

FOR YOUR INFORMATION

Clarification Of *Notice To Members 96-60*

NASD Regulation Inc. (NASD RegulationSM) is issuing this FYI to clarify the staff's regulatory intent and purpose in issuing *NASD Notice to Members 96-60* (Notice). This FYI describes the substance of advice that the staff has provided in response to individual written inquiries pertaining to the Notice. That Notice was published to clarify member's suitability obligation under NASD[®] Rule 2310 (Rule) when dealing with speculative and low-priced securities. In issuing the Notice, the staff did not intend to expand the reach of the Rule but to illustrate circumstances in which the Rule would be applicable.

The Notice noted that, because the suitability obligation under the Rule applies only to recommendations to customers, it does not apply to situations in which a member acts solely as an "order-taker" with respect to particular transactions. At the same time, the Notice attempted to make clear that the determination of whether a security is recommended does not necessarily depend on the member's classification of the security as "solicited or unsolicited," which may be done for purposes other than identifying transactions subject to suitability obligations. In connection with this point, the Notice contains the following statement: "In particular, a transaction will be considered to be recommended when the member brings a specific security to the attention of the customer through any means, including, but not limited to, direct telephone communication, the delivery of promotional material through the mail, or the transmission of electronic messages."

This language was intended only to stress that recommendations may be made in a variety of ways, and that the determination of whether a recommendation has been made in any given case does not depend on the mode of communication. This point is particularly salient in connection with transactions in low-priced, speculative securities, which often are promoted through a variety of media. The language was not meant to describe the content of communications that may result in a recommendation, or to suggest that every statement that includes mention of a security would be considered a recommendation. Whether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances, which the Notice was not intended to define.

NASD Regulation Office Of Dispute Resolution Address Change

Effective March 3, 1997, the NASD Regulation New York Office of Dispute Resolution will be located at:

125 Broad Street, 36th Floor
New York, NY 10004.

All phone and fax numbers will remain the same.

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