

# NASD NOTICE TO MEMBERS 95-82

## SEC Approves NASD Rules Concerning Index, Currency, And Currency Index Warrants

### Suggested Routing

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### Executive Summary

On September 28, 1995, the Securities and Exchange Commission (SEC) approved proposed changes to NASD® rules governing index, currency, and currency index warrants. The amended rules:

- revise the listing criteria for stock index warrants;
- specify the customer margin requirements for the purchase and short sale of stock index and currency warrants; and
- create a new Schedule J to the NASD By-Laws that consolidates all of the regulatory requirements applicable to the conduct of accounts, the execution of transactions, and the handling of orders in index warrants listed on Nasdaq® and exchange-listed stock index warrants, currency index warrants, and currency warrants by members that are not members of the exchange on which the warrant is listed or traded.

The full text of the rule changes concerning index, currency, and currency index warrants is at the end of this Notice.

**All currency and index warrants traded on a national securities exchange before the SEC's approval of the new rules are grandfathered.**

### Summary Of The Rule Changes

#### Account Approval, Trading, And Advertising Rules

New Schedule J to the By-Laws sets out various customer protection rules applicable to stock index, currency index, and currency warrants. Specifically, Schedule J makes existing options customer protection rules in Article III, Section 33 of the NASD

Rules of Fair Practice applicable to stock index, currency, and currency index warrants. Where the options sales practice rules are made applicable by Schedule J to such warrants, the term "option" includes a stock index, currency index, or currency warrant.

Section 3 of Schedule J states that no member may accept an order from a customer to purchase or sell a stock index, currency index, or currency warrant unless the customer's account has been approved for options trading pursuant to Article III, Section 33(b)(16) of the Rules of Fair Practice.

Sections 4 through 7 and 9 of Schedule J apply the options rules for suitability (Section 33(b)(9)), discretionary accounts (Section 33(b)(18)), supervision of accounts (Sections 33(b)(17)(B) and (20)), and customer complaints (Section 33(b)(17)(A)) to stock index and currency warrants.

Section 8 of Schedule J generally applies the standards applicable to written communications regarding listed options (Section 35A) to stock index and currency warrants. The provisions of Section 35A as applied to stock index and currency warrants require that all advertisements, sales literature, and educational material issued by a member pertaining to stock index and currency warrants be approved by a Compliance Registered Options Principal, and all advertisements and educational materials pertaining to stock index warrants be approved by the NASD or by another self-regulatory organization.

**The NASD cautions its members that any time they provide information to a customer regarding stock index warrants, they should provide the customer with information regarding the unique characteristics and risks of these instruments. In addition, any writ-**

**ten communications to customers regarding stock index and currency warrants should state that these warrants share many of the risks of standardized options, but, unlike standardized options, they are backed only by the credit of the issuer (not The Options Clearing Corporation (OCC)) and each issue of warrants contains its own terms and conditions that may differ from those of other warrants, even other warrants on the same underlying index or issued by the same issuer.**

### **Position And Exercise Limits And Reporting Requirements**

Section 10 of Schedule J provides that position limits for stock index warrants on the same index with original issue prices of \$10 or less will be 15 million warrants, except that for warrants on the Standard & Poor's MidCap 400 Index with an original issue price of \$10 or less, the position limit will be 7.5 million warrants. The position limits are consolidated position limits, meaning that index warrants on the same index on the same side of the market must be aggregated for position-limit purposes.

The position limit rule also contains a provision that equalizes positions in index warrants that initially were priced above \$10 with those that were priced at or below \$10. In particular, positions will be equalized by dividing the original issue price of the index warrants priced above \$10 by 10 and multiplying this number by the size of the index warrant position. For example, if an investor held 100,000 Nasdaq 100 Index® warrants priced initially at \$20, the size of this position for position-limit purposes would be 200,000, or 100,000 times 20 divided by 10.

Section 11 of Schedule J sets forth the exercise limits applicable to index warrants. Specifically, the exer-

cise limits provide that no investor or group of investors acting in concert may, within five consecutive business days, exercise more index warrants on the same index on the same side of the market than the applicable index warrant position limit.

Section 12 of Schedule J provides that positions of 100,000 or more index warrants on the same index on the same side of the market must be reported to the NASD.

Section 14 of Schedule J provides that the NASD may halt or suspend trading in an index warrant if it concludes that such action is appropriate in the interests of a fair and orderly market and the protection of investors. Among the factors that may be considered by the NASD are:

- trading has been halted or suspended in underlying stocks whose weighted value represents 20 percent or more of the index value;
- the current calculation of the index derived from the current market prices of the stocks is not available; or
- other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

### **Margin**

New Section 3(f)(10) of Article III, Section 30 of the Rules of Fair Practice states the margin requirements applicable to index, currency, and currency index warrants.

For long warrant positions, the new requirements provide that the initial and maintenance requirements for long positions in index, currency, and currency index warrants will be 100 percent of the full purchase price of the warrants.

For short positions in index warrants,

the margin requirement is 100 percent of the current market value of the warrant plus 15 percent of the current value of the underlying index. The margin requirements for short positions can be decreased to the extent that they are out-of-the-money, however, the minimum requirement for each such warrant cannot be less than the current value of the warrant plus 10 percent of the current index value.

For short positions in currency warrants, the margin requirements follow the margin requirements presently applicable to standardized currency options. Specifically, short sales of warrants on the German mark, French franc, Swiss franc, Japanese yen, British pound, Australian dollar, and European Currency Unit will each be subject to a margin level of 100 percent of the current market value of each such warrant plus a four percent "add on." Warrants on the Canadian dollar would be subject to a one percent "add on." The "add on" required on any other foreign currency would be such other percentage as specified by the national securities exchange listing the warrant and approved by the SEC on a case-by-case basis. The required margin can be decreased to the extent that the warrant is out-of-the-money, however, the minimum requirement for each such warrant must not be less than the current value of the warrant plus .75 percent (.0075) of the value of the underlying currency (or such other percentage as specified by the national securities exchange listing the warrant and approved by the SEC).

The margin required on currency index warrants would be an amount as determined by the national securities exchange listing the warrant and approved by the SEC.

Index, currency warrant, and currency index warrant margin require-

ments also receive offset treatment for spread and straddle positions. Specifically, stock index, currency, and currency index warrants may be offset with either warrants or OCC-issued options on the same stock index, currency, or currency index, respectively, in the same manner that standardized index and currency options may be offset with other standardized index and currency options. The rules governing the margin treatment for spreads and straddles involving stock index, currency, and currency index warrants are being implemented on a one-year pilot basis. The NASD also will allow market participants to use escrow receipts to cover a short-call position in broad-based stock index warrants.

### **Listing Standards**

The NASD has substantially revised the listing standards applicable to stock index warrants. Under the revised standards, issuers must have a minimum tangible net worth exceeding \$250 million or have a minimum tangible net worth exceeding \$150 million, provided the issuer has not issued warrants such that the aggregate original issue price of all of the issuer's stock index, currency, and currency index warrant offerings (combined with offerings by its affiliates) listed on Nasdaq or a national securities exchange exceeds 25 percent of the issuer's net worth.

The term of the index warrants must provide that unexercised in-the-money warrants will be automatically exercised on the delisting date (if the issue is not listed on a national securities exchange) or upon expiration.

For warrant offerings where U.S. stocks constitute 25 percent or more of the index value, issuers must use the opening prices (a.m. settlement) of the U.S. stocks to determine the final index warrant settlement value

and the index warrant settlement value on the two business days preceding the day on which the final index warrant settlement value is to be determined.

In instances where the stock index underlying a warrant is comprised of, in whole or in part, securities traded outside the United States, the foreign country securities or American Depositary Receipts (ADRs) that are not subject to a comprehensive surveillance agreement and have less than 50 percent of their global trading volume in dollar value within the United States, cannot, in the aggregate, represent more than 20 percent of the weight of the index, unless such index is otherwise approved for warrant or option trading.

### **Reporting Changes In The Number Of Warrants Outstanding**

To assist in the surveillance of index warrant trading, as a condition of listing on Nasdaq, issuers would be required to notify (or make arrangements for the warrant transfer agent to notify) the NASD of any early warrant exercises by 4:30 p.m., Eastern Time, on the day the settlement value for the warrants is determined. Such notice must be filed in such form and manner as may be prescribed by the NASD from time to time.

### **Reporting The Execution Of Hedging Transactions Due To Early Exercise**

The NASD will require any issuer of a stock index warrant (for which 25 percent or more of the value of the underlying index is represented by securities traded primarily in the United States) to file a report with the NASD concerning certain trades the issuer effects as a result of the early exercise of a stock index warrant to adjust a hedge that the issuer has established in connection with the

issuance of such warrants. The threshold reporting level for issuer hedge transactions in stock will be set at the reporting level of the New York Stock Exchange's Daily Program Trading Report (DPTR), which is a program trade involving at least 15 stocks of \$1 million or more in value. Any issuer hedge transaction effected in another market (such as options market, futures market, OTC derivatives market) must be reported regardless of its size.

These reports will be submitted to the NASD by the close of business on the second business day following the trade date of the transaction subject to the report. All such reports must be filed as required by the NASD from time to time and must include the following information with respect to each reportable trade:

- order-entry time;
- product type (stock, stock option, futures contract, futures option);
- order type (market maker on close, limit);
- market action (buy/open, buy/close, sell/option);
- account identifier;
- size (total number of shares or contracts);
- total dollar value of trade;
- market where executed; and
- the warrant issue hedged.

Questions regarding the new rules applicable to stock index, currency, and currency index warrants may be directed to Thomas R. Gira, Assistant General Counsel, at (202) 728-8957; questions concerning the sales practice and margin rules applicable to index warrants may be directed to

the NASD Compliance Department, at (202) 728-8221; questions regarding the listing standards applicable to Nasdaq-listed index warrants may be directed to David Irwin, Assistant Director, Policy and Practices, Nasdaq Issuer Services, at (202) 728-8102; and questions concerning the position and exercise limits and reporting requirements applicable to index warrants may be directed to NASD Market Surveillance, at (800) 925-8156.

### **Text Of New Schedule To The By-Laws And Amendments To The By-Laws And Rules Of Fair Practice**

Below is the text of new Schedule J to the NASD By-Laws and the amendments to: Schedule D to the NASD By-Laws; Section 30 of the NASD Rules of Fair Practice; and the NASD Board's Policy issued under Section 2 of the NASD Rules of Fair Practice concerning Fair Dealing with Customers with Regard to Derivative Products or New Financial Products.

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

## **SCHEDULE J**

### **TRADING IN INDEX WARRANTS, CURRENCY INDEX WARRANTS, AND CURRENCY WARRANTS**

#### **Sec. 1. General**

(a) Applicability—The rules in this Schedule J shall be applicable: (1) to the conduct of accounts, the execution of transactions, and the handling of orders in index warrants listed on the Nasdaq Stock Market (“Nasdaq”); and (2) to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed stock index warrants, currency index

warrants, and currency warrants by members who are not members of the exchange on which the warrant is listed or traded.

(b) Except to the extent that specific provisions in this Schedule govern, or unless the context otherwise requires, the provisions of the By-Laws and Rules of Fair Practice and all other interpretations and policies of the Board of Governors shall also be applicable to transactions in index warrants, currency index warrants, and currency warrants.

(c) The rules in this Schedule are not applicable to stock index warrants, currency index warrants, and currency warrants listed on national securities exchanges prior to September 28, 1995.

#### **Sec. 2. Definitions**

(a) The term “stock index group” means a group of stocks each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a stock index.

(b) The term “index warrants” means instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying stock index group has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying stock index group.

(c) The term “currency warrants” shall mean instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e.,

European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying foreign currency has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying foreign currency. The term “foreign currency warrants” shall also include cross-rate currency warrants.

(d) The term “currency index” means a group of currencies each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a currency index.

(e) The term “currency index warrants” shall mean instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying currency index has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying currency index.

(f) The term “control” shall have the same meaning as the term “control” as set forth in Article III, Section 33(b)(2)(ZZ) of the Rules of Fair Practice.

#### **Sec. 3. Account Approval**

No member or person associated with a member shall accept an order from a customer to purchase or sell an index warrant, currency index warrant, or currency warrant unless the customer's account has been approved for options trading pursuant to Article III, Section 33(b)(16) of the Rules of Fair Practice.

#### **Sec. 4. Suitability**

The provisions of Article III, Section 33(b)(19) of the Rules of Fair Practice shall apply to recommendations by members and persons associated with members regarding the purchase or sale of index warrants, currency index warrants, or currency warrants. The term "option" as used therein shall be deemed to include such warrants for purposes of this Section.

#### **Sec. 5. Discretionary Accounts**

Insofar as a member or person associated with a member exercises discretion to trade in index warrants, currency index warrants, or currency warrants in a customer's account, such account shall be subject to the provisions of Article III, Section 33(b)(18) of the Rules of Fair Practice. The term "option" as used therein shall be deemed to include such warrants for purposes of this Section.

#### **Sec. 6. Supervision of Accounts**

The provisions of Article III, Section 33(b)(20) of the Rules of Fair Practice shall apply to all customer accounts of a member in which transactions in index warrants, currency index warrants, or currency warrants are effected. The term "option" as used therein shall be deemed to include such warrants for purposes of this Section.

#### **Sec. 7. Customer Complaints**

The record-keeping requirements of Article III, Section 33(b)(17)(A) of the Rules of Fair Practice concerning the receipt and handling of customer complaints relating to options shall also apply to customer complaints relating to index warrants, currency index warrants, or currency warrants and the required records of such complaints shall be maintained together with the records pertaining to options related complaints, provided that complaints related to index

warrants, currency index warrants, or currency warrants shall be clearly identified as such. The term "option" as used therein shall be deemed to include such warrants for purposes of this Section.

#### **Sec. 8. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants**

The provisions of Article III, Section 35A of the Rules of Fair Practice shall be applicable to communications to customers regarding index warrants, currency index warrants, or currency warrants. The term "option" as used therein shall be deemed to include such warrants for purposes of this Section and the term "The Options Clearing Corporation" shall be deemed to mean the issuer of such warrants. Sections 35A(c)(5) and (d)(2)(C)(v) shall also not be applicable to communications with the public regarding index warrants, currency index warrants, or currency warrants.

#### **Sec. 9. Maintenance of Records**

The record-keeping provisions of Article III, Section 33(b)(17)(B) shall be applicable to customer accounts approved to trade index warrants, currency index warrants, or currency warrants. The term "option" as used therein shall be deemed to include such warrants for purposes of this Section.

#### **Sec. 10. Position Limits**

Except with the prior written approval of the Corporation in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, office, director or employee thereof, or for the account of any customer, a purchase or sale transaction in an index warrant listed on Nasdaq or on a national securities

exchange if the member has reason to believe that as a result of such transaction the member, or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control an aggregate position in an index warrant issue on the same side of the market, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market, in excess of the position limits established by the Corporation, in the case of Nasdaq-listed index warrants, or the exchange on which the index warrant is listed.

In determining compliance with this Section, the position limits for Nasdaq-listed index warrants are as follows:

(i) Fifteen million warrants with respect to warrants on the same stock index (other than the Standard & Poor's MidCap 400 Index) with an original issue price of ten dollars or less.

(ii) Seven million five hundred thousand warrants, with respect to warrants on the Standard & Poor's MidCap 400 Index with an original issue price of ten dollars or less.

(iii) For stock index warrants with an original issue price greater than ten dollars, positions in these warrants must be converted to the equivalent of warrants on the same index priced initially at ten dollars by dividing the original issue price of the index warrants priced above ten dollars by ten and multiplying this number by the size of such index warrant position. After recalculating a warrant position pursuant to this paragraph (iii), such recalculated warrant position shall be aggregated with other warrant positions on the same underlying index on the same side of the market and subjected to the applicable position limit set forth in paragraph (i) or (ii)

above. For example, if an investor held 100,000 Nasdaq 100 Index warrants offered originally at \$20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000, or 100,000 times 20/10.

#### **Sec. 11. Exercise Limits**

Except with the prior written approval of the Corporation, in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a long position in any index warrant if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly: (1) has or will have exercised within any five (5) consecutive business days a number of index warrants overlying the same index in excess of the limits for index warrant positions contained in Section 10 of this Schedule J; or (2) has or will have exceeded the applicable exercise limit fixed from time to time by an exchange for an index warrant not dealt in on Nasdaq. The Corporation may institute other limitations concerning the exercise of index warrants from time to time by action of the Corporation. Reasonable notice shall be given of each new limitation fixed by the Corporation. These exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

#### **Sec. 12. Reporting Requirements**

(a) Each member shall file with the Corporation a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee

of such member, and each customer account of the member, which has established an aggregate position of 100,000 index warrants on the same side of the market in an index warrant issue listed on Nasdaq, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market traded on Nasdaq or a national securities exchange.

(b) Such report shall identify the person or persons having an interest in such account and shall identify separately the total number of each type of index warrant that comprises the reportable position in such account. The report shall be in such form as may be prescribed by the Corporation and shall be filed no later than the close of business on the next business day following the day on which the transaction or transactions necessitating the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this subsection, the member filing such report shall file with the Corporation such additional periodic reports with respect to such account as the Corporation may from time to time prescribe.

#### **Sec. 13. Liquidation of Index Warrant Positions**

Whenever the Corporation determines that a person or group of persons acting in concert holds or controls an aggregate position (whether short or long) in index warrants overlying the same index in excess of the position limitations established by Section 10 of this Schedule J, it may, when deemed necessary or appropriate in the public interest and for the protection of investors, direct any member or all members carrying a position in index warrants overlying such index for such person or persons to liquidate such position or positions, or portions thereof, as expeditiously as possible

and consistent with the maintenance of an orderly market, so as to bring such person or persons into compliance with the position limitations contained in Section 10.

Whenever such a directive is issued by the Corporation no member receiving notice thereof shall accept and/or execute for any person or persons named in such directive any order to purchase or sell short any index warrants based on the same index, unless in each instance express approval therefore is given by the Corporation, or the directive is rescinded.

#### **Sec. 14. Trading Halts or Suspensions**

(a) The trading in an index warrant on Nasdaq shall be halted whenever the Senior Vice President for Market Surveillance, or its designee, shall conclude that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:

(i) trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;

(ii) the current calculation of the index derived from the current market prices of the stocks is not available;

(iii) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(b) Trading in index warrants that has been the subject of a trading halt or suspension may resume if the Senior Vice President for Market Surveillance, or its designee, determines that the conditions which led to the halt or suspension are no longer present or that the interests of a fair and orderly market are served by a

resumption of trading. In either event, the reopening may not occur until the Corporation has determined that trading in underlying stocks whose weighted value represents more than 50% of the index is occurring.

## **SCHEDULE D**

### **PART I - DEFINITIONS**

(1) through (18) No change.

(19) "Nasdaq National Market System security" or "NNM security" means any authorized security which (i) satisfies all applicable requirements of Part II and substantially meets the criteria set forth in Part III, Sections 2 and 5 of this Schedule D and is subject therefore to a transaction reporting plan approved by the Securities and Exchange Commission; (ii) is a right to purchase such security; [or] (iii) is a warrant to subscribe to such security; or (iv) is an index warrant which substantially meets the criteria set forth in Part III, Section 2 of this Schedule D, and has been designated therefore as a national market system security pursuant to SEC Rule 11Aa2-1.

**PART II** No change.

### **PART III**

Introduction No change.

### **DESIGNATION OF NASDAQ NATIONAL MARKET SECURITIES**

**Sec. 1.** No change.

**Sec. 2.** Quantitative Designation Criteria

(a) and (b) No change.

(c) Warrants

(1) No change.

(2) An index warrant may be design-

nated for inclusion if it substantially meets the following criteria:

(A) The minimum public distribution shall be at least 1 million warrants.

(B) The minimum number of public holders shall be at least 400.

(C) The aggregate market value of the outstanding index warrants shall be at least \$4 million.

(D) The issuer of the index warrants must have [assets in excess of \$100 million] a minimum tangible net worth in excess of \$150 million.

(E) The term of the index warrant shall be for a period from one to five years. Any index warrant designated pursuant to this paragraph shall not be required to meet the requirements of Sections 3, 4 or 5 of this Part. The Association may apply additional or more stringent criteria as necessary to protect investors and the public interest.

(F) Limitations on Issuance—Where an issuer has a minimum tangible net worth in excess of \$150 million but less than \$250 million, Nasdaq will not list stock index warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the issuer and its affiliates combined that are listed for trading on Nasdaq or a national securities exchange exceeds 25% of the issuer's net worth.

(G) A.M. Settlement—The terms of stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States must provide that the opening prices of the stocks comprising the index will be used to determine (i) the final settlement value (i.e., the settlement value for warrants that are

exercised at expiration) and (ii) the settlement value for such warrants that are valued on either of the two business days preceding the day on which the final settlement value is to be determined.

(H) Automatic Exercise—All stock index warrants and any other cash-settled warrants must include in their terms provisions specifying (i) the time by which all exercise notices must be submitted and (ii) that all unexercised warrants that are in the money (or that are in the money by a stated amount) will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by Nasdaq (if such warrant issue has not been listed on a national securities exchange).

(I) Foreign Country Securities—In instances where the stock index underlying a warrant is comprised in whole or in part with securities traded outside the United States, the foreign country securities or American Depositary Receipts ("ADRs") thereon that (i) are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, shall not, in the aggregate represent more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading.

(J) Changes in Number of Warrants Outstanding—Issuers of stock index warrants either will make arrangements with warrant transfer agents to advise the NASD immediately of any change in the number of warrants outstanding due to the early exercise of such warrants or will provide this information themselves. With respect to stock index warrants for which 25% or more of the value of the underlying index is represented by securities traded primarily in the United States, such notice shall be

filed with the NASD no later than 4:30 p.m. Eastern Standard Time, on the date when the settlement value for such warrants is determined. Such notice shall be filed in such form and manner as may be prescribed by the NASD from time to time.

(K) Only eligible broad-based indexes can underlie index warrants. For purposes of this subsection, eligible broad-based indexes shall include those indexes approved by the Securities and Exchange Commission to underlie index warrants or index options traded on Nasdaq or a national securities exchange.

## **SECTION 30 OF THE RULES OF FAIR PRACTICE**

**Sec. 1. and Sec. 2.** No change.

**Sec. 3(a) through (f)(9)** No change.

### **Sec. 3(f)(10)**

(a) This Section sets forth the minimum amount of margin which must be deposited and maintained in margin accounts of customers having positions in index warrants, currency index warrants or currency warrants dealt in on Nasdaq or a national securities exchange. The Corporation may at any time impose higher margin requirements in respect of such positions when it deems such higher margin requirements to be advisable. The initial deposit of margin required under this Section must be made within five full business days after the date on which a transaction giving rise to a margin requirement is effected. The margin requirements set forth in this Section are applicable only to index warrants, currency index warrants and currency warrants listed for trading on Nasdaq or a national securities exchange on or after September 28, 1995.

(b) Definitions

The following definitions shall apply to transactions in index warrants, currency index warrants, and currency warrants.

(1) The terms "stock index group," "index warrants," "currency warrants," "currency index," and "currency index warrants" when used in reference to an index warrant, currency index warrant, or currency warrant shall have the same meanings as set forth in Section 2 of Schedule J to the By-Laws.

(2) The term "current market value" of an index warrant, currency index warrant or currency warrant shall mean the total cost or net proceeds of the transaction on the day the warrant was purchased or sold and at any other time shall mean the most recent closing price of that issue of warrants on Nasdaq, in the case of a Nasdaq-listed index warrants, or the exchange on which it is listed on any day with respect to which a determination of current market value is made.

(3) The term "index group value" in respect of an index warrant means the numerical index value of a particular stock index multiplied by \$1.00 U.S. or other applicable index multiplier.

(4) The term "index group value" in respect to a currency index warrant means the numerical index value of particular currency index multiplied by \$1.00 U.S. or the applicable index multiplier.

(5) The term "strike price" in respect of an index warrant, currency index warrant or currency warrant means the price at which the warrant may be exercised in accordance with its terms.

(6) The term "spot price" in respect of a currency warrant on a particular business day means the noon buying rate in U.S. dollars on such day in

New York City for cable transfers of the particular underlying currency as certified for customs purposes by the Federal Reserve Bank of New York.

(7) The term "index call warrant" means a warrant structured as a call on the underlying stock index group. The term "index put warrant" means a warrant structured as a put on the underlying stock index group.

(8) The term "currency index call warrant" means a warrant structured as a call on the underlying currency index. The term "currency index put warrant" means a warrant structured as a put on the underlying currency index.

(9) The term "currency call warrant" means a warrant structured as a call on the underlying currency. The term "currency put warrant" means a warrant structured as a put on the underlying currency.

(10) The term "reporting authority" in respect of an index warrant means the institution or reporting service specified in the prospectus for the warrant as the official source for calculating and reporting the levels of such stock index.

(11) The term "numerical index value" in respect of an index warrant means the level of a particular stock index as reported by the reporting authority for the index.

(12) The term "reporting authority" in respect of a currency index warrant means the institution or reporting service specified in the prospectus for the warrant as the official source for calculating and reporting the levels of such currency index.

(13) The term "numerical index value" in respect of a currency index warrant means the level of a particular currency index as reported by the reporting authority for the index.



(14) The term “unit of underlying currency” in respect of a currency warrant means a single unit of the currency covered by the warrant.

(c) Except as provided in this Section, no index warrant, currency index warrant or currency warrant carried for a customer shall be considered of any value for the purpose of computing the margin required in the account of such customer. Subject to the exceptions set forth in subparagraph (e) of this Section, the minimum margin on any currency warrant, currency index warrant or index warrant issued, guaranteed or carried “short” in a customer’s account shall be:

(1) In the case of an index put or call warrant, 100% of the current market value of each such warrant plus 15% of the current index group value. Such amount shall be decreased by the excess of the strike price of the warrant over the current index group value in the case of an index call warrant, or the excess of the current index group value over the strike price of the warrant in the case of an index put warrant; or

(2) In the case of a currency put or call warrant, 100% of the current market value of each such warrant plus 4% (or such other percentage, as specified by the national securities exchange listing the warrant and approved by the Commission on a case-by-case basis) of the product of the units of underlying currency per warrant and the spot price for such currency. The add-on percentage with respect to warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar, U.S. and European Currency Unit (“ECU”) shall be four percent (4%), and for the Canadian Dollar the “add-on” percentage shall be one percent (1%). Such amount shall be decreased by the excess of the strike price of the warrant over

the product of the units of underlying currency per warrant and the spot price of the currency in the case of a currency call warrant, or any excess of the product of the units of underlying currency per warrant and the spot price over the strike price of the warrant in the case of a currency put warrant; or

(3) In the case of the currency index put or call warrants, 100% of the current market value of each such warrant plus a percentage, as specified by the national securities exchange listing the warrant and approved by the Commission on a case-by-case basis, of the current index group value. Such amount shall be decreased by the excess of the strike price of the warrant over the current index group value in the case of a currency index call warrant, or any excess of the current index group value over the strike price of the warrant in the case of a currency index put warrant.

Notwithstanding the foregoing:

(d) The minimum margin on each currency put or call warrant, currency index put or call warrant or index put or call warrant issued, guaranteed or carried “short” in a customer’s account shall be not less than 100% of the current market value of such warrant plus: (i) 10% of the current index group value in the case of an index warrant; (ii) .75% (.0075) (or such other percentage as specified by the national securities exchange listing the warrant and approved by the Commission) of the product of the units of underlying currency per warrant and the spot price of such currency, in the case of a currency warrant; or (iii) in the case of currency index warrants, a percentage of the current index group value as specified by the national securities exchange listing the warrant and approved by the Commission.

(e) (1) When a “short” position in an

index call warrant, currency index call warrant or currency call warrant is offset by a “short” position of equivalent underlying value in a put warrant or a put option issued by The Options Clearing Corporation on the same index or currency, or a “short” position in an index put warrant, currency index put warrant or currency put warrant is offset by a “short” position of equivalent underlying value in a call warrant or a call option issued by The Options Clearing Corporation on the same index or currency, the margin required shall be the margin on the put position or the call position, whichever is greater, plus the current market value of the other position.

(2) When a “long” position in an index call warrant, currency index call warrant or currency call warrant is offset by a “short” position of equivalent underlying value in a call warrant or a call option issued by The Options Clearing Corporation on the same index or currency, then, provided that the “long” position expires no earlier than the “short” position, the margin required shall be the amount, if any, by which the strike price of the “long” position exceeds the strike price of the “short” position.

(3) When a “long” position in an index put warrant, currency index put warrant or currency put warrant is offset with a “short” position of equivalent underlying value in a put warrant or a put option issued by The Option Clearing Corporation on the same index or currency, then, provided that the “long” position expires no earlier than the “short” position, the margin required shall be the amount, if any, by which the strike price of the “short” position exceeds the strike price of the “long” position.

(4) The margin treatment for spread positions pursuant to subparagraphs (1), (2), and (3) above is subject to a

one-year pilot program scheduled to begin September 28, 1995.

(5) No margin is required in respect of a "short" position in an index call warrant where the customer has delivered, promptly after the warrant has been sold short, to the Member with which such position is maintained, a Market Index Warrant Escrow Receipt in a form satisfactory to the Corporation, issued by a bank or trust company pursuant to specific authorization from the customer which certifies that the issuer of the agreement holds for the account of the customer (1) cash, (2) cash equivalents, (3) one or more qualified equity securities, or (4) a combination thereof; that such deposit has an aggregate market value, at the time the warrant is sold short, of not less than 100% of the aggregate current index value; and that the issuer will promptly pay the Member sufficient funds to purchase the warrant sold short in the event of a buy-in.

## **RULES OF FAIR PRACTICE**

**Sec. 1.** No change.

**Sec. 2.** Recommendations To Customers

### **••• Policy of the Board of Governors—Fair Dealing with Customers with Regard to Derivative Products or New Financial Products**

The Board emphasizes members' obligations for fair dealing with customers when making recommendations or accepting orders for new financial products. As new products are introduced from time to time, it is important that members make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products. Members must follow specific

guidelines, set forth below, for qualifying the accounts to trade the products and for supervising the accounts thereafter.

(1) For index warrants—members are obliged to comply with the [following rules, regulations and procedures applicable to options trading. In transactions with customers, members may effect transactions in index warrants only with customers whose accounts have been approved for options trading, pursuant to the standards contained in Section 33 and Appendix E of the Rules of Fair Practice. Members shall also be obliged to comply with standards in Appendix E for Discretionary Accounts (Section 18), Suitability (19), and Supervision of Accounts (Section 20) for customers that desire to trade index warrants and that have been approved for options trading] rules, regulations, and procedures applicable to index warrants and foreign currency warrants contained in Schedule J to the By-Laws.

# NASD NOTICE TO MEMBERS 95-83

## SEC Approves Rules Permitting Arbitration Participants To Seek Injunctive Relief From Arbitrators

### 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 August 23, 1995, the Securities and Exchange Commission (SEC) approved amendments to the Code of Arbitration Procedure (Code) clarifying the authority of arbitrators to issue injunctions. The amendments include a new section that permits parties in intra-industry disputes<sup>1</sup> to seek emergency relief, called "immediate injunctions," or nonemergency relief, called "regular injunctions." The parties will remain free, however, to obtain interim injunctive relief from the courts even though the merits of the case, and any claims for permanent injunctive relief, must be submitted to arbitration.

The new section codifies the authority of arbitrators to grant interim injunctive relief; requires parties seeking injunctions, in court or from the arbitrators, to submit a claim to arbitration for permanent relief; and provides that parties failing to comply with injunctive orders issued pursuant to Section 45 may be subject to disciplinary action for violating Article III, Section 1 of the Rules of Fair Practice. The amendments also require the party requesting interim injunctive relief pay a \$2,500 nonrefundable surcharge for expedited proceedings. The new section is effective on January 3, 1996, for a one-year trial period. The text of the amendments follows this Notice.

### Description Of Amendments

On August 23, 1995, the SEC approved an amendment to the Code adding a new section specifying procedures for obtaining injunctive relief in arbitration in connection with intra-industry disputes. The amendments also set forth fees for such injunctive relief proceedings and provide that members may be subject to disciplinary actions for failure to abide by injunctive orders issued under the new rules.

New Section 47 of the Code expressly provides that temporary and permanent injunctive relief may be obtained from the arbitrators; however, because parties may prefer to vest jurisdiction over interim relief in the courts, the NASD<sup>®</sup> has determined not to interfere with such preferences by barring resort to the courts at this time. Therefore, parties to an arbitration proceeding will still be permitted to obtain temporary injunctive relief from a court of competent jurisdiction, but they must submit the dispute to arbitration for final resolution. The new provision limits the scope of the relief that the parties may obtain in court to temporary relief and clarifies that the arbitrators have the authority to make final resolutions of issues in arbitration, including enjoining any party.

The NASD's goal in adopting these changes to the Code is to force eligible intra-industry disputes that include injunctive actions into arbitration, even if the initial temporary relief is obtained in court. The NASD is adopting the new rules as a pilot program and they will be effective for one year from January 3, 1996. The NASD will evaluate the new injunctive relief process toward the end of the first year of operation to determine, among other things, whether the process is providing the procedural efficiency and protection for the parties that would justify mandating that the parties obtain injunctive relief exclusively in arbitration, and whether the process should be adopted as a permanent addition to the Code.

### Introduction To New Section 47

The introduction to new Section 47 provides that the parties to an arbitra-

<sup>1</sup> The new section is expressly limited to intra-industry (member to member or employee to member) claims eligible for arbitration under Section 8 of the Code.

tion may seek an “interim injunction” from a single arbitrator or a “permanent injunction” from a panel of arbitrators. In addition, parties may seek temporary injunctive relief in court; however, a party seeking temporary relief from a court for a dispute that is required to be submitted to arbitration pursuant to Section 8 of the Code must also file a claim for permanent relief in arbitration for the same dispute. This provision will prevent a party who is seeking interim relief in court from failing to pursue final resolution of the claim in arbitration. Thus, temporary injunctive relief may be obtained from a court or a single arbitrator, while permanent injunctive relief may be obtained only as a final remedy or award from a full panel hearing a claim in arbitration submitted pursuant to Subsection 25(a) of the Code.

### **Procedure For Seeking Interim Injunctive Relief**

Under new Section 47, interim injunctions are available as Immediate Injunctive Orders (essentially emergency relief) or Regular Injunctive Orders (nonemergency relief). Immediate Injunctive Orders are the approximate equivalent of temporary restraining orders, while Regular Injunctive Orders are the approximate equivalent of Preliminary Injunctions designed to preserve the positions of the parties pending arbitration of the dispute on the merits. Subsection 47(a) provides that applications for interim injunctions will be heard by a single arbitrator.

Subsection 47(b) requires the party seeking interim injunctive relief to make a clear showing that it is likely to succeed on the merits, that it will suffer irreparable injury unless the relief is granted, and that the balancing of the equities lies in its favor. Thus, the proposed standards for

granting injunctive relief are similar to those traditionally employed in many courts.

Subsection 47(c) provides that the party seeking interim injunctive relief must serve a Statement of Claim, a statement of facts demonstrating the necessity for injunctive relief, and a properly executed Uniform Submission Agreement (collectively, the application) on the party or parties against whom injunctive relief is sought. The applicant must also simultaneously file the application with the NASD Arbitration and Mediation Department.

Subsection 47(d) sets forth the procedure and timetable for the administration of applications for interim injunctive relief. Paragraph (d)(1) provides that applications for Immediate Injunctive Orders will generally be scheduled for hearing one to three business days after the NASD receives the application. If the party against whom an Immediate Injunctive Order is sought chooses to file a response, two copies must be submitted to the Director and served on all other parties at or before the hearing. The Arbitration Department will provide the name and background of the arbitrator assigned to hear the application before the hearing. The hearing on the application may be held by telephone or in person in a location specified by the NASD, taking into consideration the needs and circumstances of the parties. The NASD intends to conduct such hearings as teleconferences whenever personal attendance by all parties is difficult and where the nature of the hearing and the evidence to be presented will permit. To the extent personal hearings are held, the NASD contemplates holding such hearings in New York, Chicago, and San Francisco. The arbitrator will attempt to rule on the application within one business day after the hearing and record are closed. The duration of an Interim

Injunction will be determined by the arbitrator, but, in any event, it will expire no later than the date of any ruling on a Regular Injunctive Order (if any) or a decision on the merits of the entire controversy.

Under Paragraph 47(d)(2), applications for Regular Injunctive Orders generally will be scheduled for a hearing within three to five business days after the response is filed or due to be filed, whichever comes first. A response to an application is due three business days after the party against whom an injunction is sought receives a copy of the application. If a responding party does not file a response, however, the responding party may still be heard and present evidence at the hearing. As with applications for Immediate Injunctive Relief under paragraph (d)(1), the Arbitration and Mediation Department will provide the name and background information of the arbitrator assigned to hear the application for a Regular Injunction, and the hearing on the application may be held by telephone or in selected cities. The arbitrator will attempt to rule on applications for Regular Injunctions within one business day after the hearing and record are closed. If granted, the injunction will remain in effect for a term to be determined by the arbitrator, but in no event later than the date of a decision on the merits of the dispute.

The NASD does not intend that interim relief be open-ended in nature. The NASD will advise and train arbitrators hearing applications for Immediate Injunctive Orders that they should consider setting short time limits on the duration of an order and require the applicant to seek renewal of an order in the event a Regular Injunctive Order has not been obtained. The NASD will also advise and train arbitrators hearing applications for Regular Injunctive Orders that they should consider lim-

iting the duration of an injunctive order to remove incentives for the applicant to delay proceedings on the merits. In addition, the NASD will advise parties who have been enjoined that they may seek reconsideration (including termination or limitation) of the injunctive order at any stage of the proceedings. Finally, the NASD will monitor cases where Immediate Injunctive Orders have been granted to determine if any party is being unfairly disadvantaged during the effectiveness of the order.

### Peremptory Challenges

To recognize and facilitate expedited injunctive proceedings, new Subsection 47(e) provides the parties with unlimited challenges for cause to the single arbitrator appointed to hear the application for an interim injunction, but no peremptory challenges are permitted. In addition, the parties will not be permitted a peremptory challenge to the arbitrator who heard an application for an injunctive order and who subsequently is appointed to participate on the arbitration panel hearing the same arbitration on the merits.

The amendments also include a change to Section 22 of the Code that excepts proceedings for injunctive orders under new Section 47 from the provisions of Section 22 granting a party one peremptory challenge to an arbitrator. Therefore, the two changes together (new Subsection 47(e) and the amendment to Section 22) make clear that with respect to the single arbitrator appointed to hear an application for an injunction there will be no peremptory challenge available.

### Expedited Hearings

Subsection 47(f) provides for the appointment of a panel of arbitrators

to hear the merits of a claim immediately following the issuance of an interim injunction. The arbitration of the claim will proceed in an expedited manner according to a timetable and procedures specified by the arbitration panel. This provision ensures that, in cases where interim injunctive relief has been granted, the merits of the dispute will be resolved expeditiously.

Subsection 47(g) provides that if a court has issued an injunction against one of the parties to an arbitration agreement, any arbitration that might be requested will be handled expeditiously, according to a timetable and procedures determined by the arbitration panel. Thus, in all cases eligible for arbitration, an injunction usually will speed up the proceedings.

Subsection 47(h) permits the arbitrator to require a party to deposit security in an amount that the arbitrator deems proper for the payment of any costs or damages that might be incurred by the adverse party if it were wrongfully enjoined. If the arbitrator security deposit, Subsection (h) requires that the deposit be placed in a separate bank trust or escrow account for the benefit of the party against whom injunctive relief is sought for the payment of any costs or damages that may be incurred or suffered by the party against whom injunctive relief is sought if it is found to have been wrongfully enjoined. This provision provides a mechanism to protect the party who is enjoined from the consequences of the injunction if, in the final decision on the merits, the enjoined party prevails. The NASD will not be the depository for security deposits; rather, parties required to deposit security will be required to make their own private arrangements with a financial institution to comply with the rule and the arbitrator's order.

Subsection 47(i) contains a "sunset" clause, causing the section to expire in one year unless extended by the NASD Board of Governors. This will provide for a pilot period, during which allowing arbitrators to issue interim injunctions can be assessed.

### Fees

Currently, Section 44 imposes a non-refundable \$2,500 surcharge on all parties in an expedited proceeding. Expedited proceedings are provided in connection with a request for injunctive relief under new Section 47 and as a result of a court granting injunctive relief. The amended Section 44 provides that the total \$2,500 surcharge is to be paid only by the party or parties requesting expedited proceedings. The NASD regards the language of Section 44(h) imposing a surcharge as applying to a party seeking temporary injunctive relief, regardless of whether that relief is sought in court or in arbitration. In addition, the rule change provides that the arbitrator may determine that a party shall reimburse another party for any such surcharge it has paid.

### Failure To Comply With Injunctive Orders

The NASD has also amended the *Resolution of the Board of Governors, Failure to Act Under Provisions of the Code of Arbitration Procedure* currently found at paragraph 3744 of the *NASD Manual* to provide that failure to comply with any injunctive order issued pursuant to Section 47 may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Article III, Section 1 of the Rules of Fair Practice. The failure of a party to comply with a court-issued injunction may be remedied through contempt proceedings in that court and, therefore, are not covered by this amendment.

Questions regarding this Notice may be directed to the NASD Arbitration and Mediation Department at (212) 858-4400.

## Text Of Amendments To The Code Of Arbitration Procedure

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

### CODE OF ARBITRATION PROCEDURE

**PART I** and **PART II** No change.

### PART III UNIFORM CODE OF ARBITRATION

**Sec. 12** through **Sec. 21** No change.

#### Peremptory Challenge

**Sec. 22.** In any arbitration proceeding, except as provided in Section 47, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple Claimants, Respondents and/or Third-Party Respondents, the Claimants shall have one peremptory challenge, the Respondents shall have one peremptory challenge, and the Third-Party Respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the person(s) named under Section 21 or Section 32(d) or (e), whichever comes first. There shall be unlimited challenges for cause.

**Sec. 23** through **Sec. 43** No change.

### Schedule of Fees for Industry and Clearing Controversies

#### Sec. 44.

(a) through (g) No change.

(h) In each industry or clearing controversy which is required to be submitted to arbitration before the Association as set forth in Section 8, above, [requiring] where interim injunctive relief is requested or where a court has issued a temporary injunction and a party requests expedited [hearings] proceedings, a total non-refundable surcharge of \$2,500 shall be paid by [all Claimants, collectively, and a non-refundable surcharge of \$2,500 shall be paid by all Respondents, collectively] the party or parties requesting the expedited proceedings as provided in Section 47. For purposes of this Section, where expedited proceedings are mandated by subsection (g) of Section 47 of this Code, the party that sought and was granted injunctive relief by a court shall be deemed a party requesting expedited proceedings. These surcharge fees shall be in addition to all other non-refundable filing fees, hearing deposits, or costs which may be required. The arbitrators may determine that a party shall reimburse another party for any non-refundable surcharge it has paid.

**Sec. 45** and **Sec. 46** No change.

#### Injunctions

**Sec. 47.** In industry or clearing disputes required to be submitted to arbitration pursuant to Section 8, parties to the arbitration may seek injunctive relief either within the arbitration process or from a court of competent jurisdiction. Within the arbitration process, parties may seek either an "interim injunction" from a single arbitrator or a permanent injunction from a full arbitration panel. From a court of competent

jurisdiction, parties may seek a temporary injunction. A party seeking temporary injunctive relief from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Section 8 shall simultaneously file a claim for permanent relief with respect to the same dispute with the Director in the manner specified under this Code. This section 47 contains procedures for obtaining an interim injunction. Paragraph (g) of this Section relates to the effect of court-imposed injunctions on arbitration proceedings. If any injunction is sought as part of the final award, such request should be made in the remedies portion of the Statement of Claim, pursuant to Section 25(a).

#### Single Arbitrator

(a) Applications for interim injunctive relief shall be heard by a single arbitrator.

#### Showing Required

(b) In order to obtain an interim injunction, the party seeking the injunction must make a clear showing that it is likely to succeed on the merits, that it will suffer irreparable injury unless the relief is granted, and that the balancing of the equities lies in its favor.

#### Application for Relief

(c) Interim injunctions include both Immediate Injunctive Orders and Regular Injunctive Orders, as described in paragraph (d) below. In either case, the applicant shall make application for relief by serving a Statement of Claim, a statement of facts demonstrating the necessity for injunctive relief, and a properly executed Submission Agreement on the party or parties against whom injunctive relief is sought. The above documents shall simultaneously and in the same manner be filed with the Direc-

tor of Arbitration, together with an extra copy of each document for the arbitrator, proof of service on all parties, and all fees required under Section 44. Filings and service required under this Section 47 may be made by United States mail, overnight delivery service or messenger.

(d) The procedures and timetable for handling applications for interim injunctive relief are as follows:

(1) Immediate Injunctive Orders.

(A) Upon receipt of an application for an Immediate Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than one and no later than three business days after receipt of the application by the respondent and the Director.

(B) The filing of a response to an application for an Immediate Injunctive Order is optional to the party against whom the immediate order is sought. Any response shall be served on the applicant. If a response is submitted, the responding party shall, prior to the hearing or at the hearing, file with the Director two copies of the response and proof of service on all parties.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Section 21; and any information required to be disclosed by the arbitrator pursuant to Section 23 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for an Immediate Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within

one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Immediate Injunctive Order. Unless the parties agree otherwise, however, the order will expire no later than the earlier of the issuance or denial of a Regular Injunctive Order under subparagraph (2) or a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

(2) Regular Injunctive Orders.

(A) Upon receipt of an application for a Regular Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than three and no later than five business days after the response is filed or due to be filed, whichever comes first.

(B) The party against which a Regular Injunctive Order is sought shall serve a response on the applicant within three business days of receipt of the application. The responding party shall simultaneously and in the same manner file with the Director two copies of the response and proof of service on all parties. Failure to file a response within the specified time period shall not be grounds for delaying the hearing, nor shall it bar the respondent from presenting evidence at the hearing.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Section 21; and any information required to be disclosed by the arbitrator pursuant to Section 23 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for a Regular Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or

in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Regular Injunctive Order. Unless the parties agree otherwise, however, a Regular Injunctive Order shall expire no later than a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

### **Challenges to Arbitrators**

(e) There shall be unlimited challenges for cause to the single arbitrator appointed to hear the application for injunctive relief, but there shall be no peremptory challenges. Parties wishing to object to the arbitrator shall do so by telephone to the Director, and shall confirm such objection immediately in writing or by facsimile transmission, with a copy to all parties. A peremptory challenge may not be made to an arbitrator who heard an application for an injunctive order and who subsequently participates or is to participate on the arbitration panel hearing the same arbitration case on the merits.

### **Hearing on the Merits**

(f) Immediately following the issuance of an Immediate or Regular Injunctive Order, the Director shall appoint arbitrators according to the procedures specified in the Code to hear the matter on the merits. The arbitration shall proceed in an expedited manner pursuant to a schedule and procedures specified by the arbitrators. The arbitrators may specify procedures and time limitations for actions by the parties different from those specified in the Code.

(g) If a court has issued an injunction against one of the parties to an arbitration agreement, unless otherwise specified by the court, any requested arbitration concerning the matter of the injunction shall proceed in an expedited manner according to a time schedule and procedures specified by the arbitration panel appointed under this Code.

### **Security**

(h) The arbitrator issuing the Immediate or Regular Injunctive Order may require the applicant, as a condition to effectiveness of the order, to deposit security in an amount that the arbitrator deems proper, in a separate bank trust or escrow account for the benefit of the party against whom injunctive relief is sought, for the payment of any costs and damages that may be incurred or suffered by the party against whom injunctive relief is sought if it is found to have been wrongfully enjoined.

### **Effective Date**

(i) This Section 47 shall apply to arbitration claims filed on or after the

effective date of this section. Except as otherwise provided in this Section 47, the remaining provisions of the Code shall apply to proceedings instituted under Section 47. Section 47 shall expire one year after its effective date unless extended by the NASD Board of Governors.

### **Resolution of the Board of Governors**

#### **Failure to Act Under Provisions of Code of Arbitration Procedure**

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Article III, Section 1 of the Rules of Fair Practice for a member or a person associated with a member to: (1) fail to submit a dispute for arbitration under the NASD Code of Arbitration Procedure as required by that Code; (2) fail to comply with any injunctive order issued pursuant to Section 47; (3) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the NASD Code of Arbitration Procedure; [(3)] (4) fail to honor an award, or comply with a written and

executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by the National Association of Securities Dealers, Inc., the New York, American, Boston, Cincinnati, Chicago, Pacific, or Philadelphia Stock Exchanges, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of securities disputes before the American Arbitration Association where timely motion has not been made to vacate or modify such award pursuant to applicable law; or [(4)] (5) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by the National Association of Securities Dealers, Inc.



# NASD NOTICE TO MEMBERS 95-84

## Rudman Committee Releases Summary Of Conclusions And Recommendations

### 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

Below are the summary conclusions and recommendations that the Rudman Committee released on Tuesday, September 19, 1995.

### Overall Conclusions

Based on its Review, the Select Committee concludes that the NASD® has discharged its self-regulatory responsibilities, not of course with perfection or without difficulty, but professionally and reasonably. The NASD's role as the primary regulator of the broker/dealer profession and the non-exchange securities markets, combined with its stewardship of the vast Nasdaq® market, is both difficult and unique. No other SRO is faced with such complex and challenging obligations.

The Committee's Review does not support the claims of those who assert that the NASD is controlled by and for the benefit of Nasdaq market makers. Nor does it support those who assert that the NASD cloaks in regulatory garb actions that are in fact designed solely to advance the commercial interests of certain segments of the NASD's membership.

The Select Committee does find, however, that the NASD's governance structure has failed to keep pace with the significant growth and continuing evolution of the Nasdaq market, and the concomitant expansion of the NASD's regulatory responsibilities. In some cases, the existing governance structure has led to ineffective rulemaking for the Nasdaq market. In others, it has required the NASD to mediate economic clashes among its members arising from their divergent interests in the Nasdaq market—a daunting role which the NASD, as a membership association and regulator of the entire broker/dealer profession, did not seek and was never designed to play. The current structure has also

placed the NASD, as the owner of Nasdaq's trading systems, in the unenviable position of regulating the competing systems owned by NASD members.

The NASD's existing governance structure thus blurs the distinction between regulating the broker/dealer profession and overseeing the Nasdaq stock market. Both missions are thereby disserved.

The NASD's existing structure would also benefit from increasing public representation on the NASD's governing bodies. Not only would a full measure of public representation benefit the NASD's current stature and importance, it should also bolster confidence in the NASD's policies. It would not be inconsistent with self-regulation, because NASD members would still be fairly represented in the Association's affairs and have ample opportunity to bring their expertise and viewpoint to bear.

Regarding NASD enforcement, the Committee believes that the core of the NASD's disciplinary process is sound. No doubt, mistakes have been made, and some judgments certainly can be questioned in retrospect, but the overall process is designed to be effective and fair. At the same time, however, NASD disciplinary proceedings have become more contentious, complex, and consequential than the existing system was designed to accommodate. New measures are required to address these developments.

This will entail certain changes significant in the conduct of most NASD disciplinary proceedings. It will also entail greater national oversight within the NASD itself, greater public participation, more frequent, formal coordination of enforcement efforts with the SEC, the states and the major securities exchanges, and prompt deployment of increased

financial and human resources. The Committee believes that these measures can be implemented without compromising the principle of peer review.

Finally, the Committee believes that the critical internal review function (including regular district audits) has not been given the mandate, resources, or prominence necessary for effective oversight within the NASD itself. Significant improvement is required.

### **Principles Of Effective Governance**

Based on its Review, the Committee believes that, to be fully effective, the NASD's governance structure should conform to the following principles:

- The NASD and the Nasdaq market should not be divorced, but regulation of the broker/dealer profession should otherwise be separated from and performed independently of regulation of the Nasdaq and other OTC markets.
- To this end, the governing Board charged with regulating the NASD's member firms should be separate and independent from the governing Board responsible for overseeing the Nasdaq market. So, too, should their respective professional staffs. Those two governing Boards and staffs, however, should remain associated within a single SRO structure. This will maintain the strength of the existing NASD organization in linking commercial and technical expertise to regulation so that each informs and enhances the other.
- In all events, enforcement should be independent of responsibility for the Nasdaq and other OTC markets and should be the paramount task of the Board charged with regulating the broker/dealer profession.
- The separate governing Boards responsible for regulating the broker/

dealer profession and for regulating the Nasdaq market should each have 50 percent public membership. The parent (or equivalent) Board should have a majority of public members. Other governing bodies with substantial policymaking or oversight authority also should have strong public representation, as appropriate to their specific tasks.

- The public members of the Boards and other governing bodies, though not affiliated with NASD member firms, should have sufficient knowledge, experience, and interest in the securities industry or markets to play a meaningful role in governance, and should represent a wide spectrum of skills and interests.
- Apart from public representation, the composition of the separate governing Boards should be tailored to reflect the interests of their respective constituencies.
- In addition, the composition of the Board responsible for regulating the broker/dealer profession should provide for balanced representation of the NASD's diverse membership, including small and large firms and firms involved in different business specialties.
- The Nominating Committees for the principal governing bodies should be composed equally of NASD members and public representatives, and the selection process should provide an opportunity for all interested and qualified constituencies to participate.
- The NASD's professional staff should take an active management role, and should ensure that all governing bodies are equipped to reach decisions in a fully informed and timely fashion and that the views of all relevant constituencies are taken into account.
- NASD discipline and enforcement

should be, in fact and appearance, fair, effective, and professional.

- The NASD should have a strong, independent and well-equipped Office of Internal Review, with provision for regular district audits and an Ombudsman.
- The NASD should at all times devote the financial and human resources necessary to meet its paramount regulatory obligations.

### **Specific Recommendations**

Guided by the foregoing, and based on the Review, the Select Committee makes the following specific recommendations:

#### **Corporate Restructuring**

- (a) The NASD should reconstitute and establish Nasdaq as a strong, independent operating subsidiary, not divorced from the NASD, but with as much autonomy and authority over the Nasdaq and OTC markets as the law will allow.
- (b) The NASD should create a separate, strong and independent operating subsidiary, NASD Regulation, Inc. (NASDR), responsible for regulating the broker/dealer profession.
- (c) The NASD should retain ultimate policymaking, oversight, and corporate authority as parent holding company and statutory SRO. However, to effectuate the purposes of this proposed restructuring, the NASD should grant substantial deference to its operating subsidiaries in the areas of their respective jurisdiction.
- (d) The composition of the Boards of the NASD, Nasdaq, and NASDR should be tailored to meet their respective responsibilities and to reflect the interests of their respective constituencies.

(e) The governing Boards of Nasdaq and NASDR should each have 50 percent public membership, meaning directors drawn from outside the membership of the NASD and representing a broad spectrum of skills and interests. The Board of the NASD should have a majority of public members, also representing a broad spectrum of skills and interests.

(f) Board compositions that would satisfy the foregoing criteria are depicted in Exhibit D (see page 529).

(g) The members of the NASD Board of Governors should be selected as shown in Exhibit D. Although as there shown, certain NASD governors would be selected by the Nasdaq and NASDR Boards, those governors should not be directors of Nasdaq or NASDR at the time of their selection. The public governors on the NASD Board should be proposed by an NASD Nominating Committee and elected by the NASD Board, with provision for public governor candidates to be proposed as well by any NASD member, under rules to be established by the NASD Board.

(h) The District members of the NASDR Board should be proposed by District Nominating Committees and elected by the NASD Districts, under rules to be established by the NASDR Board (including rules for contested elections). The remaining members of the NASDR Board should be proposed by an NASDR Nominating Committee and elected by the NASDR Board. The NASDR Board should establish procedures permitting NASD members or the public also to propose candidates for non-District seats.

(i) The members of the Nasdaq Board should be proposed by a Nasdaq Nominating Committee and elected by the Nasdaq Board. The Nasdaq Board should establish procedures permitting NASD members or the

public also to propose candidates.

(j) The Nominating Committees of the NASD, NASDR, and Nasdaq, respectively, should be composed equally of individuals affiliated with NASD member firms and individuals drawn from the public. The members of the Nominating Committees need not be present members of the respective Boards.

(k) The Nasdaq and NASDR Boards should select, respectively, the CEOs of each entity. The NASD Board should retain the authority to reject or dismiss the CEOs chosen by Nasdaq and NASDR, but should exercise such authority only in exceptional cases.

(l) The NASD Board should choose the CEO of NASD.

(m) The CEOs of the NASD, Nasdaq, and NASDR, respectively, need not be affiliated with an NASD member, but may be drawn from the public or from the professional staffs of NASD, NASDR, or Nasdaq.

(n) The principal functions of NASD, NASDR, and Nasdaq, respectively, should be as shown in Exhibit E (see pages 530 and 531).

### **Discipline And Enforcement**

(a) The NASD should significantly augment its disciplinary procedures, and allocate the necessary financial resources and personnel at both the District and national levels, so as to ensure effective, fair, and professional enforcement.

(b) The NASD should establish an Office of Professional Hearing Officers within NASDR. The professional hearing officers should be NASDR employees and should sit, along with two industry representatives, in every NASD disciplinary proceeding in which either the respondent or

NASDR so elects, or the Board of the NASD or NASDR so determines.

(c) In all disciplinary proceedings, *ex parte* contacts between the disciplinary panels—including the District Business Conduct Committees and the Market Surveillance Committee and the parties or their representatives—including attorneys presenting the case for NASDR—should be prohibited.

(d) Before any proposed settlement of a disciplinary proceeding is approved by a panel sitting without a professional hearing officer, it should be reviewed by a designated NASDR staff attorney (other than the attorney presenting the case) to determine and advise the panel whether the proposed settlement conforms to NASD policy, including sanction guidelines.

(e) The documentary discovery rights of respondents in NASD disciplinary proceedings should be expanded to furnish respondents, at a reasonable time in advance of the initial hearing, with all non-privileged materials in the NASD's possession (including exculpatory evidence) directly relevant to the dispute. The precise rules should be established by NASDR. Also, NASDR should establish rules for a motions practice suitable for NASD disciplinary proceedings. Disciplinary panels, including NBCC panels, should be given the power to impose sanctions on either side for frivolous practice or contumacious behavior by the parties or their counsel.

(f) The workload of the NBCC should be reduced in order for it to address national enforcement policy issues and ensure uniformity in NASD membership application processing. To help achieve this goal, the professional staff assigned to the NBCC should be delegated the responsibility to review all settlements and non-appealed disciplinary cases, referring to the NBCC itself

only such settlements and non-appealed cases, if any, as appear inconsistent with NASD enforcement policy or sanction guidelines. Public members should serve on the NBCC, but NASD member firms should be in the majority.

### **District Committees**

(a) District Nominating Committees should be directed to consider diversity in the size and type of firms represented on the District Committees, especially in Districts that have larger-than-average Committees.

(b) In the event of a contested election for District Committee seats, the NASD and its staff should remain strictly neutral. To the extent that NASD or NASDR resources are employed in the election process, they should be made available on an equal basis to all candidates.

### **Office Of Internal Review**

(a) The NASD should create a strong, independent, and responsive Office of Internal Review, to be housed in and administered by the NASD parent. This Office should conduct regular internal audits and reviews of the NASD's and its subsidiaries' operations, including the Districts. The Office should also be equipped with the necessary authority and resources to conduct special internal investigations on its own initiative or at the request of the NASD

Board, the Nasdaq Board, the NASDR Board, or the CEOs of the NASD, Nasdaq, or NASDR.

(b) The Office should serve also as an "Ombudsman" for receiving and addressing concerns and complaints, whether anonymous or not, from any source (within or outside of the NASD), concerning the operations, policies, or activities of the NASD, Nasdaq, or NASDR, or any staff members.

(c) The hiring, firing, and compensation of the professional staff serving in the Office should be exclusively the province of the NASD's CEO and the NASD Board. The Office should have authority to raise issues directly with any operating entity, unit, or official within the NASD organization.

### **Coordination With Other Regulators**

On at least a semi-annual basis, high-level NASD and NASDR officials should engage in formal consultations to coordinate national enforcement policy with the other principal securities industry regulators, *i.e.*, the SEC, state regulators, and the New York and American Stock Exchanges.

### **Membership Voting**

The Select Committee finds no reason to change the NASD's decision,

approved by the SEC in 1994, to eliminate the requirement of membership voting on proposed rule changes except in those unusual cases in which the NASD Board or NASDR Board determines otherwise.

### **Professional Staff**

The NASD, NASDR, and Nasdaq professional staffs should take an active role in management and in identifying and pursuing issues and recommending proposed solutions, policies, and rules.

### **Individual Investors**

The Committee notes that, in accordance with the principles of effective governance endorsed by this Committee, the NASD is creating an Office dedicated to representing the interests of individual investors and making certain that those interests are taken into account in policy and rulemaking.

### **Allocation Of Financial Resources**

The NASD should allocate the necessary financial resources and personnel to achieve the foregoing goals as soon as practicable. In particular, the NASD should significantly increase the resources it currently allocates to enforcement and discipline and to internal audit and review.

**Exhibit D**

**Current and Proposed Makeup of NASD and Subsidiary Boards**

<i>NASD, Inc., Board of Governors</i>	
<b>Current</b>	<b>Proposed</b>
President of NASD 13-15 Governors elected by NASD members in the various NASD Districts 11-13 Governors elected by the Board (the "at-large" Governors)	CEO of NASD 1 industry representative selected by the Nasdaq Board 1 industry representative from the NASD Districts selected by the NASDR Board 1 at-large industry representative selected by the NASDR Board 5 public members representing a broad spectrum of skills and interests

<i>The Nasdaq Stock Market, Inc., Board of Directors</i>	
<b>Current</b>	<b>Proposed</b>
President of NASD/Nasdaq 4 public representatives (including 2 issuer representatives) 10 industry representatives (including 1 current NASD Governor)	CEO of Nasdaq 8 public members representing a broad spectrum of skills and interests 4 "market maker" representatives 4 industry representatives from firms that are not primarily "market makers" CEO of NASD (ex officio, non-voting)

<i>Proposed Makeup of the NASD Regulation, Inc., Board of Directors</i>	
CEO of NASDR 11 representatives of member firms elected by the NASD Districts 3 at-large industry representatives 14 public members representing a broad spectrum of skills and interests CEO of NASD (ex-officio, non-voting)	

**Exhibit E**

**Recommended Role and Composition of NASD and Subsidiary Boards**

<p><b>NASD, Inc.</b></p> <p>Makes ultimate policy decisions and exercises ultimate review authority over the decisions of the two operating subsidiaries, including NASDR disciplinary decisions (but with substantial deference to each subsidiary's expertise in the areas of its jurisdiction)</p> <p>Resolves jurisdictional or other disputes between Nasdaq and NASDR</p> <p>Administers the Office of Internal Review</p> <p>Administers common overhead and technology of Nasdaq and NASDR</p> <p>Establishes a consolidated corporate budget</p> <p>Manages external relations on major policy issues, including relations with Congress, the SEC, state regulators, other SROs, business groups and the public at large</p> <p>Retains overall responsibility for ensuring that the NASD's statutory obligations and functions are fulfilled</p>
<p><b>Board of Governors</b></p> <p>CEO of NASD</p> <p>1 industry representative selected by the Nasdaq Board</p> <p>1 industry representative from the NASD Districts selected by the NASDR Board</p> <p>1 at-large industry representative selected by the NASDR Board</p> <p>5 public members representing a broad spectrum of skills and interests</p>

<p><b><i>The Nasdaq Stock Market, Inc.</i></b></p>	<p>Oversees and operates the Nasdaq market</p> <p>Designs and operates Nasdaq trading systems, and promulgates rules for those trading systems and for the other OTC markets</p> <p>Conducts market surveillance, including trading halts</p> <p>Establishes fees for market services</p> <p>Prepares the annual budget and strategic plan for the Nasdaq subsidiary</p> <p><b><i>Board of Directors</i></b></p>
<p>CEO of Nasdaq</p> <p>8 public members representing a broad spectrum of skills and interests</p> <p>4 "market maker" representatives</p> <p>4 industry representatives from firms that are not primarily "market makers"</p> <p>CEO of NASD (ex officio, non-voting)</p>	

<p><b><i>NASD Regulation, Inc.</i></b></p>	<p>Establishes rules and regulations for the broker/dealer profession generally (including Rules of Fair Practice and membership requirements)</p> <p>Administers the enforcement and disciplinary systems, including investigation and adjudication of all cases referred by the NASD or Nasdaq, or initiated by NASDR itself</p> <p>Administers the Office of Professional Hearing Officers</p> <p>Conducts arbitrations</p> <p>Conducts qualification examinations and operates the CRD system</p> <p>Oversees all District Offices and compliance activities (including review of underwriting agreements, advertising, and enforcement of MSRB rules)</p> <p>Establishes the annual budget and strategic plan for the NASDR subsidiary</p> <p><b><i>Board of Directors</i></b></p>
<p>CEO of NASDR</p> <p>11 representatives of member firms elected by the NASD Districts</p> <p>3 at-large industry representatives</p> <p>14 public members representing a broad spectrum of skills and interests</p> <p>CEO of NASD (ex officio, non-voting)</p>	

# NASD NOTICE TO MEMBERS 95-85

## Executive Summary

NASD *Notice to Members 95-16* (March 1995) and NYSE Information Memorandum 95-16 (April 1995) (collectively referred to as "95-16") were published to address issues concerning provisions in customer agreements and predispute arbitration clauses that appear to violate NASD and NYSE rules. The NASD and NYSE are issuing this Notice to address important ques-

tions raised by members and others concerning the statements in 95-16, see attached.

Questions about this notice should be directed to William R. Schief, Vice President, Regional Attorneys/Enforcement, NASD; at (301) 208-2858, Elliott R. Curzon, Assistant General Counsel, NASD, (202) 728-8451; your coordinator at the NYSE; or Salvatore Pallante, Senior Vice President, NYSE, at (212) 656-8480.

## Clarification Of NASD *Notice to Members 95-16* And NYSE Information Memorandum 95-16: Content And Enforcement Of Provisions In Customer Agreements And Predispute Arbitration Clauses

### 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





National Association of  
Securities Dealers, Inc.



New York  
Stock Exchange

TO: Members And Member Organizations

DATE: October 16, 1995

SUBJECT: Clarification Of NASD *Notice To Members 95-16* And NYSE Information Memorandum 95-16:  
Content And Enforcement Of Provisions In Customer Agreements And Predispute Arbitration Clauses

NASD *Notice to Members 95-16* (March 1995) and NYSE Information Memorandum 95-16 (April 1995) (collectively referred to as "95-16") were published to address issues concerning provisions in customer agreements and predispute arbitration clauses that appear to violate NASD and NYSE rules. The NASD and NYSE are issuing this notice to address important questions raised by members and others concerning the statements in 95-16.

### Background

Earlier this year NASD *Notice to Members 95-16* and NYSE Information Memo 95-16 were issued to notify members that customer agreements of some members contained predispute arbitration clauses and other provisions that were inconsistent with NASD and NYSE arbitration rules.<sup>1</sup> Specifically mentioned were NYSE Rules 636(d), 613, 607(b), 603, and 627(a); Article III, Section 21(f) of the NASD Rules of Fair Practice; and the NASD Code of Arbitration Procedure.

Members were cautioned not to include nor seek to enforce provisions in customer agreements that restrict or limit, contrary to such rules, the ability of customers to arbitrate disputes or the authority of the arbitrators to make an award, including an award of punitive damages.

Important questions have been raised by members and others regarding the meaning and application of certain statements in 95-16. Those questions and our answers are presented in this notice to provide further clarification.

Article III, Section 21(f)(4) of the NASD Rules of Fair Practice and NYSE Rule 636 address the form and content of predispute arbitration clause in customer agreements. These rules recognize that customer agreements "cannot be used to curtail any rights that a party may otherwise have had in a judicial forum."<sup>2</sup>

The NASD and NYSE expect their members to comport with high standards of professional conduct when dealing with their customers with respect to the arbitration of disputes and predispute arbitration clauses.

<sup>1</sup> Copies of *Notice to Members 95-16* are available from the NASD Support Services Department at (202) 728-8061; and copies of NYSE Information Memorandum 95-16 are available from your NYSE Coordinator.

<sup>2</sup> Order Approving Proposed Rule Changes by the New York Stock Exchange, Inc., National Association of Securities Dealers, Inc., and the American Stock Exchange, Inc., SEC Release No. 34-26805 (May 10, 1989); 54 F.R. 21144:

"This provision makes clear that the use of arbitration for the resolution of investor/broker-dealer disputes represents solely a choice of arbitration as a means of dispute resolution. Agreements cannot be used to curtail any rights that a party may otherwise have had in a judicial forum. If punitive damages or attorneys fees would be available under applicable law, then the agreement cannot limit parties' rights to request them, nor arbitrators rights to award them. The agreements may not be used to shorten applicable statutes of limitation, restrict the situs of an arbitration hearing contrary to SRO rules, nor limit SRO forums otherwise available to parties."

## Questions And Answers

Question No. 1: May customer agreements contain a “governing law clause?”<sup>3</sup>

Answer: Yes, provided: (a) there is an appropriate contact or relationship between the transaction at issue or the parties and the law selected; and (b) that the clause is otherwise consistent with the aforementioned NYSE or NASD rules. For example, neither the governing law clause, nor any other clause in the customer agreement, may “limit[] the ability of a party to file any claim in arbitration or limit[] the ability of the arbitrators to make any award,” or limit or contradict any of the aforementioned NYSE or NASD rules, such as rules relating to the location of the arbitration hearing. Article III, Section 21(f)(4) of the NASD Rules of Fair Practice, NYSE Rule 636.

Question No. 2: Is it permissible to include a disclosure in the customer agreement that the law governing the agreement prohibits or may prohibit an award of punitive damages in arbitration?

Answer: No. Such a disclosure would be inconsistent with NYSE Rule 636(d) and Article III, Section 21(f)(4) of the NASD Rules of Fair Practice.

Question No. 3: Is a “governing law clause” (as described in Question No. 1) which names the state of residence of the customer permissible?

Answer: Yes, provided that the clause is otherwise consistent with aforementioned NYSE or NASD rules.

Question No. 4: If, under the governing law set forth in the customer agreement, punitive damages are not available in court, may a party assert this as a defense in an arbitration proceeding to a claim for punitive damages?

Answer: Yes, although the arbitrators will determine whether, or to what extent, this defense will be accepted.

Question No. 5: Is there anything in NASD *Notice to Members 95-16* (or NYSE Information Memorandum 95-16) intended to endorse the awarding of punitive damages in arbitration?

Answer: No, they are not intended to encourage or discourage the award of punitive damages.

Question No. 6: May a party in arbitration raise the governing law provision (in the customer agreement at issue) in arguing issues before the arbitrators such as state law interest rates and state law economic loss theories?

Answer: Yes, although the arbitrators will determine which arguments they will permit.

Question No. 7: May a firm designate a hearing location for self-regulatory organization (SRO) arbitrations in its arbitration clause?

Answer: No.

Question No. 8: May a firm dictate the composition of a panel for an SRO arbitration in its arbitration clause?

Answer: No.

## Conclusion

Enforcing provisions of a customer agreement that are inconsistent with NYSE or NASD rules will be deemed to constitute violative activity and could subject the member to disciplinary action.

<sup>3</sup> Sometimes referred to as a “choice of law clause.”

As stated in 95-16, members should promptly review their customer agreements and make such changes as are necessary and appropriate to ensure that they comply with the NASD's and NYSE's rules. Members should also advise their customers of the changes to the agreements. Members will have thirty (30) days from the date of this notice to make any necessary changes to their agreements. Members using agreements determined not to be in compliance may be subject to disciplinary action.

Questions about this notice should be directed to William R. Schief, Vice President, Regional Attorneys/Enforcement, NASD, at (301) 208-2858; Elliott R. Curzon, Assistant General Counsel, NASD, (202) 728-8451; your coordinator at the NYSE; or Salvatore Pallante, Senior Vice President, NYSE, at (212) 656-8480.



John E. Pinto  
*Executive Vice President*  
*National Association of Securities Dealers, Inc.*



Edward A. Kwalwasser  
*Executive Vice President*  
*New York Stock Exchange, Inc.*

# NASD NOTICE TO MEMBERS 95-86

## NASD Reminds Members About Continuing Education Program Regulatory Element

### 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® reminds members that registered persons who do not satisfy their Regulatory Element computer-based training requirement within the 120-calendar-day period beginning on the second, fifth, or tenth anniversary of their initial securities registration or of the date of a serious disciplinary action (see below) may not perform, nor be paid for, any activity that requires a securities registration.

In June, the Central Registration Depository (CRD<sup>SM</sup>) sent 8,132 registered persons Continuing Education Advisory Messages notifying them of their obligation to satisfy a Continuing Education Program Regulatory Element computer-based training requirement. Their obligation began on a date beginning in July and ending 120 calendar days later. As of September 15, most (4,224, or 52 percent) of this group have not made arrangements to satisfy their requirement.

A notified registered person satisfies the Regulatory Element computer-based training requirement by making an appointment at any NASD PROCTOR® Certification Testing Center and completing a Regulatory Element training session. Because the number of registered persons with Regulatory Element computer-based training obligations grows each day, the NASD is concerned that those who wait until the last minute may have difficulty scheduling an appointment at a PROCTOR Center, have their 120-day window close, and will find themselves with an inactive registration until they can complete their training.

Members are urged to encourage all employees with Regulatory Element requirements, and especially those with requirements expiring in the next 30 days, to make their appointments at a PROCTOR Center as

soon as possible. The NASD has 55 fixed-site PROCTOR Centers and a remote site delivery capability (PROCTOR PRO) with an established schedule of dates and locations through December 1995. A listing of the fixed-site PROCTOR Centers and the schedule of the mobile PROCTOR PRO for 1995 are included with this Notice.

### Background

On February 8, 1995, the Securities and Exchange Commission (SEC) approved a new Part XII to Schedule C of the By-Laws prescribing requirements for the continuing education of certain registered persons subsequent to their initial qualification and registration with the NASD.

The Regulatory Element of the Continuing Education Program requires that every person registered for 10 years or less who is covered by the Regulatory Element will be required to satisfy the requirement within 120 calendar days after the second, fifth, and tenth anniversaries of their initial securities registration. Also covered are those who have been registered more than 10 years and who have been the subject of a serious disciplinary action (suspension, bar, fine of \$5,000 or more, or a statutory disqualification) during the most recent 10 years.

Since July 1, 1995, individuals have been phased into the Regulatory Element daily, based on their anniversaries as explained above. The CRD notifies registered individuals of their Regulatory Element obligation by sending a Continuing Education Program Advisory Message to their firm 30 days in advance of their anniversary date. The Advisory Message specifies the Begin Date (the anniversary date) and the End Date (120 calendar days later) of the period during which the person must sat-

isfy the Regulatory Element requirement. For example, persons registered in July 1990 received Advisory Messages in June advising that they are required to satisfy the Regulatory Element within a 120-calendar-day period beginning on their fifth anniversary in July and ending in late October or November, as the case may be.

### Continuing Education Information

Several publications are available that explain the Continuing Education Program. *Special Notice to Members 95-13* (March 8, 1995) has the actual rule language, which is Part XII of Schedule C of the NASD By-Laws, and three other reference sections:

- *Status Report On The Securities Industry Continuing Education Program*, including a questions and answers section to help member firms understand the Program;
- *Content Outline For The Regulatory Element*, which specifies the subject areas covered in the Regulatory Element computer-based training; and
- *Guidelines For Firm Element Training*, which provide firms with a common approach for developing and implementing a firm-specific training program that meets the needs of all types and sizes of firms.

*The Continuing Education Program For Securities Professionals*, a pamphlet available at cost (\$.35), describes the Continuing Education Program to registered persons through a series of questions and answers about the Program. Many firms send this pamphlet to their employees who are notified that they must take the Regulatory Element computer-based training.

*Notice to Members 95-35* (May 1995) has an update on the Continu-

ing Education Program and 38 questions and answers about the Regulatory Element specifically.

*Membership On Your Side*, Volume 4, Number 2 (July 1995), has an overview of the Continuing Education Program and examples of the CRD Reports (Continuing Education Program Advisory Messages) sent to firms.

To order copies of any of these publications call NASD MediaSource<sup>SM</sup> at (301) 590-6578. Questions about this Notice may be directed to John Linnehan, Director of Continuing Education, at (301)-208-2932, or your Quality & Service Team at:

Quality & Service Team 1  
(301) 921-9499

Quality & Service Team 2  
(301) 921-9444

Quality & Service Team 3  
(301) 921-9445

Quality & Service Team 4  
(301) 921-6664

Quality & Service Team 5  
(301) 921-6665

Firms uncertain as to which Quality & Service Team is assigned to work with them can call the NASD Member Services Phone Center at (301) 590-6500.

### NASD PROCTOR Centers

Below is a listing, as of October 1, 1995, of the fixed-site PROCTOR Centers, as well as the schedule of the mobile PROCTOR PRO facilities through the balance of 1995. Phone the individual PROCTOR Center to schedule a computer-based training session appointment. To schedule an appointment with PROCTOR PRO please phone (800) 999-6647 and

select option 1 at the voice prompt.

### Holiday Schedule

Jan. 2	New Year's Day
Feb. 20	Washington's Birthday
Apr. 14	Good Friday
May 29	Memorial Day
July 4	Independence Day
Sept. 4	Labor Day
Nov. 23	Thanksgiving Day
Dec. 25	Christmas Day

### Alabama

Birmingham Metro. Area  
PROCTOR Certification Testing  
Lakeshore Park Plaza  
2204 Lakeshore Drive  
Suite 305  
Birmingham, AL 35209  
(205) 870-1643  
Hours: 8:00-1:00 (M,T,Th,Fr)  
8:00-3:30 (W)  
Delivery Stations: 5

### Arizona

Phoenix Metro. Area  
PROCTOR Certification Testing  
1717 W. Northern Avenue  
Park North II Building  
Suite 117  
Phoenix, AZ 85021  
(602) 870-7522  
Hours: 9:00-4:30 (M-F)  
Delivery Stations: 11

### Arkansas

Little Rock Metro. Area  
PROCTOR Certification Testing  
11219 Financial Ctr. Pkwy  
Suite 311  
Little Rock, AR 72211-2859  
(501) 224-5781  
Hours: 8:30-4:00 (M,F); 8:30-2:00  
(T,Th)  
8:30-1:00 (W)  
Delivery Stations: 4

**California**

Los Angeles Metro. Area  
 PROCTOR Certification Testing  
 Koll Center  
 1920 Main Street, Suite 230  
 Irvine, CA 92714  
 (714) 757-7530  
 Hours: 8:00-4:00 (M-F)  
 Delivery Stations: 20

Los Angeles Metro. Area  
 PROCTOR Certification Testing  
 701 N. Brand Blvd., Suite 340  
 Glendale, CA 91203  
 (818) 545-7383  
 Delivery Stations: 20  
 Hours: 8:00-4:00 (M-F)

Sacramento Metro. Area  
 ACT Center  
 555 Capitol Mall  
 Suite 550  
 Sacramento, CA 95814  
 (916) 658-0180  
 Hours: 7:30-3:30 (M-F)  
 Delivery Stations: 8

San Diego Metro. Area  
 PROCTOR Certification Testing  
 6333 Greenwich Drive  
 Suite 175  
 San Diego, CA 92122  
 (619) 558-1164  
 Hours: 8:00-3:30 (M-F)  
 Delivery Stations: 11

San Francisco Metro. Area  
 PROCTOR Certification Testing  
 525 Market Street  
 Suite 390  
 San Francisco, CA 94105  
 (415) 882-1212  
 Hours: 8:00-4:00 (M-F)  
 Delivery Stations: 24

**Colorado**

Denver Metro. Area  
 PROCTOR Certification Testing  
 2000 South Colorado Blvd.  
 Suite 2100  
 Denver, CO 80222  
 (303) 692-8745  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 13

**Connecticut**

Hartford Metro. Area  
 PROCTOR Certification Testing  
 Glastonbury Corporate Ctr.  
 628 Hebron Avenue, Suite 210  
 Glastonbury, CT 06033  
 (860) 657-3161  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 12

Norwalk Metro. Area  
 PROCTOR Certification Testing  
 Merritt 7 Corporate Park  
 101 Merritt 7, 3rd Floor  
 Norwalk, CT 06851  
 (203) 845-9655  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 10

**District Of Columbia**

Please see Virginia

**Florida**

Miami Metro. Area  
 PROCTOR Certification Testing  
 The Spessard Holland Building  
 8000 Governors Square Blvd.  
 Suite 303  
 Miami Lakes, FL 33016  
 (305) 825-7940  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 18

Orlando Metro. Area  
 PROCTOR Certification Testing  
 601 South Lake Destiny Road  
 Suite 220  
 Maitland, FL 32751  
 (407) 875-8118  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 24

**Georgia**

Atlanta Metro. Area  
 PROCTOR Certification Testing  
 900 Ashwood Parkway  
 Suite 490  
 Atlanta, GA 30338  
 (404) 551-0845  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 18

**Illinois**

Bloomington Metro. Area  
 PROCTOR Certification Testing  
 211 Landmark Drive, Suite A3  
 Normal, IL 61761  
 (309) 452-4788  
 Hours: 8:00-3:30 (M-F)  
 Delivery Stations: 10

Chicago Metro. Area  
 PROCTOR Certification Testing  
 10 South LaSalle Street  
 Suite 2101  
 Chicago, IL 60603  
 (312) 609-2525  
 Hours: 8:00-4:00 (M-F)  
 Delivery Stations: 25

ACT Center  
 River Tree Court  
 Corner of 21 and Rt. 60  
 Vernon Hills, IL 60061  
 (708) 247-4218  
 Hours: 8:00-4:00 (M, T, Th, F, S)  
 Delivery Stations: 9

**Indiana**

Indianapolis Metro. Area  
 PROCTOR Certification Testing  
 Keystone at the Crossing  
 8900 Keystone Crossing  
 Suite 990  
 Indianapolis, IN 46240  
 (317) 846-8287  
 Hours: 8:00-3:30 (M-F)  
 Delivery Stations: 8

**Iowa**

Des Moines Metro. Area  
 PROCTOR Certification Testing  
 3737 Woodland Avenue  
 Suite 232  
 West Des Moines, IA 50265  
 (515) 223-5452  
 Hours: 8:00-3:30 (M-F)  
 Delivery Stations: 6

**Kansas**

Kansas City Metro. Area  
 PROCTOR Certification Testing  
 Commerce Plaza II  
 7400 West 110th Street  
 Suite 310  
 Overland Park, KS 66210  
 (913) 338-4700  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 9

**Kentucky**

Louisville Metro. Area  
 PROCTOR Certification Testing  
 10170 Linn Station Road  
 Suite 550  
 Louisville, KY 40223  
 (502) 423-1603  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 4

**Louisiana**

New Orleans Metro. Area  
 PROCTOR Certification Testing  
 Energy Centre  
 1100 Poydras Street  
 Suite 810  
 New Orleans, LA 70163  
 (504) 522-7999  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 7

**Maryland**

Baltimore Metro. Area  
 PROCTOR Certification Testing  
 Dulaney Center II  
 901 Dulaney Valley Road  
 Suite 502  
 Towson, MD 21204  
 (410) 337-5103  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 9

**Massachusetts**

Boston Metro. Area  
 PROCTOR Certification Testing  
 1601 Trapelo Road  
 Building C  
 Waltham, MA 02154-1046  
 (617) 890-0466  
 Hours: 8:00-3:30 (M-F)  
 Delivery Stations: 23

**Michigan**

Detroit Metro. Area  
 PROCTOR Certification Testing  
 Oakland Towne Square  
 One Towne Square  
 2nd Floor  
 Southfield, MI 48076  
 (810) 351-9088  
 Hours: 8:00-3:30 (M-F)  
 Delivery Stations: 16

**Minnesota**

Minn./St. Paul Metro. Area  
 PROCTOR Certification Testing  
 8300 Norman Center Drive  
 Suite 850  
 Bloomington, MN 55437  
 (612) 835-9420  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 18

**Missouri**

St. Louis Metro. Area  
 PROCTOR Certification Testing  
 West Park I  
 12655 Olive Blvd., 3rd Floor  
 Creve Coeur, MO 63141  
 (314) 469-6086  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 11

**Nebraska**

Omaha Metro. Area  
 PROCTOR Certification Testing  
 Century Building  
 11213 Davenport Street  
 Suite 103  
 Omaha, NE 68154  
 (402) 333-6278  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 6

**New Jersey**

West Orange Metro. Area  
 PROCTOR Certification Testing  
 Eisenhower Office Park  
 101 Eisenhower Parkway  
 4th Floor  
 Roseland, NJ 07068  
 (201) 228-8777  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 18

**New Mexico**

Albuquerque Metro. Area  
 PROCTOR Certification Testing  
 City Center  
 6400 Uptown Blvd. N.E.  
 Suite 476W  
 Albuquerque, NM 87110  
 (505) 884-6033  
 Hours: 8:30-4:30 (M,W,F); 8:30-2:30 (T, Th)  
 Delivery Stations: 4

**New York**

Please also see New Jersey

New York City Metro. Area  
 PROCTOR Certification Testing  
 225 Broad Hollow Road  
 Suite 116W  
 Melville, NY 11747  
 (516) 845-9063  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 21

New York City Midtown Area  
 PROCTOR Certification Testing  
 201 East 42nd Street  
 Suite 1000, 10th Floor  
 New York, NY 10017  
 (212) 809-5509  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 50

New York City Whitehall Area  
 PROCTOR Certification Testing  
 33 Whitehall Street  
 11th Floor  
 New York, NY 10004  
 (212) 809-5509  
 Hours: 8:30-5:30 (M-F)  
 Delivery Stations: 50

Rochester Metro. Area  
 PROCTOR Certification Testing  
 Woodcliff I  
 345 Woodcliff Drive, 1st Floor  
 Fairport, NY 14450  
 (716) 383-5630  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 8

**North Carolina**

Charlotte Metro. Area  
 PROCTOR Certification Testing  
 5000 Nations Crossing Road  
 9 Woodlawn Green  
 Suite 219  
 Charlotte, NC 28217  
 (704) 523-2773  
 Hours: 8:00-3:30 (M-F)  
 Delivery Stations: 14

Raleigh Metro Area  
 5540 Centerview Drive  
 Suite 307  
 Raleigh, NC 27606  
 (919) 859-2240  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 8

**Ohio**

Cincinnati Metro. Area  
 PROCTOR Certification Testing  
 4445 Lake Forest Drive  
 Suite 210  
 Cincinnati, OH 45242  
 (513) 769-6555  
 Hours: 8:00-3:30 (M-F)  
 Delivery Stations: 9

Cleveland Metro. Area  
 PROCTOR Certification Testing  
 6450 Rockside Woods Blvd.  
 Suite 155  
 Independence, OH 44131  
 (216) 642-7745  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 7

Columbus Metro. Area  
 PROCTOR Certification Testing  
 655 Metro Place South  
 Suite 145  
 Dublin, OH 43017  
 (614) 793-1592  
 Hours: 8:00-3:30 (M-F)  
 Delivery Stations: 7

**Oklahoma**

Oklahoma City Metro. Area  
 PROCTOR Certification Testing  
 One Lakeview Energy Center  
 3817 Northwest Expressway  
 Suite 150  
 Oklahoma City, OK 73112  
 (405) 942-1562  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 6

**Oregon**

Portland Metro. Area  
 PROCTOR Certification Testing  
 9115 S.W. Oleson Road  
 Suite 101  
 Portland, OR 97223  
 (503) 293-8957  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 7

**Pennsylvania**

Allentown Metro. Area  
 PROCTOR Certification Testing  
 7660 Imperial Way  
 Suite A-101  
 Allentown, PA 18195  
 (610) 481-0460  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 5

Harrisburg Metro. Area  
 PROCTOR Certification Testing  
 Commerce Park  
 2405 Park Drive, Suite 202  
 Harrisburg, PA 17110  
 (717) 652-4821  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 4

Philadelphia Metro. Area  
 PROCTOR Certification Testing  
 1760 Market Street, 9th Floor  
 Philadelphia, PA 19103  
 (215) 564-2980  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 20

Pittsburgh Metro. Area  
 PROCTOR Certification Testing  
 Foster Plaza, Building 9  
 750 Holiday Drive  
 Suite 605  
 Pittsburgh, PA 15220  
 (412) 928-2440  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 8

**Tennessee**

Memphis Metro. Area  
 PROCTOR Certification Testing  
 Penn Marc Centre  
 6401 Poplar Avenue, Suite 110  
 Memphis, TN 38119  
 (901) 767-1180  
 Hours: 9:00-4:30 (M, T); 9:00-3:00  
 (W, Th, F)  
 Delivery Stations: 4

Nashville Metro. Area  
 PROCTOR Certification Testing  
 One Lakeview Place  
 25 Century Blvd., Suite 604  
 Nashville, TN 37214  
 (615) 871-9972  
 Hours: 9:00-3:00 (M, W, F); 9:00-  
 4:30 (T, Th)  
 Delivery Stations: 6

**Texas**

Dallas Metro. Area  
 PROCTOR Certification Testing  
 Wellington Centre  
 14643 Dallas Parkway  
 Suite 640  
 Dallas, TX 75240  
 (214) 385-1181  
 Hours: 8:30-4:30 (M-F)  
 Delivery Stations: 20

Houston Metro. Area  
 PROCTOR Certification Testing  
 Park National Bank Building  
 10333 Richmond Avenue  
 Suite 680  
 Houston, TX 77042  
 (713) 952-5005  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 14



San Antonio Metro. Area  
 PROCTOR Certification Testing  
 40 Northeast Loop 410  
 Suite 431  
 San Antonio, TX 78216  
 (210) 349-5900  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 8

**Utah**

Salt Lake City Metro. Area  
 PROCTOR Certification Testing  
 560 East 200 South  
 Suite 360  
 Salt Lake City, UT 84102  
 (801) 537-1615  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 9

**Virginia**

No. Virginia Metro. Area  
 PROCTOR Certification Testing  
 Tycon Towers I Building  
 8000 Towers Crescent Drive  
 Suite 280  
 Vienna, VA 22182  
 (703) 821-3695  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 12

Richmond Metro. Area  
 PROCTOR Certification Testing  
 Culpeper Building  
 1606 Santa Rosa Road  
 Suite 113  
 Richmond, VA 23288  
 (804) 285-8706  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 7

**Washington**

Seattle Metro. Area  
 PROCTOR Certification Testing  
 11400 Southeast 8th Street  
 Suite 270  
 Bellevue, WA 98004  
 (206) 451-9883  
 Hours: 9:00-4:30 (M-F)  
 Delivery Stations: 11

**Wisconsin**

Milwaukee Metro. Area  
 PROCTOR Certification Testing  
 10400 West North Avenue  
 Suite 340  
 Milwaukee, WI 53226  
 (414) 774-1378  
 Hours: 8:30-4:00 (M-F)  
 Delivery Stations: 12

**PROCTOR PRO 1995 Delivery Schedule For Continuing Education Regulatory Element Computer-Based Training**

To schedule an appointment with PROCTOR PRO, please phone (800) 999-6647 and select option 1 at the voice prompt.

<b>Dates</b>	<b>Location/Address</b>
Oct. 11-13	Las Vegas, NV University of Nevada Las Vegas UNLV Business Center
Oct. 18-20	Sioux Falls, SD University of Sioux Falls Salsbury Student Union-Rose Room 1101 West 22nd Street
Oct. 25-27	Amarillo, TX Amarillo College Russell Gym, Room # 131
Nov. 8-10	Boise, ID Holiday Inn-Airport 3300 Vista Ave.
Nov. 29-Dec. 1	Anchorage, AK 2550 Denali 16th Floor Conference Room
Dec. 13-15	Spokane, WA Eastern Washington University Spokane Center 705 West First Street

As of this printing, dates and location are pending in Honolulu.

# NASD NOTICE TO MEMBERS 95-87

## Confidentiality Clauses In Settlement Agreements

### Suggested Routing

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

### Executive Summary

Members must review and correct promptly, as needed, their settlement agreements with customers or other persons that contain confidentiality clauses that prohibit or discourage the customer or other person from disclosing the settlement terms (and the underlying facts of the dispute) to the NASD® or any other securities regulator upon inquiry. Such confidentiality clauses violate NASD Rules of Fair Practice.

### Background

Recent NASD examinations and a special survey have revealed that a number of member firms continue to use broad confidentiality clauses in settlement agreements with customers and other parties that impede NASD investigations. Such settlement agreements violate Article III, Section 1 of the NASD Rules of Fair Practice as conduct inconsistent with just and equitable principles of trade.

Of the member firms surveyed during June to August 1995, 61 percent were using settlement agreements with customers that contained confidentiality or nondisclosure provisions that prohibited the customer from disclosing the settlement terms (and the underlying facts of the dispute) to the NASD or any other securities regulator upon inquiry. Some clauses required a court order, subpoena, or similar condition before permitting disclosure to a securities regulator.

These prohibitively broad nondisclosure clauses continue to be used by certain members despite past NASD notices warning members to stop using them. *Notice to Members 86-36* (May 1986) and the *NASD Regulatory & Compliance Alert* (June 1994 and July 1995) were among the warning notices provided. For example, *Notice to Members 86-36* cautioned

members "against executing agreements that may prevent any customer or other party from providing information, documents, or testimony, or otherwise cooperating with the NASD in its investigations of alleged violations."

Other than these broad confidentiality clauses, settlement agreements used by firms in settling disputes with their customers or other persons are not usually a regulatory concern. Indeed, settlement agreements may require confidentiality as to persons other than securities regulators. However, a violative confidentiality clause is one that prohibits or inhibits the customer or other person from disclosing the settlement terms (and the underlying facts of the dispute), upon inquiry, to a securities regulator, such as the NASD, or imposes conditions on such disclosure.

### Acceptable Confidentiality Clauses

Whenever the settlement agreement references confidentiality, the confidentiality clause should be written to expressly authorize the customer or other person to respond, without restriction or condition, to any inquiry about the settlement or its underlying facts and circumstances by any securities regulator, including the NASD. In a recent case, a District Business Conduct Committee found violative settlement agreements that required the customers to notify the firm, reasonably in advance, before disclosing any information to the NASD concerning their complaints against the firm.

We are suggesting appropriate language below that members may use to correct past confidentiality clauses and to ensure that new or future agreements comply with NASD rules.

**Suggested Notice To Customers To Correct Past Settlement Agreements**

“You are hereby notified that the Settlement Agreement you previously executed with this firm should not be construed to prohibit or restrict you (or your attorney) from responding to any inquiry about the settlement or its underlying facts and circumstances by the Securities and Exchange Commission (SEC), the National Association of Securities Dealers, Inc. (NASD) or any other self-regulatory organization.”

**Suggested Language For Future Settlement Agreements**

“Any non-disclosure provision in this agreement does not prohibit or restrict you (or your attorney) from

responding to any inquiry about this settlement or its underlying facts and circumstances by the Securities and Exchange Commission (SEC), the National Association of Securities Dealers, Inc. (NASD) or any other self-regulatory organization.”

**Conclusion**

An attempt to impede an NASD investigation is a serious violation of just and equitable principles of trade [see William Edward Daniel, Sec. Exch. Act Rel. No. 28408 (September 6, 1990)]. Use of such violative confidentiality clauses will likely result in NASD disciplinary proceedings, especially in view of past warnings to NASD members about noncompliance in this important area. The New York Stock Exchange

recently fined a member \$25,000 for executing improper settlement agreements that required “prior notification, consent or formal process before customers could disclose information relating to their complaints, which thus restricted or limited the customers’ ability to cooperate with an Exchange investigation.”

Member firms should immediately review their settlement agreements and make such changes in the confidentiality clauses as may be necessary to ensure that they comply with Article III, Section 1 of the NASD Rules of Fair Practice as discussed above.

If you have questions about appropriate language for the confidentiality clause, please contact your local NASD District Office.

# NASD NOTICE TO MEMBERS 95-88

Treasury Delays  
Effective Date Of Wire  
Transfer Recordkeeping  
Requirements Until  
April 1, 1996; Proposes  
Clarifying Amendments

## Suggested Routing

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

## Executive Summary

The Department of the Treasury (Treasury) recently announced a delay in the effective date for certain amendments to the Bank Secrecy Act (BSA) that were scheduled for January 1, 1996. The amendments, which require broker/dealers to comply with additional recordkeeping requirements for funds transfers and transmittals, now are effective April 1, 1996. The changes are delayed while Treasury seeks comment on proposed amendments that clarify definitions regarding the parties to an international funds transfer.

## 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. In 1992, the Annunzio-Wylie Anti-Money Laundering Act (the 1992 Amendment) amended the BSA to give Treasury and the Board of Governors of the Federal Reserve System (the Fed.) joint authority to prescribe regulations for maintaining records of domestic and international transfers of funds.

In April 1993, Treasury and the Fed. published a joint proposal with amendments to the BSA for wire transfers, which was adopted in final form in early 1995 (the Joint Rule). The Joint Rule requires additional recordkeeping related to certain funds transfers and transmittals by broker/dealers and other financial institutions. At the same time, Treasury adopted a companion rule (the Travel Rule) that requires financial institutions to include in transmittal orders certain information that must be retained under the new recordkeeping requirements. Members may refer to *Notice to Members 95-69*

(August 1995) for a more detailed discussion of these rules.

Originally scheduled to become effective on January 1, 1996, these changes prompted industry concerns because the parties to an international funds transfer were defined differently in the BSA than they are in the Uniform Commercial Code Article 4A (UCC 4A). In response, Treasury and the Fed. determined to delay the effective date of these changes until April 1, 1996, and proposed amendments that clarify the roles of the parties to an international funds transfer.

## Proposed Amendments

To clarify the requirements, Treasury and the Fed. are proposing changes to the definitions in the Joint Rule that make the roles of the parties to an international funds transfer or transmittal of funds consistent under the BSA and under the UCC 4A. Specifically, the amendments expand the definitions of beneficiary's bank, originator's bank, payment order, receiving bank, receiving financial institution, recipient's financial institution, transmittal order, transmittor, and transmittor's financial institution to include both domestic and foreign institutions. The changes also clarify that only financial institution offices located within the United States are subject to the Joint Rule's requirements. In addition, Treasury and the Fed. are revising Sections 103.33(e)(6) and (f)(6) of the BSA to delete the word "domestic" in certain places. These changes do not effect the scope of the exceptions in these sections.

Finally, Treasury is proposing changes to the Travel Rule that reflect the amended definitions in the Joint Rule. The proposed amendments to the Travel Rule also incorporate the exceptions contained in the Joint Rule.

Members may refer to the August 24, 1995, *Federal Register* to review the proposed amendments in their entirety.

Questions concerning this Notice may be directed to Susan Lang, NASD Compliance Department, at (202) 728-6969.

# NASD NOTICE TO MEMBERS 95-89

**Broker/Dealer And  
Agent Renewals  
For 1996; Dues  
Must Be Paid By  
December 15, 1995**

## Suggested Routing

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

## Executive Summary

The 1995-96 NASD® broker/dealer and agent registration renewal cycle begins in early November. This program simplifies the registration renewal process through the payment of one invoiced amount that includes fees for NASD personnel assessments, NASD branch offices, New York Stock Exchange (NYSE), American Stock Exchange (AMEX), Chicago Board Options Exchange (CBOE), Pacific Stock Exchange (PSE), and Philadelphia Stock Exchange (PHLX) maintenance fees. The invoice also includes state agent renewal fees and state broker/dealer renewal fees.

Members should read this Notice and the instruction materials to be sent with the November invoice package to ensure continued eligibility to do business in their respective states effective January 1, 1996.

## Initial Renewal Invoices

In early November, initial renewal invoices will be mailed to all member firms. The invoices will include fees for NASD personnel assessments, NASD branch-office fees, NYSE, AMEX, CBOE, PSE, and PHLX maintenance fees, state agent renewal fees, and state broker/dealer renewal fees. The NASD must receive full payment of the November invoice **no later than December 15, 1995.**

NASD personnel assessments for 1996 will be based on the number of registered personnel with an approved NASD license as of December 31, 1995. That personnel assessment is currently \$10 per person. NASD branch office assessments is \$75 per branch based on the number of active branches as of December 31, 1995.

Agent renewal fees for NYSE, AMEX, CBOE, PSE, PHLX, and

state affiliations are listed in a matrix enclosed with each invoice. The matrix includes a list of broker/dealer renewal fees for states that participate in the broker/dealer renewal program. NYSE, AMEX, CBOE, PSE, and PHLX maintenance fees—collected by the NASD for firms that are registered with those exchanges as well as the NASD—are based on the number of NYSE-, AMEX-, CBOE-, PSE-, and PHLX-registered personnel employed by the member.

If a state does not participate in this year's broker/dealer renewal program, members registered in that state must contact the state directly to ensure compliance with renewal requirements. Some participating states may require steps beyond the payment of renewal fees to complete the broker/dealer renewal process. Members should contact states directly for further information on state renewal requirements.

Payment of the initial invoice should be by check, made payable to the National Association of Securities Dealers, Inc., or by bank wire transfer. The check should be drawn on the member firm's account, with the firm's Central Registration Depository (CRD<sup>SM</sup>) number on the check. Submit the check along with the top portion of the invoice and mail in the return envelope provided. To ensure prompt processing, do not include the renewal invoice payment with other forms or fee submissions. Members should be advised that failure to return payment to the NASD by the December 15, 1995, deadline could result in an immediate ineligibility to do business in their respective states effective January 1, 1996.

## Filing Forms U-5

Members may avoid paying unnecessary renewal fees by filing Forms U-5 for agents terminating in one or more

jurisdiction affiliations. Due to the positive feedback received by the NASD by its member firms that used post-dated Forms U-5 for renewals, the NASD will again accept post-dated agent termination notices on Forms U-5. From November 1 to December 15, the NASD will accept and process Forms U-5 (partial and full terminations) with **post-dated dates of termination**. Under this procedure, if the Form U-5 indicates a termination date of December 31, 1995, an agent may continue doing business in a jurisdiction until the end of the calendar year without being assessed renewal fees for that jurisdiction. Please ensure that Forms U-5 are filed by the renewal deadline date of December 15, 1995. Also, **post-dated Forms U-5 cannot be processed if the date of termination is after December 31, 1995.**

Members should exercise care when submitting post-dated Forms U-5. The NASD will process these forms as they are received, but cannot withdraw a post-dated termination once it is processed. Once an agent has been terminated, a member must file a new Form U-4 **after** the termination date indicated on the Form U-5.

The NASD encourages members having access to the Firm Access Query System (FAQS) to electronically file all Forms U-5 and Page 1s of Form U-4. FAQS offers several advantages to firms in this regard, including the ability to **immediately** process terminations, ensure in-house control over agent registrations, and reduce normal and express mailing costs as well as long-distance telephone charges. FAQS also allows members to quickly and efficiently handle the large filing volumes that typically occur at this time every year. Because of that, the NASD will provide an additional service to FAQS users by expanding the on-line user hours for November and December 1995. The system will be

operational from 7 a.m. to 11 p.m., Eastern Time (ET), Monday through Friday, and from 9 a.m. to 5 p.m., ET, on Saturday.

### Filing Forms BDW

The CRD Phase II allows firms requesting terminations (full or state only) to file their Forms BDW with the CRD to avoid the assessment of renewal fees in those jurisdictions that are designated on the Form BDW, **provided that the jurisdiction is a CRD Phase II participant**. Currently, there are six jurisdictions that are not participating in Phase II:

- Michigan;
- Puerto Rico;
- American Stock Exchange;
- Chicago Board Options Exchange;
- New York Stock Exchange; and
- Pacific Stock Exchange.

Firms requesting termination in any of the above-listed jurisdictions must submit a Form BDW directly to the jurisdiction as well as to the CRD.

The deadline for receipt of Forms BDW by the CRD for firms desiring to terminate an affiliation before year end 1995 is December 15, 1995. This same date applies to the filing of Forms BDW with the jurisdictions that are not participating in Phase II. Post-dated Forms BDW filed with the CRD **will be** accepted and processed in the same manner as post-dated Forms U-5.

### Removing Open Registrations

For the ninth year, the initial invoice package will include a roster of firm agents whose NASD registration is

terminated or purged due to a deficient condition for more than 180 days, **but** who have an approved registration with a state. This roster helps reconcile personnel registrations before year end. Firms may terminate obsolete state registrations through the submission of Forms U-5 or reinstate the NASD licenses through the filing of Page 1s of Forms U-4. No roster will be included if a firm does not have agents in this category.

### Final Adjusted Invoices

On January 15, 1996, the NASD will mail final adjusted invoices to its members. These invoices will reflect the final status of firm and agent registrations as of December 31, 1995. Any adjustments in fees owed as a result of registration terminations or approvals subsequent to the initial invoice mailing will be made in this final reconciled invoice. If a member has more agents and/or branch offices registered at year end than it did on the November invoice date, additional fees will be assessed. If a member has fewer agents and/or branch offices registered at year end than it did in November, a credit/refund will be issued.

Included with this adjusted invoice will be the member renewal rosters, which will list all renewed personnel with the NASD, NYSE, AMEX, CBOE, PSE, PHLX, and each state. Persons whose registrations are approved in any of these jurisdictions during November and December will be on this roster, while registrations that are pending approval or are deficient at year end **will not** be in the renewal process. Firms will also receive an NASD branch-office roster that lists all branches for which they have been assessed.

This year's final invoice package will also include a breakdown of fees by

billing code for firms that use billing codes in the registration process. This breakdown will aid firms in their internal research and allocation of fees.

Firms then will have about two months in which to reconcile any discrepancies on the rosters. All jurisdictions should be contacted directly

in writing. Specific information and instructions concerning the final adjusted invoice package will appear in the January 1996 issue of the *Notices to Members*, as well as on the inside cover of the renewal roster. Firms may also refer to their renewal edition of *Membership On Your Side* for details concerning the renewal process.

Questions concerning this Notice may be directed to your firm's assigned Quality & Service Team or the NASD Member Services Phone Center at (301) 590-6500.



# NASD NOTICE TO MEMBERS 95-90

The Nasdaq Stock Market<sup>SM</sup> and the securities exchanges will be closed on Thursday, November 23, in observance of Thanksgiving 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*
Nov. 17	Nov. 22	Nov. 27
20	24	28
21	27	29
22	28	30
23	Markets Closed	—
24	29	Dec. 1

## Thanksgiving 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

\*Pursuant to Sections 220.8(b)(1) and (4) of Reg. 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 95-91

## SOES Tier Levels Set To Change November 13, 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

Effective November 13, 1995, tier sizes for 900 Nasdaq National Market<sup>®</sup> securities will be revised in accordance with paragraph 2451a7 of the Rules of Practice and Procedure for the Small Order Execution System (SOES<sup>SM</sup>).

Under the SOES Rules, the maximum SOES order size for a Nasdaq National Market security is 1,000, 500, or 200 shares depending upon the trading characteristics of the security. The maximum SOES order size for a Nasdaq National Market security also corresponds to the minimum quote size requirement for Nasdaq market makers in that security (Schedule D to the NASD By-Laws, paragraph 1819, Part V, Sec. 2a). The old Nasdaq Workstation<sup>®</sup> service indicates the minimum quote size requirement for each Nasdaq National Market security in its bid/offer quotation display. The indicator "SM10," "SM5," or "SM2" is displayed to the left of the security name, corresponding to a minimum-size display of 1,000, 500, or 200 shares, respectively.

The criteria for establishing tier sizes are:

- A 1,000-share tier size was applied to Nasdaq National Market securities that had an average daily nonblock volume of 3,000 shares or more a day, a bid price that was less than or equal to \$100, and three or more market makers.

- A 500-share tier size was applied to Nasdaq National Market securities that had an average daily nonblock volume of 1,000 shares or more a day, a bid price that was less than or equal to \$150, and two or more market makers.

- A 200-share tier size was applied to Nasdaq National Market securities that had an average daily nonblock volume of less than 1,000 shares a

day, a bid price that was less than or equal to \$250, and less than two market makers.

According to SOES Rules, Nasdaq<sup>®</sup> periodically reviews the SOES tier size applicable to each Nasdaq National Market security to determine if the trading characteristics of the issue have changed so as to warrant a tier-size adjustment. Such a review was conducted as of March 31, 1995, using the aforementioned formula.<sup>1</sup> Subsequently, the NASD Board approved implementation of the SOES tier size changes called for by this review with two exceptions:

- An issue would not be permitted to move more than one level. For example, if an issue was previously categorized in the 1,000-share tier, it would not be permitted to move to the 200-share tier, even if the formula calculated that such a move was warranted. The issue could move only one level to the 500-share tier as a result of any single review. In adopting this policy, the NASD is attempting to maintain adequate public investor access to the market for issues in which the tier-size level decreased and to help ensure the ongoing participation of market makers in SOES for issues in which the tier-size level increased.

- For 20 securities priced below \$1, where the reranking called for a reduction in tier size, the NASD Board did not approve a decline in tier size.

Following is a list of the Nasdaq National Market issues that will require a SOES tier-level change on November 13, 1995. For more information, please contact Nasdaq Market Operations at (203) 378-0284.

<sup>1</sup> 33 of the Nasdaq National Market securities subjected to the SOES tier-size reranking procedures on March 31, 1995, are no longer Nasdaq National Market securities.

## Nasdaq National Market SOES Tier-Size Changes

All Issues In Alphabetical Order By Security Name  
(Effective November 13, 1995)

Symbol	Company Name	Old Tier Level	New Tier Level	Symbol	Company Name	Old Tier Level	New Tier Level
<b>A</b>				ALNK	AMERILINK CP	200	500
ABCB	A B C BANCORP	200	500	AMES	AMES DEPT STORES INC	200	500
ABCR	A B C RAIL PROD CP	500	1000	AMESW	AMES DEPT STRES WT C	200	500
ACMTA	A C M A T CP CL A	200	500	AMPI	AMPLICON INC	500	200
ARIS	A R I NETWORK SVCS	1000	500	SLOT	ANCHOR GAMING	500	1000
AVEC	A V E C O R CARDIO	500	1000	ANDR	ANDERSEN GROUP INC	500	200
ARONA	AARON RENTS INC CL-A	1000	500	ADYNF	ANDYNE COMPUTING LTD	200	500
ASHE	AASCHE TRANSPORT SVC	200	500	ANTC	ANTEC CORPORATION	500	1000
ABTE	ABLE TELECOM HLDG CP	200	500	APHT	APHTON CORP	500	1000
ABRX	ABR INFORMATION SVCS	200	500	APGG	APOGEE INC	200	500
ASTF	ACCUSTAFF INC	500	1000	APOL	APOLLO GROUP INC A	200	500
ATVI	ACTIVISION INC	200	500	ADAX	APPLIED DIGITAL ACCE	500	1000
AFLX	ADFLEX SOLUTIONS INC	200	500	AVTC	APPLIED VOICE TECH	200	500
ADTN	ADTRAN INC	200	500	APLX	APPLIX INC	200	500
CHGNF	AES CHINA GENER CL A	500	1000	AQUX	AQUAGENIX INC	500	1000
ACSA	AFFILIATED COMP A	200	500	AQUXW	AQUAGENIX INC WTS	500	1000
AGNU	AGRI-NUTRITION GRP	500	1000	AKSEF	ARAKIS ENERGY CP	200	500
AEIC	AIR EXPRESS INTL CP	200	500	ARAM	ARAMED INC	1000	500
ALAB	ALABAMA NATL BNCP	200	500	AFAS	ARDEN IND PRODS INC	200	500
ALDNF	ALADDIN KNOW SYS LTD	500	1000	ARLCF	AREL COMMU & SFT ORD	200	500
ATNG	ALATENN RESOURCES	1000	500	ARLWF	AREL COMMUN WTS A	200	500
ALCO	ALICO INC	500	1000	ARIA	ARIAD PHARM INC	500	1000
ALLG	ALLEGIANCE BANC CP	200	500	ARIAW	ARIAD PHARM INC WTS	500	1000
ALSC	ALLIANCE SEMICON CP	500	1000	ARTL	ARISTOTLE CP	1000	500
ABCI	ALLIED BANK CAPITAL	500	1000	ARKR	ARK RESTAURANTS CP	500	1000
HAUL	ALLIED HOLDINGS INC	500	1000	ABFSP	ARKANSAS BEST CV PFD	1000	500
ALFC	ALLIED LIFE FINL CP	500	1000	ARTW	ART S WAY MFG CO INC	500	200
ALMIW	ALPHA MICROSYS WTS	500	1000	ASND	ASCEND COMMUN INC	500	1000
ALRC	ALTERNATIVE RES CP	200	500	AZPN	ASPEN TECHNOLOGY INC	200	500
AMBC	AMER BNCP OHIO	200	500	AGRPA	ASSOCIATED GRP INC A	200	500
AMBJ	AMER CITY BUS JOURNL	500	1000	AGRPB	ASSOCIATED GRP INC B	200	500
AMCE	AMER CLAIMS EVALUAT	1000	500	ASTR	ASTROSYSTEMS INC	1000	500
ACPI	AMER CONSUMER PROD	500	200	ASTI	ASTRUM INTL CP	200	500
AEOS	AMER EAGLE OUTFIT	200	500	ATSW	ATRIA SOFTWARE INC	500	1000
AFIL	AMER FILTRONA CP	200	500	ACLV	AUTOCLAVE ENGINEERS	500	1000
HSTR	AMER HOMESTAR CP	500	1000	AVRT	AVERT INC	200	500
AIFC	AMER INDEMNITY FIN	1000	500	AVRTW	AVERT INC WTS	200	500
ALHCP	AMER LIFE HLDG PFD	500	1000				
SKYC	AMER MOBILE SATEL CP	500	1000	<b>B</b>			
AMPC	AMER PUBLISHING CL A	500	1000	BCTI	B C T INTL INC	200	500
SNIFF	AMER SENSORS INC	200	500	BFEN	B F ENTERPRISES INC	500	200
AMGD	AMER VANGUARD CP	500	200	BFSI	B F S BANKORP INC	500	200
AMOO	AMERCO	200	500	BKCS	B K C SEMICONDUCTORS	500	200
ATEL	AMERICAN TELECASTING	500	1000				

Symbol	Company Name	Old Tier Level	New Tier Level	Symbol	Company Name	Old Tier Level	New Tier Level
BTGI	B T G INC	200	500	RARE	BUGABOO CREEK STEAK	500	1000
BTBTY	B T SHIP SPONSOR ADR	1000	500	BOBJY	BUSINESS OBJ S A ADS	200	500
BUMM	B U M INTL INC	200	500				
BSST	BABY SUPERSTORE INC	500	1000				
PAPA	BACK BAY RESTAURANT	1000	500	<b>C</b>			
BPMI	BADGER PAPER MILLS	200	500	CBBI	C B BANCSHARES INC	500	200
BWINB	BALDWIN LYONS CL B	500	1000	CBTC	C B T CP	200	500
BGLV	BALLY'S GRAND INC	200	500	CBHI	C BREWER HOMES INC A	500	1000
BGLVW	BALLY'S GRAND INC WT	200	500	CDPT	C D P TECH INC	500	1000
BANF	BANCFIRST CP	1000	500	CFIB	C F I INDS INC	500	200
BMCCP	BANDO MCGLOC PFD A	500	200	CFWC	C F W COMMUN CO	200	500
BARY	BARRY'S JEWELERS INC	200	500	FLYAF	C H C HELICO CL A	1000	500
BPILF	BASIC PET INTL LTD	500	1000	CIMC	C I M C O INC	1000	500
BTIOF	BATTERY TECHS INC	200	500	CMGI	C M G INFO SVCS INC	500	1000
BRBC	BAY RIDGE BNCP INC	500	1000	CNBF	C N B FINANCIAL CP	500	200
BFSB	BEDFORD BCSHS INC	200	500	CNXS	C N S INC	200	500
BEBA	BEEBA S CREATIONS	1000	500	COSB	C S B FINL CORP	500	1000
BCMPY	BELL CABLEMEDIA ADR	500	1000	CUBE	C-CUBE MICROSYS INC	500	1000
BELW	BELLWETHER EXPL CO	500	1000	CLCI	CADIZ LAND CO INC	200	500
BNHNA	BENIHANA NATL CP A	200	500	CLNP	CALLON PETROLEUM CO	200	500
BFCX	BENSON FINANCIAL CP	200	500	HIFI	CAMBRIDGE SOUNDWORKS	500	1000
BGAS	BERKSHIRE GAS CO	200	500	CMSH	CAMERON ASHLEY INC	500	1000
BEST	BEST PRODS CO INC	200	500	CANXA	CANNON EXPRES INC A	1000	500
BETT	BETTIS CP	200	500	CANXB	CANNON EXPRESS INC B	500	200
BLSC	BIO LOGIC SYS CP	1000	500	BIKE	CANNONDALE CP	500	1000
BPLX	BIO-PLEXUS INC	500	1000	CNTBY	CANTAB PHARM PLC ADR	200	500
BCRX	BIOCRYST PHARM INC	500	1000	CABK	CAPITAL BANCORP	200	500
BDTC	BIODENTAL TECH CP	200	500	CAPS	CAPITAL SAV BNCP INC	200	500
BSSI	BIOSAFETY SYSTEMS	500	1000	CSWC	CAPITAL SOUTHWEST CP	500	200
BSEP	BIOSEPPA INC	500	1000	CARD	CARDINAL BSCHS INC	200	500
BINC	BIOSPHERICS INC	1000	500	CARH	CAREER HORIZONS INC	200	500
BLIS	BLISS LAUGHLIN INDS	200	500	CBNJ	CARNEGIE BANCORP	200	500
BLLE	BOLLE AMERICA INC	500	1000	CBNJW	CARNEGIE BANCORP WTS	200	500
BNSOF	BONSO ELEC INTL INC	200	500	CARV	CARVER FED SAV BK	200	500
BNSWF	BONSO ELECT INTL WTS	200	500	CSCC	CASCADE COMMUN CP	500	1000
BORAY	BORAL LTD ADS	500	200	CSNRW	CASINO RES WTS A	500	1000
BOSA	BOSTON ACOUSTICS INC	500	1000	CSNR	CASINO RESOURCE CP	500	1000
BPRXL	BRADLEY PHARM WTS D	200	500	CATS	CATALYST SEMICOND	500	1000
BPRXA	BRADLEY PHARMA A	200	500	CGMV	CEDAR GROUP INC	200	500
BPRXW	BRADLEY PHARMA WTS A	200	500	CLDN	CELADON GROUP INC	200	500
BPRXZ	BRADLEY PHARMA WTS B	200	500	CCIL	CELL COMM INTL INC	500	1000
BRCOA	BRADY W H CO CL A	1000	500	CLST	CELLSTAR CP	500	1000
BTSB	BRAINTREE SAV BK THE	1000	500	CSBC	CENTRAL & STHN HLD GA	500	200
BPTM	BRIDGEPORT MACH INC	500	1000	CETV	CENTRAL EURO CL A	500	1000
BRID	BRIDGFORD FOODS CP	500	1000	CNSP	CENTRAL SPRINKLER CP	500	1000
BNBC	BROAD NATL BNCP	200	500	CTFC	CENTRAL TRACTOR INC	200	500
BRKB	BROOKLYN BNCP INC	500	1000	CPLX	CERPLEX GROUP INC	500	1000
BKST	BROOKSTONE INC	500	1000	CHPP	CHAMPPS ENTERTAIN	500	1000
BEAN	BROTHERS GOURMET	500	1000	CHANF	CHANDLER INS CO LTD	1000	500
BUCK	BUCKHEAD AMERICA CP	200	500	CMFB	CHEMFAB CP	1000	500

Symbol	Company Name	Old Tier Level	New Tier Level	Symbol	Company Name	Old Tier Level	New Tier Level
CHERA	CHERRY CP CL A	500	1000	<b>D</b>			
CVAL	CHESTER VALLEY BNCP	500	200	DNFCW	D & N FIN CP WTS	1000	500
CINDF	CINAR FILMS VTG CL B	200	500	DEPCA	D E P CORP CL A	500	1000
CNMWW	CINCINNATI MICRO WTS	200	500	DPKG	D O L C O PKG CP	200	500
CINE	CINERGI PICTURES ENT	500	1000	DSPG	D S P GROUP INC	200	500
CINS	CIRCLE INCOME SHARES	1000	500	DTII	D T INDUSTRIES INC	500	1000
CAST	CITATION CP	500	1000	DAIG	DAIG CP	500	1000
CITI	CITICASTERS INC	200	500	DMCVA	DAIRY MART STORES A	1000	500
CICS	CITIZENS BKSH INC	200	500	DMCVB	DAIRY MART STORES B	1000	500
CLNTF	CLEARNET COMMUN CL A	500	1000	DKTH	DAKOTAH INC	500	1000
CTRIS	CLEVETRUST RLTY SBI	500	200	DAKT	DAKTRONICS INC	500	1000
CLDRP	CLIFFS DRILLING PFD	500	200	DARL	DARLING INTL INC	200	500
CNRG	COASTWIDE ENERGY SER	200	500	DARTA	DART GROUP CP CL A	500	1000
COBI	COBANCORP INC	500	200	DBCC	DATA BROADCASTING	500	1000
CCSC	COHERENT COMMUN SYS	200	500	DMCB	DATA MEASUREMENT CP	500	1000
COHU	COHU INC	200	500	DKEY	DATAKEY INC	1000	500
CTFG	COLE TAYLOR FIN GRP	200	500	DMAR	DATAMARINE INTL INC	500	1000
CMCAF	COMCAST UK CABLE	200	500	DWCHW	DATAWATCH CP WTS	500	1000
CMTTF	COMET SOFTWARE ORD	200	500	DAWK	DAW TECHNOLOGIES INC	200	500
CFBXZ	COMM FIRST DEP SH	500	200	DEEP	DEEPTECH INTL INC	200	500
CBKI	COMMUNITY BANKS INC	500	200	TRUX	DEFLECTA-SHIELD CP	500	1000
CBNH	COMMUNITY BANKSHARES	500	1000	DOCP	DELAWARE OTSEGO CP	500	200
CMSV	COMMUNITY SAV F A	200	500	DEVC	DEVCON INTL CP	1000	500
CMSB	COMNWLTH SAV BANK	500	1000	DLGC	DIALOGIC CORP	500	1000
CPTL	COMPUTER TELE CL 1	200	500	DMED	DIAMETRICS MED INC	200	500
CHGR	CONCORD HEALTH GRP	200	500	DCPI	DICK CLARK PROD INC	1000	500
CHGRW	CONCORD HLTH GRP WTS	200	500	DLNK	DIGITAL LINK CP	200	500
CPLNY	CONCORDIA PAPER ADS	500	1000	DGIC	DONEGAL GROUP INC	500	1000
COND	CONDOR SVCS INC	1000	500	DHULZ	DORCHESTER HUGO DR	1000	500
CONE	CONESTOGA BNCP INC	500	1000	DSYT	DORSEY TRAILERS INC	500	1000
CTWS	CONN WATER SVCS INC	500	1000	DYPR	DRYPERS CP	500	1000
COGI	CONSOLIDATED GRAPHIC	500	1000	DUCK	DUCKWALL-ALCO STORES	200	500
CPSS	CONSUMER PORTFOLIO	200	500	DRMD	DURAMED PHARM INC	200	500
CFIN	CONSUMERS FIN CP	500	200	DWYR	DWYER GROUP INC	200	500
CCCI	CONTL CHOICE CARE	200	500	DRCO	DYNAMICS RESEARCH CP	500	1000
CCCIW	CONTL CHOICE WTS	200	500				
CONT	CONTL WASTE INDS INC	200	500	<b>E</b>			
CEXCF	CONWEST EXPLOR CO LD	500	200	EBMA	E & B MARINE INC	200	500
COOP	COOPERATIVE BKSHS	500	1000	ECCS	E C C S INC	500	1000
CPRT	COPART INC	500	1000	EMLTF	E M C O LTD	200	500
CORC	CORCOM INC	500	1000	ERLY	E R L Y INDS INC	200	500
CEXP	CORP EXPRESS INC	200	500	ESSF	E S S E F CP	1000	500
COSCB	COSMETIC CENTER CL-B	500	1000	EBSI	EAGLE BANCSHARES	500	200
CNSK	COVENANT BK FOR SAV	200	500	EFCW	EAGLE FINANCE CP	200	500
CVTI	COVENANT TRANS INC A	500	1000	EGFC	EAGLE FINANCIAL CP	200	500
CRTV	CREATIVE TECH CP	200	500	EESI	EASTERN ENVIRONM SVC	1000	500
CGRO	CROP GROWERS CP	200	500	EATS	EATERIES INC	500	1000
CRWN	CROWN BOOKS CP	1000	500	EDMK	EDMARK CP	200	500
CYBX	CYBERONICS INC	1000	500	EDUC	EDUCATIONAL DEV CP	200	500

Symbol	Company Name	Old Tier Level	New Tier Level	Symbol	Company Name	Old Tier Level	New Tier Level
EMSI	EFFECTIVE MGMT SYS	500	1000	FCBK	FIRST CHARTER BANK	200	500
ELCN	ELCO INDS INC	500	1000	FCTR	FIRST CHARTER CP	500	200
EFCX	ELECTRIC FUEL CP	500	1000	FTCG	FIRST COLONIAL GP	1000	500
ELRC	ELECTRO RENT CP	500	1000	FCOMP	FIRST COMMERCE PFD	1000	500
ETCIA	ELECTRONIC TELECOM A	500	200	FFDP	FIRST FED BANCSHARES	1000	500
ELTN	ELTRON INTL INC	200	500	FFEC	FIRST FED EAU CLR	200	500
EMCR	EMCARE HOLDINGS INC	500	1000	FFFD	FIRST FED FT DODGE	200	500
EMMS	EMMIS BROADCASTING A	500	1000	FMAC	FIRST MERCH ACCEP CP	500	1000
ENCC	ENCORE COMPUTER CP	200	500	FRME	FIRST MERCHANTS CP	500	200
ERCC	ENERGY RESEARCH CP	200	500	CASH	FIRST MIDWST FIN INC	200	500
EWST	ENERGY WEST INC	500	200	FMOR	FIRST MTGE CP	500	200
EFBI	ENTERPRISE FED BNCP	200	500	FMSB	FIRST MUTUAL SAV BK	200	500
EPIC	EPIC DESIGN TECH INC	200	500	FNGB	FIRST NORTHERN SV BK	500	1000
ETRC	EQUITRAC CP	1000	500	FPBK	FIRST PATRIOT BKS	200	500
ECII	EQUITY CORP INTL	500	1000	SOPN	FIRST SAV BK MOORE	200	500
ENNS	EQUITY INNS INC	500	1000	SHEN	FIRST SHENANGO BNCP	1000	500
ERNS	ERNST HOME CENTER	200	500	FUBC	1ST UNITED BANCORP	500	1000
ESCA	ESCALADE INC	1000	500	FAME	FLAMEMASTER CP THE	500	200
ESMR	ESMOR CORRECT SVCS	500	1000	FNRI	FLORES & RUCKS INC	500	1000
EVGMP	EVERGRN MEDIA CP PFD	500	200	FLSC	FLORSHEIM SHOE CO	200	500
XLTCP	EXCEL TECH CONV PFD	1000	500	FLRO	FLUOROSCAN IMAG SYS	200	500
EXTR	EXSTAR FINANCIAL CP	1000	500	FLOW	FLUOROSCAN IMAG WTS	200	500
				FMXI	FOAMEX INTL INC	500	1000
				FLMK	FOILMARK INC	200	500
				FORE	FORE SYSTEMS INC	200	500
<b>F</b>				FSTM	FORSTMANN & CO	1000	500
FMBN	F & M BANCORP (MD)	200	500	FPAM	FPA MED MGMT INC	500	1000
FBTC	F B & T FINANCIAL CP	200	500	FRES	FRESH AMERICA CP	500	1000
FCBF	F C B FINANCIAL CP	500	1000	FRDM	FRIEDMANS INC CL A	500	1000
FHPCA	F H P INTL CP PFD A	500	1000	FFHH	FSF FINANCIAL CP	200	500
FACE	FACELIFTERS HOME SYS	200	500	FUSN	FUSION SYSTEMS CP	500	1000
FBARP	FAMILY BRGN CP PFD A	200	500				
FGCI	FAMILY GOLF CENTERS	500	1000	<b>G</b>			
FMCT	FARMERS & MECH BANK	500	1000	DRTK	G T S DURATEK INC	200	500
FTHR	FEATHERLITE MFG	200	500	GZEA	G Z A GEOENVIRONMENT	1000	500
FOBC	FED ONE BANCORP INC	200	500	GAMBY	GAMBRO A B B ADR	500	1000
FILAF	FEDERAL INDS LTD A	1000	500	GWLD	GAMING WORLD INTL	200	500
FSCR	FEDERAL SCREW WORKS	200	500	GWLDW	GAMING WORLD INTL WT	200	500
FLCO	FELCOR SUITE HOTELS	200	500	GDMI	GARDNER DENVER MACH	200	500
FFFC	FFVA FINANCIAL CORP	200	500	GEER	GEERLINGS & WADE INC	500	1000
FBST	FIBERSTARS INC	500	1000	GP	GEN PARAMETRICS CP	1000	500
FBCI	FIDELITY BANCORP DEL	200	500	GCOR	GENCOR INDS INC	1000	500
FSBI	FIDELITY BANCORP INC	1000	500	GMED	GENEMEDICINE INC	500	1000
FFFL	FIDELITY FED SAV(FL)	500	1000	GNSAW	GENSIA INC WTS	200	500
FIBC	FINANCIAL BNC INC	200	500	GENZL	GENZYME CP-TISSUE RP	500	1000
FFSI	FINANCING FOR SCI	500	1000	BOTX	GEORGIA BONDED FIBER	500	200
FIRE	FINL INST INS GP LTD	200	500	GWRX	GEOWORKS	500	1000
ALRT	FIRST ALERT INC	200	500	GCHI	GIANT CEMENT HLDG	200	500
FAHC	FIRST AMER HEALTH	200	500	ROCK	GIBRALTAR STEEL CP	500	1000
FBSI	FIRST BANCSHARES INC	1000	500				
FBNKP	FIRST BKS CUM PFD C	500	200				

Symbol	Company Name	Old Tier Level	New Tier Level	Symbol	Company Name	Old Tier Level	New Tier Level
GIGA	GIGA TRONICS INC	500	1000	HOLO	HOLOPAK TECHS INC	1000	500
GMKT	GLOBAL MKT INFO INC	500	1000	HLPH	HOLOPHANE CP	500	1000
GMKTW	GLOBAL MKT INFO WTS	500	1000	HFMD	HOME FED CP	1000	500
GVIL	GLOBAL VILLAGE COMMU	500	1000	HPBC	HOME PORT BNCP INC	1000	500
GLFE	GOLF ENTERPRISES INC	500	1000	HTPI	HOME THEATER PROD	200	500
GNCNF	GORAN CAPITAL INC	200	500	HMCI	HOMECORP INC	500	200
GOVTY	GOVETT LTD ADR	200	500	HZWV	HORIZON BNCP INC	500	200
GPPV	GRAFF-PAY-PER-VIEW	500	1000	HOSP	HOSPOSABLE PROD INC	500	200
GRNTP	GRANT GEOPHYS PFD	1000	500	HUGO	HUGOTON ENERGY CP	200	500
GCBK	GREAT COUNTRY BANK	1000	500	HTCC	HUNGARIAN TELEPHONE	200	500
GTFN	GREAT FINANCIAL CP	200	500				
GLUX	GREAT LAKES AVIATION	500	1000				
GWALY	GREAT WALL ADR	1000	500	<b>I</b>			
STON	GREENSTONE INDS INC	200	500	ISGTF	I S G TECH INC	500	1000
STONW	GREENSTONE INDS WTS	200	500	IVFAP	I V F AMER INC PFD	1000	500
GSOF	GROUP I SOFTWARE INC	500	200	IVIP	I V I PUBLISHING INC	500	1000
GLFD	GUILFORD PHARM INC	500	1000	JEWLF	I W I HOLDING LTD	200	500
GMRK	GULFMARK INTL INC	1000	500	IBSF	IBS FINANCIAL CORP	200	500
				IDMCW	IDM ENVIRON WTS A	200	500
				IDMC	IDM ENVIRONMENTAL CP	200	500
<b>H</b>				IGEN	IGEN INC	500	1000
HFFC	H F FINANCIAL CP	1000	500	IMAXF	IMAX CORP	500	1000
HMGC	H M G WORLDWIDE CP	200	500	INHO	INDEPENDENCE HLDG CO	1000	500
HMNF	H M N FINANCIAL INC	500	1000	IFSL	INDIANA FED CP	1000	500
HDVS	H. D. VEST INC	1000	500	INDGF	INDIGO N.V.	500	1000
NOSH	HAIN FOOD GROUP INC	500	1000	ISCX	INDUSTRIAL SCI CORP	1000	500
HALL	HALLMARK CAP CP	200	500	ITCC	INDUSTRIAL TRAINING	500	1000
HAPY	HAPPINESS EXPRESS	200	500	IREG	INFOR RES ENGINEER	500	1000
HRBF	HARBOR FED BNCP INC	500	1000	INHL	INHALE THERAP SYS	200	500
HARB	HARBOR FED SAV BK	500	1000	NKPR	INNKEEPERS USA TRUST	200	500
HARC	HARCOR ENERGY INC	200	500	IGCA	INNOVATIVE GAMING CP	200	500
HNBC	HARLEYSVILLE NATL CP	200	500	IMMI	INPHYNET MED MGMT	500	1000
NHWK	HARRIS COMPUTER SYS	500	1000	IPEC	INTEGRATED PROCESS	200	500
HAVAB	HARVARD INDS CL B	500	1000	ITGR	INTEGRITY MUSIC A	500	1000
HRVY	HARVEY ENTERTAIN CO	200	500	ISLSW	INTELLIGENT SUR WT A	200	500
HSKL	HASKEL INTL INC CL A	200	500	ISLSL	INTELLIGENT SUR WT B	200	500
HTHR	HAWTHORNE FINANCIAL	1000	500	INTG	INTERGROUP CP THE	200	500
HPWR	HEALTH POWER INC	500	1000	IPICZ	INTERNEURON WTS B	1000	500
HOAM	HEALTHWISE OF AMER	500	1000	INTR	INTERSCIENCE COMP CP	500	1000
HART	HEARTLAND WIRELESS	200	500	INTRW	INTERSCIENCE COMP WT	200	500
HBCCA	HEFTEL BRDCSTG CP A	500	1000	IMPTY	INTGRATED MICRO ADS	200	500
HEIDF	HEIDEMIJ N.V.	200	500	POST	INTL POST LIMITED	200	500
HMSR	HEMASURE INC	500	1000	ITGI	INVESTMENT TECH GRP	500	1000
HFBS	HERITAGE FED BANCSH	200	500	IPCI	IPC INFO SYSTEMS INC	200	500
HILI	HILITE INDS INC	200	500	OREX	ISOLYSER CO INC	200	500
HIFS	HINGHAM INSTI SAVING	500	200	ILDCY	ISRAEL DEVEL LTD ADR	200	500
HNFC	HINSDALE FINL CP	1000	500	ITII	ITI TECHNOLOGIES INC	500	1000
HRSH	HIRSCH INTL CP CL A	500	1000				
HLGRF	HOLLINGER INC	1000	500				
HPRKZ	HOLLYWOOD PK DEP SHS	1000	500				

Symbol	Company Name	Old Tier Level	New Tier Level	Symbol	Company Name	Old Tier Level	New Tier Level
<b>J</b>				MHMY	M H MEYERSON & CO	500	1000
JGIN	J G INDUSTRIES INC	500	200	MKAU	M K GOLD CO	200	500
JPFS	J P FOODSERVICE INC	200	500	MKRL	M K RAIL CP	200	500
JCORW	JACOR COMMUN INC WTS	500	200	MLXR	M L X CORP	200	500
JANNF	JANNOCK LIMITED	500	200	MROC	M O N R O C INC	200	500
JEBC	JEFFERSON BNCP (LA)	200	500	MTIC	M T I TECH CORP	500	1000
JJSC	JEFFERSON SMURFIT CP	500	1000	MTLI	M T L INC	500	1000
JOSB	JOS A BANK CLOTHIERS	500	1000	MACD	MACDERMID INC	200	500
FEET	JUST FOR FEET INC	500	1000	MMRI	MACHEEZMO MOUSE REST	200	500
				MACR	MACROMEDIA INC	500	1000
				OSKY	MAHASKA INV CO	200	500
<b>K</b>				MKTAY	MAKITA CP SPONS ADR	1000	500
KBKC	K B K CAPITAL CP	500	1000	MANA	MANATRON INC	1000	500
KTHI	K TRON INTL INC	500	1000	MGAS	MARCUM NATURAL GAS	500	1000
KHLR	KAHLER REALTY CP	500	1000	MRSA	MARISA CHRISTINA INC	200	500
KYMDA	KENTUCKY MED INS A	1000	500	MFAC	MARKET FACTS INC	500	200
KIDD	KIDDIE PRODUCTS INC	200	500	MARSA	MARSH SUPERMARKETS A	1000	500
KLRT	KLEINERTS INC	200	500	MFCX	MARSHALLTOWN FIN CP	200	500
KNGT	KNIGHT TRANS INC	200	500	MATK	MARTEK BIOSCIENCE CP	500	1000
KRUG	KRUG INTL CP	1000	500	MRCF	MARTIN COLOR-FI INC	1000	500
KURZ	KURZWEIL APPLIED INT	200	500	MSDX	MASON-DIXON BCSHS	200	500
				MATW	MATTHEWS INTL CP A	200	500
				MTSN	MATTSON TECH INC	200	500
<b>L</b>				MAVK	MAVERICK TUBE CORP	200	500
LFSB	L F S BNCP INC	500	1000	MAXM	MAXIM GROUP INC	500	1000
LVMHY	L V M H MOET ADR	500	1000	MXWL	MAXWELL LABS INC	1000	500
LJPC	LA JOLLA PHARM CO	200	500	MAXS	MAXWELL SHOE CO CL A	200	500
LJPCW	LA JOLLA PHARM CO WT	200	500	MOXY	MCMORAN OIL & GAS CO	200	500
LCLD	LACLEDE STEEL CO	500	1000	MBRK	MEADOWBROOK REH CL-A	1000	500
BOOT	LACROSSE FOOTWEAR	200	500	MCTH	MEDCATH INC	500	1000
LVSF	LAKEVIEW FIN CP	500	1000	ARTS	MEDIA ARTS GROUP INC	200	500
LAND	LANDAIR SERVICES INC	500	1000	MMGT	MEDICAL MGMT INC	500	1000
LARK	LANDMARK BSCHS INC	200	500	MDCLW	MEDICALCONTL INC WTS	200	500
LACI	LATIN AMER CASINOS	1000	500	MDCL	MEDICALCONTROL INC	200	500
LFED	LEEDS FED SAV BANK	200	500	MSNS	MEDISENSE INC	200	500
LIBT	LIBERTY TECHS INC	500	1000	MEGT	MEGATEST CP	500	1000
LIFB	LIFE BANCORP INC	500	1000	MEGO	MEGO FINL CP	200	500
LGND	LIGAND PHARM INC B	200	500	MMTCY	MEMTEC LTD ADR NEW	200	500
LNTV	LIN TELEVISION CP	200	500	MBVT	MERCHANTS BANCSHARES	500	200
LNDL	LINDAL CEDAR HOMES	500	1000	MBIA	MERCHANTS BNCP IL	500	1000
LIQB	LIQUI BOX CP	500	1000	MERQ	MERCURY INTERACTIVE	500	1000
LOFSY	LONDON & OVERSEA ADR	200	500	MERX	MERIX CP	500	1000
LONDY	LONDON INTL PLC ADR	500	200	MFIN	METRO FINL CP	500	200
LORX	LORONIX INFO SYS INC	200	500	MTLG	METROLOGIC INSTR INC	500	1000
LEIX	LOWRANCE ELECTRONICS	1000	500	MNCO	MICHIGAN NATL CP	1000	500
LUFK	LUFKIN INDS INC	1000	500	MICM	MICOM COMMUN CP	500	1000
				MCRL	MICREL INC	200	500
				MICN	MICRION CP	200	500
<b>M</b>				MIFGY	MICRO FOCUS SPON ADR	1000	500
MFBC	M F B CORP	500	1000	MLIN	MICRO LINEAR CORP	200	500



Symbol	Company Name	Old Tier Level	New Tier Level	Symbol	Company Name	Old Tier Level	New Tier Level
MINT	MICRO-INTEGRATION CP	200	500	NPIX	NETWORK PERIPHERALS	500	1000
MPIX	MICROELCT PACKAGING	500	1000	NTII	NEUROBIO TECH INC	500	1000
MTEC	MICROTEC RES INC	200	500	NWCG	NEW WORLD COMMUN A	200	500
MCBS	MID CONT BC SHS INC	500	1000	NWPC	NEW WORLD POWER NEW	500	1000
MIDS	MID SOUTH INS CO	500	1000	NMSB	NEWMIL BANCORP	1000	500
MSEX	MIDDLESEX WATER CO	200	500	VISNZ	NEWVISION RED WTS	200	500
MIDI	MIDISOFT CORP	200	500	VISN	NEWVISION TECH INC	200	500
MTIK	MILLER BUILDNG SYS	1000	500	VISNW	NEWVISION TECH WTS	200	500
MILL	MILLER INDS INC	200	500	NXTR	NEXSTAR PHARM INC	500	1000
MFFC	MILTON FED FINL CP	500	1000	NDCOO	NOBLE DRILL CV PFD	200	500
MECC	MINN EDUCAT COMP CP	200	500	NRTI	NOONEY REALTY TRUST	500	200
MMAN	MINUTEMAN INTL INC	500	200	NORL	NORRELL CP	200	500
MISS	MISSISSIPPI CHEMICAL	500	1000	NBSI	NORTH BSCHS INC	200	500
MITY	MITY-LITE INC	200	500	NSCF	NORTHSTAR COMPUTER	200	500
MBLYA	MOBLEY ENVIRO SVCS A	1000	500	NWAC	NORTHWEST AIRLN CL A	500	1000
MODL	MODEL IMPERIAL INC	200	500	NWSB	NORTHWEST SAV BK	500	1000
MODT	MODTECH INC	1000	500	NWTL	NORTHWEST TELEPROD	1000	500
PSTA	MONTEREY PASTA CO	500	1000	NSSY	NORWALK SAV SOCIETY	200	500
MORP	MOORE PRODUCTS CO	200	500	NORWY	NORWEB PLC ADR	500	1000
MOTR	MOTOR CLUB OF AMER	500	1000	NPPI	NORWOOD PROM PRODS	500	1000
MPAA	MOTORCAR PARTS&ACCES	500	1000	NMTXW	NOVAMATRIX MED WTS A	200	500
MOVI	MOVIE GALLERY INC	500	1000	NMTXZ	NOVAMATRIX MED WTS B	200	500
MOFN	MOVIEFONE INC CL A	200	500	FERTP	NU WEST INDS PF A	500	200
LABL	MULTI COLOR CP	1000	500	NUCM	NUCLEAR METALS INC	1000	500
RDIOA	MULTI-MKT RADIO CL A	200	500	NUMR	NUMAR CP	500	1000
RDIOW	MULTI-MKT RADIO WT A	200	500	NYCO	NYCOR INC	1000	500
RDIOZ	MULTI-MKT RADIO WT B	200	500	NYCOA	NYCOR INC CL A	1000	500
				NYCOP	NYCOR INC PFD	500	200
<b>N</b>				<b>O</b>			
NBTB	N B T BANCORP INC	500	1000	OSBF	O S B FINANCIAL CP	500	200
AGVS	N D C AUTOM INC	500	1000	OHSC	OAK HILL SPORTSWEAR	1000	500
NNBR	N N BALL & ROLLER	500	1000	OETA	ODETICS INC CL A	200	500
NSAI	N S A INTL INC	1000	500	OETB	ODETICS INC CL B	200	500
NSCC	N S C CORPORATION	1000	500	OLGR	OILGEAR CO	200	500
NAGC	NATIONAL GAMING CP	200	500	OLHC	OLD LYME HOLDING CP	1000	500
POPS	NATL BEVERAGE CP	1000	500	ZEUS	OLYMPIC STEEL INC	500	1000
NCBE	NATL CITY BANCSHARES	500	200	OPPCF	OPTIMA PETROLEUM CP	500	1000
NCBM	NATL CITY BNCP	1000	500	ORRA	ORBIT SEMICON INC	200	500
NADX	NATL DENTEX CP	500	1000	ORTL	ORTEL CP	200	500
NIRTS	NATL INCOME RLT TRUS	1000	500	OCAI	ORTHODONTIC CENTERS	200	500
NAIG	NATL INSURANCE GP	1000	500	GOSHB	OSHKOSH B GOSH CL B	500	200
NSSX	NATL SANITARY SUPPLY	500	200	OFCP	OTTAWA FINANCIAL CP	200	500
NMSS	NATURAL MICROSYS CP	500	1000	OCOMA	OUTLET COMMUN CL-A	500	1000
NAVG	NAVIGATORS GP INC	1000	500	OWOS	OWOSSO CP	200	500
NEOG	NEOGEN CP	200	500				
NEOS	NEOSTAR RETAIL GROUP	500	1000				
NIIUF	NEOZYME II UTS	500	1000				
NETC	NETCOM ON-LINE COMMU	500	1000	<b>P</b>			
IMGXW	NETWORK IMAGING WTS	1000	500	PCSS	P C SVC SOURCE INC	500	1000

Symbol	Company Name	Old Tier Level	New Tier Level	Symbol	Company Name	Old Tier Level	New Tier Level
PDSF	P D S FINANCIAL CP	200	500	<b>Q</b>			
PICM	P I C O M I N S CO	200	500	QLGC	QLOGIC CP	200	500
PMRP	P M R CP	500	1000	QSYS	QUAD SYSTEMS CP	500	1000
PMTS	P M T SERVICES INC	200	500	QDIN	QUALITY DINING INC	500	1000
PRIA	P R I AUTOMATION INC	200	500	QSII	QUALITY SYSTEMS INC	500	1000
PCCI	PACIFIC CREST CAP	200	500	QDELW	QUIDEL CP WTS 2000	1000	500
PSUN	PACIFIC SUNWEAR CAL	500	1000	QUIP	QUIPP INC	200	500
PLLL	PARALLEL PET CP	200	500	QHGI	QUORUM HEALTH GP INC	200	500
PKWY	PARKWAY CO	200	500				
PRLX	PARLEX CP	500	1000	<b>R</b>			
PTEN	PATTERSON ENERGY INC	500	1000	RACO	RACOTEK INC	500	1000
PSON	PAUL-SON GAMING CP	500	1000	RADAF	RADICA GAMES LTD	200	500
PSAI	PEDIATRIC SVC AMER	200	500	RMPO	RAMAPO FINANCIAL CP	500	1000
PMFG	PEERLESS MFG CO	500	1000	RMTR	RAMTRON INTL CP	200	500
PTAC	PENN TREATY AMER CP	500	1000	RARB	RARITAN BANCORP INC	200	500
PVIR	PENN VIRGINIA CP	500	1000	REDI	REDDI BRAKE SUPPLY	200	500
PAGI	PENN-AMERICA GRP INC	1000	500	RDMN	REDMAN INDUSTRIES	500	1000
PBCTP	PEOPLES BK PFD (CT)	1000	500	REED	REEDS JEWELERS INC	500	200
PEBO	PEOPLES BNCP INC OH	200	500	RFTN	REFLECTONE INC	1000	500
PERM	PERMANENT BNCP INC	200	500	RELY	RELIANCE BNCP INC	500	1000
PMFI	PERPETUAL MIDWEST	200	500	RSFCP	REPUBLIC SEC PFD A	500	200
PTCCZ	PERSEPTIVE TEC II UT	200	500	RESR	RESEARCH INC	500	200
TPMI	PERSONNEL MGMT INC	200	500	RSND	RESOUND CORP	500	1000
PFWA	PET FOOD WAREHSE INC	500	1000	RCRE	RETIREMENT CARE ASSO	200	500
PETC	PETCO ANIMAL SUP INC	200	500	RPCLF	REVENUE PROP LTD	1000	500
PNTGF	PETROMET RES LTD	200	500	REXW	REXWORKS INC	1000	500
PHAM	PHAMIS INC	500	1000	RFMI	RF MONOLITHICS INC	200	500
PHARY	PHARMACIA AKTIA ADR	500	1000	RIDE	RIDE SNOWBOARD CO	200	500
PHOC	PHOTO CONTROL CP	1000	500	RIMG	RIMAGE CP	1000	500
PHYN	PHYSICIAN RELIANCE	500	1000	RFBC	RIVER FOREST BNCP	500	1000
PSSI	PHYSICIANS SALES&SVC	200	500	RSGI	RIVERSIDE GP INC	500	200
PIFI	PIEMONTE FOODS INC	500	200	RNRC	RIVERSIDE NATL BANK	200	500
PGDA	PIERCING PAGODA INC	200	500	RESC	ROANOKE ELEC STEEL	1000	500
PCLE	PINNACLE SYSTEMS INC	200	500	ROBN	ROBBINS AND MYERS	500	1000
PLEN	PLENUM PUBLISHING CP	500	1000	RCSBP	ROCHESTER COM PFD B	500	1000
POLK	POLK AUDIO INC	200	500	BREW	ROCK BOTTOM RESTR	500	1000
PRTV	POSITIVE RESPONSE TV	200	500	OTCM	ROYCE OTC MICRO-CAP	500	1000
PBKC	PREMIER BKSHS	500	200	RBCO	RYAN BECK CO INC	1000	500
PREN	PRICE ENTERPR INC	500	1000				
PSAB	PRIME BNCP INC	1000	500	<b>S</b>			
PRES	PRIME RESIDENTIAL	500	1000	SBSE	S B S ENGINEERING	200	500
PNBC	PRINCETON NATL BNCP	200	500	SFXBA	S F X BRDCST CL A	500	1000
PSCM	PRO SPORTS CARE MGMT	500	1000	SIHS	S I HANDLING SYS INC	1000	500
PRCT	PROCEPT INC	500	1000	SUGN	S U G E N INC	200	500
PSDI	PROJECT SOFTWRE & DV	500	1000	ABAG	SAFETY COMPONENTS	500	1000
PXXI	PROPHET 21 INC	500	1000	SCHR	SCHERER HEALTHCARE	500	1000
PROS	PROSPECT GROUP INC	500	200	STIZ	SCIENTIFIC TECH INC	1000	500
				SCGN	SCIGENICS INC CLLBLE	1000	500

Symbol	Company Name	Old Tier Level	New Tier Level	Symbol	Company Name	Old Tier Level	New Tier Level
SCOT	SCOTT AND STRINGFELL	200	500	SUBM	SUBMICRON SYSTEMS	200	500
SEWY	SEAWAY FOOD TOWN INC	500	200	SBCN	SUBURBAN BNCP	500	1000
SDTI	SECURITY DYNAMICS	200	500	SUMI	SUMITOMO BANK OF CA	1000	500
SEMCF	SEMI-TECH CP VTG A	1000	500	SBIT	SUMMIT BCSHS INC TX	200	500
SENE	SENECA FOODS CP	200	500	SUBI	SUN BANCORP INC	500	200
SEVN	SEVENSON ENVIRONMENT	1000	500	SIHLF	SUN INTL HOTELS A	1000	500
SEVL	7TH LEVEL INC	500	1000	SRBC	SUNRISE BNCP CALIF	1000	500
SSBC	SHELTON BNCP INC	200	500	SILVW	SUNSHINE MINING WTS	200	500
SHVA	SHIVA CP	200	500	SCON	SUPERCONDUCTOR TECHS	500	1000
SMFC	SHO-ME FINANCIAL CP	500	1000	SWSH	SWISHER INTL INC	1000	500
SLFC	SHORELINE FIN CP	500	200	SYSF	SYSTEMSOFT CP	200	500
SHFL	SHUFFLE MASTER INC		1000				
SIGA	SIGMA CIRCUITS INC	200	500				
SGMA	SIGMATRON INTL INC	500	1000	<b>T</b>			
SFNA	SIMMONS FIRST NATL A	1000	500	TFCE	T F C ENTERPR INC	500	1000
SIMM	SIMMONS OUTDOOR CP	500	1000	TIH	T I I INDUSTRIES INC	200	500
SMCO	SIMPSON MFG CO	200	500	CFON	TARGET TECH INC	500	1000
SINGW	SINGING MACH CO WTS	500	1000	TGEN	TARGETED GENETICS CP	200	500
SING	SINGING MACHINE CO	500	1000	TKOCF	TASEKO MINES LTD	200	500
SIRN	SIRENA APPAREL GP	200	500	TOFF	TATHAM OFFSHORE INC	500	1000
FISH	SMALL'S OILFIELD	1000	500	TBUD	TEAM RENTAL GRP INC	200	500
HAMS	SMITHFIELD CO INC	200	500	TENXF	TEE-COMM ELECTRONICS	500	1000
SDSK	SOFTDESK INC	500	1000	TCOMP	TELE COMMUN PFD B	500	200
SKEY	SOFTKEY INTL INC NEW	500	1000	TWSTY	TELEWEST COMMUN ADR	200	500
SOMR	SOMERSET GP INC THE	500	200	WRLS	TELULAR CP	500	1000
SNIC	SONIC SOLUTIONS	200	500	TESS	TESSCO TECH INC	500	1000
SMBC	SOUTHERN MO BNCP INC	500	1000	TRBS	TEXAS REGIONAL CL A	200	500
SWBI	SOUTHWEST BANCSHARES	1000	500	HBGI	THE HOLSON BURNES GP	1000	500
OKSB	SOUTHWEST BNCP INC	1000	500	RHOM	THE ROTTLUND CO	1000	500
SWWC	SOUTHWEST WATER CO	1000	500	SBLT	THE SUNBELT CO	1000	500
SCTRW	SPECIALTY TELE WTS	200	500	TDHC	THERMADYNE HLDGS CP	200	500
SCTR	SPECIALTY TELECONSTR	200	500	TGIS	THOMAS GROUP INC	500	1000
DIAGF	SPECTRAL DIAGNOSTICS	200	500	TMSTA	THOMASTON MILLS A	1000	500
SPCT	SPECTRIAN CP	200	500	THOM	THOMPSON PBE INC	500	1000
SPIR	SPIRE CP	500	200	TBDI	TMBR/SHARP DRILL INC	200	500
SPOR	SPORT-HALEY INC	500	1000	TODDA	TODD A O CP CL A	200	500
SPMTA	SPORTMART INC A	500	1000	TCIX	TOTAL CONTAINMENT	200	500
SPKL	SPRECKELS INDS CL A	500	1000	TELU	TOTAL-TEL USA COMMUN	1000	500
SQAI	SQUARE INDUSTRIES	200	500	TWER	TOWER AUTOMOTIVE INC	200	500
STND	STANDARD FIN INC	200	500	TSEMF	TOWER SEMICONDUCTOR	200	500
STLY	STANLEY FURNITURE	1000	500	TTRRW	TRACOR INC WTS A	500	1000
SBNP	STATE BSCHS INC	500	1000	TSCO	TRACTOR SUPPLY CO	500	1000
SBIB	STERLING BCSHS TX	500	1000	TCAM	TRANS CP OF AMER INC	500	1000
PGMS	STILLWATER MINING CO	500	1000	TRNI	TRANS INDS INC	500	200
STIM	STIMSONITE CP	200	500	IBET	TRANS WORLD GAMING	200	500
STRD	STRATEGIC DIST INC	200	500	IBETW	TRANS WORLD GAMNG WT	200	500
TOWV	STRATOSHERE CP	200	500	TREX	TRANSNATL RE CORP A	500	1000
TOWVW	STRATOSHERE CP WTS	200	500	TTXG	TRANSTEXAS GAS CO	500	1000
STRO	STROUDS INC	200	500	TWBC	TRANSWORLD BNCP	500	200
STUA	STUART ENTERTAINMENT	1000	500	TWHH	TRANSWORLD HOME HLTH	200	500

Symbol	Company Name	Old Tier Level	New Tier Level	Symbol	Company Name	Old Tier Level	New Tier Level
TWHHW	TRANSWORLD HOME WTS	200	500	WRTEP	W R T ENERGY CP PFD	500	1000
TRED	TREADCO INC	1000	500	WSMP	W S M P INC	500	200
TPIFY	TRI POLYTA INDO ADR	200	500	WTDI	W T D INDS INC	500	1000
TCBK	TRICO BANCSHARES	200	500	WVFC	W V S FINANCIAL CP	1000	500
TRCD	TRICORD SYSTEMS INC	500	1000	WCCX	WACKENHUT CORRECT GP	500	1000
TRPS	TRIPOS INC	200	500	WGTI	WANDEL & GOLTERMANN	500	1000
TRSM	TRISM INC	500	1000	WANG	WANG LABS INC DEL	500	1000
THBC	TROY HILL BNCP INC	200	500	WANGW	WANG LABS INC WTS	500	1000
TFCO	TUFCO TECHS INC	1000	500	WAVX	WAVE SYSTEMS CP A	500	1000
				WAVT	WAVE TECH INTL INC	500	1000
				WAVO	WAVEPHORE INC	200	500
<b>U</b>				WELC	WELCOME HOME INC	200	500
UBSH	UNION BANKSHARES CP	1000	500	WCSTF	WESCAST INDS INC A	500	1000
UTII	UNITECH INDS INC	200	500	WCBO	WEST COAST BNCP ORE	500	1000
UFCS	UNITED FIRE CASUALTY	500	200	WABC	WESTAMERICA BNCP	500	1000
UNBJ	UNITED NATL BNCP	200	500	WBKC	WESTBANK CORP	200	500
UNEWY	UNITED NEWSPAPER ADR	200	500	WCBI	WESTCO BANCORP	1000	500
UBMT	UNITED SAV BK F A MT	1000	500	WSTR	WESTERFED FIN CP	500	1000
UHCO	UNIV HOLDING CP	1000	500	WSBK	WESTERN BANK OREGON	1000	500
UFPI	UNIVERSAL FOREST PRO	500	1000	WOFC	WESTERN OHIO FIN	200	500
URMD	UROMED CP	500	1000	WBAT	WESTPORT BNCP INC	500	1000
XPRSA	US XPRESS ENTRP CL A	200	500	WHRC	WHITE RIVER CP	1000	500
				CELL	WHOLESALE CELL USA	500	1000
				WIKS	WICKES LUMBER CO	500	1000
<b>V</b>				WMCO	WILLIAMS CONTROLS	200	500
VALN	VALLEN CP	1000	500	WCII	WINSTAR COMMUN INC	200	500
VALE	VALLEY SYSTEMS INC	1000	500	WCHI	WORKINGMENS CAP HLDG	200	500
VJET	VALUJET AIRLINES INC	200	500				
VFLX	VARIFLEX INC	200	500	<b>X</b>			
VGHN	VAUGHN COMMUN INC	500	1000	XNET	XCELLENET INC	500	1000
VTRA	VECTRA BANKING CP	500	1000	XPLR	XPLOR CP	500	200
VECO	VEECO INSTRUMENT INC	500	1000				
VENGF	VENGOLD INC	200	500	<b>Y</b>			
VCNB	VENTURA COUNTY NATL	1000	500	YFED	YORK FINANCIAL CP	1000	500
VENT	VENTURIAN CP	200	500	YBTVA	YOUNG BRDCSTG INC A	200	500
VRTS	VERITAS SOFTWARE CP	1000	500	YSII	YOUTH SVCS INTL INC	500	1000
BEAR	VERMONT TEDDY BEAR	200	500				
VIGN	VIAGENE INC	500	1000	<b>Z</b>			
VDNX	VIDEONICS INC	200	500	ZALEW	ZALE CP WTS A	500	1000
VVUS	VIVUS INC	500	1000	ZING	ZING TECHS INC	500	1000
VOLT	VOLT INFO SCIENCES	500	1000				
<b>W</b>							
WBCI	W F S BANCORP INC	200	500				
BKLYZ	W R BERKLEY DEP SHR	500	1000				

# NASD NOTICE TO MEMBERS 95-92

## Nasdaq National Market Additions, Changes, And Deletions As Of September 20, 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 September 20, 1995, the following 38 issues joined the Nasdaq National Market®, bringing the total number of issues to 3,870:

Symbol	Company	Entry Date	SOES Execution Level
BCOM	Bank of Commerce	8/22/95	200
EUPH	Euphonix, Inc.	8/22/95	1000
HRBC	Harbinger Corporation	8/22/95	200
WNUT	Walnut Financial Services, Inc.	8/22/95	200
ATCE	ATC Environmental Inc.	8/23/95	500
ATCEL	ATC Environmental Inc. (CI C Wts 9/30/96)	8/23/95	500
CTRN	Computron Software, Inc.	8/24/95	200
INLD	Inland Casino Corporation	8/24/95	200
PMAT	Plasma & Materials Technologies, Inc.	8/24/95	200
USAP	Universal Stainless & Alloy Products, Inc.	8/24/95	200
NNEXF	Newscope Resources, Limited	8/25/95	200
CVANV	Crown Vantage Inc. (WI)	8/28/95	200
CSIN	Computational Systems, Inc.	8/29/95	500
TSSW	TouchStone Software Corp.	8/29/95	200
PDTI	PDT, Inc.	8/30/95	200
RWAY	Rent-Way, Inc.	8/31/95	200
AAIRV	Airways Corporation (WI)	8/31/95	500
NRGIA	National Energy Group, Inc. (CI A)	9/1/95	200
FAIR	Renaissance Entertainment Corp.	9/1/95	500
FAIRW	Renaissance Entertainment Corp. (CI A Wts 1/27/00)	9/1/95	500
FAIRZ	Renaissance Entertainment Corp. (CI B Wts 1/27/00)	9/1/95	500
ALLA	Allied Capital Advisers, Inc.	9/8/95	200
ADVNZ	ADVANTA Corp. (Dep Shrs)	9/11/95	1000
PRFN	Prestige Financial Corp.	9/11/95	200
LINK	Interlink Electronics	9/14/95	200
LINKW	Interlink Electronics (Wts 6/7/96)	9/14/95	200
RCHI	Risk Capital Holdings, Inc.	9/14/95	1000
CGGI	The Carbide/Graphic Group, Inc.	9/14/95	500
BYDS	Boyds Wheels, Inc.	9/15/95	500
FPBN	FP Bancorp Inc.	9/18/95	200
NTSR	NetStar, Inc.	9/19/95	500
SMSI	Smith Micro Software, Inc.	9/19/95	200
RELEF	Ariely Advertising, Limited (Ord Shrs)	9/20/95	200
HDSN	Hudson Technologies, Inc.	9/20/95	500
HDSNW	Hudson Technologies, Inc. (Wts 11/2/99)	9/20/95	500
PEDX	Pediatrix Medical Group, Inc.	9/20/95	500
PRMO	Premenos Technology Corp.	9/20/95	200
SENEA	Seneca Foods Corporation (CI A)	9/20/95	200

## Nasdaq National Market Symbol And/Or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since August 22, 1995:

New/Old Symbol	New/Old Security	Date of Change
NELL/NELL	Nellcor Puritan Bennett, Inc./Nellcor, Inc.	8/28/95
CVAN/CVANV	Crown Vantage Inc./Crown Vantage Inc. (WI)	8/29/95
ATCC/ATCC	Mesaba Holdings, Inc./AirTran Corporation	8/31/95
KNIDV/KNIC	L.L. Knickerbocker Co. (New WI)/ L.L. Knickerbocker Co.	8/31/95
KNWDV/KNICW	L.L. Knickerbocker Co. (Wts New WI 1/24/97)/ L.L. Knickerbocker Co. (Wts 1/24/97)	8/31/95
PARQ/PARQ	ParcPlace-Digitalk, Inc./ParcPlace Systems, Inc.	8/31/95
MAIC/MAIC	MAIC Holdings Inc./Mutual Assurance Inc.	9/1/95
RCSB/RCSB	RCSB Financial Inc./Rochester Community Savings Bank	9/1/95
RCSBP/RCSBP	RCSB Financial Inc. (Conv Pfd Cl B)/ Rochester Community Savings Bank (Conv Pfd B)	9/1/95
USTC/USTD	USTC Holdings Corp./U S Trust Corp. (New WI)	9/7/95
AAIR/AAIRV	Airways Corporation/Airways Corporation (WI)	9/8/95
NEGX/NRGIA	National Energy Group, Inc. (Cl A)/National Energy Group, Inc. (Cl A)	9/8/95
ARNX/ARGS	Aronex Pharmaceuticals, Inc./Argus Pharmaceuticals, Inc.	9/12/95
CPDN/CPDN	CompDent Corporation/APPS Dental, Inc.	9/15/95
CELL/CELL	Brightpoint, Inc./Wholesale Cellular USA, Inc.	9/15/95
CYNRW/CYNRW	Canyon Resources Corp. (Wts 12/31/95)/ Canyon Resources Corp. (Wts 9/30/95)	9/19/95
SENEB/SENE	Seneca Foods Corp. (Cl B)/Seneca Foods Corp.	9/20/95

## Nasdaq National Market Deletions

Symbol	Security	Date
AMEI	American Medical Electronics, Inc.	8/22/95
AIHI	Automotive Industries Holding, Inc.	8/23/95
ALTI	Altai, Inc.	8/24/95
GRARE	Great American Recreation, Inc.	8/24/95
TRCK	Truck Components, Inc.	8/24/95
FPNX	First Pacific Networks, Inc.	8/25/95
ITEG	IntegraCare, Inc.	8/28/95
PBEN	Puritan-Bennett Corp.	8/28/95
TRNZ	Trinzic Corporation	8/28/95
YSCO	Yes Clothing Co.	8/28/95
CBOT	Cabot Medical Corporation	8/29/95
LIDA	Lida Inc. (Cl A)	8/30/95
MLTI	Multicare Companies, Inc.	8/30/95
SABR	Saber Software Corp.	8/31/95
ABEV	Atlantic Beverage Company, Inc.	9/1/95
DSGT	Designatronics Inc.	9/1/95
FBARP	Family Bargain Corporation (Ser A Pfd)	9/1/95
LZTN	Lazer-Tron Corp.	9/1/95
MDIX	Medical Diagnostics, Inc.	9/1/95
PSBX	PSB Holdings Corp.	9/1/95
PTNM	Putnam Trust Co.	9/1/95
RWTIW	Redwood Trust, Inc. (Wts 12/31/97)	9/1/95

<b>Symbol</b>	<b>Security</b>	<b>Date</b>
SKEYW	Softkey International Inc. (Wts 3/26/96)	9/1/95
VUPDW	Video Update, Inc. (Wts 7/20/99)	9/1/95
ACMT	ACMAT Corporation	9/5/95
BMTI	Bird Medical Technologies, Inc.	9/7/95
USAM	USA Mobile Communications Holdings, Inc.	9/8/95
PREF	Preferred Entertainment, Inc.	9/11/95
MSAM	Marsam Pharmaceuticals, Inc.	9/13/95
ETEX	Eastex Energy Inc.	9/15/95
NCEL	Nationwide Cellular Service, Inc.	9/20/95

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 95-93

Fixed Income Pricing  
System Additions,  
Changes, And  
Deletions As Of  
September 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 September 28, 1995, the following bonds were added to the Fixed Income Pricing System (FIPS<sup>SM</sup>). These bonds are not subject to mandatory quotation:

Symbol	Name	Coupon	Maturity
SINC.GB	Sinclair Broadcast	10.000	9/30/05
OWI.GA	Owens-III	10.000	8/1/02
ACME.GB	Acme Metals	13.500	8/1/04
TBS.GC	Turner Br	7.400	2/1/04
TRNL.GA	Total Renal Care	12.000	8/15/04
TBS.GD	Turner Br	8.400	2/1/24
KOGC.GA	Kelley Oil & Gas	13.500	6/15/99
RBK.GA	Reebok	9.750	9/15/98
FRP.GA	Freeport-McMoRan Res	8.750	2/15/04
TWA.GC	Trans World Airlines	12.000	11/3/98
GLXT.GA	Galaxy Telecom LP/CAP	12.375	10/1/05

As of September 28, 1995, changes were made to the symbols and names of the following FIPS bonds:

New Symbol	New Name	Old Symbol	Old Name
IGL.GA	IMC Global Inc	IFL.GA	IMC Fertilizer Group
IGL.GB	IMC Global Inc	IFL.GB	IMC Fertilizer Group

As of September 28, 1995, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name
OI.GI	OWI.GA	Owens-III
SBGI.GA	SINC.GA	Sinclair Broadcast
SBGI.GB	SINC.GB	Sinclair Broadcast

Two bonds were listed in the September 1995 edition of *Notices to Members* with incorrect maturity dates. The correct listings for these bonds are:

Symbol	Name	Coupon	Maturity
CNC.GA	Conseco	8.125	2/15/03
BRUO.GA	Bruno's	10.500	8/1/05

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 October

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, October 16, 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 Expelled, Individuals Sanctioned

**Henderson Securities, Inc. (Little Rock, Arkansas), Joseph C. Marfoglio (Registered Principal, Little Rock, Arkansas), Edwin P. Griffin (Registered Principal, Addison, Texas) and Frank H. Henderson, II (Registered Representative, Little Rock, Arkansas)** submitted an Offer of Settlement pursuant to which the firm, Marfoglio, and Griffin were fined \$7,500, jointly and severally. The firm was expelled from NASD membership and Marfoglio was suspended from association with any NASD member in any principal capacity for 30 days and suspended from association with any NASD member in any capacity for one week. Griffin was suspended from association with any NASD member in any capacity for two weeks and Henderson was suspended from association with any NASD member in any principal capacity for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Henderson failed and neglected to become registered as a general securities principal and a municipal securities principal with the NASD. The findings also stated that the firm, acting through Henderson and Marfoglio, violated the terms of its restriction

agreement with the NASD by failing and neglecting to ensure that Henderson became registered as a general securities principal and as a municipal securities principal within 90 days of the effective date of firm's membership and by advancing funds to Henderson and Marfoglio that resulted in the firm falling below 120 percent of its minimum net capital requirement.

The NASD also found that the firm, acting through Henderson, Marfoglio, and Griffin, failed and neglected to accurately prepare and maintain the firm's books and records and engaged in a securities business when its net capital was below the required minimum. The NASD determined that the firm, acting through Henderson, Marfoglio, and Griffin, filed inaccurate FOCUS Parts I and IIA reports and failed to record securities transactions executed by the firm for its customers and employees on the firm's purchase and sales blotter. In addition, the NASD found that the firm, acting through Henderson, Marfoglio, and Griffin, failed and neglected to maintain copies of new account information for customers in connection with securities transactions and submitted an inaccurate NASD Assessment Report that failed to reflect commissions earned from those securities transactions. Also, the findings stated that the firm, acting through Henderson, Marfoglio, and Griffin, failed to submit its annual audit on time and failed to establish, maintain, and enforce written supervisory procedures to monitor the firm's financial condition.

**R. J. Telese & Company (Tallevast, Florida) and Robert J. Telese (Registered Principal, Sarasota, Florida)** were fined \$30,000, jointly and severally. The firm was expelled from NASD membership and Telese was barred from association with any NASD member in any principal

capacity. 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, acting through Telese, breached its restrictive agreement with the NASD by loaning money to the firm's parent company, causing the firm's excess net capital to fall below the minimum requirement. In addition, the firm, acting through Telese, failed to accurately prepare the firm's general ledger, trial balance, and computation of net capital and filed a materially inaccurate FOCUS Part I report. The firm, acting through Telese, also failed to respond to NASD requests for information.

#### **Firm Fined, Individuals Sanctioned**

**Franklin-Lord, Inc. (Scottsdale, Arizona), William Mentis (Registered Principal, Scottsdale, Arizona), and Brett L. Bouchy (Registered Representative, Gilbert, Arizona).** The firm and Mentis submitted an Offer of Settlement pursuant to which they were fined \$23,000, jointly and severally, and the firm was fined an additional \$5,000. Mentis was suspended from association with any NASD member in any capacity for 60 days and required to requalify by examination as a financial and operations principal. Bouchy, in a separate decision, was fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination. Without admitting or denying the allegations, the firm and Mentis consented to the described sanctions and to the entry of findings that the firm, acting through Mentis, failed to abide by its restriction agreement in that it exceeded its inventory limitations and held customer funds for

about six weeks without complying with the provisions of the Securities and Exchange Commission (SEC) Customer Protection Rule 15c3-3. The findings also stated that the firm, acting through Mentis, failed to prepare books and records indicating the exact date of receipt of customer funds and filed a materially inaccurate FOCUS report with the NASD. The NASD found that the firm, acting through Mentis and Bouchy, allowed Bouchy to act in a principal capacity without being properly qualified. In addition, the NASD determined that the firm failed to maintain records required by the NASD Free-Riding and Withholding Interpretation.

#### **Firms Fined**

**All-Tech Investment Group, Inc. (Montvale, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$13,600. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it executed 136 short-sale transactions for customer accounts through the Small Order Execution System (SOES<sup>SM</sup>) in violation of Section c)3(D) of the SOES Rules.

**HMS Securities, Inc. (Montvale, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$23,200. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed 232 short-sale transactions for customer accounts through SOES in violation of Section c)3(D) of the SOES Rules.

**Sherwood Securities Corp. (New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000. Without admitting or deny-

ing the allegations, the firm consented to the described sanction and to the entry of findings that it reported, or caused to be reported, trade reports that were more than 90 seconds after execution, thus violating an Interpretation of the NASD Board of Governors.

**U.S. Securities Clearing Corp. (San Diego, California)** submitted an Offer of Settlement pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to supervise adequately the activities of a registered representative at a branch office in regard to the purchases and sales of securities, including, among other things, failing to review timely and approve correspondence and new account forms, and failing to preserve records.

#### **Individuals Barred Or Suspended**

**William C. Allen (Registered Representative, Memphis, Tennessee)** submitted an Offer of Settlement pursuant to which he was fined \$30,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Allen consented to the described sanctions and to the entry of findings that he received from a registered representative of a member firm \$32,546.69 as his share of commissions from mutual fund sales and reinvestments, without prior oral or written authorization from his member firm. The findings also stated that Allen forged the names of public customers to account transfer request forms and transferred 50 customer accounts from his member firm to another member firm without the knowledge or consent of his member firm. The

NASD also determined that Allen forged the name of the registered representative on a new account application for public customers. The NASD found that Allen failed and neglected to keep current his Uniform Application for Securities Industry Registration (Form U-4) by failing to disclose to the NASD a settlement agreement with his member firm whereby he repaid commissions of \$9,486.34 earned on customer accounts that were wrongfully transferred from the firm to another member firm.

**Gregory D. Breemes (Registered Representative, Couer D'Alene, Idaho)** 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, Breemes consented to the described sanctions and to the entry of findings that he received from public customers two checks totaling \$35,000 intended for investment purposes. The NASD found that Breemes invested the funds into mutual funds registered in his name where they were used for his own purposes and not as the customer intended.

**Donald Robert Breitenstein (Registered Representative, Chanhassen, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Breitenstein consented to the described sanction and to the entry of findings that he failed to disclose on his Form U-4 the existence of a criminal case.

**Leslie H. Brenner, III (Registered Representative, Schenectady, New York)** submitted an Offer of Settlement pursuant to which he was fined

\$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brenner consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information regarding a customer complaint and his termination from a member firm.

**Gary Alan Clayton (Registered Representative, Yakima, Washington)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$11,450 plus interest in restitution to a customer. Without admitting or denying the allegations, Clayton consented to the described sanctions and to the entry of findings that he received from a public customer two checks totaling \$48,100 for investment purposes. According to the findings, Clayton failed to follow the customer's instructions, and, instead, purchased two certificate of deposits that were retained under his control. Furthermore, the NASD found that when the customer complained to Clayton about the missing funds, he redeemed the certificates of deposit and returned her money plus interest. In addition, the NASD determined that Clayton billed the same customer a \$4,596.16 management fee that was a duplicate fee also charged by his member firm. Additionally, the findings stated that Clayton failed to inform his member firm in writing that he was conducting financial advisory services for the customer, off the books and records of the firm, for which he received compensation.

The NASD also determined that Clayton received from a public customer an \$11,450 check for investment purposes and failed to deposit the funds to the customer's account. Instead, the funds were deposited to

an account under Clayton's control.

**Samir Kh Fataftah (Registered Representative, Seattle, Washington)** was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fataftah executed two securities purchases in the account of a public customer without the customer's prior knowledge or consent. Furthermore, Fataftah executed purchase and sale transactions in the account of a public customer without obtaining prior written discretionary authorization and without written acceptance of such an account by his member firm. In addition, Fataftah recommended purchase transactions to the same customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the frequency and nature of the transactions and on the basis of facts disclosed by the customer as to her other security holdings, financial situation, objectives, and needs. Fataftah also failed to respond to NASD requests for information.

**Robert Lester Gardner (Registered Representative, Castaic, California)** was fined \$50,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by examination as a general securities representative. The SEC affirmed the sanctions following appeal of a January 1995 NBCC decision. The sanctions were based on findings that Gardner effected the purchase of securities in a public customer's account without the customer's knowledge or consent.

**David A. Grachek (Registered Representative, Omaha, Nebraska)** 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, Grachek consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information regarding his termination from a member firm.

**John William Gray (Registered Representative, St. Louis Park, Minnesota)** submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gray consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information regarding his termination from a member firm.

**Gary William Harnum (Registered Representative, Stoneham, Massachusetts)** 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, Harnum consented to the described sanctions and to the entry of findings that he caused the address of a public customer to be changed in the records of his member firm to Harnum's home address and subsequently caused a \$3,259.31 check made payable to the customer to be sent there. The findings also stated that Harnum obtained the customer's check, forged the customer's signature, and converted the proceeds for his own use and benefit.

**William H. Hewitt (Registered Principal, Madison, Wisconsin)** 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, Hewitt consented to the described sanction and to the entry of findings that he participated in outside business activities while failing to give prompt written

notice of such activities to his member firm.

**Harry H. Hynes (Registered Principal, Evergreen, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$25,000, suspended from association with any NASD member in any capacity for two years, and ordered to disgorge \$19,257.95. Without admitting or denying the allegations, Hynes consented to the described sanctions and to the entry of findings that he participated in the unregistered distribution of securities. The findings also stated that Hynes participated in a private securities transaction without providing prior written notice of the transaction to his member firm.

**Kerry Mark Jones (Registered Representative, Tigard, Oregon)** was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jones submitted to the NASD a Form U-4 containing information that was incomplete or inaccurate so as to be misleading in that he failed to disclose criminal convictions against him.

**Charles E. Kautz (Registered Representative, Clearwater, Florida)** was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Kautz caused seven registered representatives under his supervision to list their names falsely as representative of record on applications for annuities that he sold.

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

**Marvin Eugene Kennedy (Registered Representative, Redding,**

**California)** submitted an Offer of Settlement pursuant to which he was fined \$45,000 and suspended from association with any NASD member in any capacity for 120 days. Without admitting or denying the allegations, Kennedy consented to the described sanctions and to the entry of findings that he sold high-yield mutual funds to public customers and made material misrepresentations and omissions of material facts to the customers as to the safety of the investments and their risk. The findings also stated that Kennedy recommended high-yield mutual funds to public customers without having reasonable grounds for believing that the securities were suitable for the customers based on the facts disclosed by the customers as to their other security holdings and in light of their financial situations and needs.

**Patrick J. Kuhse (Registered Principal, San Diego, California)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kuhse failed to respond to NASD requests for information.

**Jack Lubitz (Registered Principal, Great Neck, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for seven days. Without admitting or denying the allegations, Lubitz consented to the described sanctions and to the entry of findings that, on behalf of a member firm, he prepared inaccurate net capital computations. The findings also stated that Lubitz, on behalf of the firm, conducted a securities business while failing to maintain the required minimum net capital.

**Kevin D. Mark (Registered Representative, Torrance, California)** was fined \$20,000 and barred from

association with any NASD member in any capacity. The sanctions were based on findings that Mark failed to respond to NASD requests for information concerning an investigation of the circumstances of his termination from a member firm.

**Arnold Mercado (Registered Representative, Houston, Texas)** was fined \$15,000, \$2,500 of which is to be paid as restitution to his member firm, barred from association with any NASD member in any capacity, and required to requalify by examination. The sanctions were based on findings that Mercado made improper use of customer funds totaling \$2,500 by converting those funds for his own use and benefit.

**Berwick A. Moore (Registered Representative, Jeanerette, Louisiana)** was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay \$49,127 in restitution to his former member firm. The sanctions were based on findings that Moore received from public customers checks totaling \$46,000 for investment purposes, failed to invest the funds on behalf of the customers and, instead, converted the funds for his own use and benefit, without the customers' knowledge or consent. The findings also stated that Moore failed to respond to NASD requests for information.

**Jennifer Lynn Moore (Registered Representative, Hurst, Texas)** 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, Moore consented to the described sanctions and to the entry of findings that she made misstatements and omitted material facts to retail customers to induce them to purchase securities. The findings also stated that Moore induced customers

to purchase the securities by using, among other things, high-pressure tactics and representations that the market price for the security would escalate towards, or in excess of, 100 percent within one year or less. The NASD also determined that Moore maintained two brokerage accounts in which the above-referenced security was purchased and sold and failed to notify the executing member, in writing, of her association or status with her member firm.

**Steven V. Munoz (Registered Representative, San Francisco, California)** submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by examination as a general securities representative within 60 days or he will be suspended until he requalifies. Without admitting or denying the allegations, Munoz consented to the described sanctions and to the entry of findings that he sent sales literature to two potential public customers that contained false, misleading, unwarranted, and exaggerated statements and failed to provide a sound basis for evaluating certain facts in regard to certain securities and services. The NASD also determined that Munoz failed to have the sales literature approved by a registered principal.

**Burll Dean Murchison (Registered Principal, Houston, Texas)** submitted a Letter of Acceptance Waiver and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to public customers. Without admitting or denying the allegations, Murchison consented to the described sanctions and to the entry of findings that a member firm, acting through him, used instrumentalities of interstate commerce to effect securities transactions while failing

to maintain the required minimum net capital and effectively concealed the true financial condition of the member firm. The NASD also found that the firm, acting through Murchison, had its sales representatives represent that the firm would repurchase securities and that the firm's general ledger and trial balance were not properly posted. The findings stated that the firm's order tickets for transactions did not disclose the contract interest rate and the general terms of the close-out arrangements and the firm failed to prepare a repo-ledger for itself and its customers that indicated the contra parties, date of initiation, close-out terms, and contract interest rates. The NASD also determined that Murchison, acting on behalf of the firm, failed to disclose on confirmations to customers for transactions that they were purchasing securities under an agreement to resell them to the firm at a later date.

**Stanley E. Nygaard (Registered Representative, Valrico, Florida)** was fined \$25,000, ordered to disgorge \$7,075 in commissions to public customers, and required to requalify as an investment company and variable contracts products representative. In addition, Nygaard was suspended from association with any NASD member in any capacity until he pays the fine and disgorgement. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Nygaard, outside the regular course or scope of his employment with his member firm, induced public customers to invest in a common stock and failed to provide prior written notice of the transaction to or obtain approval from his member firm.

**James Duane Peterson (Registered Representative, Coon Rapids, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from associa-

tion with any NASD member in any capacity. Without admitting or denying the allegations, Peterson consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notification to his member firm.

**Sara Buzze Sharpe (Registered Principal, Fort Worth, Texas)** submitted an Offer of Settlement pursuant to which she was fined \$25,000, barred from association with any NASD member in a principal capacity, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Sharpe consented to the described sanctions and to the entry of findings that she engaged in sales of unregistered securities to retail customers and failed to maintain copies of public customers' mutual fund account statements. The NASD also found that Sharpe failed to adequately supervise the activities of her member firm's employees and associated persons by failing to perform a periodic review of mutual fund customer accounts, failing to review wire order mutual fund transactions, and failing to perform a periodic review of customer accounts cleared on a fully disclosed basis. The findings stated that Sharpe submitted an inaccurate Form BD amendment to the SEC, failed to employ and caused to be associated with her member firm a registered limited principal-financial and operations person or limited principal introducing broker/dealer financial and operations person. The NASD determined that Sharpe permitted an individual to act and function as the president of her member firm without being qualified as and becoming registered with the NASD as a general securities principal or in other similar principal capacity and without qualifying and registering with the state of Texas as an agent of the firm. In addition, the

NASD found that Sharpe failed to respond to an NASD request for information.

**Patricia H. Smith (Registered Representative, Hanover, Pennsylvania)** was fined \$7,500, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by examination before again becoming registered in any capacity. The SEC affirmed the sanctions following appeal of an October 1994 NBCC decision. The sanctions were based on findings that, on four occasions, Smith submitted to her member firms applications for the purchase of securities with her name listed on the application as the soliciting representative, when these transactions had actually been solicited by other unregistered individuals.

#### Individuals Fined

**Fores J. Beaudry (Registered Representative, Portland, Oregon)** was fined \$10,000, required to disgorge \$386,399, and required to requalify by examination. The sanctions were based on findings that Beaudry purchased securities during an initial public offering price that traded at an immediate premium in the secondary market and failed to make a bona fide public distribution of the stock at its public offering price in contravention of the Board of Governors Free-Riding and Withholding Interpretation. In addition, Beaudry maintained personal securities accounts with member firms and effected trades in these accounts while associated with another member firm, without appropriate written disclosure.

**Peter Rettman (Registered Representative, Seattle, Washington)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and

required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Rettman consented to the described sanctions and to the entry of findings that he made investments in partnership with other investors, and, in connection with such activity, failed to provide his member firm with prior written notice describing in detail the proposed transactions, his proposed role therein, and stating whether he would receive selling compensation in connection with the transactions.

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

**Brooks Securities, Inc.,** Cleveland, Ohio

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

**Iris S. Burleson** (Weatherford, Texas)

**Joseph D. Burleson** (Weatherford, Texas)

**William P. Hampton** (San Diego, California)

**Michael H. Hume** (Incline Village, Nevada)

**Peter D. Matthews** (Edina, Minnesota)

**John R. Moysey** (McLean, Virginia)

**Anthony B. Scannell** (Addison, Illinois)

Robert D. Tompkins (Peoria, Illinois)

**Individual Whose Registration Was  
Cancelled/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 the entry.

**Michael P. Barton**, West Hartford,  
Connecticut (August 31, 1995)

# FOR YOUR INFORMATION

## **Affirmative Determination Requirements Postponed Until February 20, 1996**

The effective date of the rule prohibiting members from using blanket or standing assurances as to stock availability to satisfy their affirmative-determination requirements made in connection with short sales was postponed until February 20, 1996. This action supersedes and replaces information sent to Compliance Directors on July 28, 1995, stating that, 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 NASD<sup>®</sup> Prompt Receipt and Delivery of Securities Interpretation.

## **Implementation Of The Primary Market-Maker Standards Postponed Until December 1, 1995**

The implementation date of the primary market-maker standards to determine the eligibility of market makers to an exemption from the NASD short-sale rule was postponed from September 6, 1995, until December 1, 1995. 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 Nasdaq Workstation II<sup>™</sup>.

## **Firms Receiving Payment For Order Flow Must Comply With New And Amended Rules**

On October 2, 1995, all firms receiving payment for order flow must comply with new and amended rules. On October 27, 1994, the SEC amended Rule 10b-10 and adopted a new rule, Rule 11Ac1-3, to address SEC concerns regarding payment for order flow.

New SEC Rule 11Ac1-3 requires broker/dealers to inform customers in writing, when a new account is opened, about the firm's policies on the receipt of payment for order flow, including whether it is received and a detailed description of the nature of compensation received. Firms must also disclose information on order routing decisions, including whether market orders are subject to price improvement opportunities. Rule 11Ac1-3 also requires the dissemination of an annual update of this information to all customers.

The SEC also amended Rule 10b-10 to require that a firm must indicate on the confirmation whether it receives payment for order flow and the availability of further information on request. Amended Rule 10b-10(d)(9) also contains a detailed definition of payment for order flow that includes "any monetary payment, service, property, or other benefit that results in any remuneration, compensation, or consideration to a broker or dealer from any broker or dealer, registered securities exchange, registered securities association or exchange member in return for routing customer orders to such entity." The definition provides further examples of remuneration or compensation that is deemed payment for order flow.



# SPECIAL NASD NOTICE TO MEMBERS 95-94

NASD Requests  
Comment On Proposed  
Redefinition Of Gross  
Revenue For Assessment  
Purposes; **Comment  
Period Expires  
November 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

## Executive Summary

The NASD<sup>®</sup> is requesting member comment on a proposed change to the NASD By-Law definition of Gross Revenue for NASD Assessment Purposes to require inclusion of net interest and dividend income (gross income less related interest and dividend expense but not in excess of such revenue) in assessable revenue. The change would take effect for the 1996 assessment based on revenues generated in calendar year 1995.

## Background

Based on an extensive survey of members' FOCUS filings for 1995 and follow-up discussions with a number of member firm representatives, the NASD found that along with the normal interest income from customer margin accounts and dividends from trading and investment positions, a significant portion of member revenue is generated "from the securities business," representing interest associated with trading strategies involving, for example, repurchase, reverse repurchase, and stock loan/borrow transactions. The NASD Board of Governors (Board) has, therefore, approved for member comment an amendment to the definition of gross revenue to require inclusion of net interest and dividend income (gross income less related interest and dividend expense but not in excess of such revenue) in assessable revenue. This amendment treats interest and dividend income for NASD assessment purposes the same way the Securities Investor Protection Corporation treats such income for assessment purposes.

Based on FOCUS data, NASD assessment data, and survey data, the NASD estimated that this change in assessment definition, if adopted for 1995, would have generated additional assessment revenue of \$3 million based on the budgeted level of assessment revenue of \$39 million. Higher revenues are anticipated to be necessary beginning in 1996 to fund the commitment of greater resources to the NASD's broker/dealer regulation activities, partly in response to the recent findings and recommendations of The NASD Select Committee on Structure and Governance (the Rudman Committee).

## Request For Comments

The Board believes that this amendment provides for consistent treatment of net interest and dividend income for assessment purposes, and supports the equitable allocation of dues, fees, and assessments among member firms as contained in the NASD By-Laws. The Board requests member comment before filing the amendment with the Securities and Exchange Commission. Written comments must be received **no later than November 27, 1995**, and should be addressed to:

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

Questions concerning this Notice may be directed to James Shelton, NASD Billing Manager, at (301) 590-6757.

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