is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation and the affiliation has been approved by the creditor's examining authority.

§ 220.12 Market functions account.

(a) *Requirements.* In a market functions account, a creditor may effect or finance the transactions of market participants in accordance with the following provisions. A separate record shall be kept for the transactions specified for each category described in paragraphs (b) through (e) of this section. Any position in a separate record shall not be used to meet the requirements of any other category.

(b) *Specialists*—(1) *Applicability.* A creditor may clear or finance specialist transactions and permitted offset positions for any specialist, or any specialist joint account, in which all participants, or all participants other than the creditor, are registered as specialists on a national securities exchange that requires regular reports on the use of specialist credit from the registered specialists.

(2) *Required margin.* The required margin for a specialist's transactions shall be:

(i) Good faith margin for:

(A) Any long or short position in a security in which the specialist makes a market;

(B) Any wholly-owned margin security or exempted security; or

(C) Any permitted offset position.

(ii) The margin prescribed by § 220.18 (Supplement: Margin requirements) when a security purchased or sold short in the account does not qualify as a specialist or permitted offset position.

(3) *Additional margin; restriction on "free-riding".* (i) Except as required by paragraph (b)(4) of this section, the creditor shall issue a margin call on any day when additional margin is required as a result of specialist transactions. The creditor may allow the specialist a maximum of one payment period to satisfy a margin call.

(ii) If a specialist fails to satisfy a margin call within the period specified in paragraph (b)(3) of this section (and the creditor is required to liquidate securities to satisfy the call), the creditor shall be prohibited for a 15 calendar day period from extending any further credit to the specialist to finance transactions in nonspecialty securities.

(iii) The restriction on "free-riding" shall not apply to:

(A) Any specialist on a national securities exchange that has an SEC-approved rule on "free-riding" by specialists; or

(B) The acquisition or liquidation of a permitted offset position.

(4) *Deficit status.* On any day when a specialist's separate record would

liquidate to a deficit, the creditor shall not extend any further specialist credit in the account and shall issue a margin call at least as large as the deficit. If the call is not met by noon of the following business day, the creditor shall liquidate positions in the specialist's account.

(5) *Withdrawals.* Withdrawals may be permitted to the extent that the equity exceeds the margin requirements specified in paragraph (b)(2) of this section.

(c) *Underwriters and distributors.* A creditor may effect or finance for any dealer or group of dealers transactions for the purpose of facilitating the underwriting or distribution of all or a part of an issue of securities with a good faith margin.

(d) *OTC marketmakers and third marketmakers.* (1) A creditor may clear or finance with a good faith margin, marketmaking transactions for a creditor who is a registered NASDAQ marketmaker or a qualified third marketmaker as defined in SEC Rule 3b–8 (17 CFR 240.3b–8).

(2) If the credit extended to a marketmaker ceases to be for the purpose of marketmaking, or the dealer ceases to be a marketmaker for an issue of securities for which credit was extended, the credit shall be subject to the margin specified in § 220.18 (Supplement: Margin requirements).

(e) *Odd-lot dealers.* A creditor may clear and finance odd-lot transactions for any creditor who is registered as an odd-lot dealer on a national securities exchange with a good faith margin.

§ 220.13 Arranging for loans by others.

(a) A creditor may not arrange for the extension or maintenance of credit to or for any customer by any person upon terms and conditions other than those upon which the creditor may itself extend or maintain credit under the provisions of this part, except that this limitation shall not apply to credit arranged for a customer which does not violate parts 207 and 221 of this chapter and results solely from:

(1) Investment banking services, provided by the creditor to the customer, including, but not limited to, underwritings, private placements, and advice and other services in connection with exchange offers, mergers, or acquisitions, except for underwritings that involve the public distribution of an equity security with installment or other deferred payment provisions;

(2) The sale of nonmargin securities (including securities with installment or other deferred payment provisions) if the sale is exempted from the registration requirements of the Securities Act of 1933 under section 4(2) of section 4(6) of the Act;

(3) A subsequent loan or advance on a face-amount certificate as permitted under 15 U.S.C. 80a–28(d); or

(4) Credit extended by a foreign person in connection with the purchase or short sale of non-U.S. traded foreign securities.

(b) A creditor shall not be deemed to have arranged credit by effecting the sale of a foreign security offered on an installment basis if no more than 15 percent of the issue is offered to United States persons as defined in section 7(f) of the Act.

§ 220.14 Clearance of securities, options, and futures.

(a) *Credit for clearance of securities.* The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities directly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

(b) *Deposit of securities with a clearing agency.* The provisions of this part shall not apply to the deposit of securities with an options or futures clearing agency for the purpose of meeting the deposit requirements of the agency if:

(1) The clearing agency:

(i) Issues, guarantees performance on, or clears transactions in, any security (including options on any security, certificate of deposit, securities index or foreign currency); or

(ii) Guarantees performance of contracts for the purchase or sale of a commodity for future delivery or options on such contracts;

(2) The clearing agency is registered with the Securities and Exchange Commission or is the clearing agency for a contract market regulated by the Commodity Futures Trading Commission; and

(3) The deposit consists of any margin security and complies with the rules of the clearing agency that have been approved by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

§ 220.15 Borrowing by creditors.

(a) *Restrictions on borrowing.* A creditor may not borrow in the ordinary course of business as a broker or dealer using as collateral any registered nonexempted security, except:

(1) From or through a member bank of the Federal Reserve System; or

(2) From any nonmember bank that has filed with the Board an agreement as prescribed in paragraph (b) of this section, which agreement is still in effect; or

(3) From another creditor if the loan is permissible under this part.

(b) *Agreements of nonmember banks.* (1) A nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the Act (See Form FR T–1, T–2).

(2) Any nonmember bank may terminate its agreement if it obtains the written consent of the Board.

§ 220.16 Borrowing and lending securities.

(a) Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. Each borrowing shall be secured by a deposit of one or more of the following: cash, cash equivalents, foreign sovereign nonconvertible debt securities that are margin securities, collateral acceptable for borrowings of securities pursuant to SEC Rule 15c3–3 (17 CFR 240.15c3–3), or irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation or a foreign bank that has filed an agreement with the Board on Form FR T–1, T–2. Such deposit made with the lender of the securities shall have at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

(b) A creditor may lend non-U.S. traded foreign securities to a foreign person for any purpose lawful in the country in which they are to be used. Each borrowing shall be secured with collateral having at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

§ 220.17 Requirements for the list of marginable OTC stocks and the list of foreign margin stocks.

(a) *Requirements for inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an

insurance company subject to section 12(g)(2)(G) of the Act, is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5–1(17 CFR 240.12g5–1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Requirements for inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, foreign margin stock shall meet the following requirements:

(1) The security is listed for trading on or through the facilities of a foreign securities exchange or a recognized foreign securities market and has been trading on such exchange or market for at least six months;

(2) Daily quotations for both bid and asked or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to creditors in the United States pursuant to an electronic quotation system;

(3) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $1 billion;

(4) The average weekly trading volume of such security during the preceding six months is either at least 200,000 shares or $1 million; and

(5) The issuer or a predecessor in interest has been in existence for at least five years.

(d) *Requirements for continued inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, foreign margin stock shall meet the following requirements:

(1) The security continues to meet the requirements specified in paragraphs (c)(1) and (2) of this section;

(2) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $500 million; and

(3) The average weekly trading volume of such security during the preceding six months is either at least 100,000 shares or $500,000.

(e) *Removal from the lists.* The Board shall periodically remove from the lists any stock that:

(1) Ceases to exist or of which the issuer ceases to exist; or

(2) No longer substantially meets the provisions of paragraphs (b) or (d) of this section or the definition of OTC margin stock.

(f) *Discretionary authority of Board.* Without regard to other paragraphs of this section, the Board may add to, or omit or remove from the list of marginable OTC stocks and the list of foreign margin stocks and equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(g) *Unlawful representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of marginable OTC stocks or the list of foreign margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the lists or stocks on those lists shall be an unlawful representation.

§ 220.18 Supplement: Margin requirements.

The required margin for each security position held in a margin account shall be as follows:

(a) Margin equity security, except for an exempted security, money market mutual fund or exempted securities mutual fund: 50 percent of the current market value of the security or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(b) Exempted security, registered nonconvertible debt security, OTC margin bond, money market mutual fund or exempted securities mutual fund: The margin required by the creditor in good faith or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(c) Short sale of nonexempted security, except for a registered nonconvertible debt security or OTC margin bond: 150 percent of the current market value of the security, or 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account.

(d) Short sale of an exempted security, registered nonconvertible debt security or OTC margin bond: 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(e) Nonmargin, nonexempted security: 100 percent of the current market value.

(f) Short put or short call on a security, certificate of deposit, securities index or foreign currency:

(1) In the case of puts and calls issued by a registered clearing corporation and listed or traded on a registered national securities exchange or a registered securities association, the amount, or other position, specified by the rules of the registered national securities exchange or the registered securities association authorized to trade the option, provided that all such rules have been approved or amended by the SEC; or

(2) In the case of all other puts and calls, the amount, or other position, specified by the maintenance rules of the creditor's examining authority.

§ 220.19 [Removed]

4. Section 229.19 is removed.

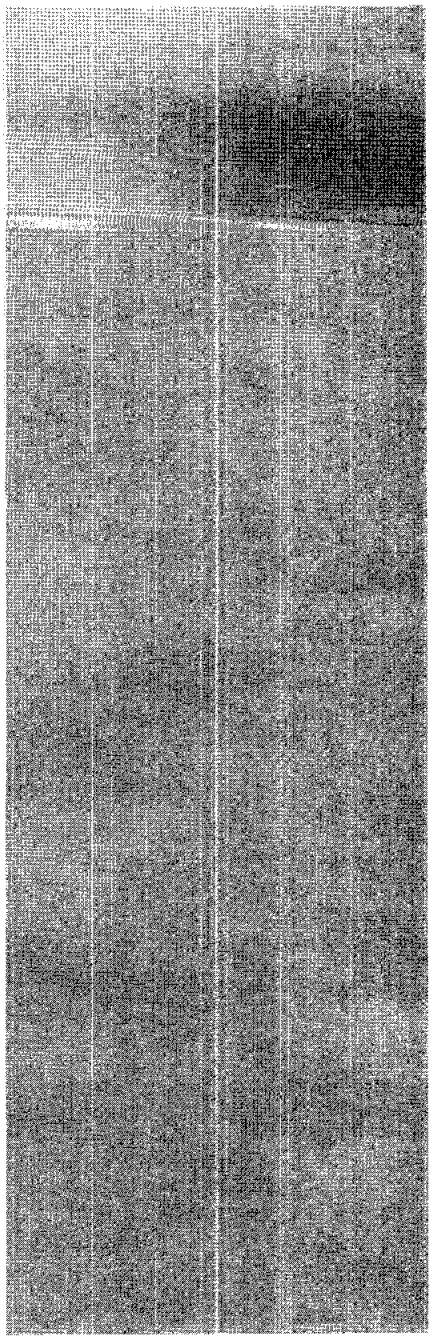
By order of the Board of Governors of the Federal Reserve System, June 21, 1995.

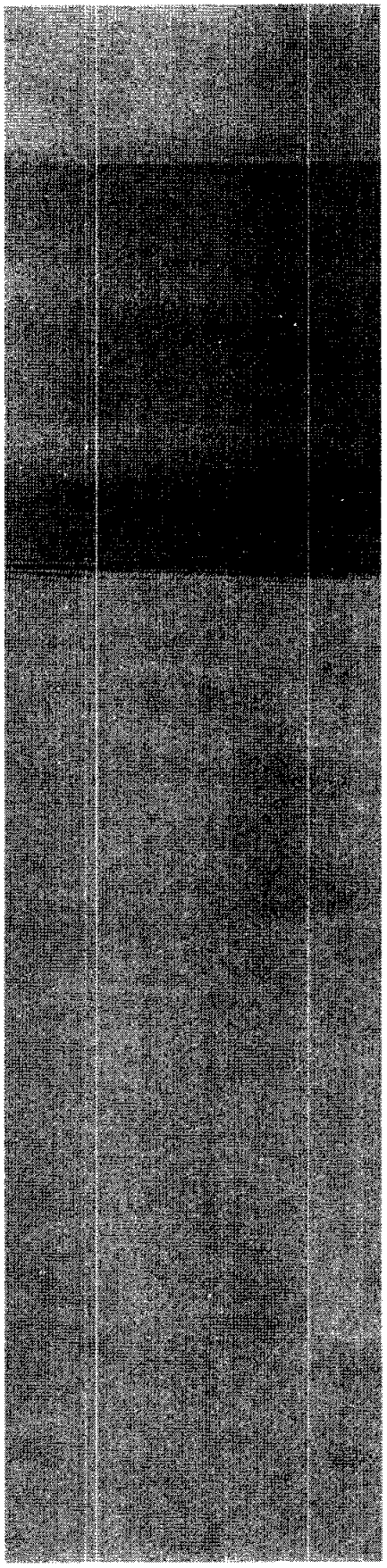
William W. Wiles,

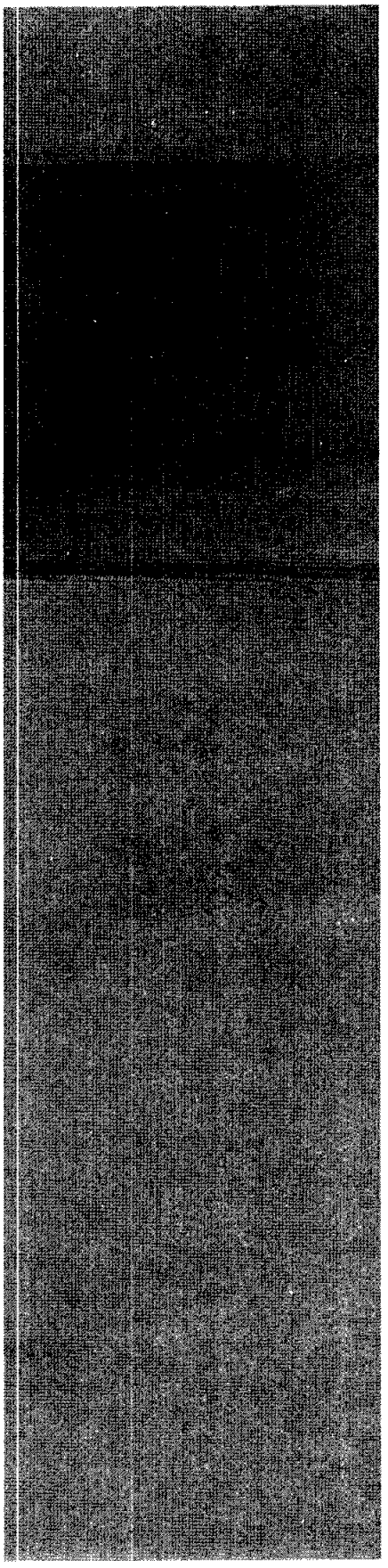
Secretary of the Board.

[FR Doc. 95–15680 Filed 6–28–95; 8:45 am]

BILLING CODE 6210–01–P







NASD NOTICE TO MEMBERS 95-69

Treasury Amends Bank Secrecy Act; Requires Additional Recordkeeping Requirements For Wire Transfers

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) is adopting final rule amendments to the Bank Secrecy Act (BSA) effective January 1, 1996. In two separate actions, Treasury is making changes that will facilitate tracing funds through the wire-transfer process. One rule change requires broker/ dealers to include additional information on funds transfer orders; a companion rule change requires broker/ dealers to collect and retain the information that must be on the transfer orders.

Background

The BSA authorizes Treasury to require financial institutions, including broker/dealers, to keep records and file reports about the source, volume, and movement of funds into and out of the country and through domestic financial institutions. These records and reports have a high degree of usefulness in criminal, tax, and regulatory matters, specifically in investigations concerning money laundering. Federal law enforcement agencies believe that a significant amount of the money laundered involves wire transfers.

The Annunzio-Wylie Anti-Money Laundering Act of 1992 (the 1992 Amendment) amended the BSA, giving Treasury and the Board of Governors of the Federal Reserve System (Fed.) joint authority to prescribe regulations for maintaining records of domestic and international transfers of funds. To this end, Treasury and the Fed. published for public comment a joint proposal about wire transfers in August 1993. With certain modification, Treasury is adopting the requirements proposed at that time.

Amendments To Orders For Transmittals Of Funds

These amendments to the BSA require broker/dealers that transmit funds to include additional identifying information on the actual order. The requirements are the same whether the broker/dealer is in the financial institution that initiates the transfer order or if the broker/dealer acts as an intermediary in forwarding the order to the next receiving financial institution. Broker/dealers must include the newly specified information in orders transmitting funds of $3,000 or more.

Effective January 1, 1996, the following information must be in funds transfers of $3,000 or more, when it is sent to the receiving financial institution, initially or on forwarding by an intermediary:

• the name and account number of the transmittor;

• the address of the transmittor, except for a transmittal order through Fedwire, until such time as the financial institution that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

• the amount of the transmittal order;

• the execution date of the transmittal order;

• the identity of the recipient's financial institution;

• as many of the following items as are received with the transmittal order:[1]

[1] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items must be included in the transmittal order, if received with the sender's transmittal order, until such time as the financial institution that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

—the name and address of the recipient;

—the account number of the recipient;

—any other specific identifier of the recipient; and

• the name or address or numerical identifier of the transmittor's financial institution.

In its release adopting the amendments, Treasury notes that in recording the amount transmitted, a broker/dealer may record the amount of foreign funds or the U.S. dollar equivalent, whichever is the broker/dealer's standard practice.

Treasury also addressed the issue of a closed system. A closed system is a transmittal of funds service that permits a recipient to pick up transmitted funds at any location within the closed system. The service may be entirely domestic or international and does not rely on banks or other outside financial institutions to effect payment to the intended recipient; transmittals are handled entirely by the service's own agents. With regard to such systems, Treasury determined that the requirement to identify the recipient's financial institution may be satisfied by including the closed system's name in the transmittal order.

Treasury also stated in its release that broker/dealers are encouraged to report to the appropriate federal law-enforcement agencies transfers that are structured in amounts of less than $3,000 to evade the requirements of these amendments and the companion recordkeeping amendments.

Amendments To Recordkeeping Requirements

These amendments to the BSA require broker/dealers to collect and retain certain information about transfers of funds of $3,000 or more. The requirements vary depending on the type of financial institution, its role in the particular wire transfer, and the relationship of the parties to the transaction with the financial institution.

Also, the changes clarify the requirements for verifying the identity of the parties to the transfer and for retrieving transfer records. Finally, the amendments add several new definitions that standardize terminology.

Meaning Of Firms

In addition to expanding the existing list of terms defined in the BSA, Treasury's changes standardize terminology. The definitions applicable to transactions by broker/dealers parallel equivalent terms used for banks in the Uniform Commercial Code. The term "established customer," is defined as "a person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person's name and address, as well as taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information."

The rule excludes from the definitions of funds transfer and transmittal of funds all transfers governed by the Electronic Fund Transfer Act, as well as any other funds transfers that are made through an automated clearinghouse, automated teller machine, or point-of-sale system. Members should note that the term "transmittal of funds" includes a funds transfer.

Recordkeeping Requirements

Broker/dealers, which are referenced in the BSA as nonbank financial institutions, are subject to different requirements depending on whether they are dealing with established customers or not.

Requirements Regarding Established Customers

If the originator of a transmittal order is an established customer, the broker/dealer must obtain and retain the following information.

• the name and address of the transmittor;

• the amount of the transmittal order;

• the execution date of the transmittal order;

• any payment instructions received from the transmittor with the transmittal order;

• the identity of the recipient's financial institution;

• as many of the following items as are received with the transmittal order:

—the name and address of the recipient;

—the account number of the recipient;

—any other specific identifier of the recipient; and

• any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.

If the broker/dealer accepts a transmittal order for a recipient that is an established customer, the broker/dealer must retain the original or a

copy of the transmittal order and any form completed or signed by the person receiving the proceeds of the transmittal of funds. If a broker/dealer acts as an intermediary financial institution, it must retain the original or a copy of the transmittal order.

Any payment instructions given by the originator, oral or written, must be retained if received with the payment order. Such payment instructions may include the purpose of the funds transfer, directions to the beneficiary's financial institution regarding how to notify the beneficiary of the receipt of funds (e.g., advise by phone), or other information.

Requirements Regarding Non Customers

For transmittal orders from a transmittor that is not an established customer, a broker/dealer must obtain all the information specified above for established customers and the following additional information:

• If the transmittal order is made in person, before accepting, the broker/dealer must verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the broker/dealer must obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., Social Security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the broker/dealer has knowledge that the person placing the transmittal order is not the transmittor, it must obtain and retain a record of the transmittor's taxpayer identification number (e.g., Social Security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

• If the transmittal order is not made in person, the broker/dealer must obtain and retain a record of the name and address of the person placing the transmittal order, as well as the person's taxpayer identification number (e.g., Social Security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (e.g., check or credit card transaction) for the transmittal of funds. If the broker/dealer has knowledge that the person placing the transmittal order is not the transmittor, the broker/dealer must obtain and retain a record of the transmittor's taxpayer identification number (e.g., Social Security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

For each transmittal order that a broker/dealer accepts for a recipient that is not an established customer, in addition to obtaining and retaining the information required for established customers, the broker/dealer must obtain and retain the following additional information:

• If the proceeds are delivered in person to the recipient or its representative or agent, the broker/dealer must verify the identity of the person receiving the proceeds and must obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., Social Security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds is not the recipient, the broker/dealer must obtain and retain a record of the recipient's name and address, as well as the recipient's taxpayer identification number (e.g., Social Security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

• If the proceeds are delivered other than in person, the broker/dealer must retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

Retrievability

The rule requires a broker/dealer to be able to retrieve the information maintained by reference to the name of the transmittor or the recipient. If the transmittor or recipient is an established customer, the broker/dealer must be able to retrieve the information also by account number. Broker/dealers are not required to retain the information in any particular manner, nor at any particular location.

Members should note that the retrievability standard will apply only to funds transfers made on or after January 1, 1996.

Verification

Where verification is required, a broker/dealer must verify a person's identity by examination of a document (other than a customer signa-

ture card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a foreign driver's license with indication of home address).

Exceptions

The following transmittals of funds are not subject to these requirements:

• transmittals of funds where the transmittor and the recipient are any of the following:

—a domestic bank;

—a wholly-owned domestic subsidiary of a domestic bank;

—a domestic broker or dealer in securities;

—a wholly-owned domestic subsidiary of a domestic broker or dealer in securities;

—the United States;

—a state or local government; or

—a federal, state, or local government agency or instrumentality; and

• transmittals of funds where both the transmittor and recipient are the same person and the transmittor's financial institution and the recipient's financial institution are the same domestic broker/dealer in securities.

Retention

The retention period remains unchanged for broker/dealers. Records required under the BSA, including funds transfer records, must be retained for five years.

Members are urged to review the final rule amendments in their entirety. The pertinent parts of the BSA, background information, and a discussion of industry comments were published in the January 3, 1995, *Federal Register*.

Questions concerning this Notice may be directed to Susan Lang, NASD Regulation Department, at (202) 728-6969.

NASD NOTICE TO MEMBERS 95-70

Labor 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 Monday, September 4, 1995, in observance of Labor Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Aug. 29	Sept. 1	Sept. 6
30	5	7
31	6	8
Sept. 1	7	11
4	Markets Closed	—
5	8	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 95-71

Nasdaq National Market Additions, Changes, And Deletions As Of July 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 July 27, 1995, the following 72 issues joined the Nasdaq National Market, bringing the total number of issues to 3,829:

Symbol	Company	SOES Entry Date	Execution Level
BRGP	Business Resource Group	6/28/95	500
NERAY	Nera AS (ADR)	6/28/95	1000
NEIB	Northeast Indiana Bancorp, Inc.	6/28/95	500
SOSS	SOS Staffing Services, Inc.	6/28/95	200
BDMI	BDM International, Inc.	6/29/95	1000
FBBC	First Bell Bancorp, Inc.	6/29/95	500
ININ	InStent Inc.	6/29/95	500
ICNI	Integrated Communication Network, Inc.	6/29/95	500
PRDM	Paradigm Technology, Inc.	6/29/95	200
SGVB	SGV Bancorp, Inc.	6/29/95	200
CFIC	Community Financial Corp.	6/30/95	1000
DRTE	Dendrite International, Inc.	6/30/95	1000
DSLGF	Discreet Logic, Inc.	6/30/95	500
GTPS	Great American Bancorp, Inc.	6/30/95	200
HEMT	HF Bancorp, Inc.	6/30/95	200
INFR	Inference Corp. (Cl A)	6/30/95	200
MTRA	Metra Biosystems, Inc.	6/30/95	200
MBLM	MobileMedia Corp.	6/30/95	1000
SFED	SFS Bancorp, Inc.	6/30/95	500
SEER	Seer Technologies, Inc.	6/30/95	500
CRONV	Cooper Cameron Corp. (WI)	7/5/95	1000
FMBD	First Mutual Bancorp, Inc.	7/5/95	500
WORK	Work Recovery Inc.	7/5/95	500
CAMD	California Micro Devices Corp.	7/6/95	200
CTND	Caretenders Health Corp.	7/6/95	200
LGTO	Legato Systems, Inc.	7/6/95	1000
MCCI	MIDCOM Communications, Inc.	7/7/95	200
OSHRF	Oshap Technologies Ltd. (Rts)	7/7/95	200
FKKY	Frankfort First Bancorp, Inc.	7/10/95	500
NFLID	Nutrition For Life Int'l, Inc. (New)	7/11/95	200
NFLIW	Nutrition For Life Int'l, Inc. (Wts 7/11/98)	7/11/95	200
ONTK	OnTrak Systems, Inc.	7/11/95	1000
BNCC	BNCCORP, Inc.	7/13/95	200
HOWT	Howtek, Inc.	7/13/95	1000
MTIN	Martin Industries, Inc.	7/13/95	1000
TINTA	Tele-Communications International, Inc. (Cl A)	7/13/95	200
LBTAV	Tele-Comm, Inc. (Ser A Liberty Media Group WI)	7/13/95	200
ALGSF	Algoma Steel, Inc.	7/14/95	500
NVDM	Novadigm, Inc.	7/14/95	1000
SIHBF	Sun International Hotels Ltd. (Ser B)	7/14/95	200
HABC	Habersham Bancorp	7/17/95	200
MTMC	Micros to Mainframes, Inc.	7/18/95	200

Symbol	Company	SOES Entry Date	Execution Level
MTMCW	Micros to Mainframes, Inc. (Wts 10/26/97)	7/18/95	200
PIXT	PixTech, Inc.	7/18/95	500
PROG	Programmer's Paradise, Inc.	7/18/95	1000
CHDX	U.S.-China Industrial Exchange, Inc.	7/18/95	200
DSWLF	Deswell Industries, Inc.	7/19/95	200
DSWWF	Deswell Industries, Inc. (Wts)	7/19/95	200
PBYP	Play By Play Toys & Novelties, Inc.	7/19/95	500
AHEZV	American Health Properties, Inc. (Dep. Shrs. WI)	7/19/95	200
EXGN	Exogen, Inc.	7/20/95	200
IMNT	IMNET Systems, Inc.	7/20/95	500
ROCF	Rockford Industries, Inc.	7/20/95	200
MASK	Align-Rite International, Inc.	7/21/95	200
IMSC	Integrated Measurement Systems, Inc.	7/21/95	200
MSFI	MS Financial, Inc.	7/21/95	500
UNSN	Unison Software, Inc.	7/21/95	500
ENER	Energy Conversion Devices, Inc.	7/24/95	200
CMTI	Community Medical Transport, Inc.	7/25/95	500
CMTIW	Community Medical Transport, Inc. (Wts 10/3/99)	7/25/95	500
DLBI	DLB Oil & Gas, Inc.	7/25/95	500
MNMD	MiniMed Inc.	7/25/95	200
TAGS	Tarrant Apparel Group	7/25/95	1000
RDHS	Logan's Roadhouse, Inc.	7/26/95	1000
OKSBP	Southwest Bancorp, Inc. (Pfd A)	7/26/95	200
ACRS	Across Data Systems, Inc.	7/27/95	1000
ATEA	Astea International, Inc.	7/27/95	500
CBCP	Capital Bancorp	7/27/95	500
EQSB	Equitable Federal Savings Bank	7/27/95	200
GSES	GSE Systems, Inc.	7/27/95	500
RNREF	RenaissanceRe Holdings, Ltd.	7/27/95	200
TSMAF	Tesma International, Inc. (Cl A Sub. Vot.)	7/27/95	200

Nasdaq National Market Symbol and/or Name Changes

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

New/Old Symbol	New/Old Security	Date Of Change
APRAV/ABBY	Apria Healthcare Group, Inc. (WI)/Abbey Healthcare Group, Inc.	6/29/95
DANB/DANBV	Dave & Buster's, Inc./Dave & Buster's, Inc. (WI)	6/30/95
SBSE/SBSE	SBS Technologies, Inc./SBS Engineering, Inc.	6/30/95
LECE/TJSY	Leasing Edge Corp./TJ Systems Corp.	6/30/95
OTCM/OTCM	Royce Micro-Cap Trust, Inc./Royce OTC Micro-Cap Fund, Inc.	7/3/95
ALRIZ/ALRZV	Allergan Ligand Retinoid Ther (Uts 6/3/20)/Allergan Ligand Retinoid Ther (Uts 6/5/97 WI)	7/10/95
APRA/APRAV	Apria Healthcare Group, Inc./Apria Healthcare Group, Inc. (WI)	7/10/95
CFCX/CTBX	Center Financial Corporation/Centerbank	7/10/95
SAMC/ASTI	Samsonite Corp./Astrum International Corp.	7/17/95
RBPAA/RBPAA	Royal Bancshares of Pennsylvania (Cl A)/Royal Bank of Pennsylvania (Cl A)	7/17/95

New/Old Symbol	New/Old Security	Date Of Change
INDE/INDE	IndeNet, Inc./Independent Telemedia Group, Inc.	7/18/95
BHIKF/BZHKF	B.H.I. Corporation/Belize Holdings, Inc.	7/19/95
CRON/CRONV	Cooper Cameron Corp./Cooper Cameron Corp. (WI)	7/19/95
QLTIF/QLTIF	QLT Phototherapeutics, Inc./Quadra Logic Technologies, Inc.	7/19/95
CDSI/CPTD	Computer Data Systems, Inc./Computer Data Systems, Inc.	7/20/95
RSTO/RSTOV	Rose's Stores, Inc./Rose's Stores, Inc. (WI)	7/21/95
RIDE/RIDE	Ride Inc./Ride Snowboard Company	7/25/95
AHEPZ/AHEZV	American Health Properties, Inc. (Dep. Shrs.)/American Health Properties, Inc. (Dep. Shrs. WI)	7/26/95
OKSBP/OKSPV	Southwest Bancorp, Inc. (Pfd A)/Southwest Bancorp, Inc. (Pfd A WI)	7/26/95
RHBC/RHBC	RehabCare Group, Inc./RehabCare Corporation	7/27/95
VVTV/VVTVA	ValueVision International, Inc. (Cl A)/ValueVision International, Inc. (Cl A)	7/27/95

Nasdaq National Market Deletions

Symbol	Security	Date
PMSV	Pharmacy Management Services, Inc.	6/28/95
TMNI	Transmedia Network, Inc.	6/28/95
BTOP	Bestop, Inc.	6/29/95
HOME	Homedco Group, Inc.	6/29/95
BRIN	Broadcast International, Inc.	6/30/95
LLSL	Lakeland First Financial Group, Inc.	6/30/95
SOLD	ADESA Corp.	7/3/95
AMRE	American Recreation Co. Hldgs., Inc.	7/3/95
ASFL	American Savings of Florida F.S.B.	7/3/95
DEER	Deerbank Corp.	7/3/95
HUBCP	HUBCO, Inc. (Ser A Pfd)	7/3/95
NFSF	N F S Financial Corp.	7/3/95
GLBCP	TCF Financial Corp. (Pfd A)	7/3/95
GLBCW	TCF Financial Corp. (Wts 7/1/95)	7/3/95
WATTA	Watts Industries, Inc. (Cl A)	7/5/95
ADLRQ	All For A Dollar, Inc.	7/6/95
FMDDQ	F & M Distributors, Inc.	7/6/95
FFSB	FF Bancorp, Inc.	7/6/95
LOTS	Lotus Development Corporation	7/6/95
SNSC	Swing-N-Slide Corporation	7/6/95
USWDA	U.S. Wireless Data, Inc.	7/6/95
FCOB	First Commercial Bancorp, Inc.	7/7/95
RHAB	Rehability Corporation	7/7/95
VARLW	Vari-L Company, Inc. (Wts 4/20/97)	7/7/95
CMMD	Command Security Corporation	7/10/95
PSFC	Plains Spirit Financial Corp.	7/10/95
SNRS	Sunrise Technologies International, Inc.	7/10/95
SSFT	Scientific Software Intercomp, Inc.	7/11/95
BCNJ	Bancorp New Jersey, Inc.	7/12/95
WILLA	John Wiley & Sons, Inc. (Cl A)	7/12/95
TRNI	Trans-Industries, Inc.	7/13/95
CRAYQ	Cray Computer Corp.	7/17/95
XNVAZ	Xenova Group plc (Uts)	7/17/95

Symbol	Security	Date
LECE	Leasing Edge Corp.	7/20/95
RRRR	Renaissance Communications Corp.	7/20/95
SPNSF	Sapiens International Corp. N.V.	7/20/95
UNMGW	UniMark Group, Inc. (Wts 8/12/99)	7/20/95
EVTCW	Environmental Technologies Corp. (Wts 12/17/97)	7/21/95
RIMGW	Rimage Corp. (Wts 7/21/95)	7/21/95
ARTL	The Aristotle Corp.	7/21/95
EZEMA	E-Z-EM, Inc. (Cl A)	7/24/95
EZEMB	E-Z-EM, Inc. (Cl B)	7/24/95
SDNBR	SDNB Financial Corp. (Rts 7/21/95)	7/24/95
USDCR	USDATA Corporation (Rts)	7/24/95
SOLQD	Solo Serve Corporation (New)	7/25/95
TIGR	Tiger Direct, Inc.	7/25/95
SPTNQ	SportsTown, Inc.	7/27/95

Questions regarding this Notice should be directed to Mark A. Esposito, Nasdaq Market Services Director, Issuer Services, at (202) 496-2536. 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 95-72

Fixed Income Pricing System Additions, Changes, And Deletions As Of July 28, 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 July 28, 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
CE.GB	Calif energy	9.875	6/30/03
HRRA.GA	Harrah's Oper	8.375	4/15/96
HRRA.GB	Harrah's Oper	10.875	4/15/02
GGE.GA	Griffin Gaming & Entmt	0.	6/30/00
PAGE.GC	Page Network	10.125	8/1/07
NBRD.GA	Nabisco	6.850	6/15/05
REVL.GG	Revlon Consumer Pr	10.875	7/15/10
OI.GI	Owens-Ill	10.000	8/1/02
CELS.GB	Commnet Cellular Inc	11.250	7/1/05
GLD.GA	Santa Fe Pacific Gold	8.375	7/1/05
LEA.GA	Lear Seating	8.250	2/1/02

As of July 28, 1995, a change was made to the name of the following FIPS bond:

Symbol	New Name	Old Name
CELS.GA	Cellular Inc.	Commnet Cellular Inc.

As of July 28, 1995, the following changes to the list of FIPS symbols occurred:

New Symbol	Old Symbol	Name
*AKS.GA	AKST.GA	AK Steel
*MRV.GA	MRVL.GA	Marvel (Parent) Hldgs Inc
CTYA.GA	CTY GA	Century Comm
*CTYA.GB	CTY GB	Century Comm
CTYA.GC	CTY GC	Century Comm
CTYA.GD	CTY GD	Century Comm

*A mandatory FIPS bond.

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 August

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, August 21, 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 Fined, Individual Sanctioned

Northridge Capital Corporation (Atlanta, Georgia) and **Anthony John Negus (Registered Principal, Roswell, Georgia)** were fined $25,000, jointly and severally. Negus was suspended from association with any NASD member in any capacity for 30 days. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm prepared and disseminated, and Negus permitted it to prepare and disseminate a summary memorandum containing material misrepresentations or omissions.

This case has been appealed to the Securities and Exchange Commission (SEC), and the sanctions are not in effect pending consideration of the appeal.

Firms Fined

CC & Q Investors Diversified, Inc. (Roswell, Georgia) was fined $50,000. The sanction was based on findings that the firm permitted an individual to function as a general securities representative and paid commissions to the individual relating to customer transactions, while she was not registered as a general securities representative with the NASD.

Mayer & Schweitzer, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $20,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it reported, or caused to be reported, late Nasdaq® transactions in contravention of the Board of Governors interpretation concerning the obligation of members to report transactions within 90 seconds of execution.

Individuals Barred Or Suspended

Sami P. Bacon (Registered Representative, Bellevue, Washington) 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, Bacon consented to the described sanctions and to the entry of findings that he executed eight securities transactions in his and his parents' personal accounts at his member firm and caused those transactions to be canceled and rebilled into the firm's error account resulting in the firm losing $4,400.

Germain R. Berard, Jr. (Registered Representative, Cumberland, Rhode Island) was fined $2,500 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Boston DBCC decision. The sanctions were based on findings that a public customer authorized Berard to surrender three of her insurance policies with cash surrender values totaling $1,696.90. The proceeds were to be applied toward the payment of an

initial premium on a new insurance policy and to be invested in the customer's bond fund, but, instead, Berard withheld and misappropriated the funds for his own use and benefit.

Julie Kaye Bernard (Registered Representative, St. Louis, Missouri) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bernard failed to respond to NASD requests for information regarding her termination from her former member firm.

Donald Marquis Bickerstaff (Registered Representative, Tiburon, California) was fined $50,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a June 1994 NBCC decision. The sanctions were based on findings that Bickerstaff forged a customer's signature on insurance policy change and reinstatement forms. In addition, Bickerstaff prepared and provided to the customer a computer illustration that falsely represented how a single $85,000 premium would fund the customer's $400,000 variable appreciable life policy.

Hugh E. Bowman, II (Registered Representative, Atlanta, Georgia) was fined $100,000, barred from association with any NASD member in any capacity, and ordered to pay $70,000 plus interest in restitution to public customers. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Bowman had solicited and received from public customers $80,000 for marketing an offering of two limited partnerships, but, instead, converted the funds for his own use and benefit.

Bowman has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Timothy D. Brady, Sr. (Registered Representative, Florissant, Missouri) submitted an Offer of Settlement pursuant to which he was fined $3,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Brady consented to the described sanctions and to the entry of findings that he opened a securities account at a member firm without notifying his member firm of the opening of the account and failing to notify the other firm of his association with his member firm.

Peter C. Bucchieri (Registered Principal, Las Vegas, Nevada) was fined $25,000, required to provide proof of payment of an arbitration award to customers, and required to pay $50,979 in restitution to customers. If Bucchieri fails to show proof of payment of restitution and the arbitration award, he must cease association with any NASD member in any capacity. Additionally, Bucchieri was suspended from association with any NASD member in any capacity for 60 days and barred from association with any NASD member as a general securities principal. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Bucchieri effected discretionary transactions in the accounts of public customers that were excessive in size or frequency, in view of the financial resources and character of the customers' securities accounts.

Bucchieri has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Scott P. Burke (Registered Representative, Orlando, Florida) was fined $70,000, barred from association with any NASD member in any capacity, ordered to disgorge commissions of $1,400, and required to pay restitution to public customers. The sanctions were based on findings that Burke induced public customers to make investments in a security outside the regular course or scope of his employment with his member firm. In addition, Burke failed to respond to an NASD request for information.

Dale S. Call (Registered Representative, Salt Lake City, Utah) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Call received from public customers $32,000 that was to be invested through his member firm, however, he failed to invest these funds as customers' intended. Call also failed to respond to NASD requests for information.

Andrew P. Cinman (Registered Representative, Atlanta, Georgia) was fined $50,000, and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Cinman effected six transactions in his personal account at his member firm that were beyond his financial means and that resulted in violation of the margin requirements in Reg. T of the Federal Reserve Board and the NASD Rules of Fair Practice.

Cinman has appealed this action to the SEC, and the sanctions, other than a bar in any capacity other than in a non-supervisory and non-proprietary capacity, are not in effect pending consideration of the appeal.

Joni Clarke (Registered Representative, Nogales, Arizona) was fined $21,000 and barred from association with any NASD member

in any capacity. The sanctions were based on findings that Clarke misappropriated public customers funds intended for the purchase of or payment on insurance policies. Clarke also failed to respond to NASD requests for information.

Mark H. Cohen (Registered Representative, Arlington, Virginia) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 90 days and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he exercised discretionary power over the account of public customers and recommended the purchase and sale of securities without having reasonable grounds for believing such recommendations were suitable for the customers considering their financial situation, needs, and investment objective. The findings also stated that Cohen accepted oral discretionary authority over the accounts of public customers and utilized such authority to effect discretionary securities transactions in the accounts without first having such discretionary power in writing and accepted by his member firm.

Larry Valton Davis (Registered Principal, Grand Prairie, Texas) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any principal capacity for six months. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he placed a misleading advertisement concerning securities investments in a newspaper and mailed the same advertisement to public customers. In addition, the NASD found that Davis failed to notify and submit the advertisement to his member firm for review and approval.

Richard A. DeVogel (Registered Representative, Philadelphia, Pennsylvania) 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, DeVogel consented to the described sanctions and to the entry of findings that he received from a public customer $424 in cash for payment of an insurance premium. The NASD determined that DeVogel failed to remit the money to the insurance company and fabricated documents purporting to be policy specification pages of a policy issued by the insurance company in favor of the customer and presented the documents as genuine to the customer.

Deborah Jane Egan (Registered Representative, Tampa, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Egan failed to respond to NASD requests for information regarding her termination from two member firms.

George S. Estlow (Registered Representative, Strafford, Pennsylvania) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Estlow received from public customers $73,398.31 to purchase a government fund. Estlow failed to submit purchase orders totaling $42,330 for the funds until a later date and failed to remit $29,670 of the funds to his member firm, which he retained. Estlow also failed to respond to NASD requests for information.

John W. Ford (Registered Principal, Pittsburgh, Pennsylvania) 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 10 business days. Without admitting or denying the allegations, Ford consented to the described sanctions and to the entry of findings that he failed to submit to the NASD an amended Uniform Application for Securities Industry Registration (Form U-4) disclosing an SEC order and suspension.

Charles E. French (Registered Representative, Metairie, Louisiana) was fined $15,000, barred from association with any NASD member in any capacity, and ordered to pay $50,000 plus interest in restitution to a public customer. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that French sold a promissory note for $50,000 to a public customer without prior written notice to and approval from his member firm. In addition, French induced the same customer to purchase the note by making material misrepresentations of material facts while failing to provide adequate disclosure to the customer.

French has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

William P. Hampton (Registered Representative, San Diego, California) was fined $15,000 and suspended from association with any NASD member in any capacity for 15 days. The NBCC imposed the sanctions following review of a Los Angeles DBCC decision. The sanctions were based on findings that Hampton effected the purchase of stock for the accounts of two public customers without their knowledge or prior authorization.

Jay H. Harjula (Registered Representative, Lakeville, Minnesota) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Harjula failed to respond to NASD requests for information about his termination from a member firm.

Carlos Roth Hodge (Registered Representative, Burlington, North Carolina) and **Carlos Timothy Hodge (Registered Representative, Charlotte, North Carolina)** submitted an Offer of Settlement pursuant to which they were fined $300,000, jointly and severally. In addition, they were each 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, outside the scope of their employment with their member firm, they solicited for compensation investors who purchased limited partnership interests and promissory notes without giving prior written notice to or receiving written approval from their member firm.

Seong Hee Hong (Registered Representative, Olathe, Kansas) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hong failed to respond to NASD requests for information about his termination from a member firm.

Brett R. Horan (Registered Representative, Cranberry Township, Pennsylvania) 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, Horan consented to the described sanctions and to the entry of findings that he falsified or caused to be falsified on various insurance forms signatures purporting to be that of policyholders and submitted such firms to his member firm. The NASD also determined that Horan falsified the purported endorsement of a policyholder on three checks totaling $1,174.56, which had been issued to the policyholder by Horan's member firm.

Harvey J. House (Registered Representative, Tomball, Texas) was fined $12,500 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of a Dallas DBCC decision. The sanctions were based on findings that House made improper use of customer funds and securities by inducing a public customer to give him $2,500 to purchase options. House falsely stated to the customer that he would be jointly investing with him and caused the customer's funds to be deposited into his personal bank account for his own use and benefit.

Jesse J. Hunt, Jr. (Registered Representative, Apopka, Florida) was fined $70,000, barred from association with any NASD in any capacity, ordered to disgorge commissions of $19,760.62, and required to pay $155,000 in restitution to public customers. The sanctions were based on findings that Hunt induced public customers to make investments in a security that were outside the regular course or scope of his employment with his member firm. In addition, Hunt failed to respond to an NASD request for information

William Holt Jowell (Registered Representative, Midland, Texas) submitted an Offer of Settlement pursuant to which he was fined $25,000, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations, Jowell consented to the described sanctions and to the entry of findings that he wrote or caused to be written, two checks totaling $25,000 against the bank account of a public customer made payable to and deposited in the bank account of a company for which he was named the trustee. The NASD determined that Jowell then withdrew the funds from the account for his own personal use and benefit without the knowledge or consent of the customer.

Ronald H.V. Justiss (Registered Representative, Denver, Colorado) was barred from association with any NASD member in any capacity. The NBCC imposed the sanction following appeal of a Denver DBCC decision. The sanction was based on findings that, while taking the Series 65 examination, Justiss was observed reviewing unauthorized materials containing exam-related information.

Justiss has appealed this action to the SEC and the sanction, other than the bar, is not in effect pending consideration of the appeal.

Steven David Kark (Registered Representative, San Francisco, California) was barred from association with any NASD member in any capacity. The NBCC affirmed the sanction following appeal of a San Francisco DBCC decision. The sanction was based on findings that Kark participated in 10 purchases of notes for $78,500 by a public customer without providing written notification to his member firm and obtained 10 personal loans totaling $78,500 from the same customer without having a reasonable basis for believing that he would be able to repay the loans. In connection with a loan application by the customer, Kark prepared and submitted to his member firm a deposit verification that falsely represented that the customer had a $100,000 investment in a partnership and had a $50,000 loan from his member firm.

In addition, Kark submitted to his member firm a Form U-4 application that did not disclose that he had been employed by another member firm.

William M. Kean (Registered Principal, Hopkins, South Carolina) was suspended from association with any NASD member in any capacity for six months and must requalify by examination as a general securities representative. The sanctions were based on findings that, outside the regular course or scope of his employment with his member firm, Kean induced public customers to purchase interests in oil or gas wells and failed to provide his member firm with written notice of these private securities transactions or obtain approval from his member firm.

Theodore King, III (Registered Representative, Camden, New Jersey) 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, King consented to the described sanctions and to the entry of findings that he received from two insurance customers $95 in payment of a homeowner's insurance policy and an insurance premium. According to the findings, King negotiated a $35 check from one of the customers, retained the proceeds, and failed to remit such payments to his member firm. The NASD also found that King received from an insurance customer a $402 check, remitted the check to his member firm, and caused $251.80 of such sum to be applied to the customer's policy and caused the $150.20 balance to be applied to pay premiums on other customer policies without the prior authorization or consent of the customer. In addition, the NASD determined that King failed to respond to NASD requests for information.

Russell Alan Kristek (Registered Representative, Mercer Island, Washington) submitted an Offer of Settlement pursuant to which he was fined $23,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kristek consented to the described sanctions and to the entry of findings that he deposited, or caused to be deposited, $225 into the securities account of a public customer. According to the findings, this payment was made to the customer without the knowledge of his member firm and was in lieu of a dividend payment to which the customer believed he was entitled to as a result of his earlier investment in a mutual fund through Kristek. The findings also stated that Kristek failed to respond to NASD requests for information.

Jonathan D. Lyons (Registered Representative, North Hills, New York) 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 15 days. Without admitting or denying the allegations, Lyons consented to the described sanctions and to the entry of findings that he failed to appear for testimony before the NASD in connection with an ongoing NASD investigation.

Thomas F. McLister (Registered Representative, Potomac, Maryland) was fined $2,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that McLister failed to disclose a felony arrest and conviction to the NASD and to update his Form U-4. McLister thereafter remained associated with two member firms while subject to a statutory disqualification. In addition, McLister prepared and submitted a false Form U-4 by failing to disclose his conviction. As a result, the NASD approved his registration and McLister became associated with a member firm while subject to a disqualification.

Christine M. Michie (Registered Representative, Jeffersonville, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Michie failed to respond to an NASD request for information about an alleged failure to disclose sales charges in connection with a mutual fund sale.

Frederick K. Nader (Registered Representative, Houston, Texas) was suspended from association with any NASD member in any capacity for one year and required to requalify by examination. The sanctions were based on findings that during the Series 7 exam, Nader retained in his possession hand-written and typed notes relating to the examination subject matter.

Nader's suspension began June 17, 1994, and concluded June 17, 1995.

Erik S. Nelson (Registered Representative, Smyrna, Georgia) 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, Nelson consented to the described sanctions and to the entry of findings that he knew, or was reckless in not knowing, that his participation in the sales of shares to public customers pursuant to his agreement with a non-registered individual with the understanding that he would receive monetary compensation from the unregistered individual was an integral step in a manipulative and deceptive device designed to defraud public investors.

Jeffrey Martin Nelson (Registered

Representative, Pearland, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Nelson failed to respond to NASD requests for information about customer complaints.

Curtis Platt (Registered Representative, Englewood, Colorado) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Platt effected 11 transactions in the accounts of three public customers without obtaining prior authorization from each of the customers.

George H. Rather, Jr. (Registered Representative, Spring, Texas) was fined $10,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify as a general securities representative. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Rather failed to timely submit five order tickets.

Rather has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Lawrance A. Rosenberg (Registered Principal, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was fined $1,000 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Rosenberg consented to the described sanctions and to the entry of findings that he failed to appear for testimony before the NASD in connection with an ongoing investigation.

Helen A. Roy (Registered Principal, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which she was fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Roy consented to the described sanctions and to the entry of findings that she failed to submit to the NASD an amended Form U-4 disclosing an SEC order and suspension.

Anthony Bernard Scannell (Registered Representative, Addison, Illinois) and **Slavko Stojanovic (Registered Representative, Des Plaines, Illinois).** Scannell was fined $5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination. Stojanovic was fined $15,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Scannell participated in the offer and sale of a security to a public customer and made material misrepresentations of fact and/or omitted material facts to the customer. Stojanovic provided statements to the customer that contained account values leading the customer to believe that the cash value of the products was substantially higher than it was. Scannell also provided the account values to or reviewed the account values provided by Stojanovic, and/or authorized Stojanovic to provide the account values to the customer, despite the fact that Scannell knew, or should have known, that the account values were not an accurate reflection of the customer's actual account values.

Bernard R. Schmitt (Registered Representative, Smyrna, Georgia) 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, Schmitt consented to the described sanctions and to the entry of findings that he entered into an agreement with a non-registered individual wherein he agreed to solicit public customers at his member firm to purchase shares of common stock. According to the findings, the non-registered individual directed Schmitt to purchase shares of the stock that were to be sold to public customers. The NASD determined that Schmitt received $10,900 in compensation from the unregistered individual for shares he was able to sell to the customers. This agreement and compensation were not disclosed to his member firm or the public customers and, as a result, Schmitt knew, or was reckless in not knowing, that his participation in the sales of stock to public customers pursuant to his agreement with the non-registered individual was an integral step in a manipulative and deceptive device designed to defraud public investors.

James E. E. Sellers, Jr. (Registered Representative, Augusta, Georgia) was fined $70,000, barred from association with any NASD member in any capacity, and ordered to pay $3,263.53 in restitution to his member firm. The sanctions were based on findings that, without the knowledge or authorization of a public customer, Sellers converted, for his own use and benefit, the proceeds of a check issued to the customer by his member firm representing the cash surrender value of an insurance policy. Sellers also failed to respond to an NASD request for information.

Dolores Lucille Shelton (Registered Representative, Odessa, Texas) was fined $10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Shelton

requested and received the proceeds from unauthorized loans made on the insurance policies of public customers and thereafter converted the proceeds for her own use and benefit without the customer's knowledge or consent.

Jeffrey Harold Supinsky (Registered Principal, Massapequa, New York) and **David Lee Stetson (Registered Principal, Glen Cove, New York)** submitted an Offer of Settlement pursuant to which they were fined $100,000, jointly and severally, barred from association with any NASD member in any principal capacity, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by examination. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they engaged in a trading scheme designed to defraud their former member firm and confer certain benefits to their new member firm. Specifically, the NASD found that Supinsky and Stetson purchased stock on an agency basis, in their former member firm's customer accounts, without the customers' prior knowledge, authorization, or consent. In each transaction, the new member firm sold short at or about the inside asking price. Supinsky and Stetson then permitted their new firm to purchase stock from their former member firm at or about the inside bid in the exact amounts needed to cover its short positions. Since each trade was unauthorized, their former member firm canceled each trade and, as result, incurred $64,947.50 in losses and their new firm realized $64,947.50 in profits.

Stephen E. Thomas (Registered Representative, Scranton, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $7,500, barred from association with any NASD member in any capacity, and required to demonstrate repayment of $1,500 to his member firm. Without admitting or denying the allegations, Thomas consented to the described sanctions and to the entry of findings that he received from two public customers $6,500 to purchase mutual fund shares. The NASD determined that Thomas remitted $5,000 to his member firm, but failed to remit the balance of $1,500 for its intended purpose.

Christopher R. Timmerman (Registered Representative, Steamboat Springs, Colorado) 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 one month. Without admitting or denying the allegations, Timmerman consented to the described sanctions and to the entry of findings that he recommended and effected for the accounts of a public customer non-exempt securities transactions and failed to have reasonable grounds for believing that such transactions were suitable for the customer based on the information disclosed to him by the customer about her financial situation and needs. The findings also stated that Timmerman effected the transactions in non-exempt securities on a discretionary basis, without having written discretionary power accepted in writing by his member firm.

Terrence L. Wilcox (Registered Representative, Taylor, Pennsylvania) was fined $5,000, barred from association with any NASD member in any capacity, and required to pay $529.58 plus interest in restitution to a member firm. The sanctions were based on findings that Wilcox received from his member firm two premium refund checks totaling $529.58 to deliver the checks to policyholders. Wilcox did not deliver the checks but caused the checks to be negotiated by a third party and himself.

Joseph E. Zappia (Registered Representative, Ridgway, Pennsylvania) 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, Zappia consented to the described sanctions and to the entry of findings that he affixed or caused to be affixed to disbursement request forms, signatures purporting to be that of insurance customers and submitted such forms to his member firm as genuine.

Individuals Fined

Michael Lewis Grayson (Registered Representative, Boring, Oregon) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $11,447. Without admitting or denying the allegations, Grayson consented to the described sanction and to the entry of findings that he exercised discretion granted pursuant to oral authority and executed transactions in the account of a public customer without obtaining prior written discretionary authorization from such customer and without written acceptance by his member firm.

Suspensions Lifted

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

Diversified Resources Corporation, Waldorf, Maryland (July 6, 1995)

First Strata Corporation, Austin, Texas (July 10, 1995)

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

Darell B. Hall, Catlettsburg, Kentucky

Daniel S. Katz, Woodland Hills, California

Roxanne Stribling, Indian Rocks Beach, Florida

Individuals Whose Registrations Were Canceled/Suspended Pursuant to Article VI Section 2 Of The NASD Code Of Procedures For Failure To Pay Arbitration Awards

The date the suspension began is listed after each entry.

Stephen J. Cooper, Lindenhurst, New York (May 30, 1995)

Daniel Hudson, Furlong, Pennsylvania (June 30, 1995)

Robert Kearse, Jersey City, New Jersey (July 7, 1995)

FOR YOUR INFORMATION

Blanket Or Standing Assurances Not Allowed To Satisfy Affirmative Determinations For Short-Sale Transactions

Effective September 5, 1995, members may not rely on blanket or standing assurances as to stock availability to satisfy their affirmative determination requirements when effecting short-sale transactions.

On January 9, 1995, an amendment to the NASD Prompt Receipt and Delivery of Securities Interpretation (Interpretation) went into effect that required members to annotate their affirmative determinations as to stock availability that are required to be made when effecting short sales for their own proprietary account or the account of a customer. The amended Interpretation requires members to annotate the following information on the trade ticket or on some other record:

• if a customer assures delivery, the member must annotate that conversation noting the present location of the securities; whether the securities are in good deliverable form; and whether they will be delivered to the firm within time for settlement; or

• if the member locates the stock, the member must annotate the identity of the individual and firm contacted who offered assurance that the shares would be delivered or were available for borrowing by settlement date; and the number of shares needed to cover the short sale. The manner by which a member or person associated with a member annotates compliance with this "affirmative determination" requirement (such as, marking the order ticket, recording inquiries in a log, etc.) is left for each member to decide.

Since January 9, 1995, however, the effectiveness of one provision of the amended Interpretation was held in abeyance until August 1, 1995. Specifically, this provision clarified that an affirmative determination and annotation of that affirmative determination must be made for each and every transaction since a "blanket" or standing assurance that securities are available for borrowing is not acceptable to satisfy the affirmative determination requirement. This provision will now go into effect on September 5, 1995. Thus, effective September 5, 1995, members will not be able to rely on daily fax sheets of "borrowable stocks" to satisfy their affirmative determination requirements under the Interpretation.

Direct questions concerning this to NASD Market Surveillance at (800) 925-8156 or (301) 590-6080.

NASD Preventive Compliance Program Offers New Computerized Support For Continuing Education Program

As part of an on-going and significant effort to provide education and preventive compliance initiatives, the NASD recently announced the development of the Member Compliance Support System (MCSS). Upon completion, the MCSS will provide member firms with an array of software applications to access, understand, and comply with NASD rules and regulations.

The Training Analysis and Planning Tool, Release 1.0, was the first component of the MCSS and was provided to all members, free of charge, in June 1995. This Tool, a user-friendly, Windows-based application, was designed with extensive industry input to help members prepare a needs analysis and develop a written training plan pursuant to the July 1, 1995, Firm Element requirement of the newly adopted Continuing Education Program.

Release 2.0 of The Training Analysis and Planning Tool, which is currently being developed and targeted for release in the fall, will provide a smooth transitional upgrade for current Release 1.0 users. While building significantly on the functionality established in Release 1.0, Release 2.0 will include the following major enhancements:

• an indexed database of training courses and vendors that can be used to match the training needs of covered persons;

• the ability to prepare, track, and manage the training progress of covered persons;

• increased on-line and print reporting capabilities including exception reporting; and

• expanded on-line help and tutorial screens.

These additional features will help members comply with the January 1, 1996, Continuing Education Program requirement of implementing their written training plans. A reasonable fee will be charged to parties wishing to purchase The Training Analysis and Planning Tool, Release 2.0.

Specific information regarding the distribution of Release 2.0 will be provided to members in subsequent *Notices to Members* and *NASD Regulatory & Compliance ALERT*. If you have general questions about the Continuing Education Program call (301) 590-6500, or your Quality & Service Team.

SEC Approves Amendments To NASD By-Laws To Withdraw The Current Option For Member Firms To Report Annual Gross Revenue For Assessment Purposes

On July 11, 1995, the Securities and Exchange Commission (SEC) approved amendments to Section 1 of Schedule A of the NASD By-Laws to withdraw the current option for member firms to report annual gross revenue for assessment purposes on a calendar-year or fiscal-year basis, and to require all member firms to report annual gross revenue on a calendar-year basis only.

Currently, Section 5 of Schedule A to the By-Laws defines gross revenue for assessment purposes as income reported on the FOCUS Report. The FOCUS Report reports income only on a calendar-year basis. The amendments rectify the current inconsistency between Sections 1 and 5 of Schedule A and simplify the data collection and reporting process for the NASD.

NASD Proposes To Delay Implementation Date Of Primary Market-Maker Standards From September 6, 1995, To November 1, 1995

Subject to regulatory review and any necessary approval by the SEC, the NASD proposes to delay the implementation date of the Primary Market-Maker Standards to be used to determine the eligibility of market makers to an exemption from the NASD's short-sale rule from September 6, 1995, to November 1, 1995. The NASD will immediately notify members of any regulatory action taken with respect to this proposal.

To qualify for an exemption from the short-sale under the new multi-part quantitative test, market makers must satisfy at least two of the following four criteria: (1) the market maker must be at the best bid or best offer as displayed in Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; and (4) the market maker executes one-and-a-half times its "proportionate" volume in the stock. Members should review *Special Notice to Members 94-68* for a more detailed explanation of the Primary Market-Maker Standards. The multi-part quantitative test will replace the present 20-day test where short sales by market makers that have maintained quotations in a particular security for 20 consecutive business days are exempt from the rule, provided the short sales are made in connection with bona fide market making activity.

Assuming the phase-in schedule for the Primary Market-Maker Standards is delayed, beginning November 1, 1995, the multi-part quantitative test will be used as a basis to evaluate the eligibility of market makers to an exemption from the rule. On December 1, 1995, market makers can continue to be exempt from the rule if they have satisfied the new multi-part quantitative test based on their trading activity from November 1, 1995, through November 30, 1995. Until November 30, the 20-day test will continue to be used to evaluate market makers' eligibility for an exemption from the rule. After December 1, 1995, a "P" indicator will be displayed next to every qualified market maker that is exempt from the rule according to the new Primary Market-Maker Standards. When the new test for the market-maker exemption goes into effect, firms will be able to verify their primary market-maker status via the Nasdaq Workstation®.

Direct your questions concerning this to NASD Market Surveillance at (800) 925-8156 or (301) 590-6080; Glen Shipway, Senior Vice President, Nasdaq Market Operations, at (203) 385-6250; or Tom Gira, Assistant General Counsel, Office of General Counsel, at (202) 728-8957.

boards, are considered to be advertising, while personalized messages sent directly to targeted individuals or groups are considered to be sales literature.

Members also have substantial supervisory obligations in this area, as they are responsible for the content of any computer interactive communications with the public, just as they would be responsible for the content of advertising, sales literature, or correspondence. Therefore, members must establish internal controls and procedures to ensure that the approval, recordkeeping, and filing requirements are satisfied. Where relevant, members' written supervisory procedures should describe the firm's policies and practices relative to the use of electronic communications. For example, a firm may wish to prohibit its associated persons from using electronic communications for any securities-related activities, or a firm could adopt procedures to require firm personnel to obtain the firm's prior approval before using the Internet or other on-line service.

Questions concerning this Special Notice should be directed to Clark Hooper, Vice President, Advertising/ Investment Companies Regulation Department, at (202) 728-8325 or Lawrence Kosciulek, Assistant Director, Advertising/Investment Companies Regulation Department, at (202) 728-8329.