

Notices to Members

September 1999

Notices

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Notices to Members (December 1996 to current) are also available on the Internet at 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 Regulation, Inc.

1999 Advertising Regulation Seminars

Topics covered will include:

Internet and Online Brokerage

Mutual Funds

Variable Insurance Products

General Brokerage

Correspondence

Case Studies

Filing Requirements

Watch your mail for registration information and brochure. Please note, attendance will be limited for both seminars.

For more information, please call NASD Conference Services at **(202) 728-8383**.

Join us this fall to learn valuable compliance tips for financial services advertising. These practical, hands-on seminars will be led by advertising regulation experts—the people who work in advertising compliance every day.

October 14-15, 1999

The Mayflower Hotel
Washington, DC
(202) 347-3000
Registration Fee: \$425

October 20, 1999

Comprehensive one-day program in conjunction with the Fall Securities Conference, October 21-22

Sheraton Seattle
Seattle
(206) 621-9000
Registration Fee: \$325

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

Schedule Date	Issue Symbol
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

NASD Notice to Members 99-77

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

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>See Arbitration, <i>NYSE Information Memo 98-42</i>, December 1998 and <i>NYSE Information Memo 98-44</i>, December 1998.</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>See SEC Approves Changes To Books And Records Requirements, <i>NASD Notice to Members 98-47</i>, July 1998.</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>See Amendment to Rule 382, (“Carrying Agreements”) <i>NYSE Information Memo 99-33</i>, July 1, 1999, and SEC Approves Rule Amendments Governing Clearing Firms And Their Introducing Firm Clients’ Relationship; Effective Date: July 19, 1999, <i>NASD Notice to Members 99-57</i>, July 1999.</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>See Amendment to Rule 387 (“COD Orders”), <i>NYSE Information Memo 99-25</i>, May 1999.</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>See Federal Reserve System Amends Regulations T, U, And X, <i>NASD Notice to Members 98-43</i>, June 1998.</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>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, <i>Special NASD Notice to Members 99-33</i>, April 1999.</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>See NASD Regulation Offers Guidance To Members Forwarding Mini Tender Offers To Their Customers, <i>NASD Notice to Members 99-53</i>, July 1999, and Member organizations should review tender offer materials for shares at or below market prices before the materials are disseminated to customers, <i>NYSE Information Memo 99-11</i>, February 1999.</p>
<p>Municipal Securities</p> <p>Consultants</p>	<p>See MSRB Rule G-38: Consultants. <i>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. See Guidelines Concerning Discretionary Accounts, <i>CBOE Regulatory Circular</i> , RG99-115, April 28, 1999.
Options Guidelines Concerning Uncovered (short) Options Accounts	See 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. See Independent Contractors, <i>CBOE Regulatory Circular</i> , RG98-122, November 9, 1998.
Options Index Options – Margin Accounts	See 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	See 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)
Supervision Review of Incoming Written Correspondence	<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>
Supervision Supervisory and Inspection Obligations	<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>
Supervision Supervisory Responsibilities	<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>
Supervision Taping	<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>
Trading/Markets Alternative Trading Systems	<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)
<p>Trading/Markets</p> <p>Changes to NASD Rules on SOES Orders Entered Within Five Minutes of Each Other</p>	<p>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 (<i>NASD Notice to Members 88-61</i>). The elimination of the presumption was effective immediately.</p> <p>See The Nasdaq Stock Market Eliminates The SOES Five-Minute Presumption, <i>NASD Notice to Members 99-21</i>, March 1999.</p>
<p>Trading/Markets</p> <p>Firm Quotation Requirements</p>	<p>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).</p> <p>See SEC Approves Changes To Rule 4613—Firm Quotation Requirements; Effective Date: August 2, 1999, <i>NASD Notice to Members 99-61</i>, July 1999.</p>
<p>Trading/Markets</p> <p>Index Arbitrage Trading Restrictions</p>	<p>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.</p> <p>See Amendment to Rule 80A (Index Arbitrage Trading Restrictions), <i>NYSE Information Memo 99-8</i>, February 1999.</p>
<p>Trading/Markets</p> <p>Order Handling Rules During Market-Wide Trading Halts</p>	<p>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.</p> <p>See SEC Issues Guidance On Handling Customer Orders During Market-Wide Trading Halts, <i>NASD Notice to Members 99-05</i>, January 1999.</p>

Training Topic	Relevant Training Point(s) and Reference(s)
<p>Trading/Markets</p> <p>Percentage Order Rules</p>	<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>
<p>Trading/Markets</p> <p>Stock Volatility Disclosures</p>	<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>
<p>Trading/Markets</p> <p>The Operation of Automated Order Execution Systems During Turbulent Market Conditions</p>	<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>
<p>Trading/Markets</p> <p>Trade Reporting. The Order Audit Trail System</p>	<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:

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**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

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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,

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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<p>(B) may not compare CMOs to any other investment vehicle, including a bank certificate of deposit;</p>	<p>and average lives, interest rates (including their effect on value and prepayment rates), tax considerations, minimum investments, transaction costs and liquidity;</p>	<p>Section 1</p>
<p>(C) may not exaggerate the relative safety offered by an investment in CMOs;</p>		<p>Title - Collateralized Mortgage Obligations Coupon Rate Anticipated Yield/Average Life Specific Tranche - Number & Class Final Maturity Date Underlying Collateral</p>
<p>(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;</p>	<p>(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</p>	<p>Section 2 Disclosure Statement:</p> <p>“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.”</p>
<p>(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;</p>	<p>(iii) the relationship between mortgage loans and mortgage securities;</p>	<p>Section 3</p>
<p>(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;</p>	<p>(B) questions an investor should ask before investing; and</p> <p>(C) a glossary of terms.</p>	<p>Product Features (Optional):</p> <p>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</p>
<p>(G) may not imply that CMOs are simple securities suitable for any investor; and</p>	<p>(c) Specific CMO Communications with the Public</p>	<p>Section 4</p>
<p>(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.</p>	<p>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.</p>	<p>Company Information:</p> <p>Name, Memberships Address Telephone Number Representative’s Name</p>
<p>(2) Required Educational Material</p>	<p>(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.</p>	<p>(2) The following conditions must also be met:</p> <p>(A) All figures in Section 1 must be in equal type size.</p> <p>(B) The disclosure language in Section 2 may not be altered and must be given equal prominence with the information in Section 1.</p>
<p>Before the sale of a CMO, a member must offer to the customer educational material that includes the following:</p>		
<p>(A) a discussion of:</p>		
<p>(i) characteristics and risks of CMOs including credit quality, prepayment rates</p>		

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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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ATTACHMENT B

Request For Comment Checklist—Questions For Members And Other Interested Parties

The following list of questions provides a quick and easy means to comment on some of the provisions contained in the proposal to modernize the advertising rules. This list of questions does not cover all of the changes contained in the proposal, including proposed changes regarding the standards applicable to member communications, other filing and pre-use approval exemptions, limitations on the use of the NASD's name, and fund rankings. Accordingly, we encourage members and other interested parties to review the entire proposal and to comment separately on all aspects of the proposal.

Instructions

Comments must be received by **October 29, 1999**. Members and interested parties can submit their comments using the following methods:

- mailing in this checklist
- e-mailing written comments to *pubcom@nasd.com*
- mailing in written comments
- submitting comments online at the NASDR Web Site (*www.nasdr.com*)

The checklist and/or written comments and should be mailed to:

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

Institutional Sales Material

1. Should the NASD exempt from the Advertising Rule's internal pre-use approval and filing requirements sales material that is distributed only to institutional investors?

Yes No See my attached written comments

Article Reprints and Press Releases

2. Should the NASD exempt from the Advertising Rule's filing requirements reprints of articles that the member has not materially altered?

Yes No See my attached written comments

3. Should the NASD exempt from the Advertising Rule's filing requirements press releases concerning investment companies that are only made available to members of the media?

Yes No See my attached written comments

Use and Disclosure of a Member's Name

4. Do you favor the proposed changes that would simplify the provisions governing disclosure of member names?

Yes No See my attached written comments

Communications About Collateralized Mortgage Obligations

5. Do you favor the proposed changes to the provisions governing communications about collateralized mortgage obligations?

Yes No See my attached written comments

Contact Information

Name: _____

Firm: _____

Address: _____

City/State/Zip: _____

Phone: _____

E-Mail: _____

Are you:

An NASD Member

An Investor

A Registered Representative

Other: _____

ACTION REQUIRED

SOES Order Sizes

Maximum SOES Order Sizes Set To Change October 1, 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.

- Legal & Compliance
- Operations
- Systems
- Trading

KEY TOPICS

- SOES Maximum Order Sizes

Executive Summary

Effective October 1, 1999, the maximum Small Order Execution SystemSM (SOESSM) order sizes for 420 Nasdaq National Market[®] (NNM) securities will be revised in accordance with National Association of Securities Dealers, Inc. (NASD[®]) Rule 4710(g).

For more information, please contact Nasdaq[®] Market Operations at (203) 378-0284.

Description

Under Rule 4710, the maximum SOES order size for an NNM security is 1,000, 500, or 200 shares, depending on the trading characteristics of the security. The Nasdaq Workstation II[®] (NWII) indicates the maximum SOES order size for each NNM security. The indicator "NM10," "NM5," or "NM2" displayed in NWII corresponds to a maximum SOES order size of 1,000, 500, or 200 shares, respectively.¹

The criteria for establishing maximum SOES order sizes are as follows:

- (1) a 1,000-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to \$100, and three or more Market Makers;
- (2) a 500-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to \$150, and two or more Market Makers; and
- (3) a 200-share maximum order size shall apply to NNM securities with an average daily non-

block volume of less than 1,000 shares a day, a bid price of less than or equal to \$250, and two or more Market Makers.

In accordance with Rule 4710, Nasdaq periodically reviews the maximum SOES order size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant an adjustment. Such a review was conducted using data as of June 30, 1999, pursuant to the aforementioned standards. The maximum SOES order-size changes called for by this review are being implemented with three exceptions.

- First, issues were not permitted to move more than one size level. For example, if an issue was previously categorized in the 1,000-share level, it would not be permitted to move to the 200-share level, even if the formula calculated that such a move was warranted. The issue could move only one level to the 500-share level as a result of any single review.
- Second, for securities priced below \$1 where the reranking called for a reduction in the level, the maximum SOES order size was not reduced.
- Third, for the top 50 Nasdaq securities based on market capitalization, the maximum SOES order sizes were not reduced, regardless of whether the reranking called for a reduction.

In addition, with respect to initial public offerings (IPOs), the SOES order-size reranking procedures provide that a security must first be traded on Nasdaq for at least 45 days before it is eligible to be reclassified.

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Thus, IPOs listed on Nasdaq within the 45 days prior to June 30, 1999, were not subject to SOES order-size reranking procedures.

Following is a listing of the 420 NNM issues that will have the maximum SOES order size changed on October 1, 1999.

Endnote

¹Previously, Nasdaq Market Makers were required to maintain a minimum quotation size for an NNM security in an amount equal to the maximum SOES order size for that security. See generally, NASD Rule 4613(a)(1) - (2). On July 15, 1998, the Securities and Exchange Commission approved an amendment to NASD Rule 4613(a)(1)(C),

which reduced the minimum quotation size for all Nasdaq securities to one normal trading unit when a Market Maker is not displaying a limit order, and which thus eliminated the requirement that Market Makers quote a size equal to the maximum SOES order size.

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Maximum SOES Order Size Changes In NNM Securities

All Issues In Alphabetical Order By Security Name

(Effective October 1, 1999)

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
FSBC	1ST STATE BNCP INC	200	500	B			
A				BFEN	B F ENTERPRISES INC	200	500
ABANP	ABI CAP TRUST PFD	1000	500	BTEK	BALTEK CP	500	1000
BOUT	ABOUT.COM INC	200	500	BKCT	BANCORP CONN INC	500	1000
ABOV	ABOVENET COMMUNICTNS	500	1000	BNSC	BANK OF SANTA CLAR	200	500
ABRI	ABRAMS INDS INC	200	500	BANCP	BBC CAPITAL TR I P	1000	500
ACLE	ACCEL INTL CP	500	1000	BNHNA	BENIHANA INC	1000	500
ACDO	ACCREDO HEALTH INC	200	500	BIDS	BID.COM INTL INC	200	500
ADFC	ADFORCE INC	200	500	BIZZ	BIZNESSONLINE.COM	200	500
DINEW	ADVANTICA WTS	500	1000	EPAY	BOTTOMLINE TECH INC	500	1000
AMRI	ALBANY MOLECULAR RES	500	1000	BRAD	BRADLEES INC	500	1000
ALCI	ALLCITY INSURANCE	200	500	BRCM	BROADCOM CORP CL A	1000	500
ALLN	ALLIN CORP	200	500	BUCA	BUCA INC	200	500
ALOY	ALLOY ONLINE INC	200	500	C			
AMNB	AMER NATL BANKSHS	200	500	CBBI	C B BANCSHARES	1000	500
ANFI	AMERICAN NATL FINL	500	1000	CDWI	C D WAREHOUSE INC	500	1000
ASCA	AMERISTAR CASINO	500	1000	CEMX	C E M CP	500	1000
AMTD	AMERITRADE HLDG A	1000	500	CERB	C E R B C O INC	200	500
AMPI	AMPLICON INC	500	1000	CFCI	C F C INTL INC	1000	500
AFSC	ANCHOR FIN CORP	500	1000	CNBF	C N B FINANCIAL CP	500	1000
ANCR	ANCOR COMMUN INC	500	1000	CFFI	C&F FINANCIAL CP	500	200
ANDR	ANDERSEN GROUP INC	500	1000	CTOO	C2 INC	200	500
ANTV	ANTENNA TV SA ADR	200	500	CIBN	CALIFORNIA IND BNC	500	200
ATHY	APPLIEDTHEORY CP SR	200	500	CNTBY	CANTAB PHARM	500	200
ARCAF	ARCADIS N.V.	1000	500	CAII	CAPITAL ASSOC	1000	500
AREM	AREMISSOFT CORP	200	500	CSWC	CAPITAL SOUTHWEST	500	1000
ARGY	ARGOSY ED GRP CL A	200	500	CBCL	CAPITOL BANCORP LT	500	1000
ARIS	ARI NETWORK	500	1000	CFFN	CAPITOL FEDERAL FINL	200	500
ABFSP	ARKANSAS BEST CV P	500	1000	CBCLP	CAPITOL TRUST I PF	1000	500
ARMHY	ARM HLDGS ADS	500	1000	CBDR	CAREERBUILDER INC	200	500
ARTNA	ARTESIAN RES CP A	500	1000	CMDC	CAREMATRIX CP	200	500
ATYT	ATI TECHNOLOGIES	500	1000	CFBI	CAROLINA FIRST BNCSH	200	500
ATLPP	ATLANTIC PFD CAP CP	500	1000	CATT	CATAPULT COMM CP	500	1000
ABTL	AUTOBYTEL.COM INC	200	500	CEBK	CENTRAL BANCORP INC	1000	500
AWEB	AUTOWEB.COM INC	200	500	CNBKP	CENTURY BCP CAP TR	500	1000
AXHM	AXIOHM TRANS SOL	200	500				

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Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
CHANF	CHANDLER INS CO LTD	1000	500	E			
CTIX	CHEAP TICKETS INC	200	500	ETEK	E-TEK DYNAMICS INC	500	1000
CHDN	CHURCHILL DOWNS IN	500	1000	ELXS	E L X S I CP	500	1000
CCHE	CLINICHEM DEV CL A	1000	500	EWBC	EAST WEST BANCORP	500	1000
CNBB	CNB FLORIDA BCSHS INC	500	1000	EDEL	EDELBROCK CP	500	1000
CBSAO	COASTAL BCP PFD A	200	500	EDCO	EDISON CONTROL CP	500	200
COHB	COHOES BANCORP	500	1000	ELBI	ELDORADO BANCSHARES	200	500
CBAN	COLONY BANKCORP	500	200	ELET	ELLETT BROTHERS IN	500	1000
CFKY	COLUMBIA FIN KY	500	1000	EMLX	EMULEX CP	1000	500
CCBP	COMM BANCORP INC	200	500	ENGSY	ENERGIS ADS	500	200
CBNY	COMMERCIAL BK OF N	500	1000	ENSI	ENERGYSOUTH INC	500	1000
CNAF	COMMERCIAL NATL FI	500	200	EMCO	ENGINEERING MEASUR	500	1000
CFIC	COMMUNITY FIN CP	500	1000	EQSB	EQUITABLE FED SAV	500	1000
CFBC	COMMUNITY FIRST BN	500	1000	EMCC	EUROPEAN MICRO HLD	1000	500
CMSV	COMMUNITY SVGS	500	1000	EXAP	EXCHANGE APPLICATNS	500	1000
CDOT	COMPS.COM INC	200	500	EXCO	EXCO RESOURCES INC	500	1000
CCRT	COMPUCREDIT CORP	200	500	EXTR	EXTREME NETWORKS	200	500
CNQR	CONCUR TECHNOLOGIES	500	1000	F			
CNXT	CONEXANT SYSTMS	500	1000	FMCO	F M S FINANCIAL CP	500	1000
CMETS	CONTL MORTGAGE EQUIT	1000	500	FRPP	F R P PROPERTIES I	500	1000
CMTN	COPPER MOUNTN NTWKS	200	500	FTUS	FACTORY 2-U STR	500	1000
COCO	CORINTHIAN COLLEG SE	500	1000	FCPYQ	FACTORY CARD OUTLE	1000	500
EXBD	CORP EXEC BOARD CO	200	500	FDCC	FACTUAL DATA CORP	500	1000
CRTQ	CORTECH INC	500	1000	FDCCW	FACTUAL DATA WTS	500	1000
DLVRY	CORTECS INTL SPO ADR	1000	500	FATB	FATBRAIN.COM INC	500	1000
CRRC	COURIER CP	500	1000	FFLC	FFLC BNCP INC	500	1000
COVD	COVAD COMMUN GROUP	500	1000	FSBI	FIDELITY BANCORP I	200	500
CMST	CREATIVE MASTER INTL	500	1000	FFFLP	FIDELITY CAP TR I	500	1000
CPTH	CRITICAL PATH INC	200	500	FFED	FIDELITY FED BNCP	1000	500
AMEN	CROSSWALK.COM INC	500	1000	FDHG	FIDELITY HLDGS INC	500	1000
CTCI	CT COMMUNICATIONS	500	1000	FBEI	FIRST BNCP OF IND	200	500
D				BUSE	FIRST BUSEY CL A	500	1000
DEAR	DEARBORN BANCORP	200	500	FTCG	FIRST COLONIAL GP	200	500
HYTDL	DECS TRUST IV	500	1000	FFSX	FIRST FED BKSHS	200	500
DLTDF	DELPHI INTL LTD	500	200	FFKY	FIRST FED FIN KENT	200	500
DELT	DELTA GALIL INDS ADS	200	500	FFHS	FIRST FRANKLIN CP	200	500
DSGX	DESCARTES SYS GRP	500	1000	FGHC	FIRST GEORG HLDGS	500	1000
DEST	DESTIA COMMUNICATNS	200	500	FIFS	FIRST INV FIN SVC	1000	500
DGJL	DG JEWELLERY CDA	500	1000	FPFC	FIRST PLACE FINL	500	1000
DFXI	DIRECT FOCUS INC	200	500	FSTH	FIRST SO BCSHS INC	500	200
DOCD	DOCDATA NV	500	1000	FLGSO	FLAGSTAR TR PFD	200	500
DOMZ	DOMINGUEZ SVCS CP	500	1000	FLAS	FLASHNET COMMUNICATN	200	500
DHOM	DOMINION HOMES INC	500	1000	FFBK	FLORIDAFIRST BNCP	200	500
DORLP	DORAL FINL CP PFD	200	500	FCST	FLYCAST COMMUN CP	200	500
DIIBF	DOREL INDS CL B	1000	500	FNBP	FNB CORP	200	500
DCLK	DOUBLECLICK INC	500	1000	FELE	FRANKLIN ELEC INC	500	1000
DRRAP	DURA AUTO CAP TR	500	1000	FRNT	FRONTIER AIRLINES	500	1000
DXPE	DXP ENTERPRISE	500	200	FTNB	FULTON BANCORP INC	500	1000

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Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
G				JXVL	JACKSONVILLE BANCO	1000	500
GBNK	GASTON FED BANC	500	1000	JCORM	JACOR COMM WTS	500	1000
GBBKP	GBB CAP I CUM TR PFD	500	200	JAMSO	JAMESON PFD S	200	500
GLDBO	GBCI CAP TR II	200	500	K			
GIFT	GERALD STEVENS INC	500	1000	KTII	K TRON INTL INC	500	1000
GNET	GO2NET INC	500	1000	KTCO	KENAN TRANSPORT CO	200	500
GNCNF	GORAN CAPITAL INC	1000	500	KEQU	KEWAUNEE SCIENTIFI	500	1000
GFLS	GREATER COMMUNITY	1000	500	L			
GSLI	GSI LUMONICS INC	500	1000	LABN	LAKE ARIEL BNCP IN	1000	500
H				LACO	LAKES GAMING INC	500	1000
HDVS	H. D. VEST INC	500	1000	LCCO	LAMAR CAP CORP	500	1000
HAMP	HAMPSHIRE GROUP LT	200	500	LATD	LATITUDE COMMUNICTNS	200	500
HRBF	HARBOR FED BNCP IN	1000	500	LAUN	LAUNCH MEDIA INC	200	500
HLTH	HEALTHEON CORP	500	1000	LCAV	LCA-VISION INC	500	1000
HSII	HEIDRICK & STRUGGLES	200	500	LIBHB	LIBERTY HOMES INC B	200	500
HIFN	HI/FN INC	500	1000	LPNT	LIFEPOINT HOSP	200	500
HBNK	HIGHLAND FEDERAL B	500	1000	LIHRY	LIHIR GOLD LTD ADR	500	200
HBFW	HOME BANCORP	500	1000	LNCB	LINCOLN BANCORP	500	1000
HOMEF	HOME CTRS (DIY) LTD	500	1000	LOAX	LOG ON AMERICA INC	200	500
HLFC	HOME LOAN FINL CP	500	1000	LONDY	LONDON INTL PLC ADR	500	200
I				M			
IMAL	IMALL INC	500	1000	MLCH	M L C HOLDINGS INC	500	1000
INDBP	INDEP CAP TR I PFD	200	500	MACC	MACC PRIVATE EQU I	200	500
INHO	INDEPENDENCE HLDG	500	1000	MKFCF	MACKENZIE FIN CP	500	200
INFA	INFORMATICA CORP SR	200	500	OSKY	MAHASKA INV CO	500	1000
INSP	INFOSPACE.COM INC	500	1000	MAKR	MAKER COMMUNICATIONS	200	500
INFY	INFOSYS TECHN ADS	200	500	MTEX	MANNATECH INC	200	500
INKT	INKTOMI CORP	1000	500	MQST	MAPQUEST.COM INC	200	500
INMG	INSURANCE MGMT SOLUT	500	1000	MRBA	MARIMBA INC	200	500
ILIF	INTELLIGENT LIFE	200	500	MVII	MARK VII INC	500	1000
ICPT	INTERCEPT GRP INC	200	500	MERK	MARKETING SPECIALISTS		
DENT	INTERDENT INC	500	1000		CORP	500	1000
GEEK	INTERNET AMERICA INC	500	1000	MSGI	MARKETING SVCS GRO	500	1000
INTT	INTEST CORPORATION	500	1000	MKTW	MARKETWATCH.COM INC	500	1000
INRS	INTRANET SOLUTIONS	500	1000	MSDXP	MASON-DIX CAP TR P	500	200
ITRA	INTRAWARE INC	200	500	MSDXO	MASON-DIXON TR II	500	200
IVGN	INVITROGEN CORP	200	500	MFLR	MAYFLOWER CO OP BK	500	200
IROQ	IROQUOIS BNCP	1000	500	MKTY	MECHANICAL		
TURF	ITURF INC	200	500		TECHNOLOGY	200	500
IVIL	IVILLAGE INC	200	500	MEDE	MEDE AMERICA CORP	500	1000
XOSY	IXOS SOFTWARE ADS	500	1000	MMXI	MEDIA METRIX INC	200	500
J				MCNS	MEDICONSULT.COM INC	200	500
JEFFP	J B I CAPITAL TR PFD	200	500	MBFC	MEGABANK FIN CORP	500	1000
MAYS	J W MAYS INC	200	500	MBIA	MERCHANTS BNCP IL	500	1000
				MCBI	METROCORP BANCSHARES	500	1000

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Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
MTLG	METROLOGIC INSTR I	500	1000	OGNB	ORANGE NATL BNCP	500	1000
METFP	METROPOLITAN CAP	1000	500	OWOS	OWOSSO CP	500	1000
METFO	METROPOLITAN CAP TR2	200	500	OXGNW	OXIGENE INC WTS	1000	500
CASA	MEXICAN RESTAURANTS INC	500	1000	P			
MFCB	MICHIGAN FINL CP	500	1000	PFINA	P F INDS INC A	1000	500
MIHL	MIH LIMITED CL A	200	500	PFCB	P.F. CHANG'S CHINA	500	1000
MBSI	MILLER BUILDING SY	500	1000	PCNTF	PACIFIC INTERNET	500	1000
MNES	MINE SAFETY APPLS	500	1000	ICED	PACKAGED ICE INC	500	1000
MNMD	MINIMED INC	500	1000	PBCI	PAMRAPO BNCP INC	500	1000
MSIX	MINING SVC INTL CP	500	1000	PCOR	PCORDER.COM INC	200	500
MMAN	MINUTEMAN INTL INC	200	500	PEEK	PEEKSKILL FIN CP	1000	500
MKSI	MKS INSTRUMENTS INC	200	500	PMFG	PEERLESS MFG CO	500	1000
MMPT	MODEM MED POPPE	500	1000	PSFC	PEOPLES-SIDNEY FIN	500	1000
MMTM	MOMENTUM BUS APPLICA	500	1000	PERM	PERMANENT BNCP INC	500	1000
MBBC	MONTEREY BAY BANCO	500	1000	PFBIP	PFBI CAP TR PFD	500	200
MORP	MOORE PRODUCTS CO	500	1000	PMORW	PHAR-MOR INC WTS	500	1000
CRGO	MOTOR CARGO INDS	500	1000	PHLYL	PHIL CONS GR PRIDE	500	200
MOTR	MOTOR CLUB OF AMER	1000	500	PHXI	PHOENIX INTL LIFE	200	500
MPTH	MPATH INTERACTIVE SE	200	500	PING	PINNACLE GLOBAL GRP	500	1000
MUEL	MUELLER PAUL CO	200	500	BIGT	PINNACLE HLDGS INC	200	500
MLTX	MULTEX.COM INC	200	500	PLXT	PLX TECHNOLOGY INC	200	500
N				POPEZ	POPE RESOURCE UTS LP	500	200
NSSC	NAPCO SEC SYS INC	500	1000	PRSF	PORTAL SOFTWARE INC	200	500
NSEC	NATL SECURITY GP I	200	500	PEGI	PREFERRED EMPLOYERS	500	1000
NWLIA	NATL WESTERN LIFE	500	1000	PCLN	PRICELINE.COM INC	200	500
NCBEP	NCBE CAP TR I PFD	500	200	PCAG	PRIMACOM AG ADS	200	500
NESY	NEON SYSTEMS INC	200	500	PNBC	PRINCETON NATL BNC	500	1000
NETP	NET PERCEPTIONS INC	200	500	PRVT	PRIVATE MEDIA GROUP	500	1000
NETO	NETOBJECTS INC	200	500	PRGY	PRODIGY COMM CORP	500	1000
NETS	NETWORK EVENT THEA	500	1000	PBCP	PROVIDENT BANCORP	500	1000
NSOL	NETWORK SOLUTIONS	500	1000	PXCM	PROXICOM INC	200	500
NTRL	NEUTRAL POSTURE SA	500	1000	PSIXP	PSINET CV PFD C	200	500
NXCD	NEXTCARD INC	200	500	CARD	PUBLICARD INC	500	1000
NCBH	NORTH COUNTY BANCO	500	1000	Q			
NOVB	NORTH VALLEY BNCP	1000	500	XING	QIAO XING UNIV TEL	200	500
NPNT	NORTHPOINT COMM GRP	200	500	QLGC	QLOGIC CP	1000	500
NWFI	NORTHWAY FINL INC SR	500	200	R			
TONS	NOVAMERICAN STEEL	500	1000	RGFCP	R&G FIN CP PFD A	500	200
NMTXZ	NOVAMETRIX WTS B	500	200	ROIA	RADIO ONE INC	200	500
NPBCP	NPB CAPITAL TR PFD	500	200	RAGS	RAG SHOPS INC	500	1000
NVDA	NVIDIA CORP	500	1000	RVWD	RAVENSWOOD WINERY	200	500
O				RAZF	RAZORFISH INC	200	500
OVBC	OHIO VALLEY BANC C	200	500	RLCO	REALCO INC	500	1000
ONEM	ONEMAIN.COM INC SE	200	500	RNWK	REALNETWORKS INC	500	1000
PLAN	OPEN PLAN SYS INC	1000	500	REFN	REGENCY BANCORP	500	1000
OBAS	OPTIBASE LTD	200	500				

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Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
RGNT	REGENT ASSISTED LI	1000	500	TMCS	TICKETMASTER ONLINE	500	1000
RIMM	RESEARCH IN MOTION	500	1000	TWTC	TIME WARNER TELECOM	200	500
RTHM	RHYTHMS NETCONNECT	200	500	TLXAF	TOOLEX-ALPHA N V ORD	1000	500
RSBI	RIDGEWOOD FINL INC	500	1000	TJOB	TOPJOBS.NET PLC	200	500
RNIC	ROBINSON NUGENT IN	500	1000	TREVP	TREEV PFD A	1000	500
ROWE	ROWECOM INC	200	500	TRIH	TRIAD HOSPITALS	200	500
S				TSSS	TRIPLE S PLASTICS	500	1000
SFED	S F S BANCORP INC	500	1000	TRYF	TROY FINCL CORP	200	500
SGVB	S G V BANCORP INC	500	1000	TUES	TUESDAY MORNING	200	500
SJNB	S J N B FINANCIAL	1000	500	TWED	TUMBLEWEED INC	200	500
SKFB	S K FAMOUS BRANDS	1000	500	TRBO	TURBOCHEF INC	500	1000
STVI	S T V GROUP INC	500	1000	TUTS	TUT SYSTEMS INC	500	1000
SAESY	SAES GETTERS ADR	500	200	U			
SGNT	SAGENT TECHNOLOGY	200	500	USPH	U S PHYSICAL THERA	500	1000
SAVB	SAVANNAH BNCP INC	200	500	UBID	UBID INC	500	1000
OKSBO	SBI CAP TR PFD	200	500	UBSH	UNION BANKSHARES C	1000	500
SVECF	SCANVEC CO 1990 LTD	1000	500	UBMT	UNITED FINANCIAL C	500	200
SCHR	SCHERER HEALTHCARE	1000	500	UPCOY	UNITED PAN-EUR ADS	500	1000
SCNT	SCIENT CORP	200	500	USPL	US PLASTIC LUMBER	200	500
SCOP	SCOOT.COM ADR	1000	500	UBANP	USBANCORP CAP TR	500	200
SCOT	SCOTTISH ANN &LIF	500	1000	USIX	USINTERNETWORKING	200	500
SCFS	SEACOAST FIN SVC	500	1000	V			
AIRB	SELECT COMFORT CP	500	1000	VAIL	VAIL BANKS INC	500	1000
SENEB	SENECA FOODS CP B	500	1000	VMIX	VALLEY MEDIA INC	200	500
SEPR	SEPRACOR INC	500	1000	VADO	VALLEY NATL CP	200	500
SRNA	SERENA SOFTWARE INC	500	1000	VUSA	VALUE AMERICA INC	200	500
STCL	SHARED TECH CELLULAR	200	500	VARI	VARIAN INC	200	500
SILK	SILKNET SOFTWARE INC	200	500	VSEA	VARIAN SEMICOND	200	500
SIXR	SIX RIVERS NAT BK	500	1000	VFLX	VARIFLEX INC	1000	500
NZSKY	SKY NETWORK TV ADS	500	200	VRSN	VERISIGN INC	500	1000
SGAI	SMITH-GARDNER&ASSOC	500	1000	VLOG	VIALOG CORP	500	1000
SECAY	SOCIETE EUR ADS A	500	200	VIGN	VIGNETTE CORP	200	500
SOFN	SOFTNET SYSTEMS INC	200	500	VCAP	VIRGINIA CAP BANCSHS	500	1000
SNSTA	SONESTA INTL A	200	500	VBNJ	VISTA BANCORP INC	1000	500
SJFC	SOUTH JERSEY FINL CP	500	1000	VDAT	VISUAL DATA CP	500	1000
SBSIP	SOUTHSIDE CAP TR	500	200	VDATW	VISUAL DATA CP WTS	500	1000
CTLG	SPECIALTY CATALOG	500	1000	VISX	VISX INC	500	1000
SPCH	SPORT CHALET INC	500	1000	VTNA	VITRAN CP INC	200	500
STNV	STATIA TERMINALS GRP	200	500	VSTR	VOICESTREAM WIRELESS	200	500
SUBI	SUN BANCORP INC	500	1000	W			
SNBCP	SUN CAPITAL TR PFD	200	500	WAIN	WAINWRIGHT BK TR C	500	1000
SYPR	SYPRIS SOLU	500	1000	WATFZ	WATERFORD PLC ADR UT	200	500
T				WAVX	WAVE SYSTEMS D9	200	500
TARR	TARRAGON REALTY	500	1000	WEBT	WEBTRENDS CORP	200	500
TSCN	TELESCAN INC	200	500	WCSTF	WESCAST INDS INC A	500	200
TBNC	THE BANC CORPORATION	500	1000				
TSCM	THESTREET.COM	200	500				

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Symbol	Security Name	Old Level	New Level
BEEF	WESTERN BEEF INC	500	1000
WGBC	WILLOW GROVE BANCORP	500	1000
WGAT	WORLDGATE COMMUNICAT	200	500

X

XNVA	XENOVA GR PLC ADS	1000	500
XMCM	XOOM.COM INC	500	1000

Y

YAVY	YADKIN VALLEY BK&TR	200	500
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800-978-NASD (6273)



**ACTION REQUESTED BY
OCTOBER 29, 1999**

Salesperson Compensation Practices

**NASD Regulation
Requests Comment on
Proposed Salesperson
Compensation Rules;
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.

- Legal & Compliance
- Mutual Funds
- Registered Representatives
- Senior Management

KEY TOPICS

- Associated Persons of Members
- Compensation
- Investment Company Securities

Executive Summary

NASD Regulation, Inc. (NASD Regulation®) requests comment from National Association of Securities Dealers, Inc. (NASD®) members, investors, and other interested parties on the following three rule proposals which relate to salesperson compensation: (1) a rule prohibiting the payment of higher payout ratios to salespersons for the sale of proprietary investment company products; (2) a rule prohibiting single security sales contests; and (3) a rule requiring disclosure of accelerated payout arrangements for salespersons who change firms.

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

Request For Comment

NASD Regulation encourages all members, investors, and interested parties to comment on the proposed rules. Comments must be received by **October 29, 1999**. For each proposal, we have included questions for you to consider in drafting your response. In addition, 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, because this is not a vote 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 a 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

The only comments that will be considered are those submitted via e-mail or in writing.

Before becoming effective, the NASD Regulation Board of Directors must adopt, and the Securities and Exchange Commission (SEC) must approve, any rule change. The NASD Board of Governors also may review the rule change.

Questions/Further Information

As noted, written comments should be submitted to Joan C. Conley. Questions concerning this *Notice to Members—Request for Comments* may be directed to Louise Corso,

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Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-6939; or Stephanie M. Dumont, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Background

Historically, NASD Regulation has not attempted to regulate the internal compensation arrangements of member firms and their representatives. In general, examination of compensation practices at firms has been done on a case-by-case basis and has taken into account the nature of the firm's business and structure. In the early 1990s, SEC Chairman Arthur Levitt sought broader information about compensation practices throughout the securities industry. Chairman Levitt formed an industry committee that issued a report on compensation practices in 1995, known as the Tully Report. This report described a number of compensation practices that exist in the securities industry that may create conflicts of interest for member firms and their representatives. The Tully Report also identified best practices to address these actual or perceived conflicts of interest.

In *Notice to Members 97-50*, NASD Regulation sought member comment on cash compensation issues relating to the sale and distribution of investment company and variable contract securities. The cash compensation arrangements included, for example, the offering of higher commissions for sale of proprietary products (those sponsored by the member or an affiliated company) as compared to non-proprietary products, and the offering of cash awards for sales contests. The *Notice* asked generally whether certain forms of incentive-based cash compensation were harmful or

beneficial to investors. We also asked for comment on possible regulatory responses, such as requiring disclosure or prohibiting certain compensation practices. We did not propose any specific rules at that time, but rather solicited comments on a broad range of issues relating to compensation.

In response, we received 20 comment letters from member firms, individual representatives, and other interested parties. Most commenters generally favored the continued application of current sales practice and suitability rules or, alternatively, some form of generic disclosure for cash compensation practices. Some commenters, however, recognized that certain practices create particularly strong point-of-sale incentives or "product favoritism" and felt that it was important to distinguish those practices from other cash compensation arrangements between offerors and broker/dealers that are not passed on to salespersons and do not create such incentives.

In 1998, the SEC approved amendments to Rules 2820 and 2830 regulating non-cash compensation arrangements in the sale of variable contracts and investment company securities, respectively ("Non-Cash Compensation Rules"). As described in *Notice to Members 98-75*, the Non-Cash Compensation Rules limit the manner in which members can pay or accept non-cash compensation and impose certain recordkeeping requirements. "Non-cash" compensation includes, for example, merchandise offered to brokers, gifts and prizes, or reimbursement of travel expenses. These rules are based on the belief that the increased use of non-cash compensation creates significant point-of-sale incentives that may compromise the requirement to match the investment needs of the

customer with the most appropriate investment product. The Non-Cash Compensation Rules do permit certain non-cash compensation arrangements that are based on total production and equal weighting of sales of a variety of products and are organized and run by the member or certain affiliates. In addition, with limited exceptions, the Non-Cash Compensation Rules prohibit a person associated with a member from accepting any compensation, cash or non-cash, from any person other than the member with which the person is associated.

Discussion

We are soliciting comment on certain compensation practices described as problematic in the Tully Report, as well as three rule proposals addressing such practices. A number of NASD Regulation committees, including the District Committees, the Small Firm Advisory Board, the Membership Committee, the Investment Companies Committee, and the Bank Broker/Dealer Committee, had the opportunity to review and comment on some or all of the three potential regulatory responses proposed in this *Notice*. Committee members expressed a wide range of opinions in discussing these topics. We have incorporated many of the committees' suggestions in the proposals and questions presented in this solicitation of comment. We are publishing these rule proposals for comment to the full membership to give all members and other interested parties an opportunity to express their views as well.

Specifically, we are requesting comment on rule proposals to address the following compensation practices:

- Payment of higher payout ratios to representatives for the sale

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of proprietary investment company products;

- Single security sales contests; and
- “Accelerated payouts,” which are higher commission payouts offered to representatives who move from one broker/dealer to another.

We are also requesting comment on additional issues regarding current salesperson compensation practices. Commenters should consider the need to provide members and associated persons the flexibility to structure compensation arrangements in the most effective manner possible in accordance with their business requirements, while addressing any investor protection concerns that may result.

Payment Of Differential Cash Compensation

Compensation Practice: The Tully Report concluded that the payment of higher compensation to registered representatives for the sale of proprietary products can create incentives to inappropriately favor such products over non-proprietary products. Such compensation arrangements can create conflicts of interest by encouraging representatives to recommend proprietary products to maximize their commissions, rather than to best meet their customers' needs. Such arrangements may provide point-of-sale incentives that could compromise proper customer suitability determinations and may present a situation where the salesperson's interests are not, in some circumstances, fully aligned with the interests of customers. In this regard, the Tully Report cited as a “best practice” the use of identical payout ratios for representatives that offer both proprietary and non-proprietary

products, noting that most firms interviewed had already adopted this practice.

The Proposal: NASD Regulation is proposing for comment the attached amendment to NASD Rule 2830, which applies to the sale and distribution of investment company securities. The proposed amendment prohibits the payment of a higher percentage of gross dealer concessions to representatives for the sale of proprietary investment company securities than the percentage provided on the same dollar amount of non-proprietary investment company securities with similar investment objectives.

Although firms use differential compensation arrangements for a variety of products, the importance of mutual funds to retail investors may make differential payouts involving investment company products of particular concern, and we have therefore limited our current proposal to those types of products. However, NASD Regulation is soliciting comments on the extent to which these restrictions should extend to other kinds of products as well.

Commenters are asked to consider the proposed rule as well as any alternative regulatory approaches to such compensation arrangements. One option would permit such differential compensation arrangements to continue, but require oral or written disclosure to customers at or before the point of sale. A disclosure approach would be consistent with the NASD's long-standing practice of not substantively regulating internal compensation arrangements of member firms and their registered representatives and instead permitting investors to evaluate whether a registered representative's particular product recommendation was influenced by such arrangements.

However, as noted by the NASD Regulation committees, questions arise as to the form and timing of such disclosures, as well as the message that such a disclosure may send to customers, implying, for example, that representatives may not have their customers' best interests in mind. Further, customers are rarely in a position to evaluate the impact of a compensation arrangement on the ultimate recommendation. Commenters in favor of a disclosure approach are asked to provide input on the type of information that would be useful to investors and the format and timing of such a disclosure. In addition, commenters are asked to discuss the firm's ability to monitor and enforce a disclosure requirement in this area.

NASD Regulation also recognizes that existing commission-based compensation systems reflect legitimate business considerations that derive from a competitive market. For example, certain fund issuers may provide additional compensation to members in order to encourage their representatives to learn more about their products and how those products can help customers meet their investment objectives. NASD Regulation would appreciate any comments on the effect this proposal may have on such strategic business considerations or initiatives.

Finally, NASD Regulation is soliciting views on whether these types of compensation arrangements and the resulting potential conflicts of interest are adequately addressed under existing NASD rules. For example, when recommending to a customer the purchase, sale, or exchange of any security, NASD Rule 2310 requires that the member have reasonable grounds for believing that the recommendation is suitable for the customer. Would these potential conflicts of interest be

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adequately addressed through the provision of more detailed guidance concerning the applicability of the suitability requirements?

Attachment A includes the draft rule language for this proposal.

Questions For Members And Other Interested Parties

- A-1. To what extent do member firms pay representatives higher compensation for selling proprietary products compared to non-proprietary products?
- A-2. If a disclosure approach were taken, should the disclosure be oral or provided in a written document? What would be the appropriate content of such disclosure?
- A-3. How would firms ensure compliance with a requirement to disclose these arrangements?
- A-4. Should the NASD's rules regarding variable products restrict similar compensation arrangements involving those products? Should restrictions extend to other kinds of products as well?
- A-5. What business reasons or considerations exist for providing differential compensation to representatives?
- A-6. Rather than substantive regulation or disclosure, is it more appropriate to address concerns regarding compensation arrangements under existing NASD sales practice rules, such as rules regarding suitability requirements? Are there additional supervisory procedures that could be put in place to deal with potential

conflicts of interest related to salesperson compensation?

Single Security Sales Contests

Compensation Practice: Some firms have used single security sales contests to stimulate the sales of particular securities, including equities and proprietary mutual funds. A "sales contest" is an arrangement that promotes the sale of a security by offering an incentive payment to a salesperson who achieves a specified level of sales of the security over a specified period of time. The argument against this practice is that a representative may recommend a security to increase his or her chances of earning a cash award, without proper consideration as to whether it is a suitable security for the customer. Arguably, an incentive like this, offered at the point of sale, may be more likely to influence (or at the least, gives the appearance of influencing) the sale of a security than an incentive which is earned on a delayed basis and takes into account total production.

The Non-Cash Compensation Rules governing variable products and investment company products prohibit the payment of non-cash compensation through sales contests, except under certain specified conditions.¹ However, the Non-Cash Compensation Rules do not regulate contests that result in cash awards,² nor do they prohibit contests involving products other than mutual funds and variable contracts.

The Proposal: We are proposing a new rule that would prohibit *all* single security sales contests, not just those involving investment company shares and variable products. The proposed rule is intended to prohibit all single security sales contests that could

improperly influence the advice of a representative. The proposed rule does not prohibit a sales contest involving a type or family of securities, such as mutual funds, or a group of equities.

In reviewing drafts of the rule proposal, NASD Regulation committees, including the Membership Committee and the Investment Companies Committee, expressed a number of concerns, many of which are reflected in the questions below. For example, committee members discussed whether prohibition or disclosure would be the appropriate solution. They also questioned whether existing NASD rules, such as those relating to suitability, may already address the issue adequately.

Attachment A includes the draft rule language for this proposal.

Questions For Members And Other Interested Parties

- B-1. To what extent do member firms conduct single security sales contests?
- B-2. What types of securities are sold through sales contests today?
- B-3. Are sales contests necessary to encourage new product innovation? Please explain.
- B-4. The proposed rule addresses contests involving one security only, which may limit its impact. Is there a significant benefit to investors to this type of prohibition? Should the prohibition extend to contests involving more than one security or a group of securities? What are the advantages or disadvantages of such an approach?
- B-5. The proposed rule applies to all types of securities. Should

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we limit the rule to only certain types of securities? If so, identify the types of securities and explain why.

B-6. As an alternative approach, we could require disclosure of sales contests to investors.

a. Would disclosure of the fact that the representative is participating in a sales contest be an effective alternative to prohibiting sales contests?

b. How, when, and in what manner would the disclosure be made?

c. Describe the burden on firms to supervise for compliance with a disclosure rule.

B-7. NASD Rule 2310 requires that representatives must have reasonable grounds for believing that a recommendation is suitable for a customer. Does this rule (or other rules) adequately cover the type of potential misconduct that the proposed rule addresses? Are they more or less easily enforced than a disclosure rule would be?

Accelerated Payouts

Compensation Practice: As part of an incentive package, representatives who move from one member firm to another may receive higher commission payouts for a short, specified period of time, sometimes three to six months or a year. These temporarily increased commission payouts, known as “accelerated payouts,” are often offered to attract a representative to a new firm.

The perceived problem with this practice is that it could act as an

incentive for the representative to trade customer accounts inappropriately by, for example, “churning” or trading the accounts excessively, in order to generate as much revenue as possible during the time that higher commission payouts are being paid.

An argument in favor of accelerated payouts is that they make up for the potential financial losses associated with moving to a new firm. For example, it takes time for the representative to complete the administrative tasks associated with transferring customer accounts from the former firm to a new firm. Also, it is likely that not all of the representative’s customers will transfer to the new firm so the accelerated payouts can make up for some lost income.

The Proposal: Our proposal would require that, when a representative transfers to a new firm, the firm must disclose, in writing, the existence and general nature of the compensation arrangements to customers whose accounts are being transferred. The firm would also provide this written disclosure to new customers as long as the higher payout arrangement is in effect. The specific compensation formula or amount paid to the representative would not need to be disclosed.

NASD Committees, including the Membership Committee and a number of the District Committees, reviewed earlier drafts of the rule and expressed their views as to whether we need to propose such a rule. A number of committee members observed that the accelerated payouts serve legitimate business purposes and questioned why their use should be limited, especially in the absence of documented evidence of abuse. Moreover, many committee members noted that there are rules already in place to address suitability and churning, and

therefore, questioned the need for more regulation in this area.

Attachment A includes the draft rule language for this proposal.

Questions For Members And Other Interested Parties

C-1. To what extent do member firms offer accelerated payouts to representatives who transfer from one broker/dealer to another?

C-2. The proposed rule is based on the assumption that accelerated payouts act as an incentive for a representative to act improperly, for example, to trade excessively in customer accounts. Is this assumption correct?

C-3. The proposed rule does not prohibit the payment of accelerated payouts offered by a firm to *keep* a representative at a firm, which raises the same point-of-sale concerns. First, to what extent do member firms offer accelerated payouts to retain representatives who are considering transferring to another firm? Second, should the proposed rule be expanded to include this type of compensation practice?

C-4. The proposed rule does not dictate the specific language of the required disclosure. Should we mandate the specific form that a disclosure statement should take?

C-5. The proposed rule does not specify how the written disclosure should be made. For example, it could be provided on account opening forms or on a separate disclosure sheet. Should we specify how the disclosure should be made?

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C-6. Does the proposed rule affect the ability of smaller firms to attract experienced representatives? Please explain.

C-7. Rather than requiring written disclosure, should we propose a rule that would require firms to provide more supervision during the time that a newly transferred representative is receiving accelerated payouts?

C-8. Do existing rules that cover sales practice abuses, such as those prohibiting unsuitable recommendations and churning, adequately address the type of potential misconduct that the proposed rule is intended to address?

Other Questions

We have additional questions for members, investors, and interested parties to address regarding the regulation of compensation practices:

D-1. The proposed rules will increase the burden on firms to ensure compliance with the proposed requirements. Will the cost of compliance with each of the proposed rules be significant? Will the cost to firms for increased compliance activities be greater than the benefit to the investor?

D-2. As an alternative to imposing the specific requirements above, should we instead

require that customers receive a general disclosure statement that explains how representatives are compensated, including both cash and non-cash compensation arrangements?

D-3. Are there other compensation practices that NASD Regulation should address in addition to, or instead of, the three practices above?

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ATTACHMENT A

Text Of Proposed Amendments

Proposed additions are underlined; proposed deletions are bracketed.

Payment Of Differential Cash Compensation

Rule 2830. Investment Company Securities

(a) No change

(b) Definitions

(1) The terms “affiliated member,” “compensation,” “cash compensation,” “non-cash compensation,” “offeror,” “differential cash compensation,” “gross dealer concessions,” “non-proprietary investment company” and “proprietary investment company” as used in paragraph (l) of this Rule shall have the following meanings:

(A) - (E) No change

(F) “Differential cash compensation” shall exist if a member pays to its associated persons a higher percentage of its gross dealer concessions for the sale of a stated dollar amount of proprietary investment company securities than the percentage of its gross dealer concessions for the sale of the same dollar amount of securities of a non-proprietary investment company with similar investment objectives.

(G) “Gross dealer concessions” shall mean the total amount of any discounts, concessions, fees or commissions provided by the offeror to the member in

connection with the sale and distribution of investment company securities.

(H) “Non-proprietary investment company” shall mean any investment company other than a proprietary investment company.

(I) “Proprietary investment company” shall mean an investment company for which the member, or an affiliate of the member, is the investment adviser or principal underwriter.

(l) Member Compensation

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

(1) - (5) No change

(6) No member shall pay or offer to pay, and no associated person shall accept payment of, differential cash compensation.

Single Security Sales Contest

Proposed New Rule XXXX

(a) No member or person associated with a member shall accept or make payments or offers of payments of any cash compensation that is related to a single security sales contest.

(b) The terms “cash compensation,” and “sales contest” as used in this Rule shall have the following meanings:

(1) “Cash compensation” shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override, or cash employee benefit received in connection with the sale or distribution of

securities.

(2) “Single security sales contest” shall mean any arrangement that promotes the sale of a single security whereby a member offers to an associated person an incentive payment or payments of cash compensation based on the achievement of a specified level of sales of such security over a pre-determined period of time.

Accelerated Payouts

11870. Customer Account Transfer Contracts

(a) Responsibility to Expedite Customer’s Request

(1) When a customer whose securities account(s) is carried by a member (the “carrying member”) wishes to transfer the entire account(s) to another member (the “receiving member”) and gives written notice of that fact to the receiving member, both members must expedite and coordinate activities with respect to the transfer. If a customer desires to transfer a portion of an account, a letter of authorization should be transmitted to the carrying member indicating such intent and specifying the portion of the account to be transferred. Although such transfers are not subject to the provisions of this rule, members must expedite authorized partial transfers of customer securities accounts and coordinate their activities with respect thereto. The automated customer account transfer capabilities referred to in paragraph (m)(1) of this Rule shall be utilized for partial transfers.

(2) When a customer transfers an account from the carrying member to the receiving

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member in connection with the transfer of employment of a registered representative from the carrying member to the receiving member, and where the receiving member provides the registered representative with increased transaction-based compensation for a specific period of time in connection with the transfer of employment or the transfer of the customer's account, the receiving member shall provide to the customer written notice describing the existence and the general nature of the compensation arrangements. For the period of time that such compensation arrangements are in effect, such written notice shall also be provided to new

customers of the registered representative at the receiving member at or prior to opening an account.

(b) No change

Endnotes

¹A non-cash contest can be held only if it meets the following requirements: (1) the non-cash compensation arrangement must be based on the total production of associated persons with respect to all investment company or variable product securities distributed by that member; (2) the credit received for each investment company or variable contract security must be equally weighted; (3) no unaffiliated non-member company or other unaffiliated member may

directly or indirectly participate in the member's or non-member's organization of a permissible non-cash compensation arrangement; and (4) recordkeeping requirements must be satisfied. See Rule 2820(h)(4)(D) and Rule 2830(l)(5)(D).

²In response to comments received on an earlier version of the Non-Cash Compensation Rules that would have imposed substantive prohibitions on cash compensation, NASD Regulation decided to delete those provisions pertaining to cash compensation, and instead, solicit specific comments on cash compensation arrangements in *Notice to Members 97-50*.

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ATTACHMENT B

Request For Comment Checklist—Questions For Members And Other Interested Parties

The following list of questions provides a quick and easy means to comment on some of the provisions contained in the proposal regarding salesperson compensation. This list of questions does not cover all of the changes contained in the proposal; therefore, we encourage members and other interested parties to review the entire proposal and to comment separately on all aspects of the proposal.

Instructions

Comments must be received by **October 29, 1999**. Members and interested parties can submit their comments using the following methods:

- mailing in this checklist
- mailing in written comments
- e-mailing written comments to *pubcom@nasd.com*
- submitting comments online at the NASDR Web Site (*www.nasdr.com*)

The checklist and/or written comments and should be mailed to:

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

Differential Compensation

1. Should the NASD adopt a rule addressing the practice of paying registered representatives higher compensation for selling proprietary mutual funds than non-proprietary mutual funds?

- Yes No See my attached written comments

2. If your response to question #1 is yes, what type of rule should be adopted:

- a. A rule requiring a firm to orally disclose to customers the difference in compensation.
- b. A rule requiring a firm to disclose in writing the difference in compensation.
- c. A rule prohibiting this practice altogether.
- d. Other (See my attached written comments)

3. Should the NASD adopt rules addressing differential compensation practices with respect to other types of products?

- Yes No

4. If your response to question #3 is yes, please provide written comments regarding the other types of products.

Single Security Sales Contest

5. Should the NASD ban sales contests that promote the sale of a single security by offering cash compensation as a prize if a representative reaches a certain level of sales?

- Yes No See my attached written comments

6. If your response to question #5 is no, should the NASD instead require firms to disclose to investors the existence of sales contests that offer representatives cash compensation?

- Yes No See my attached written comments

Attachment B continued on next page

NASD Notice to Members—Request For Comment 99-81

ATTACHMENT B (continued)

Request For Comment Checklist—Questions For Members And Other Interested Parties

Accelerated Payouts

7. Should the NASD adopt a disclosure rule addressing the payment of increased payouts for a period of time to representatives who transfer from one firm to another?

Yes No

8. If your response to question #7 is no, should the NASD instead require firms to more strictly supervise representatives who are receiving accelerated payouts?

Yes No See my attached written comments

9. Should the NASD prohibit firms from offering such payouts to representatives in these circumstances?

Yes No See my attached written comments

Other

10. Please discuss any other practices relating to compensation of representatives that the NASD should address.

See my attached written comments

Contact Information

Name: _____

Firm: _____

Address: _____

City/State/Zip: _____

Phone: _____

E-Mail: _____

Are you:

An NASD Member

An Investor

A Registered Representative

Other: _____

NASD Notice to Members 99-82

INFORMATIONAL

FIPS Changes

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of July 22, 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.

- Corporate Finance
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Senior Management
- Trading & Market Making

KEY TOPIC

- FIPS

As of July 22, 1999, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
BFI.GA	Browning-Ferris Inds Inc.	9.250	05/01/21
BFI.GB	Browning-Ferris Inds Inc.	7.875	03/15/05
BFI.GC	Browning-Ferris Inds Inc.	6.100	01/15/03
BFI.GD	Browning-Ferris Inds Inc.	6.375	01/15/08
BFI.GE	Browning-Ferris Inds Inc.	7.400	09/15/35
BGFI.GA	BGF Industries Inc.	10.250	01/15/09
BLUI.GA	Blount Inc.	7.000	06/15/05
CDIU.GB	Canandaigua Brands Inc.	8.625	08/01/06
CLHS.GB	Coast Hotels & Casinos Inc.	9.500	04/01/09
CPE.GC	Callon Petroleum Co.	10.250	09/15/04
EMMS.GA	Emmis Communications Corp. Ser B	8.125	03/15/09
EVFI.GA	Evenflo Co. Inc. Series B	11.750	08/15/06
GSTU.GA	GST USA Inc.	13.875	12/15/05
HAZ.GA	Hayes Lemmerz Intl Inc. Series B	8.250	12/15/08
HEFR.GB	Heafner (J.H.) Co. Series D	10.000	05/15/08
KEG.GA	Key Energy Svcs Inc. Series B	14.000	01/15/09
LMRM.GA	Lamar Media Corp.	9.625	12/01/06
MCLD.GE	McLeod USA Inc.	8.125	02/15/09
NCIB.GA	NCI Building Systems Inc. Series B	9.250	05/01/09
NENA.GC	Neenah Corp. Series F	11.125	05/01/07
RBFF.GA	RBF Finance Co.	11.375	03/15/09
RBFF.GB	RBF Finance Co.	11.000	03/15/06
RMKS.GA	Richmont Marketing Special	10.125	12/15/07
SDVS.GA	Special Devices Inc. Series B	11.375	12/15/08
SFY.GA	Swift Energy Co.	10.250	08/01/09
SKS.GD	Saks Inc.	7.000	07/15/04
SQA.GF	Sequa Corp.	0.000	08/01/09
TRK.GB	Speedway Motor Sports Inc. Series D	8.500	08/15/07
TSFL.GA	Transamerica Finl Corp.	0.000	03/01/10
TSFL.GB	Transamerica Finl Corp.	0.000	09/01/12

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As of July 22, 1999, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
BARC.GA	Bar Technologies Inc.	13.500	04/01/01
CNLP.GE	Conn Light & Power Co.	7.500	07/01/23
CNLP.GH	Conn Light & Power Co.	8.500	06/01/24
CNLP.GI	Conn Light & Power Co.	7.875	06/01/01
CUI.GA	Coach USA Inc.	9.378	07/01/07
FFDM.GA	Fairfield Mfg Inc.	11.375	07/01/01
FXLN.GB	Fox Liberty Networks LLC	9.750	08/15/07
IN.GA	Integon Corp. Del	8.000	08/15/99
IRDM.GB	Iridium LLC/Capital Corp.	14.000	07/15/05
MARI.GA	Marriott Intl Inc.	6.750	12/01/09
PNFT.GB	Penn Traffic Co. New	10.375	10/01/04
PNFT.GC	Penn Traffic Co. New	9.625	04/15/05
PNFT.GD	Penn Traffic Co. New	8.625	12/15/03
PNFT.GF	Penn Traffic Co. New	10.250	02/15/02
PNFT.GG	Penn Traffic Co. New	11.500	04/15/06
PNFT.GH	Penn Traffic Co. New	10.650	11/01/04
REGL.GC	Regal Cinemas Inc.	9.500	06/01/08
SCTT.GA	Scotts Co.	9.875	08/01/04
SXFE.GA	Six Flags Theme Parks Inc.	12.250	06/15/05
TSFL.GB	Transamerica Finl Corp.	0.000	09/01/12
UIHI.GA	United Intl Hldgs Inc.	0.000	11/15/99
UIHI.GB	United Intl Hldgs Inc.	0.000	11/15/99

As of July 22, 1999, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
CPE.GA	CLNP.GA	Callon Petroleum Co.	10.000	12/15/01
CPE.GB	CNLP.GB	Callon Petroleum Co.	10.125	09/15/02

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, Market Regulation, NASD Regulation®, at (301) 590-6447.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq® Market Operations, at (203) 385-6310.

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INFORMATIONAL

**Trade Date—
Settlement Date**

**Columbus Day: Trade
Date—Settlement Date
Schedule**

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.

- Internal Audit
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Trading & Market Making

KEY TOPIC

- Holiday Trade Date—Settlement Date Schedule

Columbus Day: Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 11, 1999. On this day, The Nasdaq Stock Market® and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Oct. 5	Oct. 8	Oct. 12
6	12	13
7	13	14
8	14	15
11	14	18
12	15	19

Note: October 11, 1999, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 11, will be combined with transactions made on the previous business day, October 8, for settlement on October 14. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 11.

*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

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Disciplinary Actions

Disciplinary Actions Reported For September

NASD Regulation, Inc. (NASD Regulation®) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD®) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, September 20, 1999. The information relating to matters contained in this *Notice* is current as of the end of August 21, 1999.

Firm Expelled, Individual Sanctioned

Global Strategies Group, Inc. (CRD #27414, New York, New York) and Kurt Douglas Fethke (CRD #2565653, Registered Representative, Los Angeles, California). The firm was fined \$25,000 and expelled from NASD membership, and Fethke was fined \$45,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fethke executed unauthorized transactions in the accounts of public customers and failed to respond to NASD requests to provide information and testimony. In addition, the firm failed to properly supervise its Beverly Hills branch office in that its supervisory system was not reasonably designed to achieve compliance with federal securities laws and NASD rules. **(NASD Case #C02980018)**

Firm Expelled

The Harriman Group, Inc. a.k.a, HGI, Inc. (CRD #14079, Jericho, New York) was fined \$12,300,000, and expelled from membership in the NASD. The sanctions were

based on findings that the firm failed to disclose to its customers, by prospectus delivery or otherwise, certain material information relating to secondary public offerings and distributions of common stock. In addition, the firm failed to file certain documents and information pertaining to the terms, conditions, and arrangements of the firm's participation as an underwriter and received undisclosed and excessive underwriting compensation in connection with the firm's participation as an underwriter in secondary public offerings and distributions of common stock. Furthermore, the firm failed to deliver to investors prospectuses that contained all of the information set forth in the registration agreement, and delivered to investors stock offered in public offerings without the accompaniment of post-effective amended or supplemented prospectuses. Also, the firm failed to establish, maintain, and enforce written procedures to supervise the firm's corporate financing and underwriting activities that were reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. **(NASD Case #C10970189)**

Firm And Individual Suspended

Kunz & Cline Investment Management, Inc. (CRD #37196, Salt Lake City, Utah) and Kevin Dee Kunz (CRD #1274540, Registered Principal, Fruit Heights, Utah) were censured and fined \$20,000, jointly and severally, and Kunz was fined \$5,000, individually. In addition, Kunz was suspended from association with any NASD member in any capacity for 30 days and in a principal capacity for one year, such suspensions to run concurrently.

Moreover, Kunz must requalify in a representative capacity within 90 days of the conclusion of his suspension as a representative or cease to function in such capacity until he requalifies, and to requalify in a principal capacity before functioning in such capacity after the conclusion of his principal suspension. Furthermore, the firm was suspended from participation in any public or private offering of a security in the capacities of lead underwriter, primary placement, or sales agent until such time as it retains an independent consultant to review the adequacy and completeness of the firm's operational, compliance, and supervisory procedures pertaining to participation in such offerings in such capacities and the firm demonstrates to the NASD that it has implemented any recommendations of the consultant. The sanctions were based on findings that the firm, acting through Kunz, sold securities pursuant to private placement memoranda containing material misrepresentations and omissions, and sold securities that were neither registered with the Securities and Exchange Commission (SEC) nor exempt from registration, and Kunz compensated an unregistered person in connection with the sale of securities.

The firm and Kunz appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C3A960029)**

Firms And Individuals Fined

Quaker Securities, Inc. (CRD #27263, Valley Forge, Pennsylvania) and **Jeffrey Howard King, Sr. (CRD #1570133, Registered Principal, New Hope, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they

were censured and fined \$15,000, jointly and severally. The firm was also fined an additional \$15,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through King, failed to establish, maintain, and enforce adequate supervisory procedures involving the activities of registered representatives; failed to supervise these individuals adequately by allowing them to participate in private securities transactions; and failed to record all the details of such transactions on its books and records. The findings also stated that the firm failed to accept or decline securities transactions within 20 minutes of execution, and effected transactions of Nasdaq National Market[®] securities while failing to report the transactions timely and accurately. In addition, the NASD determined that the firm, acting through King, failed to obtain the complete participation of all eligible personnel in its Firm Element training program. **(NASD Case #C9A990037)**

Tullett & Tokyo Securities, Inc. (CRD #19595, New York, New York) and **James Michael Avena (CRD #1073158, Registered Principal, Manhasset, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$20,000, jointly and severally. In addition, the firm was required to undertake to pay the NASD \$130,000 which represents a portion of the financial benefit the firm derived by allowing registered representatives to conduct a securities business while their registrations were inactive. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Avena, permitted registered representatives to conduct a

securities business while their registrations were inactive due to failure to satisfy the Regulatory Element of the Continuing Education requirements. **(NASD Case #C04990030)**

Firms Fined

Credit Suisse First Boston Corporation (CRD #816, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute SelectNetSM orders and thereby failed to honor its published quotation. **(NASD Case #CMS990070)**

Ladenburg, Thalmann & Co., Inc. (CRD #505, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it improperly permitted a statutorily disqualified individual to become and remain an assistant trader prior to receiving NASD and SEC approval for such employment. **(NASD Case #C10990136)**

Morgan Stanley & Co., Inc. (CRD #8209, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable laws and regulations regarding trade reporting. The findings also stated

that the firm failed to use reasonable diligence to ascertain the best inter-dealer market for securities and to buy or sell in such market so that the resultant price to each customer was as favorable as possible under prevailing market conditions. In addition, the NASD found that the firm failed to report transactions in high yield bonds not quoted in the Fixed Income Pricing SystemSM (FIPS[®]) on the dates of each such transaction any time during the operating hours of FIPS. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to ACT compliance, trade reporting, recordkeeping, SEC Rule 10b-10, the SEC's Order Handling Rules, the Limit Order Protection Interpretation, best execution, anti-competitive practices, the use of the Small Order Execution SystemSM (SOESSM), and the conducting of an annual review of its OTC Trading Department. **(NASD Case #CMS990084)**

Neuberger Berman, LLC (CRD #2908, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$13,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report accurately to the NASD the total of "short" positions in all customer and proprietary firm accounts in securities included in The Nasdaq Stock Market, Inc.; inaccurately reported short sales as long sales; and failed to have adequate written procedures in place to identify the nature and frequency of the reviews that were to occur to ensure accurate reporting of short positions. **(NASD Case #C06990012)**

Warburg Dillon Read, L.L.C. (CRD #7654, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$9,500, and required to pay \$3,968.75, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it received customer limit orders to buy or sell securities and failed to contemporaneously execute shares of the customer limit orders after it bought or sold shares for its market-making account. The findings also stated that firm failed to immediately display customer limit orders when the orders were at a price that would have improved its bid or offer in each security related to those orders or when the orders were priced equal to its bid or offer and the national best bid or offer and the size of the orders represented more than a de minimis amount in relation to the size associated with its bid or offer in each security. Furthermore, the NASD determined that the firm failed to provide, in connection with transactions where it acted as principal, written notification to its customers of the reported trade price of the transaction, and failed to maintain memoranda on broker orders in compliance with SEC and NASD rules. The NASD also found that the firm sold shares of securities to public customers and failed to use reasonable diligence to ascertain the best inter-dealer markets for the securities so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. **(NASD Case #CMS990069)**

Individuals Barred Or Suspended

Paul Michael Acosta (CRD #1455279, Registered Representative, Naples, Florida) was fined \$3,655,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Acosta received \$1,054,000 from public customers to invest on their behalf, failed to invest the funds as directed, provided one customer with periodic false account statements purporting to show activity in her account, and consistently represented to other customers that their funds had been invested in mutual funds and other products. Instead, Acosta used the funds in connection with his own business activities. In addition, Acosta failed to disclose to his member firms that he was engaged in outside activities and failed to respond to NASD requests for information and documentation. **(NASD Case #C07980076)**

James Michael Amira (CRD #2777512, Registered Representative, Melville, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Amira consented to the described sanctions and to the entry of findings that he submitted a falsified Form U-4 to his member firm that failed to indicate that he had been charged with a felony and that he was the subject of a complaint, investigation, or proceeding. **(NASD Case #C10990127)**

Richard John Berg (CRD #1830892, Registered Principal, White Plains, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$75,000 and

barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Berg consented to the described sanctions and the entry of findings that he recommended and engaged in purchase and sale transactions in the accounts of public customers and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situations, investment objectives, and needs. The findings also stated that Berg, by use of instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud the customers by making untrue statements of material facts or omitted to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. In addition, Berg repeatedly caused false information regarding customers' investment objectives to be entered on new account forms and collected and destroyed or hid documents from regulators to impede their examinations. **(NASD Case #C9B990014)**

Jon Thomas Brainard (CRD #1973269, Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brainard consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning a customer complaint. **(NASD Case #C10990036)**

Cary Francis Butterfield (CRD #1291148, Registered Representative, Augusta, Maine) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined

\$5,000, suspended from association with any NASD member in any capacity for 30 days, and required to pay \$32,847.34 in restitution to public customers. Without admitting or denying the allegations, Butterfield consented to the described sanctions and to the entry of findings that he engaged in private securities transactions in that he participated in the sale of promissory notes to customers without written notice to, and approval from, his member firm. **(NASD Case #C11990032)**

Joseph Capolino, Jr. (CRD #1963136, Registered Representative, Elmhurst, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Capolino failed to respond to NASD requests for information concerning a customer complaint. **(NASD Case #C10990047)**

David Raymond Carroll (CRD #2689306, Registered Representative, Washington, D.C.) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Carroll failed to respond to NASD requests for information. **(NASD Case #C9A990002)**

James Emil Cioffi (CRD #2514915, Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cioffi consented to the described sanctions and to the entry of findings that he had an impostor take the Series 7 Qualification Exam on his behalf. The findings also stated that Cioffi failed to provide the NASD with documents and to appear for an on-the-record interview. **(NASD Case #C10990042)**

Reginald Bernard Cunningham (CRD #1236085, Registered Representative, Chicago, Illinois) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cunningham received \$154.20 from public customers to reinstate their life insurance policies, issued a receipt for the funds, and failed to apply the funds to the policies because he had "lost" the money. The findings also stated that Cunningham failed to respond to NASD requests for information. **(NASD Case #C8A990030)**

Joann Camille Dodd (CRD #2073552, Registered Representative, Tampa, Florida) was fined \$34,500, suspended from association with any NASD member in any capacity for three months, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dodd received checks totaling \$9,459.67 from a public customer to set up a 401(k) plan for himself and his employees, failed to cash the checks and to set up the plan, resulting in potential tax penalties and taxes of as much as \$20,000 for the customer. Dodd also failed to respond to NASD requests for information. **(NASD Case #C07980062)**

Gary Anthony Familathe, Jr. (CRD #2665609, Registered Representative, San Francisco, California) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Familathe failed to respond to NASD requests for information. **(NASD Case #C01990003)**

Charles M. Funk, Jr. (CRD #1392152, Registered Representative, Ardmore, Pennsylvania) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Funk failed to respond

to NASD requests for information. **(NASD Case #C9A990003)**

Kodjo Gumekepe Gassou (CRD #2254196, Registered Representative, Hillsboro, Florida) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gassou failed to respond to NASD requests for information. **(NASD Case #C07980075)**

Robert Louis Giardina (CRD #2554997, Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to pay restitution of \$15,000 to a public customer. Without admitting or denying the allegations, Giardina consented to the described sanctions and to the entry of findings that he defrauded a public customer by misrepresenting to the customer that several companies would be signing an agreement to purchase shares of stock and that the customer should "get in" on the deal before the stock price went up, when, in actuality, there was no agreement. When the customer instructed Giardina to sell his holdings due to declining stock prices, Giardina persuaded the customer not to sell because of the "deal." The findings also stated that Giardina failed to timely respond to NASD requests to provide a written statement concerning allegations contained in customer complaints and to appear for an on-the-record interview. **(NASD Case #C10990012)**

Alberto Gonzalez (CRD #2770755, Registered Representative, South San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$12,684.85 and barred from association with any

NASD member in any capacity. Without admitting or denying the allegations, Gonzalez consented to the described sanctions and to the entry of findings that he received a total of \$536.97 from a public customer and a fellow registered representative and misappropriated the funds to his own use and benefit. **(NASD Case #C01990011)**

Paul Gorr (CRD #2613773, Registered Representative, Brooklyn, New York) was fined \$25,000 and barred from association with any NASD member. The sanctions were based on findings that Gorr failed to respond to NASD requests for information concerning an amended Form U-5 filed by his former member firm and an arbitration proceeding instituted by a public customer disclosed therein. **(NASD Case #C10980096)**

Gregory Alan Hartnett (CRD #2368837, Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hartnett consented to the described sanctions and to the entry of findings that he executed a note in the amount of \$21,500 in favor of a public customer to settle a complaint from the customer without disclosing the settlement to his member firm. The findings also stated that Hartnett provided false and misleading information in response to an NASD request for information. **(NASD Case #C01980020)**

Delmer D. Harvey (CRD #1284998, Registered Principal, Mitchell, South Dakota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from registration with any NASD member in any capacity

for 30 business days. Without admitting or denying the allegations, Harvey consented to the described sanctions and to the entry of findings that he engaged in an outside business activity and received compensation for such activity without providing prompt written notification to his member firm. **(NASD Case #C04990033)**

Peter Steven Haynes (CRD #1312640, Registered Representative, Boonton, New Jersey) was fined \$5,000, suspended from association with any NASD member in any capacity for 30 business days, and ordered to disgorge \$28,617. The sanctions were based on findings that Haynes conducted a securities business while employed at a member firm without being registered with the NASD. **(NASD Case #C10970176)**

Daniel Sebastian Hellen (CRD #2339553, Registered Representative, Centereach, New York) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam in all capacities prior to associating with any member firm. In addition, Hellen was required to pay \$18,000 in restitution. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of a New York District Business Conduct Committee (DBCC) decision and a call for review by the NAC. The sanctions were based on findings that Hellen effected unauthorized transactions in the accounts of public customers.

Hellen's suspension commenced with the opening of business on July 15, 1999, and will conclude at the close of business on July 13, 2001. **(NASD Case #C3A970031)**

Ronald Kerr Helton (CRD #1822240, Registered Representative, Nashville, Tennessee) submitted a Letter of

Acceptance, Waiver, and Consent pursuant to which he was fined \$6,878.17 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Helton consented to the described sanctions and to the entry of findings that he effected securities purchase transactions, on margin, for the account of a public customer that resulted in monthly margin balances ranging up to \$13,701.04. These transactions and resulting margin balances were unsuitable for the customer on the basis of her financial situation, investment objectives, and needs. The findings also stated that Helton shared in a loss in the customer's account by paying her \$3,000 without obtaining prior written authorization from his member firm. **(NASD Case #C05990032)**

Glen William Hilker (CRD #245646, Registered Representative, Denver, Colorado) submitted an Offer of Settlement pursuant to which he was censured, fined \$17,500, and suspended from association with any NASD member in any capacity for seven months. Without admitting or denying the allegations, Hilker consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Hilker failed to respond to NASD requests for information in a timely manner. **(NASD Cases #C3A970034 and C3A970053)**

Ezzat Tom Ishak (CRD #2160770, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity with the right to reapply after two years.

Without admitting or denying the allegations, Ishak consented to the described sanctions and to the entry of findings that he executed the purchase and sale of warrants in the accounts of public customers without the customers' prior knowledge, authorization, or consent. The findings also stated that Ishak failed to execute the sale of warrants in the account of a public customer despite receiving an order from the customer. **(NASD Case #C10990112)**

Jerry S. Kim (CRD #2316516, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Kim consented to the described sanctions and to the entry of findings that he accepted \$20,000 in cash from public customers for investment, invested \$5,000 at the customers' wishes, personally held on to the remaining funds, and then returned \$15,000 to the customers at a later date. The findings also stated that Kim never notified his member firm of the receipt of the cash, disregarded the firm's internal policy prohibiting representatives from accepting cash from a customer, and failed to follow his firm's procedures for recording and processing customer transactions. By failing to record the receipt of the cash on the branch office trade blotter, Kim caused his firm to fail to maintain accurate books and records as required by the SEC. **(NASD Case #C9B990020)**

Donald Kenneth Kozlowski (CRD #1002822, Registered Principal, Ft. Myers, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$3,500, suspended from association with any NASD member in any capacity for five

business days, and required to disgorge \$3,945.15 as restitution to public customers. Without admitting or denying the allegations, Kozlowski consented to the described sanctions and to the entry of findings that he sent a written communication via facsimile to a public customer regarding the future prospects of a security after the customer and his wife had purchased shares at Kozlowski's recommendation, made a misleading statement in the facsimile, and failed to have it approved prior to use by a registered principal of his member firm. **(NASD Case #C07990048)**

Todd Joseph LaScola (CRD #1968448, Registered Principal, Warwick, Rhode Island) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, LaScola consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning alleged unauthorized trading and misappropriation of funds. **(NASD Case #C11990021)**

Damon Todd Lazar (CRD #2295614, Registered Representative, Plainview, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,000, suspended from association with any NASD member in any capacity for 10 weeks, and suspended thereafter until he requalifies by exam for any capacity in which he seeks to become registered with the NASD. Without admitting or denying the allegations, Lazar consented to the described sanctions and to the entry of findings that he knowingly or recklessly made numerous material misrepresentations of fact to a public customer concerning, and in connection with, his

recommendations to purchase common stock. **(NASD Case #C07980087)**

John Joseph Lee (CRD #1264054, Registered Principal, West Babylon, New York) was fined \$25,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination in all capacities. The sanctions were based on findings that Lee failed to respond to NASD requests for information. **(NASD Case #C10980070)**

John Louis Lembo, III (CRD #1920358, Registered Representative, Ft. Lauderdale, Florida) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lembo consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C07990015)**

Anthony Joseph Maglietta (CRD #2919710, Registered Representative, Parlin, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Maglietta consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on annuity applications, annuity disclosure statements, and a "Confidential Investor Profile," enabling him to purchase an annuity on behalf of the customer without her consent and authority. **(NASD Case #C9B990021)**

Marlene Marcello McKenna (CRD #832452, Registered Principal, Providence, Rhode Island) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$450,000, barred from association with any NASD member in any capacity, and ordered to pay \$86,710, plus interest, in restitution to public customers. Without admitting or denying the allegations, McKenna consented to the described sanctions and to the entry of findings that she converted and misappropriated at least \$86,710 in cash proceeds from variable life insurance policies of public customers for her own use and benefit. **(NASD Case #C11990029)**

David Len Mitchell (CRD #2508455, Registered Representative, Orrville, Ohio) was fined \$25,000 and barred from association with the NASD in any capacity. The sanctions were based on findings that Mitchell failed to respond to NASD requests for information relating to his termination. **(NASD Case #C8B990006)**

Michael Kemp Murphy (CRD #603386, Registered Principal, Spring, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he engaged in an outside business activity in that he solicited individuals to invest funds with a non-registered entity and failed to provide written notice of these business activities to his member firm. **(NASD Case #C06990010)**

Alex Ezell Neely (CRD #1240671, Registered Principal, Casper, Wyoming) submitted a Letter of

Acceptance, Waiver, and Consent pursuant to which he was fined \$676,930 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Neely consented to the described sanctions and to the entry of findings that he received checks from a public customer totaling \$115,386 to be used for the purchase of securities. The findings also stated that Neely deposited the checks into his personal bank account, converted the funds to his own use, and failed to invest the proceeds as directed by the customer. **(NASD Case #C3A990047)**

John Patrick Nichols (CRD #2188710, Registered Representative, Fort Lauderdale, Florida) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Nichols consented to the described sanctions and to the entry of findings that he effected transactions in the securities account of a public customer, without the customer's prior knowledge or authorization. **(NASD Case #C07990025)**

AnnMarie Noel (CRD #2416716, Registered Representative, Astoria, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Noel consented to the described sanctions and to the entry of findings that she fraudulently accepted compensation in the form of cash or free or deeply discounted stock or stock warrants from or on behalf of various companies in return for recommending stocks to her brokerage firm customers without

informing the customers of such compensation. The findings also stated that her knowing failure to disclose the compensation was a material omission made with the intent to deceive her customers. In addition, on several occasions, Noel misrepresented who she was when she spoke to customers over the telephone. **(NASD Case #C10990118)**

Domingos Alexander Noya (CRD #1398190, Registered Representative, Islip Terrace, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$2,500, suspended from association with any NASD member in any capacity for 10 business days, and ordered to requalify by exam as an investment representative. If Noya fails to requalify within 90 days, he will be suspended from association with any member firm in that capacity until the exam is successfully completed. Without admitting or denying the allegations, Noya consented to the described sanctions and to the entry of findings that he guaranteed public customers against loss in a variable annuity account although no payment or transactions resulted. **(NASD Case #C10990105)**

Angel L. Ocasio-Velez (CRD #2455345, Registered Principal, San Juan, Puerto Rico) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ocasio-Velez consented to the described sanctions and to the entry of findings that he forged the signatures of public customers on "Policy Change Applications," without their authorization and consent. **(NASD Case #C07980061)**

Glenn Gerald Opfer (CRD #1049487, Registered Representative, Littleton, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Opfer consented to the described sanctions and to the entry of findings that he opened a securities account in his name at a member firm and failed to notify the firm, in writing, that he was employed with another member firm. The findings also stated that Opfer failed to notify his employing firm that he had opened the account. In addition, Opfer failed to respond to NASD requests for information and documentation. **(NASD Case #C3A990037)**

Kevin Lee Otto (CRD #1929973, Registered Representative, Milwaukee, Wisconsin) was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Otto received \$22,000 from a public customer and used the funds for some purpose other than for the benefit of the customer, without the customer's knowledge or authorization, until he returned the funds to the customer at a later date.

Otto has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal. **(NASD Case #C8A970015)**

Edward Andrew Perez (CRD #1690751, Registered Representative, Boynton Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD

member in any capacity. Without admitting or denying the allegations, Perez consented to the described sanctions and to the entry of findings that he knowingly sold stolen laptop computers to co-workers while on the premises of his member firm. **(NASD Case #C9B990016)**

Erwin Allen Porges (CRD #1222183, Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Porges consented to the described sanctions and to the entry of findings that he caused securities to be purchased in a joint account of public customers even though such purchase had not been authorized by the customers and he failed to respond to NASD requests to provide testimony. **(NASD Case #C8A990056)**

Brian Prendergast (CRD #825814, Registered Principal, Englewood, Colorado) was censured and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Prendergast invested funds from the sale of securities offered pursuant to a private placement memorandum in a manner that was inconsistent with representations in the memorandum and solicited certain securities transactions using a private placement memorandum that contained material misrepresentations and omissions, and distributed communications to purchasers that failed to conform to NASD general and specific standards for sales literature. In addition, Prendergast caused an advertisement to be placed in a newspaper that constituted a general solicitation prohibited by

the SEC and the NASD. Prendergast also failed to provide proper notice to his member firm that he had opened an account with another firm and failed to inform the executing member firm that he was associated with another firm. Moreover, Prendergast failed to respond to NASD requests for information and to provide on-the-record testimony.

Prendergast has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal. **(NASD Case #C3A960033)**

John David Roman (CRD #2251851, Registered Principal, Bridgeport, Connecticut) was ordered to disgorge \$8,500, plus interest, and barred from association with any NASD member in any capacity with the right to re-apply after one year provided that any such application be accompanied by credible evidence that he no longer has an alcohol abuse problem and that he has maintained his sobriety during, at a minimum, the one-year period immediately before the filing of the application. The sanctions were based on findings that Roman "parked" his registrations as a general securities principal and general securities representative at a member firm. **(NASD Case #C10980128)**

Steven Richard Rosenblueth a.k.a Steven Rosen (CRD #2418678, Registered Representative, Manhasset Hills, New York) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 45 business days. Without admitting or denying the allegations, Rosenblueth consented to the described sanctions and to the entry of findings that he executed the purchase of warrants in a public

customer's account without the customer's knowledge, authorization, or consent and failed to respond timely to NASD requests for information. **(NASD Case #C10990083)**

Darrell Scott Rosenthal (CRD #1702839, Registered Representative, Bellaire, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for seven business days. Without admitting or denying the allegations, Rosenthal consented to the described sanctions and to the entry of findings that he, acting in his capacity as a registered representative for his member firm, intentionally caused transactions to The Nasdaq Stock Market® to be executed and reported in his own account, affecting the reported last sale prices in the securities. The findings also stated that Rosenthal marked opening order tickets in his own account "sell close" when such orders established opening short positions and subsequently, on the same days, marked corresponding order tickets in his own account "buy open" when such orders closed out the previously established short positions. **(NASD Case #CMS990092)**

James Sylvester Ruscoe (CRD #2091493, Registered Representative, Peru, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$1,260,000, barred from association with any NASD member in any capacity, and ordered to pay \$249,874.18, plus interest, in restitution. Without admitting or denying the allegations, Ruscoe consented to the described sanctions and to the entry of findings that he improperly converted \$249,874.18 belonging to public customers for his own use and benefit. **(NASD Case**

#C11990030)

David Leland Sagars (CRD #1013621, Registered Principal, Sandy, Utah) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$7,500, jointly and severally, with a member firm, and suspended from association with any NASD member in the capacity of financial and operations principal for three business days. Without admitting or denying the allegations, Sagars consented to the described sanctions and to the entry of findings that a member firm, acting through Sagars, conducted a securities business while failing to maintain the minimum required net capital. The findings also stated that the firm, acting through Sagars, filed NASD FOCUS Part II Reports that materially misstated the firm's net capital. **(NASD Case #C3A990045)**

Douglas Frank Schwartz (CRD #2059820, Registered Representative, Fort Meyers, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$150,000, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Schwartz consented to the described sanctions and to the entry of findings that he improperly misused and borrowed public customer funds totaling \$150,000. **(NASD Case #C11990031)**

Gregory John Shultis (CRD #1934789, Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$11,340, barred from association with any NASD member in any capacity, and required to pay \$268 in restitution to his former member firm. Without

admitting or denying the allegations, Shultis consented to the described sanctions and to the entry of findings that he received a \$400 check from a public customer for financial planning services, failed to give the check to his member firm, and, instead, deposited the check in his personal bank account, using the full amount for his own benefit. **(NASD Case #C8B990024)**

Stephen Kevin Sides (CRD #2376287, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for one year, and barred from association with any NASD member in a principal capacity. Without admitting or denying the allegations, Sides consented to the described sanctions and to the entry of findings that he acted in the capacity of a general securities principal while unregistered with the NASD. **(NASD Case #C10990116)**

Dila D. Skrelja, Jr. (CRD #1819198, Registered Principal, Glen Oaks, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$5,000, and suspended from association with any NASD member in any supervisory capacity for 10 business days. Without admitting or denying the allegations, Skrelja consented to the described sanctions and the entry of findings that she failed to properly enforce her supervisory responsibilities concerning her member firm's registered representatives. **(NASD Case #C10990109)**

Robert Albert Skulman (CRD #1670270, Registered Representative, Ft. Smith, Arkansas) was censured, fined \$114,131.62, and barred from association with any NASD

member in any capacity. The sanctions were based on findings that Skulman effected unauthorized transactions in the accounts of public customers, made unsuitable recommendations to the customers, and submitted false new account forms for the customers, without their knowledge or consent. **(NASD Case #C05980048)**

Cary Steven Sprung (CRD #1526858, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sprung consented to the described sanctions and to the entry of findings that, without the consent of his member firm and his member firm's clearing firm, he utilized the clearing firm's stationery and an account statement to fraudulently depict assets in an account bearing Sprung's name in order to collateralize a loan. **(NASD Case #C10990122)**

James Mitchell Vaughn (CRD #2680249, Registered Representative, Bellport, New York) submitted an Offer of Settlement pursuant to which he was fined \$40,000, suspended from association with any NASD member in any capacity for 21 months, and required to pay \$121,202 in restitution to public customers. Without admitting or denying the allegations, Vaughn consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted to disclose material facts, predicted the future prices of speculative securities in connection with the offer and sale of securities, effected a transaction in a customer account without having obtained the customer's prior authorization, and failed to follow customer

instructions to sell securities. **(NASD Case #C3A990004)**

Dennis Anthony Wallot (CRD #1592875, Registered Representative, Westland, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$6,960, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wallot consented to the described sanctions and to the entry of findings that he engaged in private securities transactions for compensation and failed and neglected to give prior written notice to, or receive prior written approval from, his member firm. **(NASD Case #C8A990062)**

Individual Fined

Harpel Wood Keller (CRD #2047489, Registered Representative, Portland, Oregon) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$12,000. Without admitting or denying the allegations, Keller consented to the described sanctions and to the entry of findings that, while registered with a member firm, he accepted powers of attorney from clients and prospective clients of his member firm, in connection with accounts these individuals had opened with another member firm. The NASD determined that, pursuant to these powers of attorney, Keller recommended and gave orders for trades in these accounts, and engaged in this activity without providing oral or written notice to his member firm. **(NASD Case #C3B990027)**

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been

appealed to or called for review by the NAC as of August 13, 1999. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Bradford Lee Brinton (CRD #2572055, Registered Representative, St. Joseph, Missouri) was fined \$118,476.15 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brinton forged the signature of a public customer on a dividend check for \$1,695.23 payable to the customer and deposited the funds into his personal bank account, converting the funds to his own use and benefit.

Brinton has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C04990005)**

Gordon Kerr (CRD #268444, Registered Representative, Walnut, California) was fined \$10,000, suspended from association with any NASD member in any capacity for 45 days, and barred from the NASD in a principal capacity. The sanctions were based on findings that Kerr functioned as a securities principal while he was ineligible to act in that capacity.

Kerr has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C02980051)**

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents

the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Charles Douglas Gulley, Jr. (CRD #1320916, Registered Representative, Ocean Springs, Mississippi) was named as a respondent in an NASD complaint alleging that he received checks from public customers totaling \$1,465,138.62 for the purpose of investing in securities, failed and neglected to execute the purchases of securities on the customers' behalf, and instead, deposited the funds in an account that he controlled, ultimately retaining the sum of \$1,294,189.92 which he converted to his own use and benefit, without the customers' knowledge and consent. The complaint also alleges that Gulley received a check in the amount of \$5,000 from a public customer for the purpose of paying a premium on a life insurance policy, failed and neglected to pay the insurance premium, and instead, deposited the check in an account that he controlled, converting the \$5,000 to his own use and benefit, without the customer's knowledge or consent. The complaint also alleges that Gulley failed to respond completely to NASD requests for information. **(NASD Case #C05990034)**

John Joseph Kenny (CRD #1001752, Registered Principal, St. Louis, Missouri) was named as a respondent in an NASD complaint alleging that he intentionally or recklessly employed devices to defraud public customers and engaged in a course of business that operated as a fraud or deceit upon the customers

by initiating, or allowing an unregistered individual and/or his associates to initiate, unsuitable margin transactions in public customers' securities accounts. The complaint also alleges that Kenny recklessly engaged in a course of conduct to allay any concerns on the part of the customers as to impropriety in the trading of the customers' accounts by the use of material omissions and written communications which misstated and/or omitted material facts. The complaint also alleges that Kenny, without written instructions and/or the knowledge or consent of the customer, caused \$1.1 million to be wired from a public customer's account to an account at another member firm, thus facilitating an unauthorized transfer of funds. **(NASD Case #C04990035)**

Peter S. Lau (CRD #866720, Registered Representative, Edison, New Jersey) was named as a respondent in an NASD complaint alleging that he induced a public customer to effect transfers of funds totaling \$75,114 from her bank account to his personal bank account by falsely representing to her that such funds would be used to purchase an investment, then converted the funds to his own use and benefit by using them to pay off gambling debts. The complaint also alleges that Lau failed to respond to NASD requests for information. **(NASD Case #C10990119)**

Joseph John Mandaro (CRD #2559154, Registered Representative, Coral Springs, Florida) was named as a respondent in an NASD complaint alleging that he knowingly, willfully, or recklessly engaged in a device, scheme, or artifice to defraud and mislead public customers into investing in securities by participating in a "boiler room" operation which included the use of high pressure sales tactics and misleading statements and omissions. The complaint also

alleges that Mandaro made specific price predictions about speculative securities being sold, made predictions without having an adequate, accurate, or reasonable basis in fact, and failed to disclose any risk or negative information in security recommendations. The complaint also alleges that Mandaro engaged in unauthorized trading in customer accounts, without having discretionary trading authority for the accounts, and refused or failed to execute customer sell orders. **(NASD Case #CAF990011)**

John William McCall, Jr. (CRD #824736, Registered Representative, Walnut Creek, California) was named as a respondent in an NASD complaint alleging that he recommended to a public customer purchases and redemptions of mutual funds without having reasonable grounds for believing that such transactions were suitable for the customer in view of the frequency of the transactions, the type of investment being recommended to be redeemed or purchased, and the customer's financial situation and needs. **(NASD Case #C01990013)**

Michael William O'Donnell (CRD #1254156, Registered Principal, Northridge, California) was named as a respondent in an NASD complaint alleging that he engaged in private securities transactions without providing prior written notice to his member firms describing the proposed transactions and his proposed role therein. The complaint also alleges that O'Donnell, in connection with the sale of interests to public customers, made material misrepresentations and omissions in order to induce the customers to invest. **(NASD Case #C02990047)**

Jamie Patrash (CRD #2744189, Registered Representative, Jacksonville, Florida) was named as a respondent in an NASD complaint alleging that he received a total of \$851 in the form of personal checks from public customers for investment purposes, and checks and cash from individuals seeking to become associated with his member firm. The complaint alleges that Patrash altered the checks by writing his name over the member firm's name, presented the altered checks for payment, endorsed the checks, and converted the proceeds from the checks and the cash for his own use and benefit. **(NASD Case #C07990052)**

Merlin Blaine Riley III (CRD #1318026, Registered Principal, Dana Point, California) was named in an NASD complaint alleging that he executed purchase and/or sale transactions in various securities in the accounts of public customers without their authorization. The complaint also alleges that Riley executed purchase and sale transactions for the account of a public customer pursuant to oral discretionary authority but without the requisite written authorization from the customer or the requisite permission of his member firm. **(NASD Case #C02990050)**

Jay Steven Robinson (CRD #833292, Registered Principal, Wichita, Kansas) was named as a respondent in an NASD complaint alleging that he received checks totaling \$20,000 from a public customer for investment purposes. The complaint alleges that Robinson did not invest the monies as instructed by the customer, and instead, without the knowledge or consent of the customer, converted the proceeds of the checks to his

own use and benefit and returned only \$1,473.45 to the customer. **(NASD Case #C04990036)**

Michael Sean Stone (CRD #2370650, Registered Representative, St. Paul, Minnesota) was named as a respondent in an NASD complaint alleging that he affixed the signature of a public customer to a margin agreement without the customer's knowledge or consent. The complaint also alleges that Stone placed a good-till-canceled limit order to purchase shares of a stock in a customer's account without the customer's knowledge or consent. **(NASD Case #C04990037)**

Walter Mark Wolff (CRD #1579100, Registered Representative, Wilmington, Delaware) was named as a respondent in an NASD complaint alleging that he effected transactions in the securities account of a public customer, without having prior authorization to effect such transactions for the account. **(NASD Case #C9A990038)**

Suspensions Lifted

The NASD has lifted the suspension from membership on the dates shown for the following firm because it has complied with formal written requests to submit financial information.

CDH Capital Corporation, Irving, Texas (July 21, 1999)

RFCA Financial Services, Torrance, California (July 16, 1999)

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For Your Information

Y2K Testing Not Required For Legacy CRD And PC FOCUS

Due to the availability of the new Web Central Registration Depository (CRDSM) system and Web-Based FOCUS filing system, the National Association of Securities Dealers, Inc. (NASD[®]) does **not** require Year 2000 testing of their predecessor systems – Legacy CRD and PC FOCUSSM. The new systems – Web CRD and Web-Based FOCUS – have successfully completed Year 2000 testing.

If your firm uses the EFT functions of Legacy CRD and wishes to voluntarily conduct Year 2000 date

testing, the NASD will accommodate your request. Contact the Year 2000 Program Office at (888) 227-1330 to arrange testing.

Details about these applications can be found on the NASD Year 2000 Web Page on the following Web Sites: www.nasd.com and www.nasdr.com. If you have any questions, or require additional information, please contact the NASD Year 2000 Program Office at (888) 227-1330.

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