

# NASD NOTICE TO MEMBERS 97-60

## SEC Approves New Procedures For Granting Exemptions To NASD Rules

### Suggested Routing

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

### Executive Summary

On August 7, 1997, the Securities and Exchange Commission (SEC) approved amendments to the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Code of Procedure setting forth, among other things, general procedures for members to apply for exemptions under various rules and conforming changes to provide exemptive authority for particular rules. The new rules supersede prior procedures, which vested authority for granting exemptions in various standing committees of the NASD.

Questions concerning this *Notice* may be directed to Alden S. Adkins, General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8332; Mary Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation<sup>SM</sup>, at (202) 728-8252; and Robert J. Smith, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8176.

### Discussion

As part of the NASD's settlement of administrative proceedings with the SEC last year, the NASD agreed to provide autonomy and independence to the regulatory staff of the NASD and its subsidiaries such that the staff: (i) has sole discretion as to what matters to investigate and prosecute, (ii) has sole discretion to handle all other regulatory matters, (iii) prepares rule proposals, rule interpretations, and other policy matters involving consultations with interested NASD constituencies in a fair and evenhanded manner, and (iv) is generally insulated from the commercial interests of its members and The Nasdaq Stock Market<sup>SM</sup> (Nasdaq<sup>®</sup>).

On August 7, 1997, the SEC approved amendments to the NASD's Code of Procedure setting forth, among other things, general procedures for mem-

bers to apply for exemptions under various rules and conforming changes to provide exemptive authority for particular rules. The approved amendments provide autonomy and independence to the regulatory staff in that the amendments require members to apply to the staff in the first instance for an exemption under various rules and provide a right of appeal to the National Business Conduct Committee (NBCC). Under previous rules, certain quasi-adjudicative or exemptive authority was granted to various standing committees. The rules were developed after extensive consultation with SEC staff.

### Description

The amendments create a new Rule 9600 Series under the Code of Procedure that requires a member seeking an exemption from certain NASD rules to file a written application with the Office of General Counsel of NASD Regulation. The amendments also set forth a list of specific rules under which exemptions are available, including: rules relating to registration requirements (Rule 1021); categories of principal registration (Rule 1022); qualification examinations and waiver of requirements (Rule 1070): free-riding and withholding (IM-2110-1)<sup>1</sup>; communications with the public (Rule 2210); customer account statements (Rule 2340); margin accounts (Rule 2520); underwriting terms and arrangements for corporate financing matters (Rule 2710); conflicts of interest involving distributions of securities of members and affiliates (Rule 2720); direct participation programs (Rule 2810); position limits for index warrants (Rule 2850); exercise limits for index warrants (Rule 2851); position limits for options (Rule 2860); position limits for index options (IM-2860-1); exercise limits for options (Rule 2860); securities categorized as "failed to receive" and "failed to

deliver” (Rule 3210); short sales (Rule 3350); customer account transfer contracts (Rule 11870); clearance of corporate debt securities (Rule 11900); and MSRB Rule G-37.

The rules provide that any written application for an exemption must contain the member’s name and address, the name of a person associated with the member who will serve as the primary contact for the application, the rule from which the member is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the member does not wish the application or the decision on the application to be publicly available in whole or in part, the member also must include in its application a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

The rules require the NASD Regulation staff, after considering an application, to issue a written decision setting forth its findings and conclusions and to serve this decision on the applicant pursuant to NASD Rules 9132 and 9134 in the Code of Procedure. After the decision is served on the applicant, the application and decision will be made publicly available unless NASD Regulation staff determines that the applicant has shown good cause for treating the application or decision as confidential in whole or in part.

The rules permit an applicant to appeal the decision by filing a written notice of appeal within 15 calendar days after service of a decision issued under proposed Rule 9620. The notice of appeal must contain a brief statement of the findings and conclusions as to which exception is taken. The NBCC may order oral argument. If the applicant does not want the NBCC’s decision on appeal to be publicly available in whole or in part,

the applicant must include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal must be signed by the applicant. Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant, the NBCC shall provide expedited review. An applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the NBCC.

The rules require the NBCC, following the filing of a notice of appeal, to designate a subcommittee to hear an oral argument, if ordered, to consider any new evidence that the applicant can show good cause for not including in its application, and to recommend to the NBCC a disposition of all matters on appeal. After considering all matters on appeal and the subcommittee’s recommendation, the NBCC will affirm, modify, or reverse the decision issued under proposed Rule 9620. The NBCC must issue a written decision setting forth its findings and conclusions and serve the decision on the applicant. The decision must be served pursuant to NASD Rules 9132 and 9134 in the Code of Procedure. The decision will be effective upon service and constitutes final action of the NASD.

Where necessary, the rules also make conforming changes to those particular rules under which exemptive authority may be exercised and clarify that the authority for granting such exemptions rests with NASD Regulation staff in the first instance.

In addition, authority has been newly created under NASD Rule 2210 to permit the Advertising Regulation Department to grant exemptions from the pre-filing requirements of paragraph (c) of that rule in order to

reflect existing practice. The need for such authority under NASD Rule 2210 arises when, for example, members are the subject of a buyout or reorganization, or form a subsidiary firm, and the successor entity is substantially similar to the predecessor entity, retains the same control persons, and continues to produce the same securities products that were previously filed with the Department. In such situations, the pre-filing requirements may not be necessary in order to serve the purpose of the rule.

Finally, the rules delete the Rule 9800 series, which contained procedures for committee review of staff decisions relating to corporate financing and direct participation program matters.

The rules do not affect certain existing functions of committees when the functions performed are fundamentally different from adjudicatory functions, or when the issues presented are highly technical and do not require a formal process. In particular, NASD Rule 11110 will continue to authorize certain functions for the Financial Responsibility and Operations Committees, such as review of “regular way” and “when issued” transactions or an issuer’s notification of a due bill or dividend announcement in certain circumstances. NASD Rules 10102, 10104 and 10301(b) will continue to authorize certain functions for the National Arbitration and Mediation Committee, such as consideration of qualifications for arbitrators, recruitment of arbitrators, maintenance of the arbitrator pool, composition and appointment of an arbitration panel in a particular case, and approval of the determination to decline the use of the NASD’s arbitration forum in any dispute.

The rules create procedural regularity and predictability to optimize even-handed results and minimize dis-

parate results. At the same time, the amendments both clarify and streamline the process for granting exemptions by articulating the application and decision process and by clearly defining appeal rights.

## Text Of Amendments

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

## CODE OF PROCEDURE

### 9600. Procedures for Exemptions

#### 9610. Application

##### (a) File with General Counsel

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3210, 3350, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the Office of General Counsel of NASD Regulation.

##### (b) Content

An application filed pursuant to this Rule shall contain the member's name and address, the name of a person associated with the member who will serve as the primary contact for the application, the Rule from which the member is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the member does not want the application or the decision on the application to be publicly available in whole or in part, the member also shall include in its application a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

##### (c) Applicant

A member that files an application under this Rule is referred to as "Applicant" hereinafter in the Rule 9600 Series.

#### 9620. Decision

After considering an application, NASD Regulation staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant to Rules 9132 and 9134. After the decision is served on the Applicant, the application and decision shall be publicly available unless NASD Regulation staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

#### 9630. Appeal

##### (a) Notice

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. The National Business Conduct Committee may order oral argument. If the Applicant does not want the National Business Conduct Committee's decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

##### (b) Expedited Review

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly

harm the applicant, the National Business Conduct Committee shall provide expedited review.

##### (c) Withdrawal of Appeal

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the National Business Conduct Committee.

##### (d) Appointment of Subcommittee

Following the filing of a notice of appeal, the National Business Conduct Committee shall designate a Subcommittee to hear an oral argument, if ordered, consider any new evidence that the Applicant can show good cause for not including in its application, and recommend to the National Business Conduct Committee a disposition of all matters on appeal.

##### (e) Decision

After considering all matters on appeal and the Subcommittee's recommendation, the National Business Conduct Committee shall affirm, modify, or reverse the decision issued under Rule 9620. The National Business Conduct Committee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of the Association.

## Conforming Rule Changes

### Rule 1021. Registration Requirements

(e)(2) Pursuant to the Rule 9600 Series, the [President of the] Association[, upon written request,] may waive the provisions of subparagraph (1)[, above,] in situations [which]

that indicate conclusively that only one person associated with an applicant for membership should be required to register as a principal.

## 1022. Categories of Principal Registration

(b)(4) Pursuant to the Rule 9600 Series, the Association may exempt a member[, or an applicant for membership in the Association[, may upon written request, be exempted by the President of the Association, or his delegate,] from the requirement to have a Limited Principal—Financial and Operations if:

(A) it has been expressly exempted by the Commission from SEC Rule 15c3-1(b)(1)(iii);

(B) it is subject to the provisions of SEC Rule 15c3-1(a)(2) or to Section 402.2(c) of the rules of the Treasury Department.

## 1070. Qualification Examinations and Waiver of Requirements

(e) Pursuant to the Rule 9600 Series, the [President of the] Association may, in exceptional cases and where good cause is shown, waive the applicable Qualification Examination [upon written request by the member,] and accept other standards as evidence of an applicant's qualifications for registration. Advanced age, physical infirmity or experience in fields ancillary to the investment banking or securities business will not individually of themselves constitute sufficient grounds to waive a Qualification Examination.

## 2210. Communications with the Public

(c) Filing Requirements and Review Procedures

(8) Exemptions. 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.

## 2340. Customer Account Statements

(d) Pursuant to the Rule 9600 Series, the Association[, acting through its Operations Committee] may[, pursuant to a written request for good cause shown,] exempt any member from the provisions of this Rule for good cause shown.

## 2520. Margin Accounts

(c)(5)(C) Joint Accounts in Which the Carrying Organization or a Partner or Stockholder Therein Has an Interest

In the case of a joint account carried by a member in which such member, or any partner, or stockholder (other than a holder of freely transferable stock only) of such member participates with others, each participant other than the carrying member shall maintain an equity with respect to such interest pursuant to the margin provisions of this paragraph as if such interest were in a separate account.

Pursuant to the Rule 9600 Series, [T]the Association [will consider requests for exemption from the] may grant an exemption from the provisions of [this] paragraph (c)(5)(C)[, provided] if the account is:

(i) [the account is] confined exclusively to transactions and positions in exempted securities;

(ii) [the account is] maintained as a Market Functions Account conforming to the conditions of Section 220.12(e) (Odd-lot dealers) of Regulation T of the Board of Governors of the Federal Reserve System; or

(iii) [the account is] maintained as a Market Functions Account conforming to the conditions of Section 220.12(c) (Underwritings and Distributions) of Regulation T of the Board of Governors of the Federal Reserve System and each other participant margins his share of such account on such basis as the Association may prescribe.

## 2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(d) Exemptions. Pursuant to the Rule 9600 Series, the Association may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

## 2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(p) Requests for Exemption from Rule 2720

Pursuant to the Rule 9600 Series, [T]the Association [Corporate Financing Committee of the Board of Governors, upon written request,] may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member unconditionally or on specified terms from any or all of the provisions of this Rule which it deems appropriate. [Unless waived by the party requesting an exemption, a hearing shall be held upon a request before the Corporate Financing Committee, or a Subcommittee thereof designated for that purpose.]

## 2810. Direct Participation Programs

(c) Exemptions. Pursuant to the Rule 9600 Series, the Association may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

## 2850. Position Limits

(a) Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a purchase or sale transaction in an index warrant listed on Nasdaq or on a national securities exchange if the member has reason to believe that as a result of such transaction the member, or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control an aggregate position in an index warrant position on the same side of the market, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market, in excess of the position limits established by the Association, in the case of Nasdaq-listed index warrants, or on the exchange on which the warrant is listed.

## 2851. Exercise Limits

(a) Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown, in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with a member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a long position in any index warrant if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly:

(1) has or will have exercised within any five (5) consecutive business

days a number of index warrants overlying the same index in excess for the limits for index warrant positions contained in Rule 2850; or

(2) has or will have exceeded the applicable exercise limit fixed from time to time by an exchange for an index warrant not dealt in on Nasdaq.

(b) The Association, pursuant to the Rule 9600 Series for good cause shown, may institute other limitations concerning the exercise of index warrants from time to time [by action of the Association]. Reasonable notice shall be given of each new limitation fixed by the Association. These exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

## 2860. Options

(b) Requirements

(3) Position Limits

(A) Stock Options—Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of:

(i) 4,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

(ii) 7,500 options contracts of the put class and the call class on the same side of the market covering the same underlying security, providing that the 7,500 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 7,500 option contracts; or

(iii) 10,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security providing that the 10,500 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 10,500 option contracts; or

(iv) 20,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 20,000 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 20,000 option contracts; or

(v) 25,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 25,000 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or

exchange-traded options qualifying under applicable rules for a position limit of 25,000 option contracts; or

(vi) such other number of stock options contracts as may be fixed from time to time by the Association as the position limit for one or more classes or series of options provided that reasonable notice shall be given of each new position limit fixed by the Association.

(vii) Equity Option Hedge Exemption

a. The following positions, where each option contract is "hedged" by 100 shares of stock or securities readily convertible into or economically equivalent to such stock, or, in the case of an adjusted option contract, the same number of shares represented by the adjusted contract, shall be exempted from established limits contained in (i) through (vi) above:

1. long call and short stock;
2. short call and long stock;
3. long put and long stock;
4. short put and short stock.

b. Except as provided under the OTC Collar Exemption contained in paragraph (b)(3)(A)(viii), in no event may the maximum allowable position, inclusive of options contracts hedged pursuant to the equity option position limit hedge exemption in subparagraph a. above, exceed three times the applicable position limit established in paragraph (b)(3)(A)(i)-(v).

c. The Equity Option Hedge Exemption is a pilot program authorized by the Commission through December 31, 1997.

(viii) OTC Collar Aggregation Exemption

a. For purposes of this paragraph (b), the term OTC collar shall mean a conventional equity option position comprised of short (long) calls and long (short) puts overlying the same security that hedge a corresponding long (short) position in that security.

b. Notwithstanding the aggregation provisions for short (long) call positions and long (short) put positions contained in subparagraphs (i) through (v) above, the conventional options positions involved in a particular OTC collar transaction established pursuant to the position limit hedge exemption in subparagraph (vii) need not be aggregated for position limit purposes, provided the following conditions are satisfied:

1. the conventional options can only be exercised if they are in-the-money;
2. neither conventional option can be sold, assigned, or transferred by the holder without the prior written consent of the writer;
3. the conventional options must be European-style (i.e., only exercisable upon expiration) and expire on the same date;
4. the strike price of the short call can never be less than the strike price of the long put; and
5. neither side of any particular OTC collar transaction can be in-the-money when that particular OTC collar is established.
6. the size of the conventional options in excess of the applicable basic position limit for the options established pursuant to subparagraph (A)(i)-(v) above must be hedged on a one-to-one basis with the requisite long or short stock position for the duration of the collar, although the same long or short stock position can be used to hedge both legs of the collar.

c. For multiple OTC collars on the same security meeting the conditions set forth in subparagraph b. above, all of the short (long) call options that are part of such collars must be aggregated and all of the long (short) put options that are part of such collars must be aggregated, but the short (long) calls need not be aggregated with the long (short) puts.

d. Except as provided above in subparagraph b. and c., in no event may a member fail to aggregate any conventional or standardized options contract of the put class and the call class overlying the same equity security on the same side of the market with conventional option positions established in connection with an OTC collar.

e. Nothing in this subparagraph (viii) changes the applicable position limit for a particular equity security.

**IM-2860-1. Position Limits**

(B) Index Options

(i) Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction in an option contract of any class of index options displayed on Nasdaq or dealt in on an exchange if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of position limits established by the Association, in the

case of Nasdaq index options, or the exchange on which the option trades.

#### (4) Exercise Limits

Except in highly unusual circumstances, and with the prior written approval of the Association[, ] pursuant to the Rule 9600 Series for good cause shown in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with a member has an interest, or for the account of any partner, officer, director or employee thereof or for the account of any customer, any option contract if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days a number of option contracts of a particular class of options in excess of the limits for options positions in paragraph (b)(3). The Association may institute other limitations concerning the exercise of option contracts from time to time by action of the Association. Reasonable notice shall be given of each new limitation fixed by the Association.

#### **3210. Securities “Failed to Receive” and “Failed to Deliver”**

(b) Pursuant to the Rule 9600 Series, [F]for good cause shown and in exceptional circumstances, the Association may exempt a member or a person associated with a member [a member may request exemption] from the provisions of this Rule [by written request to the District Director of the District in which his principal office is located].

#### **3350. Short Sale Rule**

(j) Pursuant to the Rule 9600 Series or on the Association’s [Upon appli-

cation or on its] own motion, the Association may exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of this Rule.

#### **[9800. Corporate Financing and Direct Participation Program Matters]**

##### **[9810. Purpose]**

[The purpose of this Rule 9800 Series is to provide a procedure for review of determination by the Association’s staff regarding compliance with Rules of the Association relating to corporate financing and direct participation program matters by which any member is aggrieved.]

##### **[9820. Application by Aggrieved Member]**

[Any member aggrieved by a determination rendered pursuant to any Rule or regulation of the Association relating to underwriting terms or arrangements may make application for review of such determination. In exceptional or unusual circumstances, a member may request conditionally or unconditionally an exemption from such Rules or regulations. Applications for review will be accepted only with respect to offerings for which a registration statement or similar document has been filed with the appropriate federal or state regulatory agency; provided, however, that a hearing committee may waive the requirement for filing prior to review upon a finding that such review is appropriate under the circumstances.]

##### **[9830. Application for Review]**

[Any member making application for review pursuant to Rule 9820 (hereinafter referred to as “applicant”) shall request such review in writing and shall specify in reasonable detail the source and nature of the aggrieve-

ment and the relief requested. The applicant shall state whether a hearing is requested and shall sign the written application.]

##### **[9840. Notice of Hearing]**

[Any applicant shall have a right to a hearing before a hearing committee constituted as provided in Rule 9850. The hearing committee may request a hearing on its own motion. A hearing shall be scheduled as soon as practicable, at a location determined by the hearing committee. Written notice of the hearing shall be sent to the applicant stating the date, time, and location of the hearing.]

##### **[9850. Hearing Committee and Procedure]**

[(a) Any hearing shall be before an individual designated by the Association, who shall be current or past members of the appropriate standing committee of the Board of Governors, i.e. the “hearing committee.” Any applicant shall be entitled to appear at, and participate in, the hearing, to be represented by counsel, and to submit any relevant testimony or evidence. Representatives of the Association shall be entitled to appear at, participate in, the hearing, to be represented by counsel, and to submit any relevant testimony or evidence. Upon agreement of the applicant, representatives of the Association, and the hearing committee, a hearing may be conducted by means of telephonic or other linkage which permits all parties to participate simultaneously in the proceeding.]

[(b) In the event that the applicant waives a hearing before the appropriate hearing committee, the hearing committee shall review the matter on the record before it. Any applicant and the Association shall be entitled to submit any relevant written testimony or evidence to the hearing committee.]

### **[9860. Requirement for Written Determination]**

[The hearing committee shall render a determination as to all issues which the committee finds to be relevant as soon as practicable following conclusion of the hearing or, in cases in which a hearing is not requested, completion of the committee's review of the record. The hearing committee may determine whether the proposed underwriting or other terms and arrangements in connection with or relating to the distribution of the securities, or the terms and conditions related thereto, taking into consideration all elements of compensation and all of the relevant surrounding factors and circumstances, are fair and reasonable and in compliance with applicable Rules and regulations. The determination of the hearing committee shall be issued in writing, and a copy shall be sent to each applicant.]

### **[9870. Review by Committee of Board]**

[(a) Any member aggrieved by a determination of a hearing committee shall have a right to have that determination reviewed by the appropriate standing committee of the Board of Governors.]

[(b) Any member seeking a review of a determination of a hearing committee shall submit a written request for such review to the Association within fifteen (15) business days following issuance of the hearing committee's written determination. Any such member shall submit with the written request for review a written statement

specifying the portion of the hearing committee's determination for which review is requested and the relief sought. Any such member may submit written testimony or evidence for consideration by the committee. Representatives of the Association may also submit written testimony or evidence to the committee.]

[(c) Pursuant to a request duly made, the appropriate standing committee of the Board of Governors will review the determination of a hearing committee, giving consideration to all parts of the record which the Board committee finds relevant. The Board committee shall render a determination as to all issues which the committee finds to be relevant. The determination of the Board committee shall be issued in writing, and a copy shall be sent to each member requesting review.]

### **[9880. Nature of Determination]**

[Any determination by a hearing committee or standing committee rendered shall constitute the opinion of that committee as to compliance with applicable Association Rules, interpretations or policies and shall be advisory in nature only. Such determination shall not be subject to review by the Board of Governors. No such determination shall constitute a finding of a violation of any Rule, interpretation or policy. A finding of a violation shall be made only by a District Business Conduct Committee.]

### **11870. Customer Account Transfer Contracts**

(j) Exemptions

(1) Pursuant to the Rule 9600 Series, the Association may exempt from the provisions of this Rule, either unconditionally or on specified terms and conditions, (A) any member or (B) any type of account, security or financial instrument.

### **11900. Clearance of Corporate Debt Securities**

Each member or its agent that is a participant in a registered clearing agency, for purposes of clearing over-the-counter securities transactions, shall use the facilities of a registered clearing agency for the clearance of eligible transactions between members in corporate debt securities. Pursuant to the Rule 9600 Series, the Association may exempt any transaction or class of transactions in corporate debt securities from the provision of this Rule as may be necessary to accommodate special circumstances related to the clearance of such transactions or class of transactions.

### **Endnotes**

<sup>1</sup> An exemption is available under IM-2110-1 (free-riding and withholding) only with respect to paragraph (d) relating to issuer-directed securities. However, the NASD has proposed amendments that would provide broader exemptive authority for all of the provisions of IM-2110-1 (*see Notice to Members 97-30* (May 1997)).

© 1997, National Association of Securities Dealers, Inc. (NASD). All rights reserved.