

Notices to Members

YEAR 2000 UPDATE



NASD
NASDAQ AMEX
NASD
REGULATION

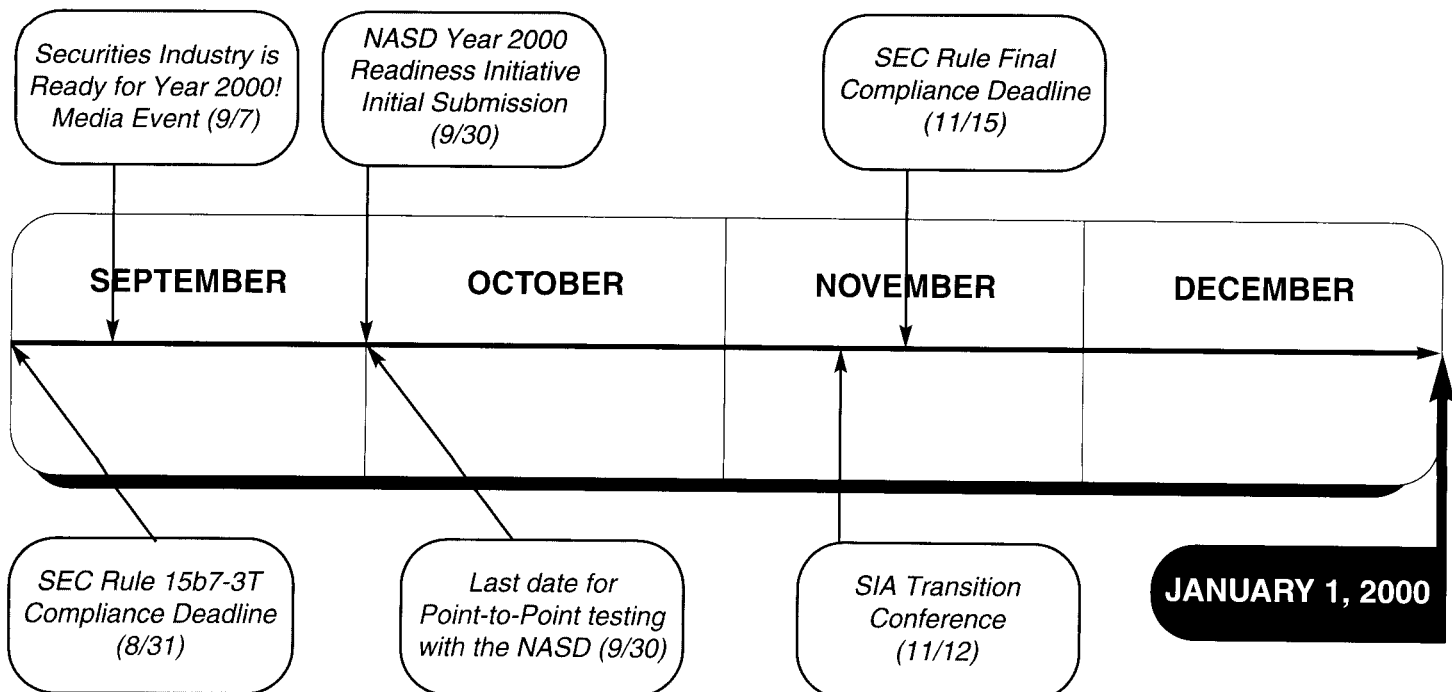
September 1999

Year 2000 Countdown

As 1999 winds down, Year 2000 issues will receive increased focus as public attention to these issues increase and companies in virtually every industry accelerate efforts to meet Year 2000 compliance deadlines. During this critical period, the securities industry will heighten its focus on regulatory compliance, investor communication, Year 2000 testing, and contingency planning. All broker/dealers should be aware of the Year 2000-related deadlines and events noted below. Following these specific dates and events are general guidelines to help firms complete their compliance efforts.¹

¹ Following these guidelines by themselves will not guarantee Year 2000 compliance.

- ☐ **August 31, 1999:** This was the compliance deadline for the Securities and Exchange Commission's (SEC) Operational Capability Rule for broker/dealers with internally developed or maintained mission-critical systems. All affected firms were required to comply with the provisions of the Rule by this date or submit to the SEC certified plans ensuring compliance by November 15, 1999. See www.nasd.com and www.nasdr.com for more information on this Rule.
- ☐ **September 7, 1999:** Officials from the SEC, National Association of Securities Dealers, Inc. (NASD®), Securities Industry Association (SIA), Investment Company Institute (ICI), and President's Council on Year 2000 Conversion will participate in a Securities Industry Media Event, which will highlight industry preparedness and investor communication. The securities industry's Year 2000 Investor Kit can be obtained by accessing the NASD and NASD Regulation Web Sites (www.nasd.com and www.nasdr.com), or by calling the Year 2000 Program Office at (888) 227-1330. Firms can also purchase additional copies of the Kit for their customers at the cost of \$28.75 in packages of 25 per order. View the Kit at: http://www.nasdr.com/3600_inv_kit.htm.



YEAR 2000 UPDATE

September 30, 1999: Certification letters for the NASD's Year 2000 Readiness Program should be submitted by this date. Letters received on or after September 30 will be posted to the NASD and NASD Regulation Web Sites periodically. This is also the last date for point-to-point testing with the NASD. See the NASD and NASDR Web Sites (www.nasd.com; www.nasdr.com) for more information.

November 12, 1999: The SIA Transition Conference, the SIA's final conference of the year, will detail the industry's Year 2000 plans over the course of the weekend of December 31, 1999-January 3, 2000. It will provide information about contingency planning as well as interaction with key communication and coordination center personnel, regulators, and the industry over the transition weekend.

November 15, 1999: This is the final compliance date for the SEC Operational Capability Rule. Applicable firms should have completed all requirements outlined in the Rule.

Milestone Guidelines

In addition to the specified deadlines listed above, firms should follow the activity guidelines below. These general activities should occur in the timeframe shown, and may vary depending on the size and complexity of the broker/dealer.

September 1999

- As outlined in the SEC Operational Capability Rule, firms should have completed all assessment, remediation, and testing processes of mission-critical systems by August 31, 1999. In addition, each firm should:
- Communicate with investors about Year 2000 readiness efforts by submitting a voluntary Year 2000 readiness letter. Refer to www.nasd.com or www.nasdr.com for further information about this NASD Year 2000 Readiness Initiative.
- Complete point-to-point testing with the Nasdaq® and NASD Regulation® applications (To schedule testing, call the NASD Year 2000 Program Office at (888) 227-1330).
- Be prepared to submit the third-quarter FOCUS filings using the new Year 2000 ready version of Web-Based FOCUS.

Submit to the SEC a plan demonstrating how your firm will become compliant by November 31, 1999, if your firm was not able to confirm readiness as of the August 31, 1999 date specified in the SEC Operational Capability Rule.

Focus on investor communication about the securities industry's readiness and your firm's readiness.

October 1999

During October, firms should be finalizing Year 2000 project activities and should:

Complete and fully test Year 2000 contingency plans to ensure functionality.

Activate freeze dates for new software or hardware as applicable to prevent Year 2000 issues with newly implemented systems.

Activate third-party contingency arrangements for any vendors or suppliers failing to show acceptable Year 2000 progress or readiness.

Focus on investor communication about the securities industry's readiness and your firm's readiness.

November 1999

In November, firms should:

Focus on investor communication about the securities industry's readiness and your firm's readiness.

Complete legal reviews of Year 2000 plans and activities, including Year 2000 warranty information in contracts.

December 1999

December should be reserved for event management and final Year 2000 preparations. These should include:

Continued focus on investor communication.

Staffing and confirming activities over the course of the transition period, including required reporting of market maker and clearing firms to the NASD.

The Year 2000

After the new year arrives firms should begin focusing on:

Leap year considerations to ensure continued success.

Decimalization plans.

In addition to the events noted above, refer to the following Year 2000 Education and Events schedule for more information on Virtual Workshops to be conducted by the NASD Year 2000 Program Office.

Year 2000 Education And Events

The NASD Year 2000 Program Office is continuing to offer Virtual Workshops—conference call-in sessions. The NASD strongly encourages registration for these sessions by calling (888) 567-0578. After placing the call, listen to the greeting, and provide the following information when prompted: firm name, Broker/Dealer #, and workshop date. On the day of the session, call (800) 857-7323 and indicate the password and confirmation number provided for the specific workshop. See below for a list of these specific workshops organized by date of session, as well as a brief summary of the issues to be discussed.

September 14—*Certification of Year 2000 Compliance and SEC Rule 15b7-3T*

Password: Certification
Conf. #: 3117560

Issues to be covered:

- ◆ Certification and the Year 2000 issue
- ◆ Latest developments in certification
- ◆ Best practices for all types of firms

Sept. 21—*Peer Review of Best Practices III*

Password: Practices
Conf. #: 3117592

Issues to be covered:

- ◆ A year review of the biggest challenges faced by broker/dealers of all sizes
- ◆ Summary of the top 10 best practices to managing the Year 2000 issue

October 12—*State of Utilities and Other Critical Services*

Password: Utilities
Conf. #: 3117608

Issues to be covered:

- ◆ State of utilities and recent guidelines
- ◆ Other services
- ◆ Possible impact on broker/dealers
- ◆ Best practices in dealing with uncertainty

October 19—*State of the Securities Industry*

Password: Industry
Conf. #: 3117632

Issues to be covered:

- ◆ Industry summary and overview
- ◆ A look at clearing firms
- ◆ A look at Market Makers
- ◆ A look at introducing firms
- ◆ In-depth look at where your firm should be in achieving Year 2000 readiness

October 26—*Legal Review for Broker/Dealers*

Password: Review
Conf. #: 3117647

Issues to be covered:

- ◆ A review of legal issues for 1998 and 1999
- ◆ Current broker/dealer trends reviewed
- ◆ Checklist of what your firm may need to do with the little time remaining

November 2—*Day Zero Preparations*

Password: Day Zero
Conf #: 3117656

Issues to be covered:

- ◆ Day zero scenarios—the new year
- ◆ Broker/dealer strategic scenarios
- ◆ Helpful hints on day zero

November 10—*Contingency Planning and Reporting Requirements*

Password: Trends
Conf. #: 3117664

Issues to be covered:

- ◆ Developments in contingency planning trends
- ◆ Step-by-step guide to completing mandatory reporting to the SROs during the transition timeframes
- ◆ Global view

November 17—*Risk Management*

Password: Risk
Conf. #: 3117677

Issues to be covered:

- ◆ Key principles in risk management
- ◆ What the NASD is doing to manage risk
- ◆ What clearing firms and introducing firms can do
- ◆ Review of seven areas that can affect your business operations

December 9—*Day Zero Preparations*

Password: Day Zero
Conf. #: 3117664

Issues to be covered:

- ◆ Day zero scenarios—the new year
- ◆ Broker/dealer strategic scenarios
- ◆ Helpful hints on day zero

December 14—*Beyond Year 2000*

Password: Beyond
Conf. #: 3117699

Issues to be covered:

- ◆ The Millennium—Doing business summary
- ◆ Resources
- ◆ Record retention and maintenance issues

Year 2000 Education And Events

NASD Year 2000 Event Calendar

Topic	Location	Date	Time
Certification of Year 2000 Compliance and SEC Rule 15b7-3T	Virtual	Sept. 14	11:00 a.m., ET
Peer Review of Best Practices III	Virtual	Sept. 21	11:00 a.m., ET
State of Utilities and Other Critical Services	Virtual	Oct. 12	11:00 a.m., ET
State of the Securities Industry	Virtual	Oct. 19	11:00 a.m., ET
Legal Review for Broker/Dealers	Virtual	Oct. 26	11:00 a.m., ET
Day Zero Preparations	Virtual	Nov. 2	11:00 a.m., ET
Contingency Planning and Reporting Requirements	Virtual	Nov. 10	11:00 a.m., ET
Risk Management	Virtual	Nov. 17	11:00 a.m., ET
Day Zero Preparations	Virtual	Dec. 9	11:00 a.m., ET
Beyond Year 2000	Virtual	Dec. 14	11:00 a.m., ET

More Information/Questions

**NASD Year 2000
Program Office**

e-mail: y2k@nasd.com

phone: (888) 227-1330

or visit the...

Year 2000 Web Pages:

www.nasd.com

or

www.nasdr.com

INFORMATIONAL

NYSE Series 7 Examination

Series 7 Examination
Fee Increase Effective
September 15, 1999

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Registration

KEY TOPICS

- Examinations
- Fees

Executive Summary

The New York Stock Exchange, Incorporated (NYSE) has increased the examination development fee from \$40 to \$90 for the Series 7 Examination, which is charged to each person who takes that Examination. The increase is effective on September 15, 1999.

Questions/Further Information

Questions concerning this *Notice to Members* may be directed to Mary M. Dunbar, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8252; or Mary Anne Furlong, NYSE, at (212) 656-4823.

Discussion

Each person who takes the Series 7 Examination (Series 7 Exam) must pay a NYSE examination development fee, as well as other fees. The National Association of Securities Dealers, Inc. (NASD[®]) collects the examination development fee on behalf of the NYSE.

The NYSE has increased the fee from \$40 to \$90.¹ The fee increase is effective on September 15, 1999. The fee charged by the NASD for taking the Series 7 remains \$110. Therefore, on and after September 15, 1999, the fees to take the Series 7 will total \$200.

Endnote

¹Exchange Act Rel. No. 41548 (Jun. 22, 1999), 64 FR 35231 (Jun. 30, 1999).

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NASD Notice to Members 99-76

INFORMATIONAL

OTC Bulletin Board

Update On OTC Bulletin Board Eligibility Rule

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Corporate Finance
- Legal & Compliance
- Operations
- Trading & Market Making

KEY TOPICS

- OTC Bulletin Board
- Eligibility Rule

Executive Summary

In *Notice to Members 99-15*, the National Association of Securities Dealers, Inc. (NASD[®]) described amendments to NASD Rules 6530 and 6540 to limit quotations on the OTC Bulletin Board[®] (OTCBB) to the securities of companies that report their current financial information to the Securities and Exchange Commission (SEC), banking, or insurance regulators. In *Notice to Members 99-43*, the NASD published the effective date schedule for the implementation of the new rules. This *Notice to Members* explains revised procedures that the NASD will follow in implementing the effective date schedule.

Questions regarding this *Notice* should be directed to Liz Heese, Product Manager, Trading and Market Services, The Nasdaq Stock Market, Inc., at (202) 728-8191; or Tim Larkin, OTCBB Compliance Manager, Listing Qualifications, The Nasdaq Stock Market[®], at (202) 496-2631 before September 1, 1999, or (301) 978-8093 thereafter.

Background

The OTCBB is a quotation service that displays real-time quotes, last-sale prices, and volume information in domestic and certain foreign securities. Eligible securities include national, regional, and foreign equity issues; and warrants, units, and American Depositary Receipts (ADRs) not listed on any other U.S. national securities market or exchange. Although the OTCBB is operated by the NASD, it is unlike The Nasdaq Stock Market or other listed markets where individual companies apply for listing and must meet and maintain strict listing standards; instead, individual brokerage firms or Market Makers initiate quotations for specific securities on the OTCBB. Currently, approximately 6,500

securities are quoted on the OTCBB.

On January 4, 1999, the SEC approved amendments to NASD Rules 6530 and 6540. As revised, Rule 6530 limits quotations on the OTCBB to the securities of issuers that report their current financial information to the SEC, banking, or insurance regulators and Rule 6540 prohibits a member from quoting a security on the OTCBB unless the issuer has made current filings. These amendments were discussed in *Notice to Members 99-15* and the full text of the rules appeared in that *Notice*.

In *Notice to Members 99-43*, the NASD published the schedule for the effectiveness of the new rule. That *Notice* indicated that in order to continue to be quoted on the OTCBB, securities quoted on the OTCBB as of January 4, 1999, must be in compliance with the new Eligibility Rule based upon the schedule below.¹

<u>Schedule Date</u>	<u>Issue Symbol</u>
July 1999	A - AD
August 1999	AE - AO
September 1999	AP - BI
October 1999	BJ - CT
November 1999	CU - FL
December 1999	FM - IG
January 2000	IH - MD
February 2000	ME - OR
March 2000	OS - R
April 2000	S - TN
May 2000	TO - Z
June 2000	All Banks & Insurance Companies

NASD Notice to Members 99-76

Effective Date Procedures

Notice to Members 99-43 also indicated that to continue to be quoted after the first trading day of the scheduled month (the "Eligibility Determination Date"), the issuer of the security must meet the requirements of the Eligibility Rule. In order to alleviate certain technical issues experienced during the implementation of the Eligibility Rule, a modified implementation schedule has been developed. Specifically, the NASD will divide the issuers in each scheduled month into two groups. The first group will have an Eligibility Determination Date at the beginning of the scheduled month and the second group will have an Eligibility Determination Date in the middle of the scheduled month. To determine whether an issuer falls into the first or second group, interested parties should refer to the OTCBB Web Site at www.otcbb.com. This modified implementation schedule will begin with the group of securities with an October Eligibility Determination Date.

The NASD will begin evaluating the compliance status of issuers that file with the SEC 30 calendar days prior to the company's scheduled Eligibility Determination Date. For banks and insurance companies

that do not file with the SEC and that are scheduled to be required to be in compliance with the Eligibility Rule during June 2000, the NASD will begin its evaluation 60 calendar days prior to the company's scheduled Eligibility Determination Date. If the NASD has no information that the issuer is compliant, it will append the issuer's symbol with a fifth character "E."² Symbol changes will appear on the OTCBB Daily List and will be reflected in the company's trading symbol four days after the date the notice appears on the OTCBB Daily List.

If the NASD does not receive any information that an issuer is eligible for continued quotation, the issuer will be removed from the system after market close on its Eligibility Determination Date. Alternatively, if the NASD receives notification that an issuer is compliant with the filing requirement, the fifth character identifier will be removed. This symbol change will be completed two business days following publication on the OTCBB Daily List.

A calendar of effective dates for each semi-monthly grouping of OTCBB securities is available on www.otcbb.com. In addition, approximately 30 days prior to the Eligibility Determination date for

each group, a list of each security in the group, and each security's eligibility status according to Nasdaq's records, is posted to www.otcbb.com. Market Makers or other parties that wish to notify the NASD of any filing that has been made which would bring an issuer into compliance should contact:

OTCBB Filings Department
9801 Washingtonian Blvd.
Gaithersburg, MD 20878-5356
(202) 496-2542
otcbbfeedback@nasd.com

Endnotes

¹This schedule is subject to change at the discretion of the NASD. The NASD will use the issue symbol as it appeared in the OTCBB quotation system on January 4, 1999, to determine where a particular issue falls in the schedule. Subsequent symbol changes will not be considered in determining an issuer's phase-in date.

²The fifth character "E" is intended to inform issuers, investors, and Market Makers that the NASD does not have information indicating that the issuer is eligible for continued quotation under the Eligibility Rule.

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INFORMATIONAL

Default Decisions

NASD Regulation Modifies Default Decision Procedures

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Legal & Compliance
- Senior Management

KEY TOPICS

- Default Decisions
- Disciplinary Actions
- Hearing Officers

Executive Summary

The purpose of this *Notice to Members* is to give National Association of Securities Dealers, Inc. (NASD[®]) members notice that if members or persons associated with members fail to file an answer to a complaint or fail to make any other filing or request related to a complaint with the Office of Hearing Officers within the time required, or fail to appear at a hearing of which they have been duly notified, the allegations of the complaint may be treated as admitted, and a default decision against the members or associated persons entered by a Hearing Officer. The procedures described in this *Notice to Members* will apply to all complaints filed on or after October 1, 1999.

Questions/Further Information

Questions concerning this *Notice to Members* should be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc. (NASD Regulation[®]), at (202) 728-8844.

Discussion

Procedures To Set Aside Or Appeal A Default Decision

In July 1998, the National Adjudicatory Council of NASD Regulation (NAC) remanded the default decision issued in the Nancy H. Martin matter (Complaint No. C02970027) in order to establish a record that would allow the NAC to conduct a review of the case. The NAC's remand in Martin was consistent with the decision issued by the Securities and Exchange Commission (SEC) in In re James M. Russen, Jr., 51 S.E.C. 675 (1993) (establishment of a complete record will give the SEC a basis for discharging its review function under Section 19 of the Securities Exchange Act of 1934).

In both of those cases, the defaulting respondent had appealed a District Business Conduct Committee default decision. Both of those decisions stated that an adjudicator conducting a new review of a default decision needs evidentiary support for the default decision in order to uphold the findings and sanctions.

It is not, however, necessary for the record to provide full evidentiary support in order for a default decision to be entered against a defaulting respondent by a Hearing Officer. Under Rule 9269(a) of the NASD's Code of Procedure, which was adopted and approved by the SEC subsequent to the issuance of the Russen decision, a Hearing Officer may consider the allegations against a defaulting respondent to be admitted and enter a default decision on that basis.

We are issuing this *Notice to Members* to clarify and reconcile the Martin and Russen decisions with Rule 9269(a). Rule 9269(a) governs the issuance of initial default decisions by Hearing Officers. Accordingly, if a respondent defaults by failing to answer a complaint in a timely manner, make any other filing or request related to the complaint, or appear at a pre-hearing conference, the allegations of the complaint may be deemed admitted and a default decision validly entered against the respondent under Rule 9269(a).¹

Consistent with the decisions in Russen and Martin, however, if a respondent against whom a default decision has been validly entered under Rule 9269(a) makes a timely appeal or motion to set aside the default and also establishes good cause for not having participated in the proceeding below, he or she will be given the opportunity to participate in a hearing before a Hearing Panel. This hearing would

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allow the respondent, among other things, to have the opportunity to participate in a full evidentiary hearing on the merits and, if he or she wishes, to contest the findings and sanctions. In determining whether a respondent has established good cause, Hearing Officers and the NAC will consider such factors as:

- whether the respondent notified the Central Registration Depository (CRDSM) of any change of address;
- the length of time that has passed between the issuance of the default decision and the respondent's appeal or motion to set aside; and
- the reasons for the respondent's failure to participate in the proceeding before the Hearing Officers.

The procedures described in this *Notice to Members* will apply to all complaints filed on or after October 1, 1999.

Duty To Update Address Information

Registered persons are reminded that failure to keep the NASD informed of their most recent address may cause a default decision to be entered against them. Article V, Section 2 of the NASD By-Laws requires all persons who apply for registration with the NASD to submit a Form U-4 and to keep all information on the Form U-4 current. Accordingly, registered persons must keep their member firms informed of their current address, and a member firm is obligated to file an amendment to the Form U-4 to notify the NASD when any registered person in the firm's employ changes his or her address. In addition, the NASD may request information from, or file a formal disciplinary action against, persons who are no longer registered with a member for at least two years after their termination from the member (Article V, Sections 3 and 4 of the NASD's By-Laws). Requests for information and disciplinary complaints issued by the NASD during this two-year period will be mailed to such a person's last address in the NASD's records, and are considered to have been

received at that address, whether or not the individual has actually received them. Thus, in order to receive mailings from the NASD, individuals must keep their address in CRD current during that two-year period. Individuals who are no longer associated with an NASD member firm and who have failed to update their addresses during the two years after they end their association may have a default decision issued against them (*see Notice to Members 97-31*).

Letters notifying the NASD of such address changes should be sent to:

Central Registration Depository
National Association of Securities
Dealers, Inc.
P.O. Box 9495
Gaithersburg, MD 20898-9401

Endnote

¹We note that Rule 9269(a) is consistent with federal practice under Rule 55 of the Federal Rules of Civil Procedure.

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INFORMATIONAL

Continuing Education

Industry/Regulatory Council On Continuing Education Issues Firm Element Advisory

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Continuing Education Testing/Qualifications
- Legal & Compliance
- Senior Management

KEY TOPICS

- Continuing Education
- Firm Element

Executive Summary

The Securities Industry/Regulatory Council on Continuing Education (Council) has issued a *Firm Element Advisory*, a guide for firms to use when developing their Continuing Education Firm Element training plans. The attached *Firm Element Advisory* lists topics that the Council considers to be particularly relevant to the industry at this time. The topics are drawn from a review of the performance of registered persons in the Regulatory Element computer-based training as well as regulatory advisories issued by industry self-regulatory organizations (SROs) since the publication of the last *Firm Element Advisory* in March 1998.

Firms should review the training topics listed in the *Firm Element Advisory* in conjunction with their annual Firm Element Needs Analysis whereby firms identify training issues to be addressed by their written Firm Element Training Plan(s). The Council is providing this advisory so that Firm Element Continuing Education may be as pertinent and enriching as possible to financial professionals in the securities industry.

Questions/Further Information

Questions about this *Notice* may be directed to John Linnehan, Director, Continuing Education, NASD Regulation, Inc. (NASD Regulation®), at (301) 208-2932; or Daniel Sibears, Senior Vice

President, Member Regulation, NASD Regulation, at (202) 728-6911.

Background

The Council includes 13 members representing a cross-section of securities firms and six SROs.¹ Both the Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA) have appointed liaisons to the Council.

The Council facilitates industry/regulatory coordination of the administration and future development of the Continuing Education Program. Council duties include recommending and helping to develop specific content and questions for the Regulatory Element programs and minimum core curricula for the Firm Element. One responsibility of the Council is to identify and recommend pertinent regulation and sales practice issues for inclusion in Firm Element training plans.

Endnote

¹The American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

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The Securities Industry Continuing Education Program

The Securities Industry Continuing Education Program *Firm Element Advisory*

One function of the Securities Industry/Regulatory Council on Continuing Education (Council) is to identify and recommend pertinent regulation and sales practice issues for possible inclusion in Firm Element training plans.

Attached are topics that the Council considers to be particularly relevant to the industry at this time. The list is based on a review of recent regulatory events, as well as advisories issued by industry self-regulatory organizations (SROs) since the last *Firm Element Advisory* of March 1998.

These issues are listed here to *complement* topics that firms may have already determined to be

appropriate to their specific Firm Element Needs Analysis and training plan. It is not mandatory for firms to address every topic listed here in their Firm Element training. However, each firm should review this list of topics *vis a vis*:

- 1) relevance to the financial products and services it offers to investors; and
- 2) its overall performance in related topic areas of the Regulatory Element.

Each firm has an obligation to determine the relevancy of these topics to its lines of business and training needs. However, firms should not limit their review of

relevant topics to those listed in the *Advisory* as they are obligated to undertake a comprehensive Firm Element Needs Analysis.

The Council will periodically highlight additional relevant regulatory areas to assist the industry and it invites your assistance. Please direct your comments, suggestions, or questions about this and future *Advisories* to either Christian Billet, Continuing Education Manager, the New York Stock Exchange, at (212) 656-2156; or John Linnehan, Director, Continuing Education, NASD Regulation, Inc. (NASD Regulation®) at (301) 208-2932.

Training Topic	Relevant Training Point(s) and Reference(s)
Arbitration	<p>There have been amendments to the New York Stock Exchange (NYSE) arbitration rules that expedite and streamline the process by encouraging early resolution through mediation.</p> <p><i>See Arbitration, NYSE Information Memo 98-42, December 1998 and NYSE Information Memo 98-44, December 1998.</i></p>
Books and Records Requirements	<p>Amendments to National Association of Securities Dealers, Inc. (NASD®) Rule 3110 (the Books and Records Rule) change the definition of “institutional account” to include the accounts of investment advisers that are now required to register with the states pursuant to the National Securities Markets Improvement Act of 1996 (NSMIA), and exclude certain customer accounts from the requirement to obtain certain tax and employment information from the customer.</p> <p><i>See SEC Approves Changes To Books And Records Requirements, NASD Notice to Members 98-47, July 1998.</i></p>
Clearing Agreements	<p>On June 2, 1999, the SEC approved amendments to the Clearing Agreement Rules of the NASD (Rule 3230) and NYSE (Rule 382). The amendments govern clearing agreements between members with respect to: (1) the handling of customer complaints about introducing firms that are received by their clearing firms; (2) exception and other reports clearing firms make available to their introducing firm clients to assist them in their supervisory obligations; and (3) clearing firms granting their introducing firm clients check writing privileges on the clearing firm’s account.</p> <p><i>See Amendment to Rule 382, (“Carrying Agreements”) NYSE Information Memo 99-33, July 1, 1999, and SEC Approves Rule Amendments Governing Clearing Firms And Their Introducing Firm Clients’ Relationship; Effective Date: July 19, 1999, NASD Notice to Members 99-57, July 1999.</i></p>
COD Orders	<p>Certain private vendors, which meet prescribed standards, may now provide electronic confirmation/affirmation services for COD (“Collection on Delivery”) and POD (“Payment on Delivery”) delivery-eligible transactions of customers of members and member organizations.</p> <p><i>See Amendment to Rule 387 (“COD Orders”), NYSE Information Memo 99-25, May 1999.</i></p>

Training Topic	Relevant Training Point(s) and Reference(s)
<p>Cold Calling</p> <p>The Use of Aliases</p>	<p>The use of aliases when making cold calls violates NASD Rule 2211 and the Federal Communications Commission's telephone solicitation rules, 47 C.F.R. 64.1200(e)(iv) (1997)1, which require anyone calling a residence for the purpose of solicitation to identify themselves; NASD Rule 2210, which requires members to observe high standards of commercial honor and just and equitable principles of trade; and NASD Interpretive Material 2310-2, which requires that sales efforts be undertaken only on a basis that can be judged as being within the ethical standards of the NASD's rules, with particular emphasis on the requirement to deal fairly with the public.</p> <p>See Use Of Alias Prohibited During Cold Calling, <i>For Your Information</i>, May 1998.</p>
<p>Cold Calling and Advertising to Persons in the United Kingdom</p>	<p>The Financial Services Authority (FSA) in the United Kingdom (U.K.) detected an increase in the frequency with which NASD member firms were soliciting U.K. citizens and asked NASD Regulation to alert its members to the standards governing the solicitation of U.K. citizens generally and implications of cold calling and advertising to persons in the U.K. in particular.</p> <p>See NASD Alerts Members To Their Obligations Concerning Cold Calling And Advertising To Persons In The United Kingdom, <i>NASD Notice to Members 98-91</i>, November 1998.</p>
<p>Compensation</p> <p>Non-Cash Compensation for Mutual Funds and Variable Products</p>	<p>New rules regulate compensation arrangements for the sale and distribution of variable products and investment company securities. See SEC Approves Rule Change Relating To Non-Cash Compensation For Mutual Funds And Variable Products, <i>NASD Notice to Members 98-75</i>, September 1998, and Questions And Answers Relating To Non-Cash Compensation Rules, <i>NASD Notice to Members, 99-55</i> July 1999.</p>
<p>Continuing Education</p> <p>Amendments to SRO Continuing Education Rules</p>	<p>Effective July 1, 1998, participation in the Regulatory Element portion of Continuing Education is required within 120 days of the 2nd anniversary of a registered person's initial securities registration, and every three years thereafter, with no graduation from the program. In addition, there is a new Regulatory Element program for persons registered in supervisory capacities.</p> <p>See Amendments to the Board's Continuing Education Program: Rule G-3, <i>MSRB Reports, Vol. 18, No. 2 (August 1998) at 33-35</i>, Amendment to Rule 345A ("Continuing Education for Registered Persons"),</p>

Training Topic	Relevant Training Point(s) and Reference(s)
	<p><i>NYSE Information Memo 98-19</i>, June 1998, and SEC Approves Changes To Continuing Education Rules, <i>NASD Notice to Members 98-35</i>, April 1998.</p>
<p>Continuing Education Status Report, Q&A</p>	<p>A status report and updated brochure on Questions and Answers regarding the Continuing Education Program have been published that address new Continuing Education initiatives, provide updated information and clarification of the amendments to the Continuing Education rules, and answer frequently asked questions regarding both the Regulatory and Firm Element components of the program.</p> <p>See <i>NYSE Information Memo 98-28</i>, September 1998 and <i>NASD Notice to Members 98-68</i>, August 1998.</p>
<p>Correspondence Standards for Written or Electronic Individual Correspondence</p>	<p>The SEC approved amendments to NASD Rule 2210 to require that written or electronic communications prepared for a single customer be subject to the general standards and those specific standards of NASD Rule 2210 that prohibit misleading statements, but not to the specific standards of the rule that prescribe specific disclosure or the filing and review requirements.</p> <p>See SEC Approves Rule Change Relating To Standards For Individual Correspondence, <i>NASD Notice to Members 98-83</i>, October 1998.</p>
<p>Customer Account Transfer Contracts</p>	<p>The required time period for the transfer of accounts between member organizations has been reduced from seven days to six days, effective February 8, 1999.</p> <p>See Amendment to Rule 412 (Customer Account Transfer Contracts), <i>NYSE Information Memo 99-1</i>, January 1999.</p>
<p>Customer Complaint Reporting Procedures</p>	<p>There have been three significant changes to customer complaint reporting procedures: 1) the product and problem codes have been expanded; 2) all complaint statistics must be reported electronically; and 3) "individual amendment records" for reports filed under Rule 351(d) will no longer be accepted.</p> <p>See Changes to Customer Complaint Reporting Procedures, <i>NYSE Information Memo 99-32</i>, June 1999.</p>

Training Topic	Relevant Training Point(s) and Reference(s)
Free-Riding and Withholding	<p>See SEC Approves Amendments To Free-Riding And Withholding Interpretation; Effective August 17, 1998, <i>NASD Notice to Members 98-48</i>, July 1998. These amendments address direct and indirect owners of broker/dealers, investment grade debt offerings, foreign investment companies, secondary offerings, issuer directed share programs, and accounts under the Employment Retirement Income Security Act.</p>
Gifts and Entertainment	<p>Members and member organizations are reminded of the NYSE's policy relating to gifts, gratuities, and entertainment.</p> <p>See Exchange Guidelines on Gifts and Entertainment, <i>NYSE Information Memo 98-40</i>, December 1998.</p>
<p>Margin</p> <p>Calculating Margin for Day-Trading and Cross-Guaranteed Accounts</p>	<p>The NASD expects that members will calculate margin for day traders and cross-guaranteed accounts in a manner that is consistent with Regulation T and Rule 2520. Accordingly, members are advised to review their margin calculation practices to ensure that they conform to the requirements of these rules, which are in the best interest of the investing public and serve to protect the financial security of members that extend credit.</p> <p>In addition, members are reminded to take certain account-related charges when computing their net capital pursuant to SEC Rule 15c3-1. These charges include those specified in Rule 2520(f)(4) for certain guaranteed accounts. Members should review the requirements of SEC Rule 15c3-1 and Rule 2520 to determine whether they are in compliance with these rules.</p> <p>The NASD intends to examine member firms for compliance with these rules.</p> <p>See <i>Calculating Margin For Day-Trading And Cross-Guaranteed Accounts, NASD Notice to Members 98-102</i>, December 1998.</p>

Training Topic	Relevant Training Point(s) and Reference(s)
<p>Margin</p> <p>Changes to Margin Rules</p>	<p>Effective April 1, 1998, the Board of Governors (Board) of the Federal Reserve System (FED) adopted several amendments to Regulation (Reg) T, as well as to Regs U and X. In addition, it eliminated Reg G, which had applied to credit extended by "other lenders" (<i>i.e.</i>, other than banks and broker/dealers). These changes were made to reflect changes to the FED's statutory authority under the Securities Exchange Act of 1934, as amended by NSMIA.</p> <p><i>See Federal Reserve System Amends Regulations T, U, And X, NASD Notice to Members 98-43, June 1998.</i></p>
<p>Margin</p> <p>Maintenance Margin Rules for Certain Volatile Stocks</p>	<p>Information about current margin requirements and steps taken by the industry to increase maintenance margin requirements for certain volatile stocks.</p> <p><i>See NASD Regulation Advises Members About Maintenance Margin Requirements For Certain Volatile Stocks And Solicits Comment On Margin Practices; Comment Period Expires May 31, 1999, Special NASD Notice to Members 99-33, April 1999.</i></p>
<p>Mini Tender Offers</p>	<p>In a mini tender offer, the offeror makes an offer directly to an issuer's shareholders to purchase a small number or percentage (under five percent of the total shares outstanding) of an issuer's securities, often at a price below the current market price, by a certain day. The offer also contains a promise to pay for the tendered shares within a specified period. When the offeror obtains tendered shares, the offeror resells the shares in the open market, pays the tendering shareholder, and retains the difference as profit. The NASD has alerted its members to the practice of mini tender offers and discusses the steps members can take to reduce the risk that customers and others tendering shares in a mini tender offer will be victimized.</p> <p><i>See NASD Regulation Offers Guidance To Members Forwarding Mini Tender Offers To Their Customers, NASD Notice to Members 99-53, July 1999, and Member organizations should review tender offer materials for shares at or below market prices before the materials are disseminated to customers, NYSE Information Memo 99-11, February 1999.</i></p>
<p>Municipal Securities</p> <p>Consultants</p>	<p><i>See MSRB Rule G-38: Consultants. MSRB Manual ¶3686.</i></p>

Training Topic	Relevant Training Point(s) and Reference(s)
Municipal Securities Delivery of Official Statements	See MSRB Rule G-32: Disclosures in Connection with New Issues. <i>MSRB Manual</i> ¶3656; and MSRB Rule G-36: Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or its Designee. <i>MSRB Manual</i> ¶3676.
Municipal Securities Electronic Delivery and Receipt of Information	See Notice entitled "Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers," <i>MSRB Reports</i> , vol 19, no.1, p.3; February 1999.
Municipal Securities Political Contributions	See MSRB Rule G-37: Political Contributions and Prohibitions on Municipal Securities Business. <i>MSRB Manual</i> ¶3681.
Municipal Securities Reporting Sales and Purchases	See MSRB Rule G-14: Reports of Sales and Purchases, and MSRB Rule G-14: Transaction Reporting Procedures, <i>MSRB Manual</i> ¶3566, and "User's Manual for Customer Transaction Reporting" contained on MSRB's Web Site at www.msrb.org .
Municipal Securities Suitability Issues	See MSRB Rule G-19: Suitability of Recommendations and Transactions; Discretionary Accounts. <i>MSRB Manual</i> ¶3591.
Mutual Funds Breakpoint Sales	The application of the mutual fund breakpoint sales rule to modern portfolio investment strategies. See SEC Approves Rule Change Relating To Mutual Fund Breakpoint Sales, <i>NASD Notice to Members 98-98</i> , December 1998.
Mutual Funds Fees and Using the Term "No Load"	Discussions concerning fees and expenses in mutual fund advertisements and sales literature as defined in NASD Rule 2210(a) must be fair, balanced, and not misleading. See NASD Reminds Members Of Their Obligations To Disclose Mutual Fund Fees, <i>NASD Notice to Members 98-107</i> , December 1998, for guidance concerning fee and expense disclosure in certain types of mutual fund sales material.

Training Topic	Relevant Training Point(s) and Reference(s)
Options Guidelines Concerning Discretionary Accounts	The Division [of Regulatory Services, Chicago Board Options Exchange] believes that some clarification regarding the use of discretion in public customer accounts, including time and price discretion and third-party discretion, is warranted. <i>See</i> Guidelines Concerning Discretionary Accounts, <i>CBOE Regulatory Circular</i> , RG99-115, April 28, 1999.
Options Guidelines Concerning Uncovered (short) Options Accounts	<i>See</i> Guidelines Concerning Uncovered (short) Options Accounts, <i>CBOE Regulatory Circular</i> , RG99-109, April 26, 1999.
Options Independent Contractors	Individuals compensated as independent contractors are considered associated persons under [CBOE] rules if they directly or indirectly control a member, are controlled by a member, or are under common control of a member. <i>See</i> Independent Contractors, <i>CBOE Regulatory Circular</i> , RG98-122, November 9, 1998.
Options Index Options – Margin Accounts	<i>See</i> Margin Accounts - Writing Index Options on a Covered Basis and Eligibility for Covered Writing Approval, <i>CBOE Regulatory Circular</i> , RG99-09, January 12, 1999.
Options Index Options – Restrictions on Exercise of American-Style, Cash Settled Index Options	<i>See</i> Restrictions on Exercise of American-Style, Cash Settled Index Options, <i>CBOE Regulatory Circular</i> , RG 99-44, February 17, 1999.
Options Types of Orders Permitted on the Exchange's Public Limit Order Book	The Equity Floor Procedure Committee ("the Committee") has received recent member inquiries regarding the handling of contingency orders on the Exchange Floor. Exchange Rule 7.4 - <u>Obligations for Orders</u> states that the Committee may specify the types of orders for acceptance into the Exchange's Public Limit Order Book ("the Book"). The [Equity Floor Procedure Committee of the CBOE] has determined not to allow the entry of contingency orders, including <i>all or none</i> orders into the Book. In addition, no member, without prior knowledge and consent from the subject customer, may change, alter, or remove a contingency placed on an order ticket such as to allow the order to be entered onto the Book. Changing, altering, or removing a contingency placed on an order without the subject customer's prior

Training Topic	Relevant Training Point(s) and Reference(s)
	<p>knowledge and consent constitutes a violation of Exchange Rules 4.6 - <u>False Statements</u> and 7.4 - <u>Obligations for Orders</u>.</p> <p>See Types of Orders Permitted on the Exchange's Public Limit Order Book, <i>CBOE Regulatory Circular</i>, RG98-44, April 30, 1998.</p>
<p>Registration – Conditions, Restrictions, and Requirements When Updating Form U-4</p>	<p>Significant changes have been made to the customer complaint questions of Form U-4. These questions have been revised so as to require disclosure of all pending arbitrations and civil proceedings that relate to securities or commodities transactions; pending written customer complaints alleging sales practice violations and compensatory damages of \$5,000 or more for 24 months from original posting, if closed without a settlement by the firm; and settlements of \$10,000 or more of arbitrations, civil suits, and customer complaints involving securities or commodities transactions.</p> <p>See Interim Forms U-4 And U-5 Go Into Effect; Interim Form BD Also Approved, <i>Special NASD Notice to Members 98-27</i>, March 1998. This <i>Special Notice to Members</i> provides guidance to members in filling out the Interim Forms U-4 and U-5, which became effective on March 16, 1998, and in understanding what information NASD Regulation will release as part of its Public Disclosure Program. See also SEC Approves and Adopts Revised Forms and Electronic Filing Requirement, <i>NASD Notice to Members 99-63</i>, August 1999.</p>
<p>Registration NYSE Floor Employees</p>	<p>The Exchange has requirements about the registration, termination, dual employment, and compensation with respect to Floor Employees, including, but not limited to, Post Clerks and Booth Clerks, also known as Trading Assistants.</p> <p>See Reminder of the Exchange's requirements with respect to registration of Floor Employees, <i>NYSE Information Memo 99-20</i>, April 1999.</p>
<p>Registration Requirements of the SROs</p>	<p>NASD Regulation receives numerous inquiries regarding whether certain individuals are required to be registered with the NASD under Rules 1021 and 1031, and has issued a <i>Notice to Members</i> to provide interpretive guidance to members on some of these issues.</p> <p>See NASD Regulation Provides Interpretive Guidance On Registration Requirements, <i>NASD Notice to Members 99-49</i>, June 1999.</p>

Training Topic	Relevant Training Point(s) and Reference(s)
Short Sales	<p>Certain NASD members may be assisting customers in the circumvention of the Short-Sale Rule (Rule 3350). Specifically, these members are failing to net security positions of accounts for customers who maintain accounts in their name and exercise control over, or operate in concert with, other accounts with a strategy designed to circumvent the Short-Sale Rule. The failure to net these positions has permitted these customers, who operate the two accounts with a single investment strategy, to avoid application of the Short-Sale Rule. Members are expected to establish and maintain supervisory procedures to detect and deter this improper trading activity.</p> <p>See NASD Reminds Members Of Obligations Relating To The Short-Sale Rule, <i>NASD Notice to Members 99-28</i>, April 1999.</p>
Supervision Research Reports/Supervisory Analysts	<p>On June 22, 1998, the SEC approved amendments to NASD Rule 2210 (Communications with the Public) that permit the approval of research reports by a supervisory analyst approved by the NYSE to satisfy NASD requirements that research reports be approved by a registered principal.</p> <p>See SEC Approves Rule Change Regarding Approval Of Research Reports, <i>NASD Notice to Members 98-54</i>, July 1998, and Revised Interpretation To Rule 344 ("Supervisory Analysts"), <i>NYSE Interpretation Memo 99-3</i>, February 22, 1999.</p>
Supervision Responsibilities for Trade Reporting and Market-Making Activities	<p>Many of the failure-to-supervise charges recently imposed on NASD members have been for inadequacies revealed in the NASD Regulation's Trading and Market Maker Surveillance (TMMS) examination process.</p> <p>See NASD Elaborates On Member Firms' Supervision Responsibilities For Trade Reporting And Market-Making Activities, <i>NASD Notice to Members 98-96</i>, December 1998. This <i>Notice</i> highlights common supervisory deficiencies relating to trade reporting, market making, and equity order handling areas, and gives guidance for preventing these deficiencies.</p>

Training Topic	Relevant Training Point(s) and Reference(s)
<p>Supervision</p> <p>Review of Incoming Written Correspondence</p>	<p>On November 30, 1998, the SEC approved amendments to NASD Rule 3010, requiring firms to review incoming, written correspondence to identify customer complaints and funds and to ensure they are properly handled.</p> <p>See New Rules – Supervision and Review of Communications with the Public, <i>NYSE Information Memo 98-03</i>, January 1998 and SEC Approves Rule Amendments Requiring Review Of Incoming, Written Correspondence; Effective March 15, 1999, <i>NASD Notice to Members 99-03</i>, January 1999, which provides guidance on how to implement this rule.</p>
<p>Supervision</p> <p>Supervisory and Inspection Obligations</p>	<p>See NASD Reminds Members Of Supervisory And Inspection Obligations, <i>NASD Notice to Members 98-38</i>, May 1998, which addresses firm obligations to supervise associated persons located in Offices of Supervisory Jurisdiction (OSJs), branch offices, and all other offices, and to inspect these offices.</p>
<p>Supervision</p> <p>Supervisory Responsibilities</p>	<p>See NASD Provides Guidance On Supervisory Responsibilities, <i>NASD Notice to Members 99-45</i>, June 1999, for guidance on the sections of NASD Rule 3010 that require firms to establish a supervisory system and develop and maintain written supervisory procedures.</p>
<p>Supervision</p> <p>Taping</p>	<p>On April 17, 1998, the SEC approved an amendment to NASD Rule 3010 to require members to establish special supervisory procedures, including the tape recording of conversations, when they have hired more than a specified percentage of registered persons from certain firms that have been expelled or that have had their broker/dealer registrations revoked for violations of sales practice rules.</p> <p>See SEC Approves Taping Rule; Effective August 17, 1998, <i>NASD Notice to Members 98-52</i>, July 1998.</p>
<p>Trading/Markets</p> <p>Alternative Trading Systems</p>	<p>On April 21, 1999, SEC Rules 3a1-1, 3b-16, and Regulation Alternative Trading System (ATS) took effect. Regulation ATS established certain thresholds for share volume of trading.</p> <p>See Implementation of Securities Exchange Act Regulation ATS, Forms ATS, ATS-R and new additions to Rules 17a-3, 17a-4, <i>NYSE Information Memo 99-23</i>, May 13, 1999 and NASD Offers Guidance On Complying With New SEC Rule Regarding Alternative Trading Systems; <i>NASD Notice to Members 99-34</i>, May 1999.</p>

Training Topic

Relevant Training Point(s) and Reference(s)

Trading/Markets

Changes to NASD Rules on SOES Orders Entered Within Five Minutes of Each Other

On January 13, 1999, The Nasdaq Stock Market, Inc. filed a rule change with the SEC that eliminates the single investment decision aggregation presumption for Small Order Execution SystemSM (SOESSM) orders entered within five minutes of each other (*NASD Notice to Members 88-61*). The elimination of the presumption was effective immediately.

See The Nasdaq Stock Market Eliminates The SOES Five-Minute Presumption, *NASD Notice to Members 99-21*, March 1999.

Trading/Markets

Firm Quotation Requirements

On June 22, 1999, the SEC approved changes to NASD Rule 4613(b) regarding quotation updates following execution of an order. NASD Rule 4613(b), as now amended, will require a Market Maker to disseminate an inferior quote whenever the Market Maker fails to execute the full size of an incoming order that is at least one normal unit of trading greater than the Market Maker's published quotation size. The rule change will also modify IM-4613 to prohibit the use of automatic quote updating in violation of Rule 4613(b).

See SEC Approves Changes To Rule 4613—Firm Quotation Requirements; Effective Date: August 2, 1999, *NASD Notice to Members 99-61*, July 1999.

Trading/Markets

Index Arbitrage Trading Restrictions

There has been a revision to the rule that governs the advance/decline of the Dow Jones Industrial Average that triggers Rule 80A's tick restrictions. In addition, the amendment to Rule 80A eliminates sidecar provisions and codifies the definition of index arbitrage.

See Amendment to Rule 80A (Index Arbitrage Trading Restrictions), *NYSE Information Memo 99-8*, February 1999.

Trading/Markets

Order Handling Rules During Market-Wide Trading Halts

On September 9, 1998, the SEC Division of Market Regulation (the Division) issued Staff Legal Bulletin No. 8 setting forth the Division's views on the appropriate handling of customer orders when market-wide circuit breakers halt trading. In addition, the SEC again stressed that broker/dealers must have sufficient internal system capacity to operate properly during periods of market stress.

See SEC Issues Guidance On Handling Customer Orders During Market-Wide Trading Halts, *NASD Notice to Members 99-05*, January 1999.

Training Topic	Relevant Training Point(s) and Reference(s)
Trading/Markets Percentage Order Rules	<p>The way percentage orders are handled has changed effective March 1999.</p> <p>See Amendment to Percentage Order Rules, <i>NYSE Information Memo 99-13</i>, February 1999.</p>
Trading/Markets Stock Volatility Disclosures	<p>The sharp increase in price volatility and volume in many stocks, particularly of companies that sell products or services via the Internet (Internet issuers) suggests that firms should make certain disclosures to retail customers to educate them about the risks of price and volume volatility.</p> <p>See NASD Regulation Issues Guidance Regarding Stock Volatility, <i>NASD Notice to Members 99-11</i>, February 1999.</p>
Trading/Markets The Operation of Automated Order Execution Systems During Turbulent Market Conditions	<p>In light of the recent dramatic intraday volatility and significant surges in trading volume with respect to certain issues, particularly Internet-based issues, firms' best execution obligations require that firm procedures treat customer orders in a fair, consistent, and reasonable manner. To the extent that firms (particularly wholesale firms) deviate from or alter their execution algorithms or procedures during turbulent market conditions, they should consider disclosing such altered procedures and the basis for activating such altered procedures to their customers and firms sending them order flow.</p> <p>See NASD Regulation Issues Guidance Concerning The Operation Of Automated Order Execution Systems During Turbulent Market Conditions, <i>NASD Notice to Members 99-12</i>, February 1999.</p>
Trading/Markets Trade Reporting. The Order Audit Trail System	<p>On March 6, 1998, the SEC approved new NASD Rules 6950 through 6957 which establish an Order Audit Trail System (OATSSM).</p> <p>OATS imposes obligations on member firms to record in electronic form and to report to NASD Regulation certain items of information with respect to orders they receive to effect transactions in equity securities traded on The Nasdaq Stock Market[®]. NASD Regulation combines this order information with transaction data currently reported by members through the Automated Confirmation Transaction ServiceSM (ACTSM) and quotation information disseminated by members through Nasdaq to construct an integrated audit trail of quotation, transaction, and order data.</p> <p>See SEC Approves New Order Audit Trail System (OATS), <i>Special NASD Notice to Members 98-33</i>, March 1998.</p>

Training Topic	Relevant Training Point(s) and Reference(s)
<p>Trading/Markets</p> <p>Transaction Reporting and Quotation Obligations Under the Fixed Income Pricing SystemSM (FIPS[®])</p>	<p>As the list of bonds requiring FIPS reporting continues to expand, members are reminded of their reporting and quotation obligations.</p> <p>See Transaction Reporting And Quotation Obligations Under The Fixed Income Pricing System (FIPS), <i>NASD Notice to Members 98-55</i>, July 1998.</p>
<p>Variable Annuities</p> <p>Sales of Variable Annuities</p>	<p>Guidelines intended to assist members in developing appropriate procedures relating to variable annuity sales to customers. The guidelines identify areas of concern such as customer information, product information, liquidity and earnings accrual, customer's income and net worth, contract size thresholds, investments in tax-qualified accounts, and variable annuity replacements that NASD Regulation would expect to be addressed in the procedures of members that offer and sell variable annuities.</p> <p>See The NASD Reminds Members Of Their Responsibilities Regarding The Sales Of Variable Annuities, <i>NASD Notice to Members 99-35</i>, May 1999.</p>

To Obtain More Information

For more information about publications contact the SROs at these addresses:

American Stock Exchange

NASD MediaSource
P.O. Box 9403
Gaithersburg, MD 20898-9403
(301) 590-6142
www.nasd.com

Chicago Board Options Exchange

Investor Services
Chicago Board Options Exchange
400 S. LaSalle Street
Chicago, IL 60605
(800) OPTIONS
www.cboe.com

Municipal Securities Rulemaking Board

MSRB
Publications Department
1640 King Street
Suite 300
Alexandria, VA 22314
(202) 223-9503
www.msrb.org

National Association of Securities Dealers

NASD MediaSource
P.O. Box 9403
Gaithersburg, MD 20898-9403
(301) 590-6142
www.nasd.com

New York Stock Exchange

Publications Department
11 Wall Street
18th Floor
New York, NY 10005
(212) 656-5273, or (212) 656-2089
www.nyse.com

Philadelphia Stock Exchange

Marketing Department
1900 Market Street
Philadelphia, PA 19103
(800) THE PHLX, or (215) 496-5158
www.phlx.com
or info@phlx.com

**ACTION REQUESTED BY
OCTOBER 29, 1999**

Advertising Regulation

NASD Regulation Requests Comment on Proposed Amendments to Provisions Governing Communications with the Public; **Comment Period Expires October 29, 1999**

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Advertising/Investment Companies
- Internal Audit
- Legal & Compliance
- Mutual Fund
- Registered Representatives
- Senior Management
- Variable Contracts

KEY TOPICS

- Advertising
- Communications with the Public
- NASD Rule 2210

Executive Summary

NASD Regulation, Inc. (NASD Regulation®) requests comment from members and other interested parties on proposed amendments to modernize, simplify, and clarify the rules governing member communications with the public. One of the most significant aspects of the proposal is to exempt all member firm communications to institutional investors from pre-use approval and NASD Regulation filing requirements. Form letters and group e-mail to existing customers and fewer than 25 prospective retail customers also would be eligible for this exemption. Additionally, the proposal would exempt article reprints and certain press releases regarding investment companies from the filing requirements and simplify the standards applicable to member communications.

Included with this *Notice* are Attachment A (the text of the proposed amendments) and Attachment B (specific questions that NASDR requests comments on from members and interested parties).

Request For Comment

NASD Regulation encourages members and other interested parties to comment on all aspects of the proposed rules. Comments must be received by **October 29, 1999**. For your convenience we have provided a checklist (see Attachment B) so that in a minimum amount of time you can provide NASD Regulation with your general comments.

Note: Each *Notice to Members* may contain different and more specific questions we encourage you to consider. While information concerning how many members are generally for or against a proposal is important to the Board, in considering whether to proceed

with or modify a proposal, the Board will also heavily rely upon information and data concerning the substantive merits of the proposal. Therefore, even when using the checklist, we encourage you to provide any specific comments you can.

Members and interested parties can submit their comments using the following methods:

- 1) mailing in the checklist (Attachment B)
- 2) mailing in written comments
- 3) e-mailing written comments
- 4) submitting comments online at the NASDR Web Site (www.nasdr.com)

If you decide to send comments using both the checklist and one of the other methods listed above, please let us know. The checklist and/or written comments should be mailed to:

Joan C. Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

You may also e-mail comments to:
pubcom@nasd.com

Before a rule change becomes effective, the NASD Regulation Board of Directors must adopt, and the Securities and Exchange Commission (SEC) must approve, any rule change. The National Association of Securities Dealers, Inc. (NASD®) Board of Governors also may review the rule change.

Questions/Further Information

As noted, written comments should be submitted to Joan Conley. Questions concerning this *Notice* may be directed to Thomas M.

NASD Notice to Members—Request For Comment 99-79

Selman, Vice President, Investment Companies/Corporate Financing, NASD Regulation, at (202) 728-8068; Thomas A. Pappas, Director, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8453; Joseph P. Savage, Counsel, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8233; or Laura Gansler, Assistant General Counsel, NASD Regulation, at (202) 728-8275.

Discussion

Background

NASD Regulation is proposing the most comprehensive set of amendments to the NASD advertising rules in recent history. These amendments are intended to enhance the effectiveness with which the advertising rules protect investors. The proposed amendments would modernize the advertising rules so that they reflect technological developments and appropriate business activities. The amendments would dramatically simplify many of the provisions of the advertising rules, and would provide greater clarity and conciseness to those rules.

NASD Regulation has consulted with five of its member committees and its National Adjudicatory Council (NAC) to develop these proposed amendments. Additionally, in October 1998, NASD Regulation issued *Notice to Members (NtM) 98-81*, which sought comment on whether any NASD rules or By-Laws should be repealed as obsolete, should be modernized in light of technological or industry developments, or should distinguish between retail and institutional customers in their application. The proposed amendments reflect many of the comments received in response to *NtM 98-81*.

Members should note that the

existing NASD advertising rules and the interpretations of these rules by NASD Regulation staff will continue to govern members' communications with the public until NASD Regulation's Board of Directors and the SEC approve the proposed amendments.

Additionally, the proposal does not reflect proposed amendments to Rule 2210 and its related Interpretive Materials that are currently pending at the SEC, including those concerning independently prepared research reports, related performance information, and bond fund volatility ratings. If the SEC approves any of these proposed amendments, we anticipate revising the proposal to incorporate such amendments.

Definitions

As discussed below, the proposal would amend the definition of "correspondence," and would create new definitions of "institutional sales material," "institutional investor," "existing retail customer," and "prospective retail customer." The proposal would exclude from the definitions of "advertisement" and "sales literature" institutional sales material, which is discussed more fully below. The proposal also would amend the definition of "sales literature" to include expressly press releases concerning a member's product or service. This amendment would codify the existing interpretation of this definition by NASD Regulation's Advertising/Investment Companies Regulation Department (the Department). As discussed below, the proposal would exempt certain press releases regarding investment companies from the filing requirements of Rule 2210.

Approval And Recordkeeping

The proposal would reword, but otherwise maintain, the current provisions requiring registered

principals to approve, initial, and date each advertisement or item of sales literature before the earlier of its first use or filing with the Department, and requiring that a separate file of sales material be maintained for a three-year period from the date of last use.¹ The proposal would maintain the current provision allowing supervising analysts of New York Stock Exchange members to approve corporate debt and equity security research reports. As discussed below, the proposal also would exempt institutional sales material, certain retail form letters, and group e-mail from the pre-use approval requirements.

A commenter to *NtM 98-81* recommended that NASD Regulation revise Rule 2210(b) to indicate that a principal's approval of sales material may be evidenced by an electronic as well as a written signature.² NASD Regulation has already issued an interpretive letter stating that the principal approval requirements of NASD Conduct Rules 3010 and 3110 (which require the signature of the principal that accepts a customer account opening) may be satisfied through the use of electronic signatures, provided certain safeguards are in place.³

Although the letter does not cite the principal approval requirements under Rule 2210, the principles articulated in that letter should apply to Rule 2210(b) as well. Consequently, a principal's approval of sales material may be evidenced by an electronic as well as a written signature.

Filing Requirements And Review Procedures

The proposal would significantly revise the pre-use approval and the filing requirements applicable to certain types of member communications. The proposal would create a separate category of

NASD Notice to Members—Request For Comment 99-79

advertisements and sales literature distributed solely to institutional investors, which would be exempted from Rule 2210's pre-use approval and filing requirements. The proposal also would exempt from the pre-use approval and filing requirements all form letters and group e-mail sent to *existing* retail customers and to fewer than 25 *prospective* retail customers. Finally, the proposal would exempt from only the filing requirements article reprints used as sales material and press releases regarding investment companies that are made available only to members of the media.

Institutional Sales Material

Today Rule 2210 does not expressly distinguish between retail and institutional sales material. Moreover, the rule currently defines "sales literature" to include any "form letter," which the NASD has interpreted to mean written communications, including e-mail messages, sent to at least two persons. Consequently, any communication sent to two or more institutional investors is deemed "sales literature," must comply with the content standards of Rule 2210, must be pre-approved by a registered principal, and may have to be filed with the Department, depending upon its content.

A number of commenters to *NtM 98-81* urged that communications sent only to institutional investors should not be subject to all of the specific content, pre-use approval, and filing standards of Rule 2210 to which retail communications are subject.⁴ NASD Regulation agrees with this conclusion. The proposed amendments would eliminate the pre-use approval and filing requirements applicable to sales material sent only to institutional investors ("Institutional Sales Material"). Sales material that is distributed to beneficiaries of institutional accounts, such as

401(k) plan participants, would be treated as retail sales material. NASD Regulation believes that plan participants and other beneficiaries of institutional accounts should receive the same investor protections as other retail investors. Moreover, Institutional Sales Material would continue to be subject to Rule 2210's content and recordkeeping requirements.

The proposal would define "institutional investor" as:

- any natural person or entity described in Rule 3110(c)(4) (regardless of whether they have an account with an NASD member); and
- any NASD member or associated person of a member.

Rule 3110(c)(4) defines the term "institutional account" as the account of:

- a bank, savings and loan, insurance company, or registered investment company;
- an investment adviser registered with either the SEC or any state; or
- any other entity or individual with total assets of at least \$50 million.

Form Letters And Group E-Mail

The use of group e-mail has become commonplace in many firms. For example, registered representatives may provide customers with information concerning their accounts, changes in market conditions, or current economic conditions. Given the volume of form letters and group e-mail that members and their associated persons may send and the speed with which this material

can be dispatched to customers, a pre-use approval requirement may be less effective than standards that are more specifically tailored to these forms of communication.

NASD Regulation believes that Rule 3010(d), which governs the approval and review of correspondence, provides a more effective means of supervising form letters and group e-mail. Rule 3010(d) requires members to adopt written procedures for the review of correspondence by registered principals. Any member that does not pre-approve all correspondence must educate and train associated persons as to NASD rules governing communications with the public and the firm's procedures, must document this training, and must monitor adherence to these procedures. Members must retain all correspondence of registered representatives related to the member's investment banking or securities business.

Several commenters to *NtM 98-81* recommended that Rule 2210 be amended to clarify that only those letters that meet the definition of "form letter" in Rule 24b-1 under the Investment Company Act of 1940 (*i.e.*, a sales letter sent to 25 or more persons within a 90-day period) are subject to the filing requirements.⁵ Others have urged NASD Regulation to look to content rather than the number of recipients in determining whether a communication is subject to the filing requirements.⁶

NASD Regulation is concerned that an exemption based solely on the number of recipients may not address the practical issues related to the supervision of group e-mail and form letters. It would seem that a content-based approach would be difficult to implement due to the inherently subjective nature of determining which communications are intended to solicit products and services.

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Accordingly, NASD Regulation has proposed an alternative approach, which would subject form letters and group e-mail sent to existing retail customers and fewer than 25 prospective retail customers (“Group Correspondence”) to the supervisory and review requirements of Rule 3010(d) applicable to correspondence, and would exempt Group Correspondence from the pre-use approval and filing requirements of Rule 2210. “Existing retail customer” would be defined as any person, other than an institutional investor, who has opened an account with a member. “Prospective retail customer” would be defined as any person, other than an institutional investor, who has not opened an account with the member.

This approach would continue to require filing and pre-use approval for sales material that raises the greatest potential for abuse – material sent to large numbers of prospective retail investors. At the same time, the proposal would subject Group Correspondence to the supervisory requirements of Rule 3010(d) and the content and recordkeeping requirements of Rule 2210.

In connection with the exemption from the pre-use approval and filing requirements for Group Correspondence, the definition of “correspondence” also would be revised. Currently, “correspondence” means any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public. As proposed, “correspondence” would simply mean any written or electronic communication that does not meet the definition of “advertisement” or “sales literature.”

Article Reprints And Press Releases

Rule 2210 defines “sales literature” to include “reprints or excerpts of any other . . . sales literature or published article.” Article reprints thus may have to be filed with the Department, depending upon their content (such as whether they pertain to mutual funds or variable products). NASD Regulation has received comments in the past, including those made in response to *NtM 98-81*,⁷ that third-party article reprints that are used as sales literature should not be subject to the filing requirements of Rule 2210. Commenters have argued that reprints often are available to the public through large-circulation periodicals published by firms that are not NASD members. Commenters have thus argued that it makes little sense to require members to file reprints with the Department, especially when members have no control over the content of these articles.

In response to these concerns, the proposal would eliminate the need to file any article reprint that has not been materially altered by the member. Members still would have to ensure that article reprints comply with the content standards of Rule 2210. Thus, members could not distribute an article reprint that contains false or misleading statements. Moreover, article reprints would continue to be subject to the pre-use approval and recordkeeping requirements of Rule 2210.

Rule 2210 also defines “sales literature” to include “any written or electronic communication distributed or made generally available to customers or the public,” which the Department historically has interpreted to include press releases.⁸ Commenters to *NtM 98-81* have

argued that press releases should be excluded from the filing requirements on the ground that media outlets typically excerpt only certain portions of press releases for their stories, and members have no editorial control over the content of the article that will appear.⁹ In response to this concern, the proposal would exclude from the filing requirements press releases concerning investment companies, provided that such releases are made available only to members of the media. These press releases would continue to be subject to the content, pre-use approval, and recordkeeping requirements of Rule 2210.

Shareholder Reports

Several commenters to *NtM 98-81* have argued that investment company annual and semi-annual reports that are used as sales material also should be exempt from the filing requirements.¹⁰ These commenters note that shareholder reports are already subject to specific content requirements under SEC rules and are filed with the SEC, and argue that these requirements should address any investor protection concerns.

Members are not required to file shareholder reports with NASD Regulation if they are only sent to current fund shareholders. However, if a member uses a shareholder report as sales material with prospective investors, the member must file the management’s discussion of fund performance (MDFP) portion of the report (as well as any supplemental sales material attached to or distributed with the report) with the Department. The Department is concerned that members frequently supplement the MDFP with marketing material that goes far beyond the SEC regulatory requirements for shareholder

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reports. Accordingly, NASD Regulation does not propose at this time to exempt mutual fund shareholder reports. However, interested parties are encouraged to comment on this issue.

Television And Video Advertisements

The proposal would require members that have filed a draft version or “story board” of a television or video advertisement pursuant to a filing requirement also to file the final filmed version within 10 business days of first use or broadcast. This rule change would codify an existing Department policy regarding television and video sales material.

Electronic Filing Of Sales Material

NASD Regulation received a number of recommendations regarding ways to allow members to file sales material and receive Department comments electronically.¹¹ NASD Regulation agrees with these commenters that electronic filing may improve the speed and efficiency of the filing and review process over the current paper-based system. Due to possible regulatory and technological constraints, however, NASD Regulation is not prepared at this time to allow electronic filing. NASD Regulation is examining the means to allow electronic filing and looks forward to working with its committees and members to determine whether electronic filing would be feasible.

Other Filing Issues

One commenter to *NtM 98-81* requested that NASD Regulation eliminate the requirement that members file a copy of the ranking or comparison used in sales material that contains rankings. This comment appears to assume that the filing is pro forma because the ranking information is reflected

in the sales material itself, or that the ranking information is readily available to NASD Regulation staff. In fact, it is not unusual for the Department to comment on sales material that presents a ranking in a manner inconsistent with the backup ranking information. Additionally, many sales material items contain rankings that are not readily available. Because the Department staff relies on the backup filings when reviewing sales material that contains rankings, elimination of this requirement could significantly delay completion of the staff’s review. Accordingly, NASD Regulation does not propose to eliminate the backup filing requirement for sales material that contains rankings. The public is invited to comment further on this issue, however.

Another commenter recommended exempting from the filing requirements generic mutual fund advertisements that comply with Rule 135a under the Securities Act of 1933.¹² Members rarely file generic advertisements. To the extent the Department has received generic advertisements, however, it has found that members sometimes misunderstand the content requirements of Rule 135a, and sometimes misclassify advertising that falls under other rules as generic advertisements. We are concerned that an exemption for generic advertisements could lead some members not to file investment company sales material that should be filed due to their misunderstanding of Rule 135a. Accordingly, NASD Regulation does not propose to exempt generic fund advertisements. Nevertheless, we invite further public comment on this issue.

Standards Applicable To Member Communications

The proposal would substantially shorten and simplify the standards applicable to communications with

the public that are contained in Rule 2210(d). The proposal would essentially eliminate the distinction between general and specific standards applicable to communications with the public, and would rewrite many of the standards in “plain English.”

The proposal would relocate certain standards from Rule 2210(d) to a new Interpretive Material 2210-1, Guidelines to Ensure that Communications Are Not Misleading. New proposed IM-2210-1 would clarify that members have the primary responsibility to ensure that their communications with the public are fair, balanced, and not misleading, including determining what disclosures are necessary to meet this standard. IM-2210-1 also would note that, while member communications must comply with these guidelines, they do not represent an exclusive list of considerations that a member must make in determining whether a communication complies with all applicable standards.

IM 2210-1 would not contain certain of the specific standards currently in Rule 2210. Partially in response to comments received on *NtM 98-81*,¹³ the proposal would eliminate the current specific standards regarding offers of free service, claims for research facilities, hedge clauses, recruiting advertising, and periodic investment plans, for the following reasons.

First, to the extent that these provisions prohibit statements that are misleading, unbalanced, or inaccurate regarding particular types of communications, the rule already prohibits the use of such statements.

Second, certain required disclosures, such as those currently applicable to any advertisement or sales literature that discusses

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periodic investment plans, may not be necessary depending upon the context.

The proposal also would delete current Rule 2210(d)(2)(J), regarding references to regulatory organizations, for similar reasons. However, the proposal would relocate the prohibition on communications that imply NASD or regulatory agency endorsement or approval of securities to Interpretive Material 2210-4 (Limitations on the Use of Association's Name).

The proposal would streamline and clarify the current provisions in Rule 2210(d)(2)(B) regarding use of recommendations in sales material, including research reports. The proposal also would move these provisions to IM-2210-1(6).

The proposal would clarify that a member making a recommendation in sales material must disclose if the member or any officer, director, or the associated person making the recommendation has any financial interest in the recommended security or any related security. Further, the member would be required to disclose the nature of such financial interest, including whether the financial interest consists of any options or warrants on the recommended security.

The proposal would continue to require any member to disclose, if applicable, that the member usually makes a market in the recommended security or any related security of the issuer. Additionally, the proposal would continue to require the member to disclose, if applicable, that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last 12 months. The proposal would shorten the underwriting look-back period

contained in the current rule from three years to 12 months to better reflect current underwriting practices.

The proposal also would require the recommendation to disclose the price at the time the recommendation was made and the date of the recommendation. When presenting past recommendations in sales material, the proposal would require disclosure of all of the member's recommendations for similar securities and time periods.

One commenter requested that NASD Regulation rescind its policy announced in *NtM 98-107* regarding the obligations of members to portray mutual fund fees and expenses in a balanced manner.¹⁴ That *Notice* addressed several concerns with the presentation of mutual fund fees and expenses, including the need to ensure that a discussion of fees that are *not* charged is balanced with a discussion of fees and expenses that *are* charged. Since publication of *NtM 98-107*, NASD Regulation has detected a marked improvement in the quality of this disclosure. Consequently, NASD Regulation reaffirms its position in *NtM 98-107*.

Use And Disclosure Of A Member's Name

The proposal would dramatically simplify the provisions concerning disclosure of member names. Every member communication that promotes a product or service would have to prominently disclose the member's name, although a member could disclose a fictional name by which the member is commonly recognized or that is required in any state in addition to the member's name. The proposal also would require disclosure of any relationship between the member and any non-member or individual who is named.

To prevent confusion, communications that include names other than the member name would be required to describe which products or services are being offered by the member. Members would not be required to disclose their names in "blind" recruiting advertisements (employment advertisements that do not identify the potential employer).

Variable Products Communications

The proposal would not amend Interpretive Material 2210-2, Communications with the Public About Variable Life Insurance and Variable Annuities. NASD Regulation believes it would be premature to amend these provisions before the SEC takes final action on its proposed Form N-6, the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies.¹⁵

Ranking Guidelines

The proposal would make several changes to the Ranking Guidelines contained in Interpretive Material 2210-3.

1) The proposal would eliminate the requirement that certain disclosures¹⁶ appear in "close proximity" to any headline or other prominent statement that refers to a ranking. The subjective nature of this requirement has complicated the Department's administration of the Ranking Guidelines. Moreover, this change addresses a similar request made in response to *NtM 98-81*.¹⁷

2) The proposal would modify the current requirement that rankings be based on total return for periods of one, five,

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and 10 years (as applicable), or if rankings for such periods are not available, for short, medium, and long-term periods. Instead, rankings would have to be based on the total return for short, medium, and long-term periods for investment companies in the same category, to the extent that the investment company has been in existence for each of these periods.

3) The proposal would eliminate certain disclosure requirements applicable to investment company rankings that are based on subcategories of funds or categories created by an investment company or its affiliate.¹⁸

One commenter requested that NASD Regulation amend the Ranking Guidelines to allow sales material to include rankings of entire fund families, in addition to rankings of individual funds.¹⁹ NASD Regulation is concerned that fund family rankings would confuse or even mislead investors. Accordingly, NASD Regulation does not propose to amend the Ranking Guidelines in this manner. Nevertheless, NASD Regulation solicits comment on whether the Ranking Guidelines should permit sales material to include rankings of entire fund families.

Limitations On Use Of The Association's Name

The proposal would simplify and shorten the requirements in Interpretive Material 2210-4 concerning the use of the NASD's name. The proposal would permit a member to use the NASD's name in any public communication, so long as it complies with the requirements of Rule 2210 and does not imply that the NASD or any other regulatory authority endorses or guarantees the

member's business practices, selling methods, or securities offered. The provisions of IM-2210-4 regarding use of the NASD's name in an over-the-counter transaction confirmation and certification of membership would generally remain the same. The proposal would delete paragraph (c), which prohibits the fraudulent or misleading use of the NASD's name, and paragraph (d), which deems a violation of IM-2210-4 to be a violation of NASD Rule 2110. NASD Regulation believes that these paragraphs simply repeat standards that already exist in Rules 2110 and 2210.

Communications About Collateralized Mortgage Obligations

The proposal would rewrite Interpretive Material 2210-1 (the CMO Guidelines), which governs communications about collateralized mortgage obligations (CMOs), and renumber it as IM-2210-6. The current CMO Guidelines may give the impression that different standards apply to educational material, advertisements, and "communications." The proposal attempts to simplify, shorten, and reorganize the CMO Guidelines to provide a more straightforward and uniform list of disclosure requirements for all CMO communications.

The proposal would reorganize the CMO Guidelines by expanding the "General Considerations" section of existing IM-2210-1 to incorporate all of the requirements generally applicable to CMO communications. The proposal would separate out requirements concerning specific products and CMO educational material.

The CMO Guidelines require all member communications to describe CMOs as "collateralized

mortgage obligations" and prohibit the use of "proprietary names." This prohibition was designed to prevent the use of names that mimic government agency nicknames (e.g., Freddie Mac, Ginnie Mae). Nevertheless, the term "proprietary" may be confusing. The proposal would replace these provisions with a general requirement that the name of the product include the term "Collateralized Mortgage Obligation."

The CMO Guidelines require members to accurately depict CMO guarantees, and state that in most cases it would be misleading to use the term "government guaranteed." They also state that private-issue CMO advertisements should not refer to guarantees or backing, but may disclose the rating.

NASD Regulation believes that the more specific requirements concerning use of the term "government guaranteed" and private-issue CMOs already are covered by the general requirement that guarantees be accurately depicted. Moreover, the language used for these specific issues is admonishing rather than compulsory. For these reasons, the proposal would eliminate these specific standards in favor of the general requirement that guarantees be accurately depicted. Members could continue to present ratings in their CMO communications, provided use of the rating is not otherwise misleading.

The proposal would clarify that educational material must be offered before a CMO sale. The proposal also would reorganize this portion of the CMO Guidelines to make it clearer.

The current CMO Guidelines provide a set of general requirements concerning print advertisements. The proposal would eliminate this section

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because it is redundant of other provisions of the new IM and the other advertising rules. Of course, print advertisements would still be permitted, subject to the advertising rules and IM-2210-6.

The proposal would eliminate the provisions regarding television advertisement story boards and non-material updating of previously filed radio or television CMO advertising, since Rule 2210 as amended would cover these areas. The proposal also would significantly reduce the number of required disclosures for radio and television CMO advertisements.

The proposal would move the current “Standardized CMO Advertisement” section into a new section entitled “Specific CMO Communications with the Public.” The new CMO Guidelines would clarify that any communication discussing a specific CMO must provide a standardized presentation of anticipated yield and other disclosures. The proposal would revise the standardized sample communication to reflect interest rates that are more common today (7.5 percent rather than 8.5 percent) and to update the maturity date.

One commenter to *NtM 98-81* recommended that NASD Regulation exempt communications to institutional investors regarding CMOs from the CMO Guidelines, on the grounds that many of the Guidelines’ required disclosures assume a retail investor’s level of knowledge.²⁰ NASD Regulation solicits comment on whether it should exempt institutional sales material regarding CMOs from the CMO Guidelines.

ATTACHMENT A

Text Of Proposed Amendments To Rule 2210 And Related Interpretive Materials

(Note: Rule 2210 and Interpretive Materials 2210-1, 2210-3, and 2210-4 are deleted in their entirety and the following new language is substituted in their place.)

2200. MEMBER COMMUNICATIONS

2210. Communications with the Public

(a) Definitions

(1) For purposes of this Rule and any interpretation thereof, “communications with the public” consist of:

(A) “Advertisements.” Any material, other than institutional sales material, that is published or designed for use in any electronic or other public media, including Web sites and any newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, sign or billboard, motion picture, or telephone directory (other than routine listings).

(B) “Sales Literature.” Any written or electronic communication, other than institutional sales material, that is generally distributed or made available to customers or the public, but which does not meet the foregoing definition of “advertisement,” including circulars; research reports; market letters; performance reports or summaries; form letters; telemarketing scripts; seminar texts; reprints or excerpts of any other advertisement, sales

literature or published article; and press releases concerning a member’s product or service.

(C) “Correspondence.” Any written or electronic communication that does not meet the foregoing definition of “advertisement” or “sales literature.”

(D) “Institutional Sales Material.” Any material that would otherwise be deemed an “advertisement” or “sales literature,” but that is distributed only to institutional investors.

(E) Participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or speaking activity.

(2) “Institutional investor” means any:

(A) natural person or entity described in Rule 3110(c)(4), regardless of whether such person or entity has an account with an Association member; and

(B) Association member or associated person of such a member.

No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication (or any excerpt thereof) will be forwarded to any person other than an institutional investor.

(3) “Existing retail customer” means any person who has opened an account with a member and is not an institutional investor. “Prospective retail customer”

means any person who has not opened such an account and is not an institutional investor.

(b) Approval and Recordkeeping

(1) A registered principal of the member must approve, initial and date each advertisement and item of sales literature before the earlier of its use or filing with the Association’s Advertising/Investment Companies Regulation Department (“Department”). With respect to corporate debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange, this requirement may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

(2) (A) Institutional sales material; and

(B) Form letters or electronic mail messages distributed only to:

(i) existing retail customers; and

(ii) fewer than 25 prospective retail customers within any 90 calendar-day period

need not be approved by a registered principal prior to use, but must be approved prior to any voluntary filing with the Department. Such communications are subject to the requirements of Rule 3010 regarding the supervision and review of correspondence.

(3) Members must maintain all advertisements, sales literature, and institutional sales material in a file for a period of three years from the date of last use.

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The file must include the name of each person who prepared and approved each advertisement and item of sales literature or institutional sales material and the date that approval was given.

(4) Members must maintain in a file information concerning the source and data of any statistical table, chart, graph or other illustration used by the member in communications with the public.

Cross Reference — NASD Conduct Rule 3010 (Supervision) and Rule 3110 (Books and Records)

(c) Filing Requirements and Review Procedures

(1) The member must provide with each filing under this paragraph the actual or anticipated date of first use, the name and title of the individual who approved the advertisement or sales literature, and the date that the approval was given.

(2) Within 10 business days of first use or publication, a member must file the following advertisements and sales literature with the Department:

(A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of paragraph (c)(3). The filing of any advertisement or sales literature that includes or incorporates a ranking or comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the

advertisement or sales literature.

(B) Advertisements and sales literature concerning public direct participation programs (as defined in Rule 2810).

(C) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Act).

(3) At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

(A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data, ranking or comparison on which the ranking or comparison is based.

(B) Advertisements concerning collateralized mortgage obligations (CMOs).

(4) A member must file each advertisement with the Department at least 10 business days prior to use, for a one-year period from the date of its first filing of any advertisement or

sales material with the Department (or with a registered securities exchange having standards comparable to those contained in this Rule).

(5) If a member has filed a draft version or "story board" of a television or video advertisement pursuant to a filing requirement, then the member must also file the final filmed version within 10 business days of first use or broadcast.

(6)(A) Notwithstanding the foregoing provisions, the Department upon review of a member's advertisements or sales literature, and after determining that the member has departed from the standards of this Rule, may require that the member file all advertisements and sales literature, or the portion of the member's material that is related to any specific type or class of securities or services, with the Department at least 10 business days prior to use. The Department will notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect.

(B) Any filing requirement imposed under this paragraph (6) will take effect 30 calendar days after the member receives the written notice, during which time the member may appeal pursuant to the hearing and appeal procedures of the Code of Procedure contained in the Rule 9510 Series.

(7) In addition to the foregoing requirements, each member's advertisements, sales literature, institutional sales material, and correspondence may be subject to a spot-check procedure. Upon written request from the

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Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.

(8) The following types of material are excluded from the filing requirements and (except for the material in paragraph (I)) the foregoing spot-check procedures:

(A) Advertisements and sales literature that previously have been filed and that are to be used without material change.

(B) Advertisements or sales literature solely related to recruitment or changes in a member's name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member.

(C) Advertisements or sales literature that do no more than identify the Nasdaq or other national securities exchange symbol of the member or identify a security for which the member is a Nasdaq registered market maker.

(D) Advertisements or sales literature that do no more than identify the member or offer a specific security at a stated price.

(E) Prospectuses, preliminary prospectuses, mutual fund profiles, offering circulars and similar documents that have been filed with the Securities and Exchange Commission (the "SEC") or any state, or that concern a securities offering that is exempt from such registration, except that an investment company prospectus published pursuant to SEC Rule 482 under the

Securities Act of 1933 will not be considered a prospectus for purposes of this exclusion.

(F) Advertisements prepared in accordance with Section 2(10)(b) of the Securities Act of 1933, as amended, or any rule thereunder, such as SEC Rule 134, unless the advertisements are related to direct participation programs or securities issued by registered investment companies.

(G) Press releases concerning investment companies, provided that such releases are made available only to members of the media.

(H) Reprints of published articles that the member has not materially altered.

(I) Form letters or electronic mail messages distributed only to:

(i) existing retail customers; and

(ii) fewer than 25 prospective retail customers within any 90 calendar-day period.

(9) Material that refers to investment company securities, direct participation programs, government securities or exempted securities (as defined in Section 3(a)(12) of the Act) solely as part of a listing of products or services offered by the member, is excluded from the requirement of paragraphs (c)(1) and (c)(2).

(10) Pursuant to the Rule 9600 Series, the Association may exempt a member or person associated with a member from the pre-filing requirements of this paragraph for good cause shown.

(d) Standards Applicable to Communications with the Public

(1) All member communications with the public must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communication to be misleading.

(2) No member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public. No member may publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(3) Material information must appear in the main text of the communication and may not be relegated to footnotes.

(4) Communications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.

(5) Any testimonial concerning a member's products and services in advertisements or sales literature must state the following:

(A) The fact that the testimonial may not be representative of the experience of other clients.

(B) The fact that the testimonial is no guarantee of

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future performance or success.

(C) If more than a nominal sum is paid, the fact that it is a paid testimonial.

(6) If any testimonial in a communication with the public concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

(7) Any comparison in advertisements or sales literature between investments or services must disclose all material differences between them, including investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.

(e) Violation of Other Rules

Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to member communications with the public will be deemed a violation of this Rule.

Cross Reference — SEC Rules Concerning Investment Company Sales Literature and Advertising (SEC Rules and Regulation T Tab)

(f) Disclosure of the Member's Name

(1) Every member communication with the public that promotes a product or service (which for purposes of this provision includes business cards and letterhead) must:

(A) prominently disclose the name of the member and may

also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;

(B) disclose any relationship between the member and any non-member or individual who is also named; and

(C) if it includes other names, clearly identify which products or services are being offered by the member.

(2) This provision does not apply to so-called "blind" advertisements used to recruit personnel.

Cross Reference — Conduct Rule 3010(g)(2) (Concerning telephone directory line listings, business cards and letterhead)

IM-2210-1. Guidelines to Ensure That Communications Are Not Misleading

Every member is responsible for determining whether any communication with the public, including material that has been filed with the Department, complies with all applicable standards, including the requirement that the communication not be misleading. In order to meet this responsibility, member communications with the public must conform with the following guidelines. These guidelines do not represent an exclusive list of considerations that a member must make in determining whether a communication with the public complies with all applicable standards.

(1) Members must ensure that statements are not misleading within the context in which they are made. A statement made in one context may be misleading even though such a statement

could be appropriate in another context. An essential test in this regard is the balance of treatment of risks and potential benefits.

(2) Members must consider the nature of the audience to which the statement will be directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed. Members must keep in mind that it is not always possible to restrict the audience that may have access to a particular communication with the public. Additional information or a different presentation of information may be required depending upon the medium used for a particular communication and the possibility that the communication will reach a larger or different audience than the one initially targeted.

(3) Member communications must be clear. A statement made in an unclear manner can cause a misunderstanding. A complex or overly technical explanation may be more confusing than too little information.

(4) Income or investment returns may not be characterized in communications with the public as tax free or exempt from income tax where tax liability is merely postponed or deferred. If taxes are payable upon redemption, that fact must be disclosed in advertisements and sales literature. References to tax free/tax exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds is subject to state or local

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income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.

(5) Communications that refer to individuals may not refer to nonexistent or self-conferred degrees or designations, nor may these communications refer to bona fide degrees or designations in a misleading manner.

(6) Any member making a recommendation in advertisements and sales literature must disclose, whenever applicable, that the member usually makes a market in, or that the member, any of its officers or directors or the associated person providing the recommendation has any financial interest in the recommended security or any related security, and the nature of the financial interest. The member also must disclose, if applicable, that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last twelve months. The member must disclose the price at the time the recommendation was made and the date of the recommendation. When presenting past recommendations in advertisements and sales literature, a member must disclose all of its recommendations for similar securities and time periods.

IM-2210-2. Communications with the Public About Variable Life Insurance and Variable Annuities

[NO CHANGE]

IM-2210-3. Use of Rankings in Investment Company Advertisements and Sales Literature

(a) Definition of "Ranking Entity"

For purposes of the following guidelines, the term "Ranking Entity" refers to any entity that provides general information about investment companies to the public, that is independent of the investment company and its affiliates, and whose services are not procured by the investment company or any of its affiliates to assign the investment company a ranking.

(b) General Prohibition

Members may not use investment company rankings in an advertisement or sales literature other than rankings developed and produced by Ranking Entities and conforming to the following requirements.

(c) Required Disclosures

(1) Headlines/Prominent Statements

A headline or other prominent statement may not state or imply that an investment company is the best performer in a category unless it is actually ranked first in the category.

(2) All advertisements and sales literature containing an investment company ranking must disclose prominently:

(A) the name of the category (e.g., growth);

(B) the number of investment companies in the category;

(C) the name of the Ranking Entity and, if applicable, the fact that the investment

company or an affiliate created the ranking;

(D) the length of the period (or the first day of the period) and its ending date; and

(E) the criteria on which the ranking is based (e.g., total return, risk-adjusted performance).

(3) All such advertisements and sales literature also must disclose:

(A) the fact that past performance is no guarantee of future results;

(B) for investment companies that assess front-end sales loads, whether the ranking takes those loads into account;

(C) if the ranking is based on total return or the current SEC standardized yield, and fees have been waived or expenses advanced during the period on which the ranking is based and the waiver or advancement had a material effect on the total return or yield for that period, a statement to that effect;

(D) the publisher of the ranking data (e.g., "ABC Magazine, June 1999"); and

(E) if the ranking consists of a symbol (e.g., a star system) rather than a number, the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all investment companies).

(d) Time Periods

(1) Any investment company ranking included in an advertisement or sales literature must be, at a minimum, current to the most recent calendar

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quarter ended, in the case of advertising, prior to the submission for publication, or, in the case of sales literature, prior to use. If no ranking that meets this requirement is available from the Ranking Entity, then a member may only use the most current ranking available from the Ranking Entity unless use of the most current ranking would be misleading, in which case no ranking from the Ranking Entity may be used.

(2) Except for money market mutual funds:

(A) advertisements and sales literature may not present any ranking that covers a period of less than one year, unless the ranking is based on yield;

(B) an investment company ranking based on total return must be accompanied by rankings based on total return for short, medium and long-term periods for investment companies in the same investment category, to the extent that the investment company has been in existence for each of these periods;

(C) an investment company ranking based on yield may be based only on the current SEC standardized yield and must be accompanied by total return rankings for the time periods in (2)(B).

(e) Categories

(1) The choice of category (including a subcategory of a broader category) on which the investment company ranking is based must be one that provides a sound basis for evaluating the performance of the investment company.

(2) An investment company ranking must be based only on (A) a category or subcategory created and published by a Ranking Entity, or (B) a category or subcategory created by an investment company or an investment company affiliate, but based on the performance measurements of a Ranking Entity.

(3) The advertisement or sales literature may not use any category or subcategory that is based upon the investment company's asset size, whether or not it has been created by a Ranking Entity.

(f) Multiple Class/Two-Tier Funds

Investment company rankings for more than one class of investment company with the same portfolio must be accompanied by prominent disclosure of the fact that the investment companies or classes have a common portfolio.

IM-2210-4. Limitations on Use of Association's Name

(a) Members may indicate membership in the Association in conformity with Article XV, Section 2 of the NASD By-Laws in the following ways:

(1) in any communication with the public, provided that the communication complies with the applicable standards of Rule 2210, and neither states nor implies that the Association or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security;

(2) in a confirmation statement for an over-the-counter transaction that states: "This

transaction has been executed in conformity with the Uniform Practice Code of the National Association of Securities Dealers, Inc."

(b) Certification of Membership

Upon request to the Association, a member will be entitled to receive an appropriate certification of membership, which may be displayed in the principal office or a registered branch office of the member. The certification will remain the property of the Association and must be returned by the member upon request of the NASD Board or the Chief Executive Officer of the Association.

IM-2210-5. Presentation of Mutual Fund Related Performance Information

[RESERVED]

IM-2210-6 Communications with the Public About Collateralized Mortgage Obligations (CMOs)

(a) Definition

For purposes of the following guidelines, the term "collateralized mortgage obligation" (CMO) refers to a multi-class debt instrument backed by a pool of mortgage pass-through securities or mortgage loans, including real estate mortgage investment conduits (REMICs) as defined in the Tax Reform Act of 1986.

(b) Communications with the Public

(1) General Considerations

All communications with the public concerning CMOs:

(A) must include within the name of the product the term "Collateralized Mortgage Obligation;"

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(B) may not compare CMOs to any other investment vehicle, including a bank certificate of deposit;

(C) may not exaggerate the relative safety offered by an investment in CMOs;

(D) must accompany any claim concerning the liquidity of a CMO with disclosure that, upon resale, an investor may receive more or less than his original investment;

(E) that discusses any guarantee, must depict the guarantee accurately and may not imply that either the market value or the anticipated yield of the CMO is guaranteed;

(F) must disclose, as applicable, that a government agency backing applies only to the face value of the CMO and not to any premium paid;

(G) may not imply that CMOs are simple securities suitable for any investor; and

(H) must disclose that a CMO's yield and average life will fluctuate depending on the actual rate at which mortgage holders prepay the mortgages underlying the CMO and changes in current interest rates.

(2) Required Educational Material

Before the sale of a CMO, a member must offer to the customer educational material that includes the following:

(A) a discussion of:

(i) characteristics and risks of CMOs including credit quality, prepayment rates

and average lives, interest rates (including their effect on value and prepayment rates), tax considerations, minimum investments, transaction costs and liquidity;

(ii) the structure of a CMO, including the various types of tranches that may be issued and the rights and risks pertaining to each (including the fact that two CMOs with the same underlying collateral may be prepaid at different rates and may have different price volatility); and

(iii) the relationship between mortgage loans and mortgage securities;

(B) questions an investor should ask before investing; and

(C) a glossary of terms.

(c) Specific CMO Communications with the Public

In addition to the standards set forth above, communications that promote a specific security or contain yield information must conform to the standards set forth below. An example of a compliant communication appears at the end of this section.

(1) The communication must present the following disclosure sections with equal prominence. The information in Sections 1 and 2 must be included. The information in Section 3 is optional; therefore, the member may elect to include any, all or none of this information. The information in Section 4 may be tailored to the member's preferred signature.

Section 1

Title - Collateralized Mortgage Obligations
Coupon Rate
Anticipated Yield/Average Life
Specific Tranche - Number & Class
Final Maturity Date
Underlying Collateral

Section 2 Disclosure Statement:

"The yield and average life shown above consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions."

Section 3

Product Features (Optional):

Minimum Denominations
Rating Disclosure
Agency/Government Backing
Income Payment Structure
Generic Description of Tranche (e.g., PAC, Companion)
Yield to Maturity of CMOs Offered at Par

Section 4

Company Information:

Name, Memberships
Address
Telephone Number
Representative's Name

(2) The following conditions must also be met:

(A) All figures in Section 1 must be in equal type size.

(B) The disclosure language in Section 2 may not be altered and must be given equal prominence with the information in Section 1.

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(C) The prepayment assumption used to determine the yield and average life must either be obtained from a nationally recognized service or the member firm must be able to justify the assumption used. A copy of either the service's listing for the CMO or the firm's justification must be attached to the copy of the communication that is maintained in the firm's advertising files in order to verify that the prepayment scenario is reasonable.

(D) Any sales charge that the member intends to impose must be reflected in the anticipated yield.

(E) The communication must include language stating that the security is "offered subject to prior sale and price change." This language may be included in any one of the four sections.

(F) If the security is an accrual bond that does not currently distribute principal and interest payments, then Section 1 must include this information.

(3) Radio/Television Advertisements

(A) The following oral disclaimer must precede any radio or television advertisement in lieu of the Title information set forth in Section 1:

"The following is an advertisement for Collateralized Mortgage Obligations. Contact your representative for information on CMOs and how they react to different market conditions."

(B) Radio or television advertisements must contain

the following oral disclosure statement in lieu of the legend set forth in Section 2:

"The yield and average life reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life."

(4) Standardized CMO Communication Example:

Collateralized Mortgage Obligations

7.50% Coupon
7.75% Anticipated Yield to 22-Year Average Life
FNMA 9532X, Final Maturity March 2023
Collateral 100% FNMA 7.50%

The yield and average life shown above reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.

\$5,000 Minimum
Income Paid Monthly
Implied Rating/Volatility Rating
Principal and Interest
Payments Backed by FNMA
PAC Bond

Offered subject to prior sale and price change.

Call Mary Representative at
(800)555-1234

Your Company Securities,
Inc., Member SIPC
123 Main Street
Anytown, USA 12121

Endnotes

¹ See NASD Conduct Rule 2210(b).

² See Letter from Bruce Saxon, Compliance Specialist, Van Kampen Investments Inc., to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Jan. 12, 1999).

³ See Letter from David A. Spotts, NASD Regulation, Inc. to Laura Moret, American Express Financial Corporation (Nov. 26, 1997) (available on the NASD Regulation Web Site).

⁴ Letter from Brian C. Underwood, Senior Vice President, A.G. Edwards & Sons, Inc., to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Nov. 24, 1998); Letter from Joanne Medero, Managing Director and Chief Counsel, Barclays Global Investors, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Jan. 13, 1999); Letter from Kathryn V. Natale, Chairman, NASD Rule Review Task Force, The Bond Market Association, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Jan. 15, 1999) ("BMA Letter"); Letter from Cornelius J. Sullivan and Debra S. Wekstein, Eaton Vance Distributors, Inc., to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Jan. 14, 1999); Letter from David A. Spotts, Senior Legal Counsel, Fidelity Investments, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Feb. 15, 1999) ("Fidelity Letter"); Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Feb. 12, 1999) ("ICI Letter"); Letter from Michael W. Reinhardt, House Counsel, Ragen MacKenzie Incorporated, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Nov. 30, 1998); Letter from James A. Tricarico, R. Gerald Baker, and Howard J. Schwartz, the Securities Industry Association, to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Feb. 23, 1999) ("SIA Letter"); Letter from Henry H. Hopkins and David A. Roscum, T. Rowe Price Associates, Inc. to Joan Conley, Corporate Secretary, NASD Regulation, Inc. (Feb. 11, 1999) ("T. Rowe Price Letter").

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⁵Fidelity Letter; ICI Letter.

⁶SIA Letter; *see also* Letter from R. Gerald Baker, Securities Industry Association, to Thomas A. Pappas and Robert J. Smith, NASD Regulation, Inc. (Nov. 9, 1998).

⁷Fidelity Letter; T. Rowe Price Letter.

⁸Additionally, the proposal would amend the definition of "sales literature" expressly to include press releases to conform it to this interpretation.

⁹*See* T. Rowe Price Letter; ICI Letter; *see also* Letter from Craig S. Tyle, Vice President and Senior Counsel, Investment Company Institute, to Thomas M. Selman, Director, Advertising/Investment Companies Regulation, NASD Regulation, Inc. (April 9, 1997).

¹⁰ICI Letter; T. Rowe Price Letter.

¹¹Fidelity Letter; ICI Letter.

¹²ICI Letter.

¹³*See* Fidelity Letter; ICI Letter.

¹⁴T. Rowe Price Letter.

¹⁵*See* Securities and Exchange Release Nos. 33-7514 and IC-23066 (Mar. 2, 1998), 63 Fed. Reg. 13988 (Mar. 23, 1998).

¹⁶These disclosures include the investment company's ranking, the total number of investment companies in the category, the name of the category, and the period on which the ranking is based (i.e., the length of the period and the ending date, or the first day of the period and the ending date).

¹⁷T. Rowe Price Letter.

¹⁸Currently when an investment company ranking is based on a subcategory, sales material that contains such a ranking must disclose the name of the full category, the investment company's ranking in the full category, and the number of funds in the full category (this requirement does not apply under certain circumstances). *See* IM-2210-3(e)(3). Sales material containing a headline or other prominent statement that proclaims an internally created ranking must indicate, in close proximity to the headline or statement, that the fund ranking is based on a category created by the fund or its affiliate.

See IM-2210-3(e)(6). The proposal would eliminate these disclosure requirements; however, proposed IM-2210-3(c)(2) would require prominent disclosure if an investment company or its affiliate created a ranking category or subcategory.

If an advertisement uses a category or subcategory created by the investment company or its affiliate, the advertisement must prominently disclose the fact that the investment company or its affiliate created the ranking category, the number of investment companies in the category, the basis for selecting the category, and the ranking entity that developed the research on which the ranking is based. *See* IM-2210-3(e)(5). These disclosure requirements would be eliminated in IM-2210-3(e)(5), but they would be reflected in proposed IM-2210-3(c)(2).

¹⁹Fidelity Letter.

²⁰BMA Letter.

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