

# Notices to Members

## February 1999

### Notices

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*Notices to Members* (December 1996 to current) are also available on the Internet at [www.nasdr.com](http://www.nasdr.com).

# NASD Notice to Members 99-09

## NASD Regulation Imposes Moratorium On Arbitrator-Ordered Expungements Of Information From The Central Registration Depository

### Suggested Routing

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

### Executive Summary

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) is imposing a moratorium on expungement of certain information from the Central Registration Depository (CRD<sup>SM</sup>) that is ordered by arbitrators. Effective **January 19, 1999**, NASD Regulation will not expunge information from the CRD system based on a directive contained in an arbitration award rendered in a dispute between a public customer and a firm or an associated person, unless the award has been confirmed by a court of competent jurisdiction. Therefore, arbitration awards rendered in such disputes that contain expungement directives that are not final (*i.e.*, those awards that have not been signed by a majority of the arbitrators) on or before **January 19, 1999**, must be confirmed by a court of competent jurisdiction before NASD Regulation will execute the expungement directive. During this moratorium, NASD Regulation will continue to execute court-ordered expungements, including expungement orders contained in an arbitration award that is confirmed by a court of competent jurisdiction. In addition, NASD Regulation will continue to expunge information from the CRD system based on expungement directives in arbitration awards rendered in disputes between firms and current or former associated persons, where arbitrators have awarded such relief based on the defamatory nature of the information.

NASD Regulation is imposing this moratorium after discussions with the North American Securities Administrators Association (NASAA), an association whose members include state and other securities regulators in the United States, as well as other securities regulators in North America. NASD Regulation operates the CRD system pursuant to an agreement with NASAA.

Although the agreement governing the operation of the CRD system expressly addresses court-ordered expungements, it does not specifically address arbitrator-ordered expungements. NASD Regulation has taken the position that expungement of information from the CRD system that is ordered by an arbitrator and contained in an award should be afforded the same treatment as a court-ordered expungement. NASAA disagrees with this position and has informed NASD Regulation that it does not believe that arbitrator-ordered expungements should be afforded the same treatment as court-ordered expungements. NASAA has informed NASD Regulation that, in its opinion, according to various state laws, information submitted to the CRD system is deemed to have been filed with each state in which that person or entity seeks to be registered. Therefore, according to NASAA, information in the CRD system that may be the subject of an arbitrator-ordered expungement is in many cases a state record, and state laws do not currently recognize the authority of an arbitrator to expunge a state record or do not otherwise currently permit such expungements because of state recordkeeping requirements. Pending further discussions with NASAA and the states, NASD Regulation is imposing a moratorium on expunging information from the CRD system based on a directive contained in an arbitration award rendered in a dispute between a public customer and a firm or associated person, unless the award has been confirmed by a court of competent jurisdiction. The moratorium is effective **January 19, 1999**.

Questions concerning this *Notice* may be directed to Ann E. Bushey, Assistant Director, CRD/Public Disclosure, NASD Regulation, at (301) 590-6389; Mary M. Dunbar,

Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252; or Richard E. Pullano, Associate Director and Counsel, CRD/Public Disclosure, NASD Regulation, at (301) 212-3789.

## Background And Discussion

The CRD system is an electronic registration and licensing system that contains information used by the Securities and Exchange Commission (SEC), National Association of Securities Dealers, Inc. (NASD®), other self-regulatory organizations (SROs), and state securities regulators to make licensing and registration decisions, among other things. The information on the CRD system includes criminal information (e.g., indictments and convictions for certain criminal offenses), disciplinary information (e.g., sanctions imposed by regulators, customer complaints that meet specified criteria, and certain categories of employment terminations), and other information. The information on the CRD system is submitted by regulatory authorities (e.g., state securities regulators and SROs) and by registered broker/dealers. NASD Regulation is responsible for processing registration-related filings and entering information into the CRD system.

NASD Regulation maintains and operates the CRD system pursuant to NASD rules and an agreement between NASD Regulation and NASAA, an association whose members include state and other securities regulators in the United

States, as well as other securities regulators in North America. NASD Regulation expunges information from the CRD system when ordered to do so by a court of competent jurisdiction. NASD Regulation, recognizing arbitrators' broad authority to grant equitable relief and a party's ability to have an award confirmed in court, also has honored such expungement directives provided they were contained in an arbitrator's award. NASD Regulation provides NASAA with copies of arbitration awards containing expungement directives before expunging any information from the CRD system.

NASAA has informed NASD Regulation that, in its opinion, under the laws of certain states, information filed with the CRD system is deemed to have been filed with those states, and, according to NASAA, is therefore a state record subject to all of the regulations and protocols that apply to state records. NASAA has further informed NASD Regulation that, in its opinion, state laws do not currently recognize the authority of an arbitrator to expunge a state record or do not otherwise currently permit such expungements because of state recordkeeping requirements. NASD Regulation has determined to impose a moratorium on expungement of information from the CRD system that is awarded by arbitrators in disputes involving public customers and firms or associated persons, but not confirmed by a court of competent jurisdiction, while it discusses with NASAA and the states certain legal and policy issues implicated by these

expungements. Therefore, effective **January 19, 1999**, NASD Regulation will not expunge information from the CRD system based on a directive contained in an arbitration award rendered in a dispute involving a public customer and a firm or associated person, unless the award has been confirmed by a court of competent jurisdiction. Awards rendered in such disputes that contain expungement directives that are not final (*i.e.*, those awards that have not been signed by a majority of the arbitrators) on or before **January 19, 1999**, must be confirmed by a court of competent jurisdiction before NASD Regulation will execute the expungement directive. Notwithstanding this moratorium, NASD Regulation will continue to expunge information from the CRD system based on expungement directives contained in arbitration awards rendered in disputes between firms and current or former associated persons, where arbitrators have awarded such relief based on the defamatory nature of the information. In addition, NASD Regulation will continue to execute court-ordered expungements, including expungement directives contained in arbitration awards rendered in disputes between public customers and firms or associated persons, provided those awards are confirmed by a court of competent jurisdiction.

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# NASD Notice to Members 99-10

## NASD Guidelines For Compliance With New Requirements For Non- California Attorneys Representing Parties In NASD Arbitrations In California

### Suggested Routing

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

### Executive Summary

Effective January 1, 1999, the NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) Office of Dispute Resolution (ODR) adopted the following Guidelines and Certification Form to govern the practice of non-California attorneys in all arbitration proceedings in California. These Guidelines are in response to a change in California state law, effective January 1, 1999, that requires non-California attorneys participating in California arbitration proceedings to associate with California counsel and to file a Certification Form with the arbitration forum and the State Bar of California in each case in which they participate. Non-California attorneys who fail to comply with the state statute may be engaged in the unauthorized practice of law in California.

Questions concerning this *Notice* may be addressed to Terri L. Reicher, Assistant General Counsel, Office of General Counsel, National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) at (202) 728-8967 or [reichert@nasd.com](mailto:reichert@nasd.com).

### Guidelines For Appearance By Attorneys In ODR Arbitration Forum In California

#### Introduction

These Guidelines apply to all parties and their counsel whose arbitration cases have been or will be heard by NASD Regulation's ODR forum anywhere in the state of California. On August 31, 1998, the California legislature amended the California Civil Procedure Code Section 1282.4 to require non-California attorneys to meet certain obligations before they may represent parties in private arbitration proceedings in California. The amendments, which become effective on January 1, 1999, were enacted in response to the California Supreme Court's decision in *Birbrower, Montalbano, Condon & Frank v.*

*Superior Court*, 17 Cal. 4th 119 (1998) (*Birbrower*), which holds that under certain circumstances, non-California attorneys who appear in California arbitration proceedings are engaged in the unauthorized practice of law in violation of Cal. Bus. & Prof. Code Section 6125.

ODR has formulated the following Guidelines, effective January 1, 1999, to comply with Section 1282.4, as amended.

Please note that the statutory amendments address **only** arbitration, **not** mediation proceedings.

#### Guidelines

##### *Attorneys Who Are Admitted to Practice in California*

- Attorneys who are admitted to practice in California must include their California bar number on the initial correspondence and the initial pleading submitted to ODR.

##### *Attorneys Who Are Not Admitted to Practice in California*

- An attorney who is licensed in a state other than California may not appear in the ODR arbitration forum in California in a representative capacity unless he or she associates with a California attorney who will be attorney of record, and provides ODR with a Non-California Attorney Certification Form, which contains the information required by Section 1282.4. These obligations are created when ODR notifies the parties that an arbitration proceeding will be located in California.
- The Form (attached to this *Notice*) requests all of the information required by Section 1282.4. The Form must be filed with the San Francisco or Los Angeles Regional Office of the ODR (depending on which office is administering the pro-

ceeding), the State Bar of California, and served upon all parties and counsel whose addresses are known to the non-California attorney at the time the Form is filed. Upon associating with a California attorney and providing the information required under Section 1282.4, a non-California attorney may participate fully in the arbitration, provided that the California attorney has entered an appearance as counsel of record.

- The State Bar of California may require a filing fee for registration of attorneys who are not admitted to practice in California. Please contact the Office of Certification at State Bar of California (see the address below) regarding any fees that may be required. The Office of Dispute Resolution cannot accept filing fees on behalf of the State Bar of California.

Office of Certification  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639  
Phone: (415) 538-2115  
Fax: (415) 538-2180

#### *Determination of Location of NASD Regulation Proceedings*

- These Guidelines apply only to ODR arbitration proceedings taking place in California.
- The location of arbitration proceedings is governed by the Uniform Submission Agreement and the Code of Arbitration Procedure Rule 10315, which provide that the Director of Arbitration shall set the initial hearing location, and that the arbitrators may set the location thereafter.

### **Question And Answers: How Guidelines Affect ODR Administration Of Arbitration Proceedings**

**Question:** When must California counsel enter an appearance?

**Answer:** Within 45 calendar days of service of the statement of claim (the same time the answer is due). This applies to all parties.

Upon receipt of a statement of claim, ODR will serve the claim (providing that all other requirements are met) and notify the parties of the probable hearing location. When the hearing location is set in California, parties choosing to be represented by non-California counsel also must enter the appearance of California counsel, before or at the time the respondent's answer is due, which is 45 calendar days after service of the statement of claim. The time for parties to obtain California counsel will not be extended, even if the time for filing an answer is extended.

**Question:** What happens if a party fails to obtain California counsel?

**Answer:** If California counsel does not enter an appearance within 45 calendar days after service of the statement of claim, ODR will advise the parties that the non-California attorney may not appear in a representative capacity in the ODR forum, and that the party without California counsel is considered to represent him or herself until California counsel enters an appearance.

**Question:** How do the Guidelines affect open arbitration cases?

**Answer:** All parties in open arbitration cases must comply with these Guidelines within 30 calendar days of the statute's January 1, 1999 effective date. This means that

California attorneys must provide the ODR with their bar numbers, and non-California attorneys must provide the San Francisco or Los Angeles Regional Office of ODR (whichever Office is administering the particular proceeding) with a completed Form, and have an associated California attorney file an appearance in the case. Parties who fail to have appearances entered by California attorneys by February 1, 1999, will be considered to represent themselves until a California attorney enters an appearance on their behalf. Non-California attorneys who fail to associate with California attorneys by the deadline may not file any documents with ODR, or appear in prehearing conferences or hearings. This prohibition applies whether or not the events require the non-California attorney to be physically present in California.

These Guidelines also apply to cases that were originally located outside of California but are subsequently transferred to California. In these cases, non-California counsel must comply with these Guidelines within 30 calendar days of the date the parties are notified the case is being transferred to California, or before the parties' first appearance in a prehearing conference after the case has been transferred to California, whichever is first.

These Guidelines also apply to California cases in which a non-California attorney is retained to represent a party after the answer has been filed. In these cases, the non-California attorney must submit the Certification Form within fifteen (15) calendar days of being retained, or before the next scheduled hearing (including prehearing conferences), whichever is sooner.

**Question:** Do the Guidelines apply to mediation cases?

**Answer:** No. The statute and these Guidelines apply only to arbitration cases in the NASD Regulation forum. NASD Regulation takes no position on the applicability of the statute or Birbrower with respect to

mediation cases. Counsel or other representatives participating in mediations should take whatever actions they deem necessary to comply with applicable California law, including but not limited to legal

research and consulting with counsel and/or the California State Bar.

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**NASD REGULATION, INC.'S OFFICE OF DISPUTE RESOLUTION  
NON-CALIFORNIA ATTORNEY CERTIFICATION FORM  
PURSUANT TO CAL. CIV. PRO. CODE SECTION 1282.4**

**INSTRUCTIONS:** This Certification Form must be completed by attorneys not admitted to practice in California who seek to represent a party in an NASD Regulation, Inc. arbitration proceeding in California. This Form shall constitute the certificate required under Cal. Code of Civil Procedure Section 1282.4(c), as amended. The Form must be filed with the NASD Regulation, Inc.'s Office of Dispute Resolution regional office administering your arbitration (check office and address below):

**San Francisco Office**

NASD Regulation, Inc.  
Office of Dispute Resolution  
525 Market Street, Suite 300  
San Francisco, CA 94105

**Los Angeles Office**

NASD Regulation, Inc.  
Office of Dispute Resolution  
300 S. Grand Avenue, Suite 1620  
Los Angeles, CA 90071

The Form also must be filed with the Office of Certification, State Bar of California, 180 Howard Street, San Francisco, California, 94105-1639, and must be served upon all other parties and counsel in the arbitration whose addresses are known to the attorney.

**Section I. Case Information**

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

**Section II. Non-California Attorney Information**

Name: \_\_\_\_\_

Office: \_\_\_\_\_

Address: \_\_\_\_\_

City/state/zip: \_\_\_\_\_

Office Phone : \_\_\_\_\_

Office Fax: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Home Fax: \_\_\_\_\_

**Section II continued:** Court(s) where attorney is admitted to practice and date(s) of admission (separate sheet may be attached if necessary):

In the two years preceding the date of this form, have you filed an application to appear as counsel pro hac vice in the State of California, or have you filed a Certification Form pursuant to Cal Civ. Proc. Code Section 1282.4? If the answer is "yes," please identify the title of the court or other forum and the case in which you filed such an application or certificate, and whether or not it was granted.

**Section III. California Counsel Information**

The following attorney is admitted to practice of law in California, and will serve as the attorney of record in this arbitration.

Name: \_\_\_\_\_

California Bar #: \_\_\_\_\_

Address: \_\_\_\_\_

City/state/zip: \_\_\_\_\_

Office Phone : \_\_\_\_\_

Office Fax: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Home Fax: \_\_\_\_\_

**Section IV. Certifications**

I hereby certify that:

- (a) I am currently a member in good standing of and eligible to practice law before each of the courts listed in Section II above; and
- (b) I am not currently on suspension or disbarred from the practice of law of any court; and
- (c) I am not a resident of the State of California; and
- (d) I am not regularly employed in the State of California; and
- (e) I am not regularly engaged in substantial business, professional or other activities in the State of California; and
- (f) I agree to be subject to the jurisdiction of the courts of the State of California with respect to the law of the State of California governing the conduct of attorneys to the same extent as a member of the State Bar of California; and
- (g) I am aware that filing a certificate containing false information or otherwise failing to comply with the standards of professional conduct required of members of the State Bar of California will subject me to the disciplinary jurisdiction of the State Bar of California with respect to any of my acts occurring during the course of the arbitration.
- (h) The foregoing information is true.

Date: \_\_\_\_\_

Non-California  
Attorney Signature: \_\_\_\_\_

Please type or  
print name here : \_\_\_\_\_

# NASD Notice to Members 99-11

## NASD Regulation Issues Guidance Regarding Stock Volatility

### Suggested Routing

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

### Executive Summary

In recent months, there has been a sharp increase in price volatility and volume in many stocks, particularly of companies that sell products or services via the Internet (Internet issuers). NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) is issuing this *Notice to Members* to suggest disclosures that firms can make to retail customers to educate them about the risks of price and volume volatility. This *Notice* also describes steps taken by some on-line brokers to respond to volatility. A companion *Notice to Members* issued today, *Notice to Members 99-12*, provides members with guidance concerning the operation of their order execution systems and procedures during extreme market conditions.

Questions or comments concerning this *Notice* may be directed to Mary Revell, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8203.

### Discussion

Recently, there has been a marked increase in the price volatility of many stocks, particularly those of Internet issuers. This volatility has been coupled with record trading volume in many of these stocks. Customers eager to trade Internet stocks have flooded their brokers with large numbers of orders, leading to large order imbalances, systems queues, and backlogs. During these extreme market conditions, many firms implemented procedures that are designed to preserve the continuous execution of customers' orders while also lessening the exposure of the firm to extraordinary market risk. For example, some Market Maker firms temporarily discontinued normal automatic order executions and handled orders manually. Firms also reduced their size guarantees on individual stocks or groups of stocks (*i.e.*, stocks of Internet issuers) on a going-forward basis. Delays in order

executions and executions at prices significantly away from the market price quoted at the time the order was entered then occurred, which in turn led to market losses caused by executions at prices higher or lower than customers expected, especially with respect to orders placed over the Internet.

First and foremost, NASD Regulation reminds member firms of their obligations under Securities and Exchange Commission (SEC) Staff Legal Bulletin No. 8 to ensure that they have adequate systems capacity to handle high volume or high volatility trading days.<sup>1</sup> In this connection, we note that the SEC staff's position relates to all firms handling orders and is premised on a legal obligation to treat customers fairly.<sup>2</sup> Second, firms should provide adequate, clear disclosure to customers about the risks arising out of evolving volatility and volume concerns and any related constraints on firms' ability to process orders in a timely and orderly manner. This *Notice* describes the types of disclosure we deem appropriate.

We also have spoken to several order entry firms that provide on-line trading services about the steps they are taking to respond to volatility. This *Notice* provides members with information about these steps.<sup>3</sup>

### Disclosure

Recent events show that the way some stocks are traded is changing dramatically, and the change in trading methods may affect price volatility and cause increased trading volume. This price volatility and increased volume present new hazards to investors, regardless of whether trading occurs on-line or otherwise. Firms are reminded that their procedures for handling customer orders must be fair, consistent, and reasonable during volatile market conditions and otherwise. To ensure that cus-

tomers are knowledgeable about these procedures, we suggest that all firms, both order entry firms (*i.e.*, firms with a retail business that route orders to other firms for execution) and integrated firms (*i.e.*, firms with a large retail business that also engage in market making and other activities), whether they offer on-line trading services or not, consider making the following types of disclosures to educate retail customers about their procedures for handling the execution of a securities transaction, particularly during volatile market conditions, along with any additional disclosures they deem appropriate. NASD Regulation notes, however, that disclosure of procedures that are unfair, inconsistent, or unreasonable would not correct deficiencies with these procedures.

#### *Delays*

Firms should consider disclosing that high volumes of trading at the market opening or intra-day may cause delays in execution and executions at prices significantly away from the market price quoted or displayed at the time the order was entered. Firms should consider explaining to customers how order executions are handled by Market Makers, and explain that Market Makers may execute orders manually or reduce their size guarantees during periods of volatility, resulting in possible delays in order execution and losses. This disclosure is particularly important with respect to on-line investors, who have come to expect quick executions at prices at or near the quotes displayed on their computer screens.

#### *Types Of Orders*

Firms should consider explaining in detail the difference between market and limit orders and the benefits and risks of each. In particular, firms should consider disclosing that they are required to execute a market order fully and promptly without

regard to price and that, while a customer may receive a prompt execution of a market order, the execution may be at a price significantly different from the current quoted price of that security. Firms should tell customers that limit orders will be executed only at a specified price or better and that, while the customer receives price protection, there is the possibility that the order will not be executed.

As a related matter, firms should consider additional disclosure for customers who place market orders for initial public offering (IPO) securities trading in the secondary market, particularly those that trade at a much higher price than their offering price, or in "hot stocks" (those that have recently traded for a period of time under what is known as "fast market conditions," in which the price of the security changes so quickly that quotes for a stock do not keep pace with the trading price of the stock). Firms may disclose that in such cases customers' risk of receiving an execution substantially away from the market price at the time they place the order may be significantly reduced if they also include a cap (or floor) with the order above (or below) which the order is not to be executed, by placing a limit order.

#### *Access*

Firms should consider alerting customers that they may suffer market losses during periods of volatility in the price and volume of a particular stock when systems problems result in inability to place buy or sell orders. Customers trading on-line may have difficulty accessing their accounts due to high Internet traffic or because of systems capacity limitations. Customers trading through brokers at full-service or discount brokerage firms or through representatives of on-line firms when on-line trading has been disabled or is not available because of systems limita-

tions may have difficulty reaching account representatives on the telephone during periods of high volume. Firms should explain their procedures for responding to these access problems.

#### *Communications With The Public*

Firms may use advertisements or sales literature to make claims about the speed and reliability of their trading services. These communications with the public must not exaggerate the members' capabilities or omit material information about the risks of trading and the possibilities of delayed executions. Moreover, members should have the systems capacity to support any claims they make about their trading services. Misrepresentations or omissions of material facts in public communications violate National Association of Securities Dealers, Inc. (NASD®) Rule 2210 as well as Rule 2110, which requires members to observe high standards of commercial honor and just and equitable principles of trade.

#### **Current Practices**

As stated above, on-line firms have described to us steps they have taken to respond to volatility. These procedures are detailed below. While NASD Regulation believes that these actions, when clearly disclosed to customers, may be appropriate responses to trading in securities experiencing extraordinary volatility, they may not be sufficient or appropriate responses in all circumstances. Each action provides protection to the firm and obviously also impacts a firm's customers wishing to trade those securities.

#### *Hot IPOs And Hot Stocks*

There recently has been significant volatility during the period of time when certain IPOs have opened for secondary market trading,

particularly the IPOs of Internet issuers. When some of these IPOs started trading on an exchange or on The Nasdaq Stock Market, Inc., after going public, they initially have traded at a much higher price than their IPO offering price. The prices of some of these "hot" IPOs have doubled or more in initial trading (one increased more than tenfold in price), only to fall sharply in subsequent trading. This price volatility has been accompanied by significant trading volume. Certain non-IPO stocks of Internet issuers also recently have traded for a period of time under fast market conditions.

The extraordinary volume of orders and cancellations entered on-line and otherwise during those periods caused queues and backlogs for many order entry and Market Maker firms. As a result of the level of market volatility and volume of orders, a number of Market Makers discontinued their normal automatic execution of orders and began handling orders manually. Firms also reduced their size guarantees on individual stocks or groups of stocks. This in turn led to delays in order executions, executions at prices significantly away from the market quoted at the time the order was entered, and delays in execution confirmations and cancellation reports.

Order entry firms responded to this price volatility and to changes in Market Maker order handling procedures in several ways. One firm has halted on-line trading of hot IPOs and stocks, requiring customers to purchase these securities through a registered representative, either in person or via the telephone. When contacted, representatives can explain, for example, the difference between market and limit orders and the benefits and risks of each, and encourage customers whose primary

goal is to achieve a target price and protect against sudden price moves, and who understand that there is a possibility that the order will not be executed, to enter limit orders. When used, this halt has been implemented only for a short period of time, typically one day.

Other firms do not accept market orders for hot IPOs, requiring customers who wish to buy these stocks to enter a limit order specifying the highest price they would pay for these issues. Still other firms do not accept any orders for certain IPOs that are forecast to be hot until the IPO begins trading in the secondary market. Finally, some firms call clients back who have placed orders on IPOs that look to be volatile. The firms alert customers to restrictions they impose by placing a notice on their Web sites.

#### *Margin*

All firms, whether on-line or otherwise, may raise margin requirements for volatile stocks. Some firms that permit on-line trading have raised the amount of equity that must be maintained in margin accounts (maintenance margin) for long positions in certain volatile stocks to between 40 percent and 100 percent.<sup>4</sup> The rationale for raising maintenance margin is to help ensure that the equity in a customer's margin account is sufficient to cover large changes in the price of a stock. Increasing maintenance margin requirements protects both the firm and customers by ensuring that investors have more equity in their margin accounts as protection in case of a large change in the value of a stock, which reduces the likelihood that the firm will have to liquidate assets in the customer's account to meet a margin call. Firms evaluate stocks for more stringent maintenance margin requirements by examining price

fluctuations, market capitalization, and volatility.

On-line firms also have responded to recent volatility by prohibiting the use of margin to purchase certain securities. Some securities have been designated as "not marginable," requiring customers to purchase the securities with 100 percent initial margin, allowing payment to be made within three days of settlement. Firms also have designated certain securities as "cash on hand," requiring customers to have 100 percent of the purchase price of the security in the account before the transaction can be executed.

#### *Investor Education*

Many firms provide some kind of investor education on issues related to market volatility on their Web sites. This education may be found in a part of the Web site devoted generally to investor education and in firm newsletters. It may include definitions of market and limit orders, an explanation of the difference between the two types of orders, and the risks and benefits of each. Some firms encourage customers to use limit orders when they are more concerned about achieving a desired target price for a trade than an immediate execution. Investor education also can be found in some firms' account-opening documents and cash- and margin-account opening documents. Finally, many firms have customer help desks and support agents, both of which provide answers to customer questions.

#### *Pop-up Or Splash Screens*

Certain firms have added a page that a customer must view when entering the customer account pages of their Web sites indicating, for example, that maintenance margin has been

raised for certain listed securities; trade reports may be delayed; only limit orders will be accepted for certain securities; and the latest "real-time" quotes viewed on the site may not be reflective of the current trading price of a stock.

Some firms use these pages to discuss what happens when customers attempt to cancel market orders and enter replacement orders. Because of delays in receiving trade reports on volatile trading days, some customers, fearing that their orders have not been executed, have attempted to cancel their initial market orders and enter new orders. Because market orders must be executed as promptly as possible, firms explain that it may not be feasible to cancel a market order, since it may already have been executed, even if a customer has not yet received a trade report confirming the execution. Customers are told that entering a cancel order and a separate replacement order may result in the customer being responsible for the execution of

duplicate orders, if the cancellation order cannot be processed in a timely fashion. Firms advise customers instead to place limit orders to reduce the risk of placing a duplicate order and ensure that the price received is within acceptable limits. One firm has created another category of order called "cancel and replace": the firm will execute the second or "replace order" only if it can confirm that the initial order was in fact canceled.

Member firms are exploring the feasibility of creating more of these screens on a stock-specific or trade-specific basis. This could include, for example, a "pop-up" screen explaining that a particular stock is trading in a fast market condition when a customer seeks to place an order in the stock.

## Endnotes

<sup>1</sup>Staff Legal Bulletin No. 8 (MR), published on September 8, 1998, states the views of the SEC's Division of Market Regulation about the need for broker/dealers to maintain enough internal systems capacity to

operate properly when trading volume is high. This Bulletin is available on the SEC's Web site at:

<http://www.sec.gov/rules/other/slbmr8.htm>

<sup>2</sup>The Legal Bulletin cites an SEC Release in support of its position. See note 8, citing Securities Exchange Act Release No. 8363 (July 29, 1968), 33 FR 11150 (August 7, 1968).

<sup>3</sup>This *Notice* addresses possible responses to recent stock price volatility, particularly in stocks traded through on-line brokerage firms. While it does not address firms' suitability obligations in connection with recommended transactions or their know-your-customer obligations, firms are reminded that the existence of these obligations does not depend upon whether a trade is executed on-line or otherwise.

<sup>4</sup>This increase is from the 25 percent maintenance margin required by NASD and stock exchange rules or the 30 percent to 35 percent maintenance margin required by many firms.

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# NASD Notice to Members 99-12

## NASD Regulation Issues Guidance Concerning The Operation Of Automated Order Execution Systems During Turbulent Market Conditions

### Suggested Routing

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

### Executive Summary

In light of the recent dramatic intraday volatility and significant surges in trading volume with respect to certain issues traded on The Nasdaq Stock Market, Inc. (Nasdaq®), particularly Internet-based issues, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) is issuing this *Notice to Members* to provide members guidance concerning the operation of their order execution systems and procedures during extreme market conditions. In sum, while National Association of Securities Dealers, Inc. (NASD®) and Securities and Exchange Commission (SEC) rules and regulations do not specify or mandate a particular order execution algorithm or procedure for the execution of customer orders (aside from requirements imposed by the NASD's limit order protection interpretation), NASD Regulation believes that members' best execution obligations require that such algorithms and procedures treat customer orders in a fair, consistent, and reasonable manner. In addition, to the extent that members (particularly wholesale firms) deviate from or alter their execution algorithms or procedures during turbulent market conditions, NASD Regulation believes that firms should consider disclosing such altered procedures and the basis for activating such altered procedures to their customers and firms sending them order flow.<sup>1</sup>

Questions or comments concerning this *Notice* may be directed to the Legal Section of NASD Regulation's Market Regulation Department, at (301) 590-6410.

### Discussion

The recent extraordinary volatility and volume in particular stocks, particularly Internet-based stocks, has led to questions as to whether customer orders in these stocks are han-

dled properly, and requests for guidance on best execution under these circumstances. In a companion *Notice to Members* issued today, *Notice to Members 99-11*, NASD Regulation is providing guidance to firms that deal directly with customers with respect to disclosure firms should consider making to inform investors of the increased risks associated with trading during turbulent market conditions. *Notice to Members 99-11* also lists some of the steps on-line firms have taken to respond to volatility. With this *Notice*, NASD Regulation is providing guidance as to the factors Market Makers should consider in evaluating whether modifications to their order execution algorithms or procedures during turbulent market conditions are consistent with the best execution of customer orders.

Given the high trade volume and share volume of the Nasdaq market, as well as competitive pressures to provide swift executions, wholesale firms (*i.e.*, those firms that principally execute orders routed to them from other firms) and integrated firms (*i.e.*, firms with a large retail business that also engage in market making and other activities) have developed their own automated order execution systems for smaller customer orders, generally 3,000 shares or less. During non-turbulent market conditions, these systems, which are by no means uniform, typically execute orders on a first-in-first-out basis and afford priced orders priority on a price/time basis, in addition to complying with applicable SEC and NASD rules, such as the SEC's limit order display rule and the NASD's limit order protection rule. As a general matter, these systems should be designed to process and execute orders during non-turbulent market conditions in a fair, consistent, and reasonable manner and have a capacity that is adequate to handle reasonably anticipated trading volume in an efficient manner.

During extreme market conditions, where there are large order imbalances and/or significant price volatility, however, many firms implement procedures that are designed to preserve the continuous execution of customers' orders while also lessening the exposure of the firm to extraordinary market risk. For example, some firms switch from an automated order execution mode to a manual execution mode in which orders are generally routed through SelectNet<sup>SM</sup> to execute against another Market Maker, passing on those prices to the customer. Other firms provide partial executions up to a certain size and, if applicable, place the remainder of the order in a queue that is then processed on a first-in-first-out basis.<sup>2</sup> These are but two examples of the procedures firms have adopted during extreme market conditions and are not intended to reflect preferred procedures.

Some firms have asked NASD Regulation whether their procedures during extreme market conditions are consistent with the best execution of customer orders. Accordingly, NASD Regulation is issuing this *Notice* to provide guidance in this area. Specifically, NASD Regulation believes firms should consider the following guidelines when evaluating whether their order execution algorithms or procedures are appropriate during turbulent market conditions. Nothing in the following guidelines is intended to suggest that firms are restricted from revising their execution algorithms for business reasons unrelated to market turbulence.

1. The treatment of customer orders under any order execution algorithm or procedure must remain fair, consistent, and reasonable.

2. To the extent that a firm's order execution algorithm or procedures are different during turbulent market conditions, the firm should disclose to its order entry firms (and customers if applicable) the differences in the procedures from normal market conditions and the circumstances in which the firm may generally activate these procedures. In this connection, however, NASD Regulation notes that the disclosure of alternative order handling procedures that are unfair or otherwise inconsistent with the firm's best execution obligations would neither correct the deficiencies with such procedures nor absolve the firm of potential best execution violations.

3. Modifications to order execution algorithms or procedures designed to respond to turbulent market conditions may be implemented only when warranted by market conditions. Excessive activation of modified procedures on the grounds of turbulent market conditions could raise best execution concerns. Accordingly, firms should document the basis for activation of their modified procedures.

4. As noted above, and as the SEC has stated, "[b]roker-dealers therefore need to take steps to prevent their operational systems from being overwhelmed by periodic spikes in systems message traffic due to high volume. In particular, broker-dealers should not merely have sufficient systems capacity to handle average-to-heavy loads."<sup>3</sup> Frequent activation of modified order execution algorithms or procedures because a firm has failed to maintain adequate system capacity to

handle exceptional loads may raise best execution concerns.

5. To the extent firms execute orders manually during extreme market conditions, NASD Regulation reminds firms that NASD Rule 2320(d) provides that "[f]ailure to maintain or adequately staff an over-the-counter order room or other department assigned to execute customers' orders cannot be considered justification for executing away from the best available market . . . ."

Ultimately, it necessarily involves a facts and circumstances analysis to determine whether actions taken by a firm during turbulent market conditions are consistent with the duty of best execution. Accordingly, NASD Regulation cannot provide specific guidance that a particular order execution algorithm or order handling procedure during turbulent market conditions is always consistent with best execution. Nevertheless, NASD Regulation believes the guidelines set forth above provide useful direction for firms.

## Endnotes

<sup>1</sup>Firms that direct order flow likewise have a best execution obligation to conduct regular and rigorous review of the quality of executions of orders sent to correspondent Market Makers.

<sup>2</sup>Firms also have reduced their size guarantee on individual stocks or groups of stocks (*i.e.*, Internet stocks) on a going-forward basis, irrespective of market conditions at any given time.

<sup>3</sup>See SEC Staff Legal Bulletin No. 8 (September 9, 1998).

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**This *Special Notice* was mailed to *Notices to Members* subscribers on January 29, 1999.**

# Special NASD Notice to Members 99-13

## NASD Alerts Members To Year 2000 Mandatory Testing Activities

### Suggested Routing

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

### Executive Summary

On December 3, 1998, the Securities and Exchange Commission (SEC) approved NASD Rule 3410 (Rule or Year 2000 Mandatory Testing Rule), which "establish[es] the NASD's specific authority to require certain members to participate in Year 2000 tests and to require reporting on the tests."

The National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) is mandating Year 2000 testing to ensure that all NASD member firms have completed appropriate levels of testing in the interests of investor protection and market integrity. The Year 2000 Mandatory Testing Program is designed to mitigate the risk of disruptions on and after January 1, 2000.

The purpose of this *Notice* is to alert NASD member firms about the mandatory testing requirements, to help members locate further information about specific testing requirements, and to answer some frequently asked questions about Year 2000 testing. A list of frequently asked questions is included at the end of this *Notice*.

Questions concerning this *Notice* may be directed to the NASD Year 2000 Program Office at (888) 227-1330.

### Background

The NASD Year 2000 Mandatory Testing Rule requires NASD members that are clearing firms, Market Makers, and government securities firms to "conduct or participate in such testing of computer systems as the Association may prescribe." Pursuant to this Rule, selected broker/dealers must test mission-critical systems that have electronic interfaces with the NASD, exchanges, clearing corporations, or service providers. More specifically, the NASD is mandating four different

kinds of testing: (1) Securities Industry Association (SIA) Industry Cycle Testing, (2) Critical Service Bureau interface testing, (3) Nasdaq Stock Market interface testing, and (4) NASD Regulation application interface testing (Central Registration Depository – CRD<sup>SM</sup> – system). Each one of these categories is described in more detail below.

### Mandated Firm Information

Each NASD member that is required to conduct Year 2000 tests pursuant to NASD Rule 3410 will be listed on the SIA Web Site ([www.sia2k.com](http://www.sia2k.com)). This Site allows member firms to see all testing mandates from the NASD and any other self-regulatory organization (SRO). As you will see on the SIA Web Site, each SRO is mandating some form of Year 2000 testing; therefore, some NASD members (*i.e.*, those NASD members that are also members of other SROs) will be subject to more than one SRO's mandatory testing rule. It is incumbent upon the NASD members selected to test to review the information available at this Site since the NASD Year 2000 Mandatory Testing Rule may mandate different tests than are required by other SROs. This information will be updated if testing mandates are revised during the testing periods. The SIA will keep this information current. If you have any questions regarding your firm's specific testing obligations, you should contact each SRO in which your firm is a member.

**SIA Industry Cycle Testing.** The SIA Industry Cycle Test is a coordinated, four-date test that simulates a trading cycle (*i.e.*, the executing, clearing, and settlement processes) crossing over the Year 2000 date change. The Industry Cycle Test is scheduled to occur over a four-week-end period (3/6/99, 3/13/99, 3/27/99, and 4/10/99) and will test predetermined Year 2000 critical dates (12/29/99, 12/30/99, 12/31/99, and

1/3/00). There is an additional weekend testing date for both mutual funds and options dealers. Mutual funds must also test on 4/17/99 (with a system date of 1/4/00) and options dealers must test on 4/24/99 (with a system date of 1/22/00). The Industry Cycle Test allows firms to test systems' functionality by executing, clearing, and settling trades with the participating exchanges and clearing corporations. Mandated firms should already have registered for Industry Cycle Tests and performed all prerequisite point-to-point testing—meaning testing between two parties. To schedule participation in the Industry Cycle Test, contact the SIA at (888) Y2K-4SIA (888-925-4742).

*Mandate Summary: Mandated to test are NASD firms that are participants of the National Securities Clearing Corporation (NSCC), either directly or through service bureaus. The clearing firms mandated to participate in this testing all clear at least an average of 30 trades per day based on 1998 fourth quarter statistics.*

### **Critical Service Bureau Interface**

**Testing.** Many broker/dealers use service providers for some critical functions (*i.e.*, clearing, trade data, and news). Testing with any critical third-party service provider is generally considered an "appropriate business practice."

*Mandate Summary:*

- *Service Bureaus: All NASD clearing firms, Market Makers, and government securities firms are mandated to test their connections with critical service bureaus.*
- *Member firms that clear for others: All NASD firms that clear for others are mandated to test with any firm for which they provide this service if that firm wishes to execute such testing in order to*

*satisfy its efforts to prepare its business for the Year 2000 transition. Proxy testing may apply at the discretion of both parties.*

### **Nasdaq Stock Market Interface**

**Testing.** Testing with The Nasdaq Stock Market® is considered point-to-point testing. Point-to-point tests are date tests in a Year 2000 environment (*e.g.*, 1/3/2000). These tests are used to verify that firms can communicate with a particular exchange or clearing corporation, or between firms using communication lines (*e.g.*, production or test lines, as mandated by the particular exchange or clearing corporation). These tests must be coordinated and scheduled between the testing parties (*e.g.*, between Nasdaq and a clearing firm).

*Mandate Summary:*

- *Computer-To-Computer Interface (CTCI): Testing is mandated for all NASD clearing firms and Market Makers that utilize this interface.*
- *Application Programming Interface (API): Testing is mandated for all NASD clearing firms and Market Makers that utilize this interface.*
- *Nasdaq Workstation II (NWII): Testing is mandated, but proxy testing is acceptable for all clearing firms and Market Makers.*

### **NASD Regulation Interface Testing—CRD.**

Testing with NASD Regulation<sup>SM</sup> applications is also considered point-to-point testing. The test will involve only certain aspects of the CRD system. Other NASD Regulation applications (such as FOCUS, Reg T., Blue Sheets, Shorts, OATS<sup>SM</sup>, Customer Complaints) will be available for voluntary testing from February through September 1999. While these applications are not mandatory, firms are urged to include applicable compliance applications in their testing pro-

grams. The NASD will schedule testing for these applications on a first-come, first-serve basis. NASD Regulation has published a "Product and Service" flyer, which is available on the NASDR Web Site ([www.nasdr.com](http://www.nasdr.com)), that outlines testing availability for all compliance applications. To schedule a test, obtain test procedures, or to learn more about voluntary testing, call the Year 2000 Program Office at (888) 227-1330.

*Mandate Summary:*

- *CRD: Testing is mandated for all batch users of this system. Batch users are required to test all batch functions and the Firm Access Query System (FAQS) that is part of the CRD application. The CRD system will be available beginning in May 1999.*

**Proxy Testing.** See frequently asked question #7 on page 64.

**Industry Coordination.** The NASD is participating in an industry-wide effort led by the SEC to coordinate all Year 2000 mandatory testing. The NASD will exchange testing reports with other SROs and use this information to monitor firm participation in any mandated tests. Firms designated to participate in mandatory testing that fail to test will be subject to NASD disciplinary actions.

### **Exemptions From Mandate.**

Requests for exemptions from the NASD testing mandate should be made in writing and forwarded to the NASD Year 2000 Program Office at 15201 Diamondback Drive, Rockville, MD 20850 by **February 21, 1999**. The request must be signed by an officer of the organization. The NASD Year 2000 Program Office will review all requests and reply to each firm in writing.

## Mandatory Testing Education

The SIA will hold a two-day conference in New York City at the Marriott Marquis on February 2 and 3 to pro-

vide further information on the Industry Cycle Testing. We encourage that firms mandated to test attend this SIA conference. The SIA registration

information is available from the SIA at (888) Y2K-4SIA (888-925-4742), or on its Web Site.

### Who To Call

#### Available Tests

Industry Cycle Test  
Nasdaq  
NASD Regulation  
Amex®

#### Contact

SIA Call Center  
Nasdaq Test Scheduling  
NASD Regulation Test Scheduling  
Ed Cook

#### Phone

(888) Y2K-4SIA  
(203) 385-4610  
(888) 227-1330, Option 3  
(212) 306-1748

For more test scheduling contacts, check the SIA *How to Test Guide* at [www.sia.com](http://www.sia.com).

For general information on the NASD Year 2000 Program or to sign up for NASD-sponsored workshops on Mandatory Testing, call (888) 227-1330 and select Option 1.

# Frequently Asked Questions

## 1. What is Point-to-Point Testing?

Connectivity/point-to-point tests are one-date tests in a Year 2000 environment (*e.g.*, 1/3/2000). These tests are used to verify that firms can communicate with a particular exchange or clearing corporation, or between firms using communication lines (*e.g.*, production or test lines, as mandated by the particular exchange or clearing corporation). These tests must be coordinated and scheduled between the testing parties.

## 2. What are Industry Cycle Tests?

The SIA Industry Cycle Test is a coordinated, four-date test that simulates a trading cycle (*i.e.*, the executing, clearing, and settlement processes) crossing over the Year 2000 date change. The Industry Cycle Test is scheduled to occur over a four-weekend period (3/6/99, 3/13/99, 3/27/99, and 4/10/99), and will test predetermined Year 2000 critical dates (12/29/99, 12/30/99, 12/31/99, and 1/3/00). The Industry Cycle Test allows firms to execute, clear, and settle trades with the

participating exchanges and clearing corporations to test systems' functionality. Participants must complete prerequisite testing prior to participation in the Industry Cycle Test. There is an additional weekend testing date for both mutual funds and options dealers. Mutual funds must also test on 4/17/99 (with a system date of 1/4/00) and options dealers must test on 4/24/99 (with a system date of 1/22/00).

## 3. If I have no external electronic interfaces, am I exempt from testing?

If a firm has no external electronic interfaces, it would not be able to participate in point-to-point or industry tests. However, as part of best business practices, firms still need to test their internal electronic systems. Member firms are reminded that testing of critical environmental systems, including security systems, HVAC, elevators, etc., also should be included in their overall Year 2000 project plan. If your firm is selected for testing and does not have any external

electronic interfaces, you must notify NASD Year 2000 Membership Support Services and request to be exempted from the mandate. The NASD will review all requests and determine whether it is appropriate to start the request.

## 4. How do I register for industry testing?

If you do not have an SIA *How to Test Guide*, you may register for SIA-sponsored tests by visiting the SIA Year 2000 Web Site at [www.sia2k.com](http://www.sia2k.com) or call the SIA at (888) Y2K-4SIA (888-925-4742).

## 5. Whom do I contact to test NASD Regulation/Nasdaq applications?

For NASD Regulation applications, contact the NASD Testing Center Help Line at (888) 227-1330, Option 3. For Nasdaq application testing, the Nasdaq Testing Center may be contacted at (800) 288-3783. You will be able to schedule tests and receive testing specifications through these numbers.

## **6. Whom should I test with?**

Member firms should conduct testing with any entity that has an external, electronic interface to the firm. For example, firms would want to test connections with correspondent clearing firms, banks, exchanges, and any other mission-critical service provider, if applicable. While the NASD Rule does not mandate testing with every organization that a firm might have an electronic connection to, as part of a firm's risk assessment, the firm should evaluate any potential risk that not testing an interface or connection might have to its business operation. Contingency plans should be developed for all tested and non-tested interfaces or connections.

## **7. What is the policy regarding proxy testing for firms that rely on service providers or software vendors for mission-critical products and services?**

To the extent possible, firms should test their systems in their own environment. However, it is not always feasible for firms that rely on service providers (serviced firms) or software purchased from vendors (turnkey firms) to test in their own environment. For this reason, firms may rely on proxy tests conducted by service providers, as specified in the NASD Mandatory Testing requirements listed on the Internet ([www.slay2k.com](http://www.slay2k.com)). Proxy testing is a term used to refer to testing that is conducted on like systems and with like interfaces for the purpose of not having to repeat identical tests that would provide the identical results. Firms utilizing the proxy should ensure that the proxy testing was conducted with a firm of similar complexity and size as their firm, using similar operating systems and software. Since the objective of every member is to conduct any testing and preparations necessary

to transition its business, each member should evaluate and determine when and where proxy testing is appropriate for its organization and risk profile. Listed below are a few helpful hints that firms should consider when evaluating the applicability of proxy testing of mission-critical systems.

- Proxy tests are conducted using the same version of Year 2000-ready software that is used to service the firm.
- Proxy tests are conducted using the same hardware and operating systems that are used by the firm. Where there are differences, the firm should verify and document how the differences would affect processing.
- For any customized software or services used, a firm should test relevant date-dependent functions. A firm also should test systems and interfaces under its direct control and those functions not covered in the proxy testing. These include items unique to the firm, as well as those for which there are an insufficient number of common users to develop acceptable proxy tests.

## **8. Should firms hire outside auditors or consultants to verify their testing processes?**

Member firm management may use qualified independent internal parties or external parties to verify the testing process. If the firm lacks internal expertise, management should use other qualified professionals, such as management consultants or CPA firms, to provide an independent review. Verification of the testing process should involve the project manager, the owner or user of the system tested, and an objective independent party such as an auditor, consultant, or other qualified individual. This objective verification should ensure that the

testing process is effective, that key dates are checked, and that any changes result in reliable information processing.

## **9. May a firm test its remediated mission-critical applications at a hot-site location (a disaster recovery site equipped with an appropriate computer and associated equipment)?**

If a firm determines that the hardware and operating systems used at the hot site are the same as the hardware and operating systems (type and version) used in-house, then the firm may test at a hot site. If the hardware and operating systems are not the same as those used in-house, hot sites may be used if the firm can demonstrate that the differences will not cause future processing problems. The hardware and software (including interfaces) running at the hot site should be Year 2000-ready.

## **10. Can testing be eliminated if the software uses an eight-digit date field?**

An eight-digit date field does not relieve firms, service providers, or software vendors from the need to test systems and applications or otherwise ensure that the firm's technical environment, including communications systems, software and hardware, are Year 2000-ready. The number of digits in a date field is not necessarily determinative of whether a system or application is Year 2000-ready. For example, data received from internal or external sources may not have an eight-digit date field, and, therefore, might not be compatible. The differences from incompatible date routines may not become apparent until testing is performed. Also, an eight-digit date field does not ensure accurate leap year processing. Another purpose of testing is to ensure that all date fields

and date routines have been made Year 2000-ready. In addition, sometimes what appears to be an eight-digit date field is not. Users may be required to enter eight digits, but the software may be dropping the century indicators and processing using only the remaining six digits.

**11. If a firm tested a particular software product in 1998 and receives an update to the product in 1999, does it need to test the updated version?**

The following factors should be considered when determining whether an update, new release, or patch to a mission-critical software application or operating system should be re-tested thoroughly, partially, or not at all:

- The firm should consult with its service provider or software vendor to identify the types of changes made, and the extent to which the service provider or software vendor has conducted internal testing before releasing the updated product or service.
- If the changes do not affect date fields or date-related calculations, the firm may not have to test, other than to perform acceptance testing that would accompany the introduction of any software update, release, or patch; or new or updated operating system; and,
- If the changes affect date fields or date-related calculations, the firm

should ensure the new release, update, or patch is appropriately tested, and that the service provider or software vendor has adequately documented and warranted the specific testing performed to ensure continued Year 2000 readiness.

As the Year 2000 approaches, firms should carefully evaluate the benefits and risks of installing new software, software upgrades, or operating system upgrades given the potential Year 2000 complications. For example, the SEC published and is imposing a moratorium on any new systems that had not been previously planned for by the SROs.

**12. What testing documentation should firms retain?**

Firms should retain appropriate documentation associated with Year 2000 efforts. Among others, regulators or self-regulators may request production of such documents to satisfy their review or examinations of data provided in any Form BD-Y2K filing or other Year 2000 disclosure document. Specifically, firms must be able to present sufficient documentation to enable examiners to perform comprehensive Year 2000 examinations. The documentation retained should enable regulatory staff to understand which tests were performed, which applications, systems, or hardware were tested, the results, and how the results were validated. Testing documentation may also assist firms in resolving

issues that may occur after the century date change. The following list includes some of the testing documentation items that firms might consider retaining:

- The organization's overall Year 2000 plan and its Year 2000 testing plan.
- The types of tests performed (e.g., baseline, unit, regression) and a summary of the results.
- The reason the firm chose the tests and how extensive those tests were.
- The criteria used to determine whether an application or system is Year 2000-ready.
- Plans for remediating and re-testing any computers, systems, or applications that failed Year 2000 tests.
- The names of persons responsible for authorizing the testing plan and accepting testing results.
- Communications with service providers and software vendors, including assurances regarding their service or product.
- Any other documentation the firm believes supports its decisions and conclusions, as well as its due diligence effort.

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# NASD Member Benefits

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**NASD®**

Parent of The Nasdaq-Amex Market Group

# NASD Notice to Members 99-14

## NASD Grants Exemptive Relief Under MSRB Rule G-37(i)

### Executive Summary

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) recently considered and granted three requests for exemptive relief under Municipal Securities Rulemaking Board (MSRB) Rule G-37(i). The staff decisions are published on the following pages in redacted form.

Questions regarding this *Notice* should be directed to Malcolm Northam, NASD Regulation, at (202) 728-8085; or Sharon Zackula,

Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8985.

Two of the exemption requests resulted from circumstances involving political contributions made prior to a merger of member firms. One exemption request resulted from unique circumstances surrounding the application of MSRB Rule G-37 to member firms that distribute Internal Revenue Code Section 529 tuition savings plans.

### Suggested Routing

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

## Recent Decisions Regarding MSRB Rule G-37(i) Exemptive Relief

### Letter 1: Exemptive Relief Granted

**Firm A**  
**Address**

Re: **Firm A** MSRB Rule G-37 Exemption Request

Dear **Mr.**

This is in response to your letters dated **Date**, and **Date** and our telephone communication of **Date** requesting an exemption for **Firm A** from the prohibition of engaging in municipal securities business contained in Municipal Securities Rulemaking Board (MSRB) Rule G-37 (Rule).

Based on your letters, as well as our telephone conversation on **Date**, we understand that this request arises out of **Firm A's Date** purchase of certain assets of **Firm B**, a municipal securities dealer located in **City**. You represent that although **Firm B** was a municipal bond dealer, its retail municipal bond business accounted for less than 2% of its annual revenue, and any such business merely accommodated clients who wished to purchase or sell municipal bonds. **Firm B** was not involved in municipal negotiated underwriting activities, private placement activities, remarketing services, or financial advisory or consultant services. You also represent that **Firm B's** municipal business did not play a role in **Firm A's** decision to purchase certain of its assets.

**Name** was the President and Chief Executive Officer of **Firm B** and on its executive committee. By virtue of his position on the executive committee, **Name** falls within the Rule's definition of a municipal finance professional (MFP). However, you represent that he was the only individual in **Firm B** that was an MFP as defined in G-37(g)(iv). Accordingly, pursuant to G-37 (g)(iv)(E), any political contributions made by **Name** while employed at **Firm B** were neither recordable nor reportable and would not have triggered a two-year business ban for **Firm B**.

In connection with the **Date** asset purchase, both **Firm A** and **Name** envisioned that **Name** would play an integral role at **Firm A**. Prior to the closing of the purchase, **Name** disclosed that within the past two years while employed at **Firm B**, **Name** had made a political contribution to an issuer official for whom he was not eligible to vote. Specifically, **Name** made a \$1,000 personal contribution to City Mayor **Name** on **Date**. You represent that **Name** contribution was not intended to influence, obtain or retain municipal securities business for **Firm B** or any other firm. Because **Name** was not deemed an MFP under Rule G-37, his contribution did not trigger any business ban for **Firm B**.

**Firm A**, as a registered municipal securities dealer, is subject to Rule G-37. You represent that, to date, **Name** is not deemed an MFP at **Firm A**. **Name** has been appointed an Executive Vice President - Capital Markets. He does not operate in any municipal securities representative capacity at **Firm A** and does not obtain or retain any municipal securities business for **Firm A**. You represent that **Name's** current position as an associated person in charge of a principal business unit classifies him as a "non-municipal finance professional executive officer" under the Rule, and does not subject **Firm A** to a two-year prohibition due to his 1997 contribution to Mayor **Name**.

If the request for an exemption from the prohibition of engaging in municipal securities is granted, **Firm A** will appoint **Name** to its Executive and Management Committee, making him a MFP within the definition of the Rule. You indicate that **Name's** extensive and considerable experience in corporate finance and management will provide essential advice and guidance to the direction of **Firm A's** overall business as it cultivates clients and develops new products and markets.

You indicate that **Firm A's** purchase of **Firm B's** assets was not an attempt to circumvent the letter or spirit of MSRB Rule G-37. You assert that if **Firm A's** request for an exemption is not granted, **Firm A** would be penalized based

solely for a political contribution made by **Name** prior to **Firm A's** acquisition that was not subject to the Rule when it was made. You believe this is inconsistent with the intent of Rule G-37 and interpretive guidance.

As you know, the Rule makes provision for a *de minimis* political contribution in instances when the political contribution is made to a person for whom the contributor is entitled to vote. However, there is no *de minimis* exemption when a political contribution is made to a person for whom the contributor is not entitled to vote. The MSRB has published several interpretations to Rule G-37. In a published interpretation dated May 24, 1994 (Q&A number 15), the MSRB indicates, in part, that in the event political contributions were made prior to becoming a MFP, the dealer's prohibition on business would begin when the MFP becomes associated with the dealer. However, in June, 1998, the MSRB provided interpretive guidance that Rule G-37 was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder the surviving dealer's municipal securities business if the merger was not an attempt to circumvent the letter or spirit of Rule G-37.

Based on the representations contained in your letters, including that **Firm B** was deemed not to have any MFPs, that **Name** does not currently meet the Rule's definition of an MFP, and that **Name** will become an MFP solely by his appointment (if the exemption request is granted) to **Firm A's** Executive and Management Committees, we consent to exemption relief to **Firm A** by removing the ban on the MSRB's Rule G-37(b) business activities effective as of the date of this letter. Please be aware that our consent is based strictly on our understanding of the material facts as you have represented them and that our decision in this matter could be different if the facts are not as represented or if other material facts have not been disclosed to us.

## Letter 2: Exemptive Relief Granted

**Firm A**  
**Address**

Dear **Mr.**

This is in response to your letters dated **Date**, and **Date** and subsequent telephone conversations requesting an exemption for **Firm A** from the prohibition of engaging in municipal securities business contained in Municipal Securities Rulemaking Board (MSRB) Rule G-37 (Rule).

The request for an exemption is the result of the merger of **Firm B** into **Firm A**, and arises because of political contributions to issuer officials made by three employees who were designated as municipal finance professionals at **Firm A**.<sup>1</sup>

In support of your request for an exemption, you make a number of representations in your letters, including:

- the applicable contributions were made by three associated persons of **Firm C [a firm which previously merged into Firm A]** and two of these individuals are no longer associated with **Firm A**;
- the designation by **Firm C** of these three individuals as municipal finance professionals was a conservative measure taken by virtue of their membership on the **Firm C** Executive Committee and had no bearing on the business of **Firm C** because the firm did not engage in negotiated underwritings, financial advisory services, or placement or remarketing agent services with issuers of municipal securities;
- the contributions were not intended to influence the award of municipal securities business within the meaning of the Rule because **Firm C** did not engage in municipal securities business, as defined in the Rule, prior to its acquisition, and **Firm A** has not been involved in such business in **State** since such date;
- both **Firm C** and **Firm A** had developed and instituted procedures reasonably designed to ensure compliance with MSRB Rule G-37 when the contributions were made and the contributions were duly reported on MSRB Form G-37/G-38 in accordance with Rule G-37; and
- the merger of the two member firms was incidental to, and effected subsequent to, the merger of the bank holding companies **Name** and **Name**.

We consent to an exemption of the two year prohibition from municipal securities business with an issuer as defined by Rule G-37. Our consent is based on all of the representations made in your letters; in consideration of the MSRB's recent published interpretation of Rule G-37<sup>2</sup>; and in consideration of the fact that instead of combining the activities of their affiliated securities firms, the parent holding company could have exercised its ability to simply avoid the prohibition contained in the Rule by maintaining separate securities affiliates, and **Firm B** could have continued to engage in municipal securities business throughout **State** free from any Rule G-37 prohibition.

Please be aware that our consent is based strictly on our understanding of the material facts as you have represented them and that our decision in this matter could be different if the facts are not as represented or if other material facts have not been disclosed to us.

<sup>1</sup> Recipient	Amount	Date	Contributor
Office: <b>issuer</b>			
<b>Name</b>	\$1,000	<b>Date</b>	<b>Name</b>
Office: <b>issuer</b>			
<b>Name</b>	\$1,000	<b>Date</b>	<b>Name</b>
<b>Name</b>	\$ 500	<b>Date</b>	<b>Name</b>

<sup>2</sup>In recent interpretive guidance concerning the applicability of Rule G-37 in connection with mergers in the municipal securities business, the MSRB stated:

[Rule G-37] was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder the surviving dealer's municipal securities business if the merger was not an attempt to circumvent the [Rule's] letter or spirit.....(emphasis added). See MSRB Notice of Interpretation, Q&A No. 1, Securities Exchange Act Release No. 34-40167 (July 2, 1998), 63 FR 37434.

### Letter 3: Exemptive Relief Granted

**Firm A**  
**Address**

Dear **Mr.**

This is in response to your letter dated **Date** requesting a one-time exemption for **Firm A** from the prohibition of engaging in municipal securities business contained in Municipal Securities Rulemaking Board (MSRB) Rule G-37 (Rule).

Based on your letter, we understand that this request arises because of **Firm A's** desire to act as distribution agent in a tuition savings plan<sup>3</sup> being developed by the **Issuer**. As indicated by your letter, you believe that certain Section 529 tuition savings plans might be deemed to be municipal securities. Accordingly, by virtue of being the distribution agent for such securities, **Firm A** might be responsible for complying with MSRB rules pertaining to the municipal securities underwriting business.<sup>2</sup> If so, **Firm A** would be precluded from performing the functions described in your letter with respect to **issuer's** proposed Section 529 tuition savings plan program.

According to your letter, **Firm A** is not in the municipal securities underwriting or finance business, and has not engaged in, and does not intend to engage in, municipal securities business as defined in Rule G-37 other than in connection with Section 529 tuition savings plans. **Name** is the President of **Firm A** and is eligible to vote in the **State** gubernatorial election. On **Date**, he made two \$500 contributions to each of two candidates for Governor of **State**. Two months after the contributions were made, **Firm A** was advised by outside counsel that its participation in Section 529 tuition savings plans might be deemed to involve the underwriting of municipal securities. **Name** subsequently sought and received the return of \$250 of each of his contributions, thus bringing the contributions within the "*de minimis*" exception to Rule G-37(b). In order both to assist **Issuer** in implementing its Section 529 tuition savings plan and to participate in the distribution of interests in the Section 529 tuition savings plan, **Firm A** has undertaken to comply with all of the applicable MSRB rules, including Rule G-37.

The following additional representations and arguments are made in support of your request:

- In its letter to Alden Adkins dated **Date**, **Issuer** has represented that unless the exemption request is granted, the citizens of **State** will be deprived of access to an important state-sponsored college savings program until **Date**, and that this will have a significant negative effect on the ability of the **State** to offer an effective and secure savings program.
- The Section 529 tuition savings plan seemingly has little in common with investments that are classified as municipal securities, and **Firm A** reasonably did not assume that its role in distributing interests in the tuition savings plan on an agency basis would constitute municipal securities business.
- In **Date**, when **Firm A** discovered that **Name** might become a municipal finance professional because of the proposed Section 529 tuition savings plan business, his contributions already had been identified and reported to the MSRB because of his association with, and designation as a non-MFP executive officer of, a different **Firm A** broker-dealer, **Firm B**.

We hereby grant an exemption to **Firm A** from the prohibition of MSRB Rule G-37(b) effective **Date**. This position is based on all the representations contained in your letter, supporting attachments, and telephone communications. In granting this exemption we note in particular: that the contributions by **Name** are the only contributions by a person who may be deemed a **Firm A** municipal finance professional that, absent an exemption, would prohibit **Firm A** from engaging in municipal securities business with **State**; that all contributions by **Name** previously have been properly recorded and reported; that **Firm A** has not engaged in municipal securities business as defined in Rule G-37 other than in connection with Section 529 tuition savings plans; that **Firm A** does not intend to engage in municipal securities business as defined in Rule G-37 during the remainder of the two-year period since **Name** contributions; and the unique characteristics of the tuition savings plans. Please be aware that our consent is based strictly on our understanding of the material facts as you have represented them and that our decision in this matter could be different if the facts are not as represented or if other material facts have not been disclosed to us.

<sup>3</sup>In 1996, the Internal Revenue Code was amended through the addition of Section 529 to encourage “qualified state tuition programs” pursuant to which states can establish and maintain tax-deferred savings programs under which participants may make contributions to accounts established for the purpose of meeting the qualified higher education expenses of designated beneficiaries. To qualify, the program must be “established and maintained” by a state, a state agency, or a state municipality (Section 529 tuition savings plan).

<sup>2</sup>For purpose of this request we assume that participant interests in **Issuer's** Section 529 tuition savings plan constitute “municipal securities,” and that **Firm A's** activities in connection with the plan constitute municipal securities business within the meaning of Rule G-37. Any questions concerning the legal interpretation of terms used in the letter should be addressed to the MSRB.

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# NASD Notice to Members 99-15

## SEC Approves Rule Amendments Limiting Quotations On OTC Bulletin Board To Reporting Securities

### Suggested Routing

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

### Executive Summary

On January 4, 1999, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (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 SEC, banking, or insurance regulators. The text of the amended rules and the *Federal Register* version of the SEC release are attached.

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; Sara Nelson Bloom, Associate General Counsel, Office of General Counsel, The Nasdaq Stock Market®, at (202) 728-8478; or Arnold Golub, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, at (202) 728-6938.

### 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 Nasdaq® 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.

In *Notice to Members 98-14*, the NASD requested comment on a proposed rule to amend Rule 6530 to

limit quotations on the OTCBB to the securities of issuers that are current in their reports filed with the SEC or other regulatory authority, and on a proposed rule that would amend Rule 6540 to prohibit a member from quoting a security on the OTCBB unless the issuer has made current filings. On July 20, 1998, after considering the comments received in response to *Notice to Members 98-14* and making changes to address these comments, the NASD filed a proposed rule change with the SEC to implement these proposals. On January 4, 1999, the SEC approved the proposed rule change.

### Amendments To NASD Rule 6530: Eligibility Rule

Prior to the present amendments, there was no requirement for an issuer quoted on the OTCBB to make current, publicly available reports with the SEC or other regulator. Over half the companies currently quoted on the OTCBB do not file any public reports.

The amendments to Rule 6530 provide that in order for a domestic issuer to continue being quoted on the OTCBB, the issuer must be required to make periodic filings with the SEC, or with banking or insurance regulators and be current with those filings. The NASD will affix a modifier on the security's symbol if the NASD has not received information that the report was timely filed. The addition of the modifier to the symbol, as well as any changes to the symbol necessary to accommodate the modifier, will be publicly reported on the OTCBB Daily List, which is available to Market Makers and investors through the OTCBB Web Site at [www.otcbb.com](http://www.otcbb.com). Once an issuer is delinquent in filing a required report, a security of the issuer may continue to be quoted on the OTCBB for a 30- or 60-calendar day grace period from

the due date of the report, depending on the type of issuer. Issuers who file with the SEC will be granted a 30-day grace period before they can no longer be quoted on the OTCBB; issuers who file with other regulators will be granted a 60-day grace period. After the grace period, quotations in the security of the delinquent issuer will not be permitted on the OTCBB.

### Amendment To Rule 6540: Impermissible Quotation Entries

The amendments to Rule 6540 prohibit member firms from quoting an issuer's security if the issuer does not comply with the eligibility requirements described above. Furthermore, with respect to those issuers that do not file with the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, the amendments require a member to alert the NASD to the issuer's reporting schedule and to provide the periodic reports to the NASD, or to ensure that the required information is provided.

### Effective Date

The new requirements are effective immediately for securities not quoted on the OTCBB on January 4, 1999. Securities quoted on the OTCBB as of that date will be phased in to comply with the new Eligibility Requirement based upon the schedule below.<sup>1</sup> The delayed effectiveness of the rule is designed to enable Market Makers, investors, and issuers to take appropriate action.

### Schedule

### Issue Symbol

July 1999	A - AD
August 1999	AE - AM
September 1999	AN - BG
October 1999	BH - CM
November 1999	CN - EM

December 1999	EN - HH
January 2000	HI - LH
February 2000	LI - NR
March 2000	NS - RE
April 2000	RF - TH
May 2000	TI - Z
June 2000	All Banks & Insurance Companies

A list of all OTCBB securities and their eligibility status according to Nasdaq's records will be available on [www.otcbb.com](http://www.otcbb.com). If you believe the status of a security is incorrect, please e-mail the correct eligibility status, and the CIK code if the issuer is an EDGAR filer, to [otcbbfeedback@nasd.com](mailto:otcbbfeedback@nasd.com), using "OTCBB Eligibility status correction" as the subject line of the email.

### Text Of Amendments

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

### Rule 6530. OTCBB Eligible Securities

A member shall be permitted to quote the [The] following categories of securities [shall be eligible for quotation] in the Service:

(a) any domestic equity security that satisfies the requirements of subparagraph (1) and either subparagraph (2) or (3) or (4) below:

(1) the security is not listed on The Nasdaq Stock Market ("Nasdaq") or a registered national securities exchange in the U.S., except that an equity security [securities that are] shall be considered eligible if it:

(A) is listed on one or more regional stock exchanges, and

(B) [do] does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape [shall be considered eligible.]; and

(2) the issuer of the security is required to file reports pursuant to Section 13 or 15(d) of the Act or the security is described in Section 12(g)(2)(B) of the Act, and, subject to a thirty calendar day grace period, the issuer of the security is current in its reporting obligations, or

(3) the security is described in Section 12(g)(2)(G) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current in its reporting obligations, or

(4) the issuer of the security is a bank or savings association that is not required to file reports with the Commission pursuant to Section 13 or 15(d) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current with all required filings with its appropriate Federal banking agency or State bank supervisor (as defined in 12 U.S.C. 1813).

(b) any foreign equity security or American Depositary Receipt (ADR) that meets all of the following criteria:

(1) [prior to April 1, 1998, is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall be considered eligible if it is:

(A) listed on one or more regional stock exchanges, and

(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

(2) after March 31, 1998,] the security is registered with the Commission pursuant to Section 12 of the [Securi-

ties Exchange]Act [of 1934] and the issuer of the security is current in its reporting obligations; or the security satisfies the requirements of paragraph (a)(2) or (3) or (4) above; and

(2) the security is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall [be considered eligible] meet this subparagraph (2) if it is:

(A) listed on one or more regional stock exchanges, and

(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

(c) any equity security that [is] meets the following criteria:

(1) the security is undergoing delisting from either the New York Stock Exchange, Inc. (NYSE) or the American Stock Exchange, Inc. (AMEX) for non-compliance with maintenance-of-listing standards; and

(2) the security is subject to a trading suspension imposed by the NYSE or AMEX preceding the actual delisting; and

(3) the security satisfies the requirements of paragraph (a)(2) or (3) or (4) above.

(d) any Direct [District] Participation Program as defined in Rule 6910 that is not listed on Nasdaq or a registered national securities exchange in the U.S. and that satisfies the requirements of paragraph (a)(2) or (3) or (4) above.

(e) Paragraphs (a)(2) and (3) and (4) above will not apply with respect to any domestic equity security quoted in the Service on the effective date of this rule change until six months after that date.

To be inserted in the historical section ; amended by SR-NASD-98-51 effective Jan. 4, 1999 for newly quoted issues; effective July 4, 1999 for issues quoted on January 4, 1999.

### **Rule 6540. Requirements Applicable to Market Makers**

#### **(a) No change**

#### **(b) No change**

(1) Permissible Quotation Entries  
no change

(2) Impermissible Quotation Entries

(A) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" or "offer wanted" indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security that does not satisfy the requirements of Rule 6530.

(B) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" or "offer wanted" indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security of an issuer that does not make filings with the Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system (or in paper format, if specifically permitted by Commission Rules) unless the member:

(i) notifies the Association of the issuer of the security's schedule for the filing of all periodic reports or financial reports required pursuant to the Act or regulatory authority, respectively, and the identity of the regulatory authority with which such reports are filed, or ensures that such notice is provided; and

(ii) provides to the Association the issuer's periodic reports required pursuant to the Act, or the issuer's financial reports required by regulatory authority, prior to the expiration of the grace period described in Rule 6530(a)(3), or ensures that the required periodic reports are provided to the Association within that time period.

(3) [(2)] Voluntary Termination of Registration  
no change

(4) [(3)] More Than One Trading Location  
no change

(5) [(4)] Clearance and Settlement  
no change

(c) Compliance with Market Maker Requirements

Failure of a member or a person associated with a member to comply with this Rule may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

To be inserted in the historical section ; amended by SR-NASD-98-51 effective Jan. 4, 1999.

### **Endnote**

<sup>1</sup>This 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.

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# Audio Tape Order Form • NASD Regulation, Inc. Fall Securities Conference

November 4-6, 1998 San Francisco, California

## 1998 Advertising Regulation Seminar

- A01 General Session/Internet  
Introductory Remarks  
Discussion Of New Rules  
Internet & Electronic  
Communications
- A02 Nuts & Bolts
- A03 Fundamentals Of Mutual Funds &  
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- A04 General Brokerage
- A05 Advanced Variable Insurance  
Products
- A06 Case Studies
- A07 Advanced Mutual Funds

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## 1998 Fall Securities Conference

- S01 General Session  
Welcome Address—State  
Of The SRO, Mary L. Schapiro,  
President, NASD Regulation, Inc.
- S02 Continuing Education
- S03 Internet Compliance Issues
- S04 Managing Compliance Issues  
And Branch Operations By  
Small Broker/Dealers
- S05 Dynamics Of Customer  
Complaints
- S06 Examination Program:  
Process & Priorities
- S07 Hot Deals, Underwriting,  
And The NASD Rules
- S08 A Look Inside The Disciplinary  
Process
- S09 Effective Supervision
- S10 Open Forum With District  
Directors
- S11 CRD/Public Disclosure Issues
- S12 Securities Law
- S13 Market Regulation Issues
- S14 Independent Contractors/  
Financial Planners/Investment  
Advisers
- S15 Rules Roundup
- S16 Enforcement Developments
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			<b>Grand Total</b>	= \$	_____

Your Name \_\_\_\_\_

Company \_\_\_\_\_

Street Address \_\_\_\_\_ MS/FI/Suite/Apt. # \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_ Day Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

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# NASD Notice to Members 99-16

## SEC Approves Changes To Rules Regarding Membership And Registration; Investigation And Sanctions; And Conduct And Code Of Procedure

### Suggested Routing

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

### Executive Summary

On December 28, 1998, the Securities and Exchange Commission (SEC) approved rule changes proposed by the National Association of Securities Dealers, Inc. (NASD® or Association) that amend the Rules of the Association to permit the Department of Enforcement to amend complaints one time prior to the filing of responsive pleadings, without Hearing Officer approval; to clarify and consolidate default provisions and shorten the call for review period for default decisions to 25 days; to require the Office of General Counsel to issue decisions in settled cases; to change the trigger date for which the timing of motions to introduce new evidence is keyed; to make certain sanctions effective 30 days after the service of the decision constituting final disciplinary action; to provide that decisions involving bars or expulsions be served by overnight courier, facsimile, or other means likely to obtain prompt service; to permit the Advertising Department staff to impose advertising pre-use filing requirements on members; to consolidate procedures for cancellation or suspension for failure to provide requested information; to simplify and expedite certain non-summary procedures in the Rule 9500 Series; and for other purposes.

The rule changes become effective on March 26, 1999. Questions regarding this *Notice* should be directed to Eric Moss, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>), (202) 728-8982.

### Discussion

**Advertisement:** Rules 2210(c)(4) and 2220(c) authorize the NASD to require members to file advertisements, sales literature, and educational material with the Association before using them in certain instances. The Rules currently pro-

vide that the District Business Conduct Committees (DBCC) may impose pre-use filing requirements and may conduct a hearing if a member opposes a pre-use filing requirement. The rules are amended to vest authority to impose a pre-use filing requirement solely with NASD Regulation staff, specifically the Advertising/Investment Companies Regulation Department. Any hearing requested regarding such requirement will be conducted by a Hearing Panel, as set forth in the non-summary proceedings of the Rule 9510 Series, rather than by a DBCC.

**Testimony:** Rule 8210 is being amended to clarify that Association staff may specify the location at which a member, associated person, or other person subject to the Association's jurisdiction must testify for the purpose of an investigation, complaint, examination, or proceeding.

**Requests for Information:** Currently, the Rule 8220 Series and the Rule 9510 Series both set forth procedures for suspending or canceling a member or associated person for failure to provide requested information to the Association. The rule change consolidates the provisions of the Rule 8220 Series and the Rule 9510 Series into the Rule 8220 Series.

Currently, the Rule 8220 Series authorizes the National Adjudicatory Council (NAC) to initiate a suspension proceeding for failure to provide requested information, and the Rule 9510 Series authorizes Association staff to initiate a cancellation proceeding for failure to provide requested information. Under the rule change, the Department of Enforcement will be able to initiate a suspension or cancellation proceeding if a member or associated person fails to provide requested information.

Several hearing procedures are being amended under the rule

change. First, the member or associated person who receives a notice initiating a cancellation or suspension will file a request for a hearing directly with the NASD Regulation Office of General Counsel, rather than the NAC. The Office of General Counsel is responsible for arranging such hearings.

Second, the rule change expands the pool of persons who could serve on the subcommittee conducting the hearing to include current and former members of the NAC, the NASD Regulation Board of Directors, and the NASD Board of Governors. At least one subcommittee member will have to be a current member of the NAC.

Third, the rule change expands the period in which a hearing must be held from 20 to 30 days. NASD Regulation has determined that 20 days is not a sufficient period both to find panelists who are available and to coordinate the schedules of all panelists, parties, and their attorneys. Lengthening this time period does not prejudice the member or person because once a hearing is requested, a suspension or cancellation cannot take effect until after the proceeding is completed.

Fourth, Rule 8222(b)(3) is being amended to include a provision of current Rule 9514(e), which allows the Association to withhold certain documents enumerated in Rule 9251 that are privileged or constitute attorney work product or are otherwise related to an examination, inspection, or investigation. Finally, the rule change adds a new requirement that if the subcommittee conducting the hearing requires that additional information be filed, then such information will have to be distributed promptly to all parties and in all cases not less than one business day before the subcommittee renders its decision.

The revised Rule 8223(b) revises the call for review process by placing the authority to conduct a review with a review panel, rather than the full NASD Board. The ability of any Governor to call the proceeding for review remains intact. Under the rule change, a review panel would conduct the review, rather than the full Board.

The reinstatement provisions set forth in proposed Rule 8225 are amended by providing that requests to terminate a suspension should be filed with the Department of Enforcement. If the Department denies the request, then a further request for relief may be filed with the review panel that rendered the decision in the underlying proceeding, as long as the request for relief is filed within 30 days after service of the decision. The review panel would be most familiar with the decision and issues during this period. If the request for relief is filed more than 30 days after service of the decision, then the NAC would act on the request for relief. This would ensure that the review panel's responsibilities conclude shortly after its decision is rendered and do not continue for an indefinite period.

References throughout the Rule Series to service by commercial courier are revised to require service by overnight commercial courier to ensure that service is effected quickly.

**Release of Disciplinary Information:** Interpretive Material 8310-2 provides for the release of disciplinary information to the public. The rule change amends this Interpretation to permit the NASD to release information about suspensions and cancellations imposed under the Rule 8220 Series, unless the NAC determines otherwise.

**Amending Complaints:** The rule change enables the Department of

Enforcement to amend complaints one time prior to the filing of responsive pleadings, without Hearing Officer approval. Rule 9212 currently requires the Department of Enforcement to move to amend any complaint, and a Hearing Officer to grant such a motion before the complaint may be amended.

**Default Provisions:** The proposed amendments to Rules 9215, 9241, 9269 and 9312 are designed to clarify and consolidate the NASD Code of Procedure (Code) default provisions, and to shorten the call for review period for default decisions to 25 days.

These amendments also make non-substantive changes that clarify the existing rules. The changes clarify that the default decisions issued by Hearing Officers should include the same contents as decisions issued in litigated cases. The amendments also clarify that either the Review Subcommittee or the NAC may set aside a default judgment. Furthermore, the changes clarify that defaults need to be appealed within 25 days after the service of the decision, and that sanctions are effective 30 days after service of the decision (other than bars and suspensions which are effective immediately). These time periods are already set forth in Rules 9360 and 9311(a), respectively.

In addition, the changes to Rule 9312 shorten to 25 days the period in which the General Counsel may call a default decision for review. The rules currently give the General Counsel 45 days to determine whether to call a default decision for review, which is the same call period for litigated decisions.

**Decisions in Settled Cases:** Rule 9270 is amended to establish that the issuance of decisions relating to accepted offers of settlement is to be

done by the General Counsel. Rule 9270 currently requires that decisions in settled cases be issued by the Office of Hearing Officers. Returning decisions related to offers of settlement to the Hearing Officers after acceptance by the NAC, the Review Subcommittee, or the General Counsel, however, serves no useful purpose and only introduces additional delay and the possibility of error.

**Motions to Introduce New Evidence:** The change to Rule 9346(b) imposes the requirement that motions to introduce new evidence in cases that are appealed or called for review be made within 30 days of service of the index to the record under Rule 9321. Rule 9346(b) currently requires that motions to introduce new evidence in these cases be made within 30 days of service of the notice of appeal (or within 35 days of service of notice of a call for review). Because motions to introduce new evidence generally can best be made after the parties have received copies of the official index to the record, it is logical to key the timing of such motions to the parties' receipt of the index.

**Effectiveness of Sanctions:** Rule 9360 is amended to state that unless otherwise provided in decisions issued under Rule 9349 or Rule 9351, a sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Association, shall become effective 30 days after the date of service of the decision. Under the current Rule 9360, a sanction becomes effective on a date established by the Chief Hearing Officer, which shall not be earlier than 30 days after the date of service of the decision constituting final disciplinary action. This change was made because the Chief Hearing Officer plays no part in the final stages of a disciplinary proceeding appealed or called for review.

In cases involving bars or expulsions, Rules 9269 and 9360 are amended to provide that service of decisions should be done by overnight courier, facsimile, or other means likely to obtain prompt service. Currently, Rule 9360 provides for personal service for final decisions imposing bars or expulsions. Rule 9269 does not currently contain language addressing the means by which service of default decisions in cases involving bars and expulsions should be accomplished. With respect to final default decisions imposing bars or expulsions, reasonable efforts at personal service (hand delivery) are generally not successful, and with respect to litigated decisions the most effective type of service is a method such as overnight courier or facsimile.

**Summary and Nonsummary Proceedings:** The Rule 9510 Series will be simplified by deleting certain non-summary proceedings and consolidating them with other rules or by replacing the current procedures with simpler procedures in a separate rule series. As noted above, the provisions of the Rule 9510 Series and the Rule 8220 Series, which both relate to failure to provide requested information, will be consolidated into the Rule 8220 Series. Similarly, the non-summary proceedings for statutory disqualification matters will be deleted from the Rule 9510 Series, and the Rule 9520 Series, which governs regular statutory disqualification matters, will be amended by adding new procedures for expediting the review of a statutory disqualification proceeding when necessary to protect investors. Finally, non-summary proceedings for failure to pay fees, dues, assessments, and other charges will be deleted from the Rule 9510 Series, and new procedures providing for a hearing by a Hearing Officer will be added as a new Rule 9530 Series.

The rule change amends Rule 9511, which sets forth the purpose of the Rule 9510 Series, to reflect these changes and to remove redundant provisions that appear in Rules 9512 and 9513.

The rule change also revises the hearing and decision provisions of Rule 9514. First, the amended Rule 9514(a)(1) contains a non-substantive, simplifying amendment that provides that a member or person who requests a hearing must set forth the specific grounds for setting aside the notice, rather than listing in the Rule each type of action that the member or person would seek to reverse or oppose at the hearing.

Second, the Rule is amended to provide that a member that received a notice of an advertising pre-use filing requirement under Rule 2210 or 2220 would have 30 days to request a hearing. Under the current Rule, which does not address pre-use filing requirements, a member or person has seven days to request a hearing in a non-summary proceeding. NASD Regulation will provide additional time in the case of advertising pre-use filing requirements because members may need additional time to consider whether to comply with or contest the requirements.

Third, the custodian of record provision under Rule 9514(f)(5) authorizes the Office of Hearing Officers to act as custodian for non-summary proceedings for a failure to comply with an arbitration award or settlement agreement related to an NASD arbitration or mediation. Under Rule 9514(b)(1), Hearing Officers serve as the adjudicators in such proceedings, and as such, the Office of Hearing Officers is a more appropriate custodian than the NASD Regulation Office of General Counsel.

Rule 9516 is amended to provide that a request for reinstatement

could be made after either a summary or a non-summary proceeding under the Rule 9510 Series. Currently, reinstatement is available only after a non-summary proceeding.

**Eligibility Proceedings:** The Rule 9520 Series, which concerns statutory disqualifications, is amended to clarify certain procedures and to expedite statutory disqualification proceedings if necessary to protect investors. Rule 9522(a) is amended to clarify that although a statutory disqualification proceeding may be initiated by the Association, a member has an independent obligation to initiate such a proceeding if it wishes to continue to associate with a statutorily disqualified person. The Rule is further amended to provide that if a member does not respond to a statutory disqualification notice issued by the Association by filing a request for relief within 10 days, the member's membership may be canceled and the associated person's registration may be revoked, unless the NAC grants an extension of time to respond for good cause shown.

NASD Regulation amended Rule 9525 to provide for an expedited review of statutory disqualification proceedings if the Statutory Disqualification Committee requests an expedited review and the NASD Board Executive Committee determines that such action is necessary for the protection of investors. In such a case, any Governor could call the proceeding for review. If such a call were made, a review panel would conduct the review, as in amended Rule 8223 (b)(2).

**Suspension or Cancellation for Failure to Pay Dues, Fees, and Other Charges:** The new Rule 9530 Series sets forth procedures for suspending or canceling the membership of a member or the registration of an associated person who fails to

pay fees, dues, assessments, or other charges. Procedures for such a cancellation or suspension are currently set forth in the Rule 9510 Series. Under the rule change, the NASD Treasurer would be authorized to initiate such proceedings by sending a notice to the member or associated person. The hearing would be conducted by a Hearing Officer, who would be authorized to suspend or cancel the membership of a member or the registration of a person. The hearing procedures are modeled on the Rule 8220 Series.

The rule change does not include a call for review because the issues to be resolved in this type of proceeding are narrow and largely administrative. NASD Regulation has determined that it would be more efficient to have one Hearing Officer conduct the hearing and render a final decision. Hearing Officers are well-suited to resolve the issues presented in hearings for failure to pay fees due to their training and experience in the NASD's disciplinary proceedings under the Rule 9200 Series and in non-summary proceedings for failure to pay arbitration awards under the Rule 9510 Series.

## Text Of Amendments

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

### 0100. GENERAL PROVISIONS

#### 0120. Definitions

**(m) "National Adjudicatory Council [Business Conduct Committee]"**

The term "National Adjudicatory Council [Business Conduct Committee]" means the committee of [the Board of Directors of] NASD Regulation which may be authorized and directed to act for the Board of Directors of NASD Regulation in a manner

consistent with the By-Laws of NASD Regulation, the Rules of the Association, and the Delegation Plan with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; and (6) such other proceedings or actions authorized by the Rules of the Association.

## 2000. BUSINESS CONDUCT

### 2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

#### 2210. Communications With The Public

##### (c) Filing Requirements and Review Procedures

(4) (A) Notwithstanding the foregoing provisions, [any District Business Conduct Committee of the Association] the Department, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department [and/or the District Committee], at least ten days prior to use. The member must provide with each filing the actual or anticipated date of first use.

(B) The [Committee] Department shall 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. The requirement

shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing [before the District Business Conduct Committee] under Rule 9514, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the [Code of Procedure as contained in the] Rule [9000] 9510 Series.

## **2220. Options Communications with the Public**

### **(c) Association Approval Requirements and Review Procedures**

(1) In addition to the approval required by paragraph (b) of this Rule, every advertisement and all educational material of a member or member organization pertaining to options shall be submitted to the Advertising/Investment Companies Regulation Department of the Association ("Department") at least ten days prior to use (or such shorter period as the Association may allow in particular instances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement or educational material has been resubmitted for, and has received, Association approval.

(2) (A) Notwithstanding the foregoing provision, [any District Business Conduct Committee of the Association] the Department, upon review of a member's options advertisements, educational material and/or sales literature, and after determining that the member will again depart from the standards of this Rule, may require that such member file all options advertisements, educational material and/or sales literature, or the portions of such member's material

that is related to any specific types or classes of securities or services, with the [Association and/or the District Committee] Department, at least ten days prior to use.

(B) The [Committee] Department shall 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. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing [before the District Business Conduct Committee] under Rule 9514, and any such hearing shall be in conformity with the hearing and appeal procedures of the [Code of Procedure, as set forth in the] Rule [9000] 9510 Series.

## **2320. Best Execution and Interpositioning**

(a) In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that [which] will be considered [by the Business Conduct Committees] in determining whether a member has used [applying the standard of] "reasonable diligence" [in this area] are:

(g) (1) In any transaction for or with a customer pertaining to the execution of an order in a non-Nasdaq security (as defined in the Rule 6700 Series), a member or person associated with a member, shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) Pursuant to the Rule 9600 Series, [T]the staff, for good cause shown [upon written request,] after taking into consideration all relevant factors, may exempt any transaction or classes of transactions, either unconditionally or on specified terms, from any or all of the provisions of this paragraph if it determines that such exemption is consistent with the purpose of this Rule, the protection of investors, and the public interest. [Any decision whether to grant such an exemption may be appealed to the National Business Conduct Committee.]

## **8210. Provision of Information and Testimony and Inspection and Copying of Books**

### **(a) Authority of Adjudicator and Association Staff**

For the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or the Rules of the Association, an Adjudicator or Association staff shall have the right to:

(1) require a member, person associated with a member, or person subject to the Association's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by Association staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) No change.

## **8220. Suspension or Cancellation for Failure to Provide Requested Information**

### **8221. Notice**

### **(a) Notice to Member**

If a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association, or fails to keep its membership application or supporting documents current, the [National Adjudicatory Council] Department of Enforcement may provide written notice to such member specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspension or cancellation [from] of membership.

### **(b) Notice to Person Associated with Member**

If a person associated with a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association, the [National Adjudicatory Council] Department of Enforcement may provide written notice to such person specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspending the association of the person with the member.

### **(c) Service of Notice**

The [National Adjudicatory Council] Department of Enforcement shall serve the member or person associated with a member with such notice via personal service or overnight commercial courier.

## **8222. Hearing**

### **(a) Request for Hearing**

Within five days after the date of service of a notice issued under Rule 8221, a member or person associated with a member served with a notice under Rule 8221(c) may file

with the [National Adjudicatory Council] NASD Regulation Office of General Counsel a written request for an expedited hearing before a subcommittee of the National Adjudicatory Council. The request shall state with specificity why the member or associated person believes that there are insufficient grounds for suspension or cancellation or any other reason for setting aside the notice issued [by the National Adjudicatory Council] under Rule 8221.

### **(b) Hearing Procedures**

#### **(1) Appointment of Subcommittee**

If a hearing is requested, the National Adjudicatory Council or the Review Subcommittee described in Rule 9120 shall appoint a subcommittee to conduct the hearing and decide whether the member or person associated with a member should be suspended or canceled. The subcommittee shall be composed of a current member of the National Adjudicatory Council and one or more current or former members of the National Adjudicatory Council, NASD Regulation Board [and], or [the] NASD Board.

#### **(2) Time of Hearing**

The hearing shall be held within [20] 30 days after the date of service of the notice issued under Rule 8221. Not later than seven days before the hearing, the subcommittee shall serve the member or person associated with a member with written notice of the date and time of the hearing via overnight commercial courier or facsimile and notify the [appropriate department or office of NASD Regulation] Department of Enforcement of the date and time of the hearing. [The appropriate department or office of NASD Regulation (hereinafter "appropriate department or office" in the Rule 8220 Series) shall be the department or office that

issued the request for the information, report, material, data, or testimony that the member or associated person failed to provide, or in the case of a member that failed to keep its membership application or supporting documents current, the Department of Member Regulation.]

### **(3) Transmission of Documents**

Not later than seven days before the hearing, the [subcommittee] Department of Enforcement shall serve the member or person associated with a member via overnight commercial courier with all documents that were considered in connection with the [National Adjudicatory Council's] decision to issue a notice under Rule 8221, unless a document meets the criteria of Rule 9251(b) (1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon the conclusion of any review by the Commission or the federal courts. The Department of Enforcement shall provide a copy of the documents transmitted to the member or person associated with a member to the subcommittee.

### **(4) Counsel**

The member or person associated with a member and the [appropriate department or office] Department of Enforcement may be represented by counsel at a hearing conducted under this Rule.

### **(5) Evidence**

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than four days before the hearing, the member or person associated with a member and the [appropriate department or office] Department of Enforcement shall

exchange copies of proposed hearing exhibits and witness lists and provide copies of the same to the subcommittee.

#### **(6) Witnesses**

No change.

#### **(7) Additional Information**

At any time during its consideration, the subcommittee may direct the member or person associated with a member or the [appropriate department or office] Department of Enforcement to submit additional information. Any additional information submitted shall be provided promptly to all parties at least one business day before the subcommittee renders its decision.

#### **(8) Transcript**

No change.

#### **(9) Record**

The record shall consist of all documents that were considered in connection with the [National Adjudicatory Council's] decision to issue a notice under Rule 8221, the notice issued under Rule 8221, the request for hearing filed under Rule 8222, the transcript of the hearing, and each document or other item of evidence presented to or considered by the subcommittee. The Office of the General Counsel of NASD Regulation shall be the custodian of the record.

#### **(10) Failure to Appear at Hearing**

If a member or person associated with a member fails to appear at a hearing for which it has notice, the subcommittee may dismiss the request for a hearing as abandoned, and the notice [of the National Adjudicatory Council] issued under Rule 8221 shall become the final action of the Association. Upon a showing of

good cause, the subcommittee may withdraw a dismissal entered pursuant to this subparagraph.

### **8223. Decision**

#### **(a) Subcommittee**

##### **(1) Proposed Written Decision**

The subcommittee may suspend or cancel the membership of a member or suspend the association of a person with a member for failure to take the action required by the notice issued under Rule 8221. The subcommittee shall prepare a proposed written decision, and if the subcommittee determines that a suspension should be imposed, the proposed written decision shall state the grounds for the suspension or cancellation and the conditions for terminating the suspension. The subcommittee shall provide its proposed written decision to the NASD Board of Governors.

##### **(2) Issuance of Decision After Expiration of Call for Review Period**

If no Governor calls the [suspension] proceeding for review within the time prescribed in paragraph (b)(1), the subcommittee's proposed written decision shall become final, and the subcommittee shall serve the final written decision on the member or associated person via overnight commercial courier or facsimile.

#### **(b) NASD Board of Governors**

##### **(1) Call For Review by Governor**

A Governor may call the suspension or cancellation proceeding for review if the call for review is made not later than ten days after the Governor receives the subcommittee's proposed written decision. By a unanimous vote of the NASD Board of Governors, the NASD Board of Gov-

ernors may shorten the call for review period to less than ten days. By an affirmative vote of the majority of the NASD Board of Governors then in office, the NASD Board of Governors may, during the ten day period, vote to extend the period to more than ten days.

##### **(2) Review and Decision**

If a Governor calls the suspension or cancellation proceeding for review within the time prescribed in subparagraph (1), [the NASD Board of Governors] a review panel shall meet and conduct a review not later than [its next meeting] 14 days after the call for review. The review panel shall be composed of the NASD Board Executive Committee, except that the Governor who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Industry, Non-Industry, or Public) as such Governor. The [NASD Board of Governors] review panel may affirm, modify, or reverse the decision of the subcommittee. Not later than seven days after the [NASD Board of Governors] review panel meeting, the [NASD Board of Governors] review panel shall serve a final written decision on the member or person associated with a member via overnight commercial courier or facsimile. The decision shall state the disposition of the suspension or cancellation proceeding, and if a suspension is imposed, state the grounds for the suspension and the conditions for terminating the suspension.

##### **(c) Effective Date**

No change.

### **8224. Notice to Membership**

The Association shall provide notice of a suspension or cancellation under the Rule 8220 Series and the

grounds therefor in the next membership supplement.

## **8225. Termination of Suspension**

### **(a) Filing of Request**

A suspended member or person associated with a member may file a written request for termination of the suspension on the ground of full compliance with the notice issued under Rule 8221 or, if applicable, the conditions of a decision under Rule 8223, with the head of the [appropriate department or office] Department of Enforcement.

### **(b) Response by Department of Enforcement**

The head of the [appropriate department or office] Department of Enforcement shall respond to the request in writing within five days after receipt of the request.

#### **(1) Request Granted**

If the head of the [appropriate department or office] Department of Enforcement grants the request, he or she shall serve the member or person associated with a member with written notice of the termination of the suspension via overnight commercial courier or facsimile.

#### **(2) Request Denied**

If the head of the department or office denies the request, the suspended member or person associated with a member may file a written request for relief with the [National Adjudicatory Council] NASD Regulation Office of General Counsel. If the member or person associated with a member files the written request for relief within 30 days after service of the decision under Rule 8223, [The National Adjudicatory Council] the

review panel constituted under Rule 8223 shall respond to the request for relief in writing within ten days after receipt of the request. If the member or person associated with a member files the written request for relief more than 30 days after service of the decision under Rule 8223, the National Adjudicatory Council shall respond to the request for relief in writing within ten days after receipt of the request. The review panel's or National Adjudicatory Council's response shall be served on the member or person associated with a member via overnight commercial courier or facsimile.

## **8300. SANCTIONS**

### **IM-8310-2. Release of Disciplinary Information**

(d) (1) The Association shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest. The Association also may release to the public information with respect to any disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the

association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

## **9000. CODE OF PROCEDURE**

### **9200. DISCIPLINARY PROCEEDINGS**

#### **9212. Complaint Issuance-- Requirements, Service, Amendment, Withdrawal, and Docketing**

##### **(a) Form, Content, Notice, Docketing, and Service**

No change.

##### **(b) Amendments to Complaint**

The Department of Enforcement may file and serve an amended complaint that includes new matters of fact or law once as a matter of course at any time before the Respondent answers the complaint. Otherwise, u[U]pon motion by the Department of Enforcement, the Hearing Officer may permit the Department of Enforcement to amend the complaint to include new matters of fact or law, [at any time] after considering whether the Department of Enforcement has shown good cause for the amendment [shown by the Department of Enforcement] and whether any Respondent will suffer any unfair prejudice if the amendment is allowed [to any Respondent, permit the Department of Enforcement to amend a complaint to include new matters of fact or law].

## 9215. Answer to Complaint

### (e) Extension of Time to Answer Amended Complaint

If a complaint is amended pursuant to Rule 9212(b), the time for filing an answer or amended answer shall be the greater of the original time period within which the Respondent is required to respond, or [extended to] 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have 14 days after service of the amended complaint, unless otherwise ordered by the Hearing Officer within which to file an amended answer.

### (f) Failure to Answer, Default

If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, the Department of Enforcement shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) issue [enter] a default decision against the Respondent [pursuant to Rule 9269]. If the Respondent fails to file an [no] answer [is filed] with the Office of Hearing Officers within the time required, the Hearing Officer may issue [allegations of the complaint may be considered admitted by such Respondent and] a default decision against the Respondent pursuant to Rule 9269 [may be issued by the Hearing Officer]. A Respondent may, for good cause shown, move the National Adjudicatory Council to set aside a default].

## 9241. Pre-hearing Conference

### (a) through (e)

No change.

### (f) Failure to Appear: Default

The Hearing Officer may issue a default decision, pursuant to Rule 9269, against a [A] Party that [who] fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which the Party [he or she] has [been duly] due notice [notified, may be deemed in default pursuant to Rule 9269]. A Party may, for good cause shown, file a motion to set aside the default].

## 9269. Default Decisions [Failure to Appear at Hearing; Defaults]

### (a) Issuance of Default Decisions [Failure to Appear May Result in Default Decision]

(1) The Hearing Officer may issue a default decision against a Respondent that fails to answer the complaint within the time afforded under Rule 9215, or a Party that fails to appear at a pre-hearing conference held pursuant to Rule 9241 of which the Party has due notice, or a [A] Party that [who] fails to appear at [a] any hearing that a Party is required to attend under the Rule 9200 Series of which the Party [he or she has been] has due notice [been duly notified may be deemed to be in default].

(2) If the defaulting Party is the Respondent, [As a consequence of the default], the Hearing Officer may deem the allegations against [a non-appearing] that Respondent [may be deemed] admitted [and a default decision entered by the Hearing Officer]. If the [non-appearing Party] defaulting Party is the Department of Enforcement, the Hearing Officer may issue a default decision ordering

that the complaint be dismissed with prejudice.

(3) [In addition, t]The Hearing Officer may order a Party that fails to appear at the pre-hearing conference or the hearing to [the non-appearing Party] pay the costs incurred by other Parties in connection with their appearance [at the hearing].

### (b) Contents of Decision [Request to Set Aside Default]

A party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs.]The contents of a default decision shall conform to the requirements of Rule 9268(b).

### (c) Review of Default Decision

Party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs. Upon a showing of good cause, either the Review Subcommittee or the National Adjudicatory Council may enter such an order.

### (d) Final Disciplinary Action of the Association; Effectiveness of Sanctions

If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective 30 days after the default decision becomes the final disciplinary action of the Association, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of the Association. The Association shall serve the decision on a

Respondent by overnight courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

## **9270. Settlement Procedure**

### **(e) Uncontested Offers of Settlement**

(1) through (2)

No change.

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council, the Review Subcommittee, or the General Counsel, they shall become final and [the National Adjudicatory Council, the Review Subcommittee or] the General Counsel shall [communicate the acceptance to the Hearing Officer who shall thereafter] issue the order and notify the Office of Hearing Officers.

### **(f) Contested Offers of Settlement**

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council or the Review Subcommittee, the General Counsel [National Adjudicatory Council or the Review Subcommittee shall communicate the acceptance to the Hearing Officer who] shall [thereafter] issue the order and notify the Office of Hearing Officers.

## **9312. Review Proceeding by National Adjudicatory Council**

### **(a) Call for Review**

#### **(1) Rule 9268 Decision**

No change.

#### **(2) Rule 9269 Decision**

A default decision issued pursuant to Rule 9269 shall be subject to a call

for review by the General Counsel, on his or her own motion within 25 [45] days after the date of service of the decision. If called for review, such decision shall be reviewed by the National Adjudicatory Council.

## **9346. Evidence in National Adjudicatory Council Proceedings**

### **(a) Scope of Review**

No change.

### **(b) Leave to Introduce Additional Evidence**

A Party may apply to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Adjudicatory Council for leave to introduce additional evidence by motion filed not later than 30 days after the Office of Hearing Officers transmits to the National Adjudicatory Council and serves upon all Parties the index to the record, pursuant to Rule 9321 [service of such Party's notice of appeal or cross-appeal or not later than 35 days after service upon the Party by the National Adjudicatory Council of a notice of review]. The motion shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, demonstrate why the evidence is material to the proceeding, and be filed and served. The Party may attach the documentary evidence as an exhibit to the motion. By a motion filed in accordance with Rule 9146, a Party may request an extension of the period during which a Party may file a motion for leave to introduce additional evidence. A Party shall demonstrate that there was good cause for failing to file the motion for leave to introduce additional evidence during the period prescribed.

## **9360. Effectiveness of Sanctions**

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a[A] sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1) shall become effective [on a date established by the Chief Hearing Officer, which shall not be earlier than] 30 days after the date of service of the decision constituting final disciplinary action. A bar or an expulsion shall become effective upon service of the decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1), unless otherwise specified therein. The Association shall [take reasonable steps to obtain personal service of] serve the decision on a Respondent by overnight courier, facsimile or other means reasonable likely to obtain prompt service when the sanction is a bar or an expulsion.

## **9500. [SUSPENSION, CANCELLATION, BAR, DENIAL OF ACCESS, AND ELIGIBILITY,] OTHER [PROCEDURES] PROCEEDINGS**

### **9510. [Procedures for] Summary and Non-Summary Proceedings [Suspension, Cancellation, Bar, Limitation, or Prohibition]**

### **9511. Purpose and Computation of Time**

#### **(a) Purpose**

[(1) The purpose of the Rule 9510 Series is to set forth procedures for certain suspensions, cancellations, bars, and limitations and prohibitions on access to the Association's services authorized by the Act and the NASD By-Laws. Pursuant to Section

15A(h)(3) of the Act, the Association may summarily:]

[(A) suspend a member or associated person who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;]

[(B) suspend a member who is in such financial or operating difficulty that the Association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the Association; or]

[(C) limit or prohibit any person with respect to access to services offered by the Association if subparagraph (A) or (B) applies to such person, or in the case of a person who is not a member, if the Association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.]

[(2) The Association also may take the following actions, after notice and opportunity for hearing:]

[(A) cancel the membership of a member that becomes ineligible for continuance in membership, or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with a member because such person is or becomes ineligible for association under Article III, Section 3 of the NASD By-Laws;]

[(B) suspend or cancel the membership of a member or the registration of a person for failure to pay fees, dues, assessments, or other charges; failure to submit a required

report or information related to such payment; or failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article VI, Section 3 of the NASD By-Laws;]

[(C) cancel the membership of a member for failure to file or submit on request any report, document, or other information required to be filed with or requested by the Association under Article VII, Section 2 of the NASD By-Laws; and]

[(D) limit or prohibit any member, associated person, or other person with respect to access to services offered by the Association or a member thereof if the Association determines that such person does not meet the qualification requirements or other prerequisites for such access or such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.]

[(3) Other procedures for suspending the membership of a member, suspending the registration of an associated person, or suspending a person from association with any member are found in the Rule 8220 Series and Rule 8320. Procedures for listing qualification matters are found in the Rule 9700 Series; the Rule 9510 Series does not apply to listing qualification matters.]

The Rule 9510 Series sets forth procedures for: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; and (2) non-summary proceedings to impose (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with

respect to access to services offered by the Association or a member thereof, if the Association determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; or (C) an advertising pre-use filing requirement.

### **(b) Computation of Time**

For purposes of the [9510] Rule 9510 Series, time shall be computed as set forth in Rule 9138, except that intermediate Saturdays, Sundays, and holidays shall be included in the computation.

### **9512. Initiation of Summary [Proceedings for Summary Suspension, Limitation, or Prohibition] Proceeding**

No change.

### **9513. Initiation of Non-Summary Proceeding[s] [for Non-Summary Suspension, Cancellation, Bar, Limitation, or Prohibition]**

#### **(a) Notice**

Association staff [shall] may initiate a proceeding authorized under [Section 3 of Article III, Section 3 of Article VI, or Section 2 of Article VII of the NASD By-Laws, or] Rule 9511(a)(2)[(D)] (A) or (B), by issuing a written notice to the member, associated person, or other person. The notice shall specify the grounds for and effective date of the cancellation, suspension, bar, limitation, or prohibition and shall state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight commercial courier.

## **(b) Effective Date**

[For any cancellation, suspension, or bar under Section 3 of Article III of the NASD By-Laws, the effective date shall be at least seven days after service of the notice on the member or associated person.] For any cancellation or suspension [under Section 3 of Article VI or Section 2 of Article VII of the NASD By-Laws] pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action pursuant to Rule 9511(a)(2)(B), the effective date shall be at least seven days after service of the notice on the member or person, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Association or a member thereof [pursuant to Rule 9511(a)(2)(D), the effective date shall be upon receipt of the notice] with respect to services to which the member, associated person, or other person does not have access [and shall be at least seven days after service of the notice with respect to services to which the member, associated person, or other person already has access] shall be upon receipt of the notice.

## **9514. Hearing and Decision**

### **(a) Request**

#### **(1) Request by Member, Associated Person, or Other Person**

A member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, 9512(a), or 9513(a) may file a written request for a hearing with the Association. The request shall state [either] the specific grounds for [reversing the summary suspension, limitation, or prohibition or for opposing the cancellation, suspension, bar, limitation, or prohibition] setting aside the notice.

The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the notice under Rule 9512 or 9513, or, with respect to notice of a pre-use filing requirement under Rule 2210(c)(4) and Rule 2220(c)(2), within 30 days of such notice. The member, associated person, or other person may withdraw its request for a hearing at any time by filing a written notice with the Association pursuant to Rules 9135, 9136, and 9137.

#### **(2) Failure to File Request**

If the member, associated person, or other person subject to the notice issued under Rule 2210, 2220, 9512(a), or 9513(a) does not file a written request for a hearing under subparagraph (1), the notice shall constitute final action by the Association.

#### **(3) Ex Parte Communications**

No change.

#### **(b) Designation of Party for the Association and Appointment of Hearing Panel**

If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 2210, 2220, 9512(a), or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement

agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 2210, 2220, 9512(a), or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on a Hearing Panel.

(2) No change.

#### **(c) Stays**

##### **(1) Summary Proceeding [Suspension, Limitation, or Prohibition]**

No change.

##### **(2) Non-Summary [Cancellation, Suspension, Bar, Limitation, or Prohibition] Proceeding**

Unless the NASD Board orders otherwise, a request for a hearing shall stay the notice issued under Rule 2210, 2220, or 9513, except that a request for a hearing shall not stay a notice of a limitation or prohibition on services offered by the Association or a member thereof with respect to services to which a member, associated person, or other person does not have access.

#### **(d) Time of Hearing**

##### **(1) Summary [Suspension] Proceeding**

No change.

##### **(2) Non-Summary [Suspension, Cancellation, Bar, Limitation or Prohibition] Proceeding**

If a member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, or 9513(a) files a written request for a hearing, a hearing shall be held within 21 days after the filing of the request for hearing. The Hearing Panel may, during the initial 21 day period, extend the time in which the hearing shall be held by an additional 21 days on its own motion or at the request of a Party. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight commercial courier.

#### **(e) Transmission of Documents**

(1) Not less than five days before the hearing, the Association shall provide to the member, associated person, or other person who requested the hearing, by facsimile or overnight commercial courier, all documents that were considered in issuing the notice under Rule 2210, 2220, 9512, or 9513, unless a document meets the criteria of Rule 9251(b) (1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(2) No change.

#### **(f) Hearing Panel Consideration**

**(1) - (3) No change.**

#### **(4) Record**

The record shall consist of: (1) the notice issued under Rule 2210, 2220, 9512, or 9513; (2) all documents transmitted by the Association under Rule 9514(e)(1); (3) the request for hearing; (4) any other

submissions by the Parties; (5) any evidence considered at the hearing; and (6) the transcript of the hearing and any corrections thereto.

#### **(5) Custodian of the Record**

If the President of NASD Regulation or NASD Regulation staff initiated the proceeding under Rule 2210, 2220, 9512, or 9513, the Office of the General Counsel of NASD Regulation shall be the custodian of the record, except that the Office of Hearing Officers shall be the custodian of record for proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. If the President of Nasdaq or Nasdaq staff initiated the proceeding under Rule 9512 or 9513, the Office of the General Counsel of Nasdaq shall be the custodian of the record.

#### **(6) Evidence Not Admitted**

No change.

#### **(g) Decision of the Hearing Panel**

##### **(1) Summary [Suspension, Limitation, or Prohibition] Proceeding**

No change.

##### **(2) Non-Summary [Suspension, Cancellation, Bar, Limitation, or Prohibition] Proceeding**

Based on its review of the record, the Hearing Panel shall decide whether a cancellation, suspension, bar, limitation, [or] prohibition, or pre-use filing requirement shall be imposed or continue to be imposed. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (3).

##### **(3) Contents of Decision**

The decision shall include:

(A) a statement setting forth the specific statute, rule, or NASD by-law that authorized the proceeding;

(B) a statement describing the investigative or other origin of the proceeding;

(C) the grounds for issuing the notice under Rule 2210, 2220, 9512, or 9513;

(D) a statement of findings of fact with respect to any act or practice that was alleged to have been committed or omitted by the member, associated person, or other person;

(E) a statement in support of the disposition of the principal issues raised in the proceedings; and

(F) if a summary suspension, limitation, or prohibition continues to be imposed, the specific grounds for imposing such suspension, limitation, or prohibition, and the terms of the suspension, limitation, or prohibition[.]; or if a non-summary suspension, cancellation, bar, limitation, [or] prohibition or pre-use filing requirement is to be imposed or continue to be imposed, [the] its effective date, time, and terms [of the suspension, cancellation, bar, limitation, or prohibition].

##### **(4) Issuance of Decision After Expiration of Call for Review Period**

No change.

##### **9515. Discretionary Review by the NASD Board**

No change.

##### **9516. Reinstatement**

A member, associated person, or other person who has been suspend-

ed or limited by a final action of the Association [after a non-summary proceeding] under the Rule 9510 Series may file a written request for reinstatement on the ground of full compliance with the conditions of the suspension or limitation. The request shall be filed with the department or office of the Association that acted as a Party in the proceeding. The head of the department or office shall serve its response on the member or person via facsimile or overnight commercial courier within five days after receipt of the request. If the head of the department or office denies the request, the member or person may file a written request for relief with the NASD Board. The NASD Board shall respond to the request in writing within 14 days after receipt of the request. The NASD Board shall serve its response by facsimile or overnight commercial courier.

## **9520. Eligibility Proceedings**

### **9521. Purpose**

No change.

### **9522. Initiation of Eligibility Proceeding[s]**

#### **(a) [Notice of Disqualification or Ineligibility] Initiation by Association**

##### **(1) Issuance of Notice of Disqualification or Ineligibility**

If Association staff has reason to believe that a statutory disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of the Association, Association staff shall issue a written notice to the member or associated person. The notice shall specify the grounds for such disqualification or ineligibility.

#### **(2) Notice to Member**

A notice issued to a member that is subject to a statutory disqualification or is otherwise ineligible for membership shall state that the member may apply for relief by filing a written application for relief pursuant to paragraph (c) with the National Adjudicatory Council within ten days after service of the notice. If the member fails to file the written application for relief within the 10-day period, the membership of the member shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

#### **(3) Notice to Associated Person**

A notice issued to an associated person who is subject to a statutory disqualification or is otherwise ineligible for association shall state that a member may apply for relief on behalf of itself and such person by filing a written application for relief pursuant to paragraph (c) with the National Adjudicatory Council within ten days after service of the notice. If the member fails to file the written application for relief within the 10-day period, the registration of the associated person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

#### **(4) Service**

No change.

#### **(b) [Application by] Obligation of Member to Initiate Proceeding**

A member shall file a written application for relief from the eligibility requirements of the Association pursuant to paragraph (c) with the National Adjudicatory Council if the member determines prior to receiving a notice under paragraph (a) that:

(1) [determines that it] the member is subject to a statutory disqualification

or otherwise is no longer eligible for membership;

(2) [determines that] a person associated with [it] such member is subject to a statutory disqualification or otherwise is no longer eligible for association with the member; or

(3) the member wishes to sponsor the association of a person who is subject to a statutory disqualification or otherwise is ineligible for association with a member.

## **9525. Expedited Review**

### **(a) Direction by Executive Committee**

Notwithstanding Rules 9523 and 9524, the NASD Board Executive Committee, upon request of the Statutory Disqualification Committee, may direct an expedited review of a recommended written decision of the Statutory Disqualification Committee if the NASD Board Executive Committee determines that expedited review is necessary for the protection of investors.

### **(b) Call for Review Period**

If a recommended decision is subject to expedited review, a Governor may call the eligibility proceeding for review within seven days after receipt of the recommended written decision.

### **(c) No Call for Review**

If no Governor calls the proceeding for review within the time prescribed, the decision shall become final, and the Statutory Disqualification Committee shall serve the decision on the member, the current or prospective associated person, and Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of the Association.

#### **(d) Call for Review**

If a Governor calls the eligibility proceeding for review within the prescribed time, a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the NASD Board Executive Committee, except that the Governor who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Industry, Non-Industry, or Public) as such Governor. The review panel may affirm, modify, or reverse the recommended written decision of the Statutory Disqualification Committee or remand the eligibility proceeding with instructions. The review panel shall prepare, issue, and serve its decision pursuant to Rule 9524(d) and (e).

#### **9526. Application to Commission for Review**

No change.

#### **9530. Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges**

#### **9531. Notice**

##### **(a) Notice**

Association staff may issue a written notice suspending or canceling the membership of a member or the registration of a person who has failed to pay a fee, due, assessment, other charge, or submit a required report or information related to such payment.

##### **(b) Service of Notice**

Association staff shall serve the notice by facsimile or overnight commercial courier and shall file a copy of the notice with the Office of Hearing Officers.

#### **(c) Effective Date of Notice**

A notice issued and served under this Rule shall become effective 15 days after the date of service of the notice.

#### **9532. Hearing**

##### **(a) Request for Hearing**

Within five days after the date of service of a notice issued under Rule 9531, the member or person served with such notice may file with the Office of Hearing Officers a written request for a hearing. The request shall state with specificity why the member or person believes that the notice should be set aside. The request for the hearing shall stay the effective date of the notice.

##### **(b) Hearing Procedures**

##### **(1) Appointment of Hearing Officer**

If a hearing is requested, the Chief Hearing Officer shall appoint a Hearing Officer to conduct the hearing and decide whether the member or the person's registration should be suspended or canceled.

##### **(2) Parties**

The Parties shall be the member or person to whom the notice was issued and the NASD Treasurer.

##### **(3) Time of Hearing**

The hearing shall be held within 45 days after the date of service of the notice under Rule 9531. Not later than seven days before the hearing, the Hearing Officer shall serve the Parties with written notice of the date and time of the hearing.

##### **(4) Transmission of Documents**

Not later than seven days before the hearing, the NASD Treasurer shall

serve the member or person associated with a member via overnight commercial courier with all documents that were considered in connection with the decision to issue a notice under Rule 9531 and provide copies of the same to the Hearing Officer.

##### **(5) Counsel**

The Parties may be represented by counsel at a hearing conducted under this Rule.

##### **(6) Evidence**

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than four days before the hearing, the Parties shall exchange copies of proposed hearing exhibits and witness lists and provide copies of the same to the Hearing Officer.

##### **(7) Witnesses**

A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

##### **(8) Additional Information**

At any time during its consideration, the Hearing Officer may direct the Parties to submit additional information. Any additional information submitted shall be provided promptly to all Parties at least one business day before the Hearing Officer renders his or her decision.

##### **(9) Transcript**

The hearing shall be recorded and a transcript prepared by a court reporter. A Party may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the

transcript may be submitted by affidavit to the Hearing Officer within a reasonable time determined by the Hearing Officer. Upon notice to the participants in the hearing, the Hearing Officer may order corrections to the transcript as requested or sua sponte.

#### **(10) Record**

The record shall consist of all documents that were considered in connection with the decision to issue a notice under Rule 9531, the notice issued under Rule 9531, the request for hearing filed under Rule 9532, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Hearing Officer. The Office of Hearing Officers shall be the custodian of the record.

#### **(11) Failure to Appear at Hearing**

If a member or person fails to appear at a hearing for which he has notice, the Hearing Officer may dismiss the request for a hearing as abandoned, and the notice issued under Rule 9531 shall become final. Upon a showing of good cause, the Hearing Officer may withdraw a dismissal entered pursuant to this subparagraph.

#### **9533. Decision**

The Hearing Officer may suspend or cancel the membership of a member or the registration of a person for failure to pay a due, fee, assessment,

other charge, or for failure to submit a required report or information related to such payment. The Hearing Officer shall prepare a proposed written decision, and if the Hearing Officer determines that a suspension or cancellation should be imposed, the proposed written decision shall state the grounds for the suspension or cancellation, and in the case of a suspension, the conditions for terminating the suspension. The written decision served under this Rule shall become effective upon service and shall constitute final action of the Association.

#### **9534. Notice to Membership**

The Association shall provide notice of a suspension or cancellation under this Rule Series and the grounds therefor in the next membership supplement.

#### **9535. Termination of Suspension**

A suspended member or person may file a written request for termination of the suspension on the ground of full compliance with the notice issued under Rule 9531 or, if applicable, the conditions of a decision under Rule 9533, with the Office of Hearing Officers. The Office of Hearing Officers shall respond to the request in writing within five days after receipt of the request. The Office of Hearing Officers shall send the written response via overnight commercial courier or facsimile.

#### **9536. Copies of Notices and Decisions to Member**

A copy of a notice or decision under the Rule 9530 Series that is served on a person associated with a member shall be served on such member.

#### **9537. Other Action Not Foreclosed**

Action by the Association under the Rule 9530 Series shall not foreclose action by the Association under any other Rule.

#### **9600. Procedures for Exemptions**

##### **9610. Application**

###### **(a) Where to File**

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010, 3210, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

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# NASD Notice to Members 99-17

## SEC Approves Amendments Regarding Application Of The Corporate Financing Rule To Certain Offerings By Charitable Organizations

### Suggested Routing

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

### Executive Summary

On December 21, 1998, the Securities and Exchange Commission (SEC) approved amendments submitted by NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) to exempt certain offerings by charitable organizations from the filing requirements of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 2710 (the Corporate Financing Rule). The new exemption was effective on December 21, 1998.

Questions regarding this *Notice* may be directed to Suzanne E. Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, at (202) 974-2747.

### Discussion

The Corporate Financing Rule requires that public offerings of securities be filed with the Corporate Financing Department of NASD Regulation (Department) so that the Department has an opportunity to determine whether compensation terms and arrangements are fair and reasonable for purposes of the rule. Offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act of 1933 (Securities Act) have been subject to the filing requirements of the Corporate Financing Rule.

The Department has found that such public offerings by charitable organizations no longer present regulatory issues requiring pre-offering review. In particular, the aggregate underwriting compensation received by church bond broker/dealers has been significantly below the maximum amount of underwriting compensation that is permitted under the Corporate Financing Rule.

NASD Regulation has, therefore, amended the Corporate Financing

Rule to exempt public offerings by a church or other charitable institution from the filing requirements, but not the substantive requirements, of the Corporate Financing Rule. In order for the new exemption to apply to an offering, the offering must qualify for the exemption from SEC registration provided by Section 3(a)(4) of the Securities Act, which requires that the securities offered by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, not be for pecuniary profit, and that no part of the net earnings inure to the benefit of any person, private stockholder, or individual. The registration exemption provided by Section 3(a)(4) is also available to any security of a fund that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940.

### Text Of Amendments

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

#### **2710. Corporate Financing Rule - Underwriting Terms and Arrangements**

**(a) No change.**

**(b) Filing Requirements**

(1) - (6) No change.

(7) Offerings Exempt from Filing

Notwithstanding the provisions of subparagraph (1) above, documents and information related to the following public offerings need not be filed with the Association for review, unless subject to the provisions of Rule 2720. However, it shall be deemed a violation of this Rule or Rule 2810, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with

this Rule or Rule 2810, as applicable:

(A) - (C) No change.

(D) securities offered pursuant to a redemption standby "firm commitment" underwriting arrangement registered with the Commission on Forms S-3, F-3 or F-10 (only with respect to Canadian issuers); [and]

(E) financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories; and

(F) offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act.

(8) No change.

(9) Offerings Required to be Filed

Documents and information relating to all other public offerings including, but not limited to, the following must be filed with the Association for review:

(A) - (E) No change.

(F) securities offered by a bank, savings and loan association, [church or other charitable institution,] or common carrier even though such offering may be exempt from registration with the Commission;

(G) - (H) No change.

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# NASD Notice to Members 99-18

## Annual Checklist Of NASD Notices to Members

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- Senior Management
- Advertising
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- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

The National Association of Securities Dealers, Inc. (NASD®) published the following *Notices to Members* during 1998. Duplicate copies are available for \$25 per monthly or special issue. A two-volume, bound and indexed edition of the entire year's *Notices* is also available for \$100. Requests, accompanied by a self-addressed mailing label and a check payable to the National Association of Securities Dealers, Inc., or credit card information, should be sent to NASD MediaSource<sup>SM</sup>, P.O. Box 9403, Gaithersburg, MD 20898-9403. Credit card telephone orders can be made by calling (301) 590-6142, Monday through Friday, 9 a.m. to 5 p.m., Eastern Time.

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# NASD Notice to Members 99-19

Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of December 22, 1998

## Suggested Routing

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

As of December 22, 1998, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
AES.GF	AES Corp.	8.000	12/31/08
CAI.GB	Continental Airlines Inc.	8.000	12/15/05
ESPI.GC	E Spire Communications Inc.	10.625	07/01/08
GBBP.GA	GBB Capital II	0.000	09/15/28
HRHO.GA	Harrahs Operating Co. Inc.	7.875	12/15/05
LODG.GB	Sholodge Inc. Series A	9.750	11/01/06
PAPA.GA	Rapid American Corp. Del	0.000	03/01/00
PAPA.GB	Rapid American Corp. Del	0.000	03/01/01
PAPA.GC	Rapid American Corp. Del	0.000	03/01/02
PAPA.GD	Rapid American Corp. Del	0.000	03/01/03
PAPA.GE	Rapid American Corp. Del	0.000	03/01/04
PAPA.GF	Rapid American Corp. Del	0.000	03/01/05
PAPA.GG	Rapid American Corp. Del	0.000	03/01/06
PAPA.GH	Rapid American Corp. Del	0.000	03/01/07
PAPA.GI	Rapid American Corp. Del	0.000	03/01/99
PDCH.GA	Plaid Clothing Group Inc.	11.000	08/01/03
PIDM.KC	Piedmont Aviation Inc. Series I	9.950	11/08/09
PIDM.KD	Piedmont Aviation Inc. Series H	9.950	11/08/10
PIDM.KE	Piedmont Aviation Inc. Series I	9.950	11/08/10
PIDM.KF	Piedmont Aviation Inc. Series H	10.000	11/08/11
PIDM.KG	Piedmont Aviation Inc. Series I	10.000	11/08/11
PIDM.KH	Piedmont Aviation Inc. Series H	10.000	11/08/12
PIDM.KI	Piedmont Aviation Inc. Series I	10.000	11/08/12
PIDM.KJ	Piedmont Aviation Inc. Series J	9.800	05/13/99
PIDM.KK	Piedmont Aviation Inc. Series K	9.800	05/13/99
PIDM.KL	Piedmont Aviation Inc. Series J	9.850	05/13/00
PIDM.KM	Piedmont Aviation Inc. Series K	9.850	05/13/00
PIDM.KN	Piedmont Aviation Inc. Series J	9.900	05/13/01
PIDM.KO	Piedmont Aviation Inc. Series K	9.900	05/13/01
PIDM.KP	Piedmont Aviation Inc. Series J	9.900	05/13/02
PIDM.KQ	Piedmont Aviation Inc. Series K	9.900	05/13/02
PIDM.KR	Piedmont Aviation Inc. Series J	9.950	05/13/03
PIDM.KS	Piedmont Aviation Inc. Series K	9.950	05/13/03
PIDM.KT	Piedmont Aviation Inc. Series J	10.000	05/13/04
PIDM.KU	Piedmont Aviation Inc. Series K	10.000	05/13/04
PIDM.KV	Piedmont Aviation Inc. Series J	10.050	05/13/05
PIDM.KW	Piedmont Aviation Inc. Series K	10.050	05/13/05
PIDM.KX	Piedmont Aviation Inc. Series J	10.100	05/13/07
PIDM.KY	Piedmont Aviation Inc. Series K	10.100	05/13/07
PIDM.KZ	Piedmont Aviation Inc. Series J	10.100	05/13/08
PIDM.LA	Piedmont Aviation Inc. Series K	10.100	05/13/08
PIDM.LB	Piedmont Aviation Inc. Series J	10.100	05/13/09
PIDM.LC	Piedmont Aviation Inc. Series K	10.100	05/13/09
PIDM.LD	Piedmont Aviation Inc. Series J	10.150	05/13/10
PIDM.LE	Piedmont Aviation Inc. Series K	10.150	05/13/10
PIDM.LF	Piedmont Aviation Inc. Series J	10.150	05/13/11
PIDM.LG	Piedmont Aviation Inc. Series K	10.150	05/13/11
PIDM.LH	Piedmont Aviation Inc. Series J	10.200	05/13/12
PIMO.GA	Primeco Inc.	12.750	03/01/05

Symbol	Name	Coupon	Maturity
PRS.GB	Presidio Oil Inc.	11.500	09/15/00
PUSM.GA	Purity Supreme Inc. Series B	11.750	08/01/99
RCEO.GA	Robertson-Ceco Corp.	12.000	11/30/99
RDFL.GA	RailRoad Financial Corp.	10.000	01/31/99
RDNH.GB	Radnor Holdings Inc. Series B	10.000	12/01/03
REVI.GB	Reeves Industries Inc.	11.000	01/15/02
RICP.GA	Riggs Capital Trust II	8.875	03/15/27
RMGY.GA	Ram Energy Inc.	11.500	02/15/08
RVDU.GA	Reeves Industries Inc.	13.000	11/15/04
SATH.GA	Shop at Home Inc.	11.000	04/01/05
SBDU.GA	Signature Brands USA Inc.	13.000	08/15/02
SCOP.GA	SCM Corp.	13.000	01/15/08
SELO.GB	Selmer Co. Inc.	11.000	06/30/00
SELO.GC	Selmer Co. Inc.	10.920	06/30/00
SFXB.GC	SFX Broadcasting Inc.	11.375	10/01/00
SHG.GA	Sun Healthcare Group Inc. Series B	9.500	07/01/07
SLRP.GA	Sellco Corp.	12.000	12/15/04
SLT.GB	Salant Corp.	10.500	12/31/98
SLTF.GC	Specialty Foods Acq Corp. Series B	11.250	08/15/03
SMDU.GA	Smith Food & Drug Ctrs Inc. Series 94A2	8.640	07/02/12
SMDU.GB	Smith Food & Drug Ctrs Inc. Series 94A3	9.200	07/02/18
SMFD.GA	Smiths Food & Drug Ctrs Inc.	11.250	05/15/07
SMKG.GA	Supermarkets General Holdings Corp.	11.625	06/15/02
SNGY.GB	Synergy Group Inc.	9.500	09/15/00
SNSA.GA	Statia Terminals Inc. Series B	11.750	11/15/03
SPRT.GB	Sprint Spectrum LP	11.000	08/15/06
SRET.GC	Specialty Retailers Inc. Series B	11.000	08/15/03
STW.GA	Standard Commercial Corp.	8.875	08/01/05
TBAG.GA	3 Bealls Holdings Corp.	12.000	12/31/02
TDHC.GB	Thermadyne Holdings Corp.	10.750	11/01/03
TLLP.GD	Toll Corp.	7.750	09/15/07
TRHG.GA	Trump Holdings & Funding	15.500	06/15/05
TRLY.GA	Trans-Lux Corp.	9.500	12/01/12
TTG.GA	Transtexas Gas Corp. Series D	13.750	12/31/01
TUBC.GB	Tuboscope Inc.	10.750	04/15/03
TXF.GC	Texfi Industries Inc. Series C	13.000	04/01/00
TYVT.GA	Taylor Investment Corp.	11.000	01/01/01
UATS.GA	United Artists Theater Co. Series 95-A	9.300	07/01/15
UC.GD	United Cos Financial Corp.	7.700	01/15/04
ULME.GA	Ultimate Electronics Inc.	10.250	01/31/05
USAR.GD	US Air Inc. Series A	10.250	01/15/99
USAR.GE	US Air Inc. Series B	10.250	01/15/99
USAR.GF	US Air Inc. Series C	10.250	01/15/99
USAR.GG	US Air Inc. Series D	10.250	01/15/99
USAR.GH	US Air Inc. Series E	10.250	01/15/99
USAR.GI	US Air Inc. Series F	10.250	01/15/99

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.GJ	US Air Inc. Series A	10.300	01/15/00
USAR.GK	US Air Inc. Series B	10.300	01/15/00
USAR.GL	US Air Inc. Series C	10.300	01/15/00
USAR.GM	US Air Inc. Series D	10.300	01/15/00
USAR.GN	US Air Inc. Series E	10.300	01/15/00
USAR.GO	US Air Inc. Series F	10.300	01/15/00
USAR.GP	US Air Inc. Series A	10.350	01/15/01
USAR.GQ	US Air Inc. Series B	10.350	01/15/01
USAR.GR	US Air Inc. Series C	10.350	01/15/01
USAR.GS	US Air Inc. Series D	10.350	01/15/01
USAR.GT	US Air Inc. Series E	10.350	01/15/01
USAR.GU	US Air Inc. Series F	10.350	01/15/01
USAR.GV	US Air Inc. Series A	10.400	01/15/02
USAR.GW	US Air Inc. Series B	10.400	01/15/02
USAR.GX	US Air Inc. Series C	10.400	01/15/02
USAR.GY	US Air Inc. Series D	10.400	01/15/02
USAR.GZ	US Air Inc. Series E	10.400	01/15/02
USAR.HA	US Air Inc. Series F	10.400	01/15/02
USAR.HB	US Air Inc. Series A	10.450	01/15/03
USAR.HC	US Air Inc. Series B	10.450	01/15/03
USAR.HD	US Air Inc. Series C	10.450	01/15/03
USAR.HE	US Air Inc. Series D	10.450	01/15/03
USAR.HF	US Air Inc. Series E	10.450	01/15/03
USAR.HG	US Air Inc. Series F	10.450	01/15/03
USAR.HH	US Air Inc. Series A	10.500	01/15/04
USAR.HI	US Air Inc. Series B	10.500	01/15/04
USAR.HJ	US Air Inc. Series C	10.500	01/15/04
USAR.HK	US Air Inc. Series D	10.500	01/15/04
USAR.HL	US Air Inc. Series E	10.500	01/15/04
USAR.HM	US Air Inc. Series F	10.500	01/15/04
USAR.HN	US Air Inc. Series A	10.550	01/15/05
USAR.HO	US Air Inc. Series B	10.550	01/15/05
USAR.HP	US Air Inc. Series C	10.550	01/15/05
USAR.HQ	US Air Inc. Series D	10.550	01/15/05
USAR.HR	US Air Inc. Series E	10.550	01/15/05
USAR.HS	US Air Inc. Series F	10.550	01/15/05
USAR.HT	US Air Inc. Series C	10.700	01/15/06
USAR.HU	US Air Inc. Series D	10.700	01/15/06
USAR.HV	US Air Inc. Series E	10.700	01/15/06
USAR.HW	US Air Inc. Series F	10.700	01/15/06
USAR.HX	US Air Inc. Series A	10.700	01/15/07
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USAR.HZ	US Air Inc. Series C	10.700	01/15/07
USAR.IA	US Air Inc. Series D	10.700	01/15/07
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USAR.ID	US Air Inc. Series A	10.700	01/15/08
USAR.IE	US Air Inc. Series B	10.700	01/15/08
USAR.IF	US Air Inc. Series C	10.700	01/15/08
USAR.IG	US Air Inc. Series D	10.700	01/15/08
USAR.IH	US Air Inc. Series E	10.700	01/15/08
USAR.II	US Air Inc. Series F	10.700	01/15/08

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.IJ	US Air Inc. Series A	10.750	01/15/09
USAR.IK	US Air Inc. Series B	10.750	01/15/09
USAR.IL	US Air Inc. Series C	10.750	01/15/09
USAR.IM	US Air Inc. Series D	10.750	01/15/09
USAR.IN	US Air Inc. Series E	10.750	01/15/09
USAR.IO	US Air Inc. Series F	10.750	01/15/09
USAR.IP	US Air Inc. Series A	10.750	01/15/10
USAR.IQ	US Air Inc. Series B	10.750	01/15/10
USAR.IR	US Air Inc. Series C	10.750	01/15/10
USAR.IS	US Air Inc. Series D	10.750	01/15/10
USAR.IT	US Air Inc. Series E	10.750	01/15/10
USAR.IU	US Air Inc. Series F	10.750	01/15/10
USAR.IV	US Air Inc. Series A	10.750	01/15/11
USAR.IW	US Air Inc. Series B	10.750	01/15/11
USAR.IX	US Air Inc. Series F	10.750	01/15/11
USAR.IY	US Air Inc. Series 88-A	9.700	01/15/99
USAR.IZ	US Air Inc. Series 88-B	9.700	01/15/99
USAR.JA	US Air Inc. Series 88-C	9.700	01/15/99
USAR.JB	US Air Inc. Series 88-D	9.700	01/15/99
USAR.JC	US Air Inc. Series 88-A	9.800	01/15/00
USAR.JD	US Air Inc. Series 88-B	9.800	01/15/00
USAR.JE	US Air Inc. Series 88-C	9.800	01/15/00
USAR.JF	US Air Inc. Series 88-D	9.800	01/15/00
USAR.JG	US Air Inc. Series 88-A	9.900	01/15/01
USAR.JH	US Air Inc. Series 88-B	9.900	01/15/01
USAR.JI	US Air Inc. Series 88-C	9.900	01/15/01
USAR.JJ	US Air Inc. Series 88-D	9.900	01/15/01
USAR.JK	US Air Inc. Series 88-A	10.000	01/15/02
USAR.JL	US Air Inc. Series 88-B	10.000	01/15/02
USAR.JM	US Air Inc. Series 88-C	10.000	01/15/02
USAR.JN	US Air Inc. Series 88-D	10.000	01/15/02
USAR.JO	US Air Inc. Series 88-A	10.050	01/15/03
USAR.JP	US Air Inc. Series 88-B	10.050	01/15/03
USAR.JQ	US Air Inc. Series 88-C	10.050	01/15/03
USAR.JR	US Air Inc. Series 88-D	10.050	01/15/03
USAR.JS	US Air Inc. Series 88-A	10.150	01/15/04
USAR.JT	US Air Inc. Series 88-B	10.150	01/15/04
USAR.JU	US Air Inc. Series 88-C	10.150	01/15/04
USAR.JV	US Air Inc. Series 88-D	10.150	01/15/04
USAR.JW	US Air Inc. Series 88-A	10.200	01/15/05
USAR.JX	US Air Inc. Series 88-B	10.200	01/15/05
USAR.JY	US Air Inc. Series 88-C	10.200	01/15/05
USAR.JZ	US Air Inc. Series 88-D	10.200	01/15/05
USAR.KA	US Air Inc. Series 88-A	10.250	01/15/07
USAR.KB	US Air Inc. Series 88-B	10.250	01/15/07
USAR.KC	US Air Inc. Series 88-C	10.250	01/15/07
USAR.KD	US Air Inc. Series 88-D	10.250	01/15/07
USAR.KE	US Air Inc. Series 88-A	10.300	07/15/08
USAR.KF	US Air Inc. Series 88-B	10.300	07/15/08
USAR.KG	US Air Inc. Series 88-C	10.300	07/15/08
USAR.KH	US Air Inc. Series 88-D	10.300	07/15/08
USAR.KI	US Air Inc. Series 88-A	10.300	07/15/09

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.KJ	US Air Inc. Series 88-B	10.300	07/15/09
USAR.KK	US Air Inc. Series 88-C	10.300	07/15/09
USAR.KL	US Air Inc. Series 88-D	10.300	07/15/09
USAR.KM	US Air Inc. Series 88-A	10.300	07/15/10
USAR.KN	US Air Inc. Series 88-B	10.300	07/15/10
USAR.KO	US Air Inc. Series 88-C	10.300	07/15/10
USAR.KP	US Air Inc. Series 88-D	10.300	07/15/10
USAR.KQ	US Air Inc. Series 88-A	10.300	01/15/08
USAR.KR	US Air Inc. Series 88-B	10.300	01/15/08
USAR.KS	US Air Inc. Series 88-C	10.300	01/15/08
USAR.KT	US Air Inc. Series 88-D	10.300	01/15/08
USAR.KU	US Air Inc. Series 88-E	10.500	01/15/99
USAR.KV	US Air Inc. Series 88-F	10.500	01/01/99
USAR.KW	US Air Inc. Series 88-G	10.500	01/01/99
USAR.KX	US Air Inc. Series 88-H	10.500	01/01/99
USAR.KY	US Air Inc. Series 88-I	10.500	01/01/99
USAR.KZ	US Air Inc. Series 88-J	10.500	01/01/99
USAR.LC	US Air Inc. Series 88-E	10.550	01/01/00
USAR.LD	US Air Inc. Series 88-F	10.550	01/01/00
USAR.LE	US Air Inc. Series 88-G	10.550	01/01/00
USAR.LF	US Air Inc. Series 88-H	10.550	01/01/00
USAR.LG	US Air Inc. Series 88-I	10.550	01/01/00
USAR.LH	US Air Inc. Series 88-J	10.550	01/01/00
USAR.LI	US Air Inc. Series 88-K	10.550	01/01/00
USAR.LJ	US Air Inc. Series 88-L	10.550	01/01/00
USAR.LK	US Air Inc. Series 88-E	10.600	01/01/01
USAR.LL	US Air Inc. Series 88-F	10.600	01/01/01
USAR.LM	US Air Inc. Series 88-G	10.600	01/01/01
USAR.LN	US Air Inc. Series 88-H	10.600	01/01/01
USAR.LO	US Air Inc. Series 88-I	10.600	01/01/01
USAR.LP	US Air Inc. Series 88-J	10.600	01/01/01
USAR.LQ	US Air Inc. Series 88-K	10.600	01/01/01
USAR.LR	US Air Inc. Series 88-L	10.600	01/01/01
USAR.LS	US Air Inc. Series 88-E	10.600	01/01/02
USAR.LT	US Air Inc. Series 88-F	10.700	01/01/02
USAR.LU	US Air Inc. Series 88-G	10.700	01/01/02
USAR.LV	US Air Inc. Series 88-H	10.700	01/01/02
USAR.LW	US Air Inc. Series 88-I	10.700	01/01/02
USAR.LX	US Air Inc. Series 88-J	10.700	01/01/02
USAR.LY	US Air Inc. Series 88-K	10.700	01/01/02
USAR.LZ	US Air Inc. Series 88-L	10.700	01/01/02
USAR.MA	US Air Inc. Series 88-E	10.700	01/01/03
USAR.MB	US Air Inc. Series 88-F	10.700	01/01/03
USAR.MC	US Air Inc. Series 88-G	10.700	01/01/03
USAR.MD	US Air Inc. Series 88-H	10.700	01/01/03
USAR.ME	US Air Inc. Series 88-I	10.700	01/01/03
USAR.MF	US Air Inc. Series 88-J	10.700	01/01/03
USAR.MG	US Air Inc. Series 88-K	10.700	01/01/03
USAR.MH	US Air Inc. Series 88-L	10.700	01/01/03
USAR.MI	US Air Inc. Series 88-E	10.750	01/01/04
USAR.MJ	US Air Inc. Series 88-F	10.750	01/01/04
USAR.MK	US Air Inc. Series 88-G	10.750	01/01/04

Symbol	Name	Coupon	Maturity
USAR.ML	US Air Inc. Series 88-H	10.750	01/01/04
USAR.MM	US Air Inc. Series 88-I	10.750	01/01/04
USAR.MN	US Air Inc. Series 88-J	10.750	01/01/04
USAR.MO	US Air Inc. Series 88-K	10.750	01/01/04
USAR.MP	US Air Inc. Series 88-L	10.750	01/01/04
USAR.MQ	US Air Inc. Series 88-E	10.800	01/01/05
USAR.MR	US Air Inc. Series 88-F	10.800	01/01/05
USAR.MS	US Air Inc. Series 88-G	10.800	01/01/05
USAR.MT	US Air Inc. Series 88-H	10.800	01/01/05
USAR.MU	US Air Inc. Series 88-I	10.800	01/01/05
USAR.MV	US Air Inc. Series 88-J	10.800	01/01/05
USAR.MW	US Air Inc. Series 88-K	10.800	01/01/05
USAR.MX	US Air Inc. Series 88-L	10.800	01/01/05
USAR.MY	US Air Inc. Series 88-E	10.850	01/01/06
USAR.MZ	US Air Inc. Series 88-F	10.850	01/01/06
USAR.NA	US Air Inc. Series 88-G	10.850	01/01/06
USAR.NB	US Air Inc. Series 88-H	10.850	01/01/06
USAR.NC	US Air Inc. Series 88-I	10.850	01/01/06
USAR.ND	US Air Inc. Series 88-J	10.850	01/01/06
USAR.NE	US Air Inc. Series 88-K	10.850	01/01/06
USAR.NF	US Air Inc. Series 88-L	10.850	01/01/06
USAR.NG	US Air Inc. Series 88-E	10.850	01/01/07
USAR.NH	US Air Inc. Series 88-F	10.850	01/01/07
USAR.NI	US Air Inc. Series 88-G	10.850	01/01/07
USAR.NJ	US Air Inc. Series 88-H	10.850	01/01/07
USAR.NK	US Air Inc. Series 88-I	10.850	01/01/07
USAR.NL	US Air Inc. Series 88-J	10.850	01/01/07
USAR.NM	US Air Inc. Series 88-K	10.850	01/01/07
USAR.NN	US Air Inc. Series 88-L	10.850	01/01/07
USAR.NO	US Air Inc. Series 88-E	10.900	01/01/08
USAR.NP	US Air Inc. Series 88-F	10.900	01/01/08
USAR.NQ	US Air Inc. Series 88-G	10.900	01/01/08
USAR.NR	US Air Inc. Series 88-H	10.900	01/01/08
USAR.NS	US Air Inc. Series 88-I	10.900	01/01/08
USAR.NT	US Air Inc. Series 88-J	10.900	01/01/08
USAR.NU	US Air Inc. Series 88-K	10.900	01/01/08
USAR.NV	US Air Inc. Series 88-L	10.900	01/01/08
USAR.NW	US Air Inc. Series 88-E	10.900	01/01/09
USAR.NX	US Air Inc. Series 88-F	10.900	01/01/09
USAR.NY	US Air Inc. Series 88-G	10.900	01/01/09
USAR.NZ	US Air Inc. Series 88-H	10.900	01/01/09
USAR.OA	US Air Inc. Series 88-I	10.900	01/01/09
USAR.OB	US Air Inc. Series 88-J	10.900	01/01/09
USAR.OC	US Air Inc. Series 88-K	10.900	01/01/09
USAR.OD	US Air Inc. Series 88-L	10.900	01/01/09
USAR.OE	US Air Inc. Series 88-E	10.900	01/01/10
USAR.OF	US Air Inc. Series 88-F	10.900	01/01/10
USAR.OG	US Air Inc. Series 88-G	10.900	01/01/10
USAR.OH	US Air Inc. Series 88-H	10.900	01/01/10
USAR.OI	US Air Inc. Series 88-I	10.900	01/01/10
USAR.OJ	US Air Inc. Series 88-J	10.900	01/01/10
USAR.OK	US Air Inc. Series 88-K	10.900	01/01/10

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.OL	US Air Inc. Series 88-L	10.900	01/01/10
USAR.OM	US Air Inc. Series 88-B	10.180	06/27/99
USAR.ON	US Air Inc. Series 88-C	10.180	06/27/99
USAR.OO	US Air Inc. Series 88-A	10.180	06/27/99
USAR.OP	US Air Inc. Series 88-D	10.180	06/27/99
USAR.OQ	US Air Inc. Series 88-C	10.230	06/27/00
USAR.OR	US Air Inc. Series 88-A	10.230	06/27/00
USAR.OS	US Air Inc. Series 88-B	10.230	06/27/00
USAR.OT	US Air Inc. Series 88-D	10.230	06/27/00
USAR.OU	US Air Inc. Series 88-C	10.230	06/27/01
USAR.OV	US Air Inc. Series 88-A	10.230	06/27/01
USAR.OW	US Air Inc. Series 88-B	10.230	06/27/01
USAR.OX	US Air Inc. Series 88-D	10.280	06/27/01
USAR.OY	US Air Inc. Series 88-C	10.330	06/27/02
USAR.OZ	US Air Inc. Series 88-A	10.330	06/27/02
USAR.PA	US Air Inc. Series 88-B	10.330	06/27/02
USAR.PB	US Air Inc. Series 88-D	10.330	06/27/02
USAR.PC	US Air Inc. Series 88-C	10.380	06/27/03
USAR.PD	US Air Inc. Series 88-A	10.380	06/27/03
USAR.PE	US Air Inc. Series 88-B	10.380	06/27/03
USAR.PF	US Air Inc. Series 88-D	10.380	06/27/03
USAR.PG	US Air Inc. Series 88-C	10.430	06/27/04
USAR.PH	US Air Inc. Series 88-A	10.430	06/27/04
USAR.PI	US Air Inc. Series 88-B	10.430	06/27/04
USAR.PJ	US Air Inc. Series 88-D	10.430	06/27/04
USAR.PK	US Air Inc. Series 88-C	10.490	06/27/05
USAR.PL	US Air Inc. Series 88-A	10.490	06/27/05
USAR.PM	US Air Inc. Series 88-B	10.490	06/27/05
USAR.PN	US Air Inc. Series 88-D	10.490	06/27/05
USAR.PO	US Air Inc. Series 88-C	10.550	06/27/06
USAR.PP	US Air Inc. Series 88-A	10.550	06/27/06
USAR.PQ	US Air Inc. Series 88-B	10.550	06/27/06
USAR.PR	US Air Inc. Series 88-D	10.550	06/27/06
USAR.PS	US Air Inc. Series 88-A	10.610	06/27/07
USAR.PT	US Air Inc. Series 88-C	10.610	06/27/07
USAR.PU	US Air Inc. Series 88-B	10.610	06/27/07
USAR.PV	US Air Inc. Series 88-D	10.610	06/27/07
USAR.PW	US Air Inc. Series 88-A	10.680	06/27/08
USAR.PX	US Air Inc. Series 88-C	10.680	06/27/08
USAR.PY	US Air Inc. Series 88-B	10.680	06/27/08
USAR.PZ	US Air Inc. Series 88-D	10.680	06/27/08
USAR.QA	US Air Inc. Series 88-A	10.760	06/27/09
USAR.QB	US Air Inc. Series 88-B	10.760	06/27/09
USAR.QC	US Air Inc. Series 88-D	10.760	06/27/09
USAR.QD	US Air Inc. Series 88-A	10.760	06/27/10
USAR.QE	US Air Inc. Series 88-B	10.760	06/27/10
USAR.QF	US Air Inc. Series 88-C	10.760	06/27/10
USAR.QG	US Air Inc. Series 88-D	10.760	06/27/10
USAR.QH	US Air Inc. Series 88-A	10.760	06/27/11
USAR.QI	US Air Inc. Series 88-B	10.760	06/27/11
USAR.QJ	US Air Inc. Series 88-C	10.760	06/27/11
USAR.QK	US Air Inc. Series 88-D	10.760	06/27/11

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.QL	US Air Inc. Series 88-C	10.760	06/27/12
USAR.QM	US Air Inc. Series 88-C	10.760	06/27/13
USAR.QN	US Air Inc. Series 89A1	9.330	01/01/06
USAR.QO	US Air Inc. Series 89A2	9.820	01/01/13
USAR.QP	US Air Inc. Series 90A1	11.200	03/19/05
USAR.QQ	US Air Inc. Series 90A2	11.350	03/19/14
USAR.QR	US Air Inc. Series 93A2	9.625	09/01/03
USAR.QS	US Air Inc. Series 93A3	10.375	03/01/13
UXVT.GA	Unifrax Investment Corp.	10.500	11/01/03
WCII.GD	Winstar Communications Inc.	10.000	03/15/08
WCII.GE	Winstar Communications Inc.	11.000	03/15/08

As of December 22, 1998, the following bonds were deleted from FIPS.

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
AEN.GB	AMC Entertainment Inc.	12.625	07/15/02
ANCP.GD	Anacomp Inc.	10.875	04/01/04
CCIR.GA	CCI Corp.	12.750	12/15/03
CCIR.GA	CCI Corp.	12.750	12/15/98
CVXP.GC	Cleveland Elec Illum Co.	8.375	12/01/11
EE.GA	El Paso Electric Co.	7.250	02/01/99
ENVI.GA	Envirotest Systems Corp.	9.625	04/01/03
ENVI.GB	Envirotest Systems Corp.	9.125	03/15/01
GPAD.GA	GPA Delaware Inc.	8.750	12/15/03
GPAD.GA	GPA Delaware Inc.	8.750	12/15/98
HAVA.GA	Harvard Industries Inc.	12.00	07/15/04
HAVA.GC	Harvard Industries Inc.	11.125	08/01/05
HHI.GB	Home Holdings Inc.	7.750	12/15/03
HHI.GB	Home Holding Inc.	7.750	12/15/98
IBUI.GA	Intl Business Interiors Corp.	14.250	12/15/03
IBUI.GA	Intl Business Interiors Corp.	14.250	12/15/98
KOB.GA	Coca Cola Bottling Group SW Inc.	9.000	11/15/03
MBCA.GB	Metropolitan Broadcasting Corp.	13.250	09/30/06
MBN.GA	MBNA Capital I	8.278	12/01/26
MBN.GB	MBNA Capital I	6.487	02/01/27
NVR.GA	NVR Inc.	11.000	04/15/03
PHO.GA	People's Telephone Co. Inc.	12.250	07/15/02
PIDM.GA	Piedmont Aviation Series A	9.700	01/15/99
PIDM.GB	Piedmont Aviation Series B	9.700	01/15/99
PIDM.GC	Piedmont Aviation Series C	9.700	01/15/99
PLST.GA	Plastic Specialties & Tech Inc.	11.250	12/01/03
SKLE.GA	Safety Kleen Corp.	9.250	09/15/99
SLBC.GA	Sullivan Broadcasting Inc.	9.625	12/15/03
SPEQ.GA	Specialty Equip Cos Inc.	11.375	12/01/03
SPRT.GA	Sprint Spectrum LP	12.500	08/15/06
TEXN.GE	Texas New Mexico Power Co.	12.500	01/15/99
TNC.GA	Town & Country Corp.	13.000	05/31/98
TUBC.GB	Tuboscope Inc.	10.750	04/15/03
USAR.GD	US Air Inc. Series A	10.25	01/15/99

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.GE	US Air Inc. Series B	10.25	01/15/99
USAR.GF	US Air Inc. Series C	10.25	01/15/99
USAR.GG	US Air Inc. Series D	10.25	01/15/99
USAR.GH	US Air Inc. Series E	10.25	01/15/99
USAR.GI	US Air Inc. Series F	10.25	01/15/99
USAR.IY	US Air Inc. Series 88-A	9.70	01/15/99
USAR.IZ	US Air Inc. Series 88-B	9.70	01/15/99
USAR.JA	US Air Inc. Series 88-C	9.70	01/15/99
USAR.JB	US Air Inc. Series 88-D	9.70	01/15/99
USAR.KU	US Air Inc. Series 88-E	10.500	01/15/99
USAR.KV	US Air Inc. Series 88-F	10.500	01/01/99
USAR.KW	US Air Inc. Series 88-G	10.500	01/01/99
USAR.KX	US Air Inc. Series 88-H	10.500	01/01/99
USAR.KY	US Air Inc. Series 88-I	10.500	01/01/99
USAR.KZ	US Air Inc. Series 88-J	10.500	01/01/99

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation<sup>SM</sup>, at (301) 590-6451.

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

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# Disciplinary Actions

## Disciplinary Actions Reported For February

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) 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 Tuesday, February 16, 1999. The information relating to matters contained in this *Notice* is current as of the end of January 20, 1999.

### **Firm Fined, Individual Sanctioned**

**Ascend Financial Services, Inc. (St. Paul, Minnesota) and Barry Howard Burton (Registered Representative, Great Falls, Virginia)** submitted Letters of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000, and Burton was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm allowed a registered representative to sign a variable annuity application as the registered representative of record, falsely indicating that he had sold the investment, when, in fact, the variable annuity had been sold by another registered representative. Moreover, the NASD found that the firm accepted the variable annuity application knowing that the individual had never met with and/or discussed the variable annuity investment with the client. The findings also stated that Burton signed two variable annuities applications as the registered representative of record, falsely indicating that he had sold the investments, when, in fact, the

variable annuities had been sold by another registered representative.

Burton, however, shall not be required to serve the suspension, having already served a 14-day suspension in July 1996 imposed by his member firm based on the same conduct.

### **Firms And Individuals Fined Equity Programs Corporation (San Diego, California) and Barton Basel Switzer (Registered Principal, Ramona, California)**

submitted an Offer of Settlement pursuant to which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Switzer, failed to establish, maintain, and enforce a system reasonably designed to achieve compliance with applicable securities laws and regulations, and the rules of the NASD in order to supervise the activities of a branch office. The firm also knew, or should have known, that the branch office was offering and selling interests in a contingent offering.

### **Kennedy, Cabot & Co., (Beverly Hills, California) and James Dominic Toussaint (Registered Principal, Los Angeles, California)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$25,000, jointly and severally, and the firm was fined an additional \$2,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Toussaint, aired television commercials concerning registered investment companies, and failed to file the advertisements with the NASD's Advertising Department. The findings also stated that the firm, acting through Toussaint, engaged in communications to the

public through television commercials that failed to provide a sound basis for evaluating the facts in regard to the securities offered, and omitted material facts and qualifications which, in light of the context of the material presented, caused the advertisements to be misleading. Moreover, the NASD found that the firm, acting through Toussaint, made exaggerated and unwarranted claims, and/or contained comparative references that were incomplete and unbalanced. The NASD also determined that the firm failed to establish, maintain, and enforce adequate procedures to address the NASD's filing requirements for mutual fund advertisements, and to identify in its written supervisory procedures, a supervisory principal responsible for communications with the public.

**Pellett Investments, Inc. (Missoula, Montana)** and **Ronald Neil Pellett (Registered Principal, Missoula, Montana)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Pellett, participated in contingent offerings of limited partnership interests and failed to transmit funds received from investors to a proper escrow account as required by Securities and Exchange Commission (SEC) Rule 15c2-4(b). The findings also stated that the firm, acting through Pellett, failed to maintain records documenting the completion of the continuing education training plan for covered registered persons, and failed to complete and implement a needs analysis and training plan for the Continuing Education Firm Element.

## Firms Fined

**Joseph Stevens & Company, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$38,393. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted a registered person to continue to perform duties as a registered person even though the person had not complied with the NASD continuing education requirements.

**M.H. Meyerson & Company, Inc. (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. 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 Service<sup>SM</sup> (ACT<sup>SM</sup>) in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to update its own quotation for broadcast orders into SelectNet<sup>SM</sup> immediately. Furthermore, the firm failed to display customer limit orders immediately when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders, or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each security.

**Smith Barney, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$17,000. 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 ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to preserve for a period of not less than three years the memoranda of brokerage orders and failed to show the correct time of execution, or the time of execution, on memoranda of brokerage orders. The firm also failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws, regulations, and rules regarding trade reporting and recordkeeping.

**W. J. Nolan & Company, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$5,000, jointly and severally, with an individual, and required to disgorge \$22,060 in excessive markups to public customers. Should disgorgement payments not be completed by a specified time, the firm will be suspended until such time as such payments have been completed. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through an individual, it effected municipal securities principal transactions at excessive markups.

**William E. Simon & Sons Municipal Securities, Inc. (Morristown, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it made a \$10,000 payment to a member firm purportedly in connection with a municipal bond transaction in the hope of developing a business relationship with the firm. According to the findings, the respondent's records regarding expenses

for the transaction inaccurately reflected that \$10,000 was paid to the other firm in connection with that offering and its records regarding disbursement of cash and debits for the transaction inaccurately reflected that \$10,000 was paid to the firm as management fees for that offering.

### **Individuals Barred Or Suspended**

**Craig Douglas Baker (Registered Representative, West Jordan, Utah)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$12,250, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Baker consented to the described sanctions and to the entry of findings that he intercepted approximately \$450 worth of gift certificates/checks intended to compensate other employees for overtime they had earned, deposited the checks into his own bank account, and used the money for his personal use.

**Alfred Gerald Block (Registered Principal, Livingston, New Jersey)** submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from acting as a principal for 30 days. Without admitting or denying the allegations, Block consented to the described sanctions and to the entry of findings that he failed to have a financial and operations principal registered with the NASD at his member firm, and as a result, he was responsible for the firm's failure to file some of its FOCUS reports, to file some FOCUS reports in a timely manner, and to file its annual audit report.

**Djoly Boliere (Associated Person, Stamford, Connecticut)** submitted an Offer of Settlement 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, Boliere consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Clyde Joseph Bruff (Registered Principal, Oakland, California)** was censured and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of an August 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Bruff exercised effective control over the account of a public customer and made recommendations to the customer that resulted in unsuitable excessive trading.

This action has been appealed to the Ninth Circuit Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

**John Milford Buob (Registered Representative, Henderson, Nevada)** submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Buob consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prompt written notification to his member firm prior to participating in such transactions. The findings also stated that, in connection with the offer or sale of limited partnership interests, Buob made misrepresentations to investors and failed to return investor funds when the terms of the contingency were not met. The findings also stated that Buob recommended and induced public customers to purchase the security by means of fraudulent and deceptive devices and contrivances in that he represented to customers that proceeds of a limited partnership

offering would be used to pay the purchase price of real estate and office building improvements. The NASD found that Buob knew, or should have known, that only \$64,399.43 of the necessary \$212,500 had been raised and, therefore, the proceeds were insufficient to pay the purchase price of such real estate and were instead used to pay suppliers of goods or services consumed or used by Buob in the conduct of his business.

**Harvey Michael Burstein (Registered Representative, Leawood, Kansas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$57,100, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Burstein consented to the described sanctions and to the entry of findings that he engaged in outside business activities for which he received compensation and engaged in private securities transactions without prior written notice to, and approval from, his member firm.

**Peter Thomas Chen (Registered Principal, Sayville, New York)** was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chen failed to respond to NASD requests for information and failed to appear for testimony.

**Michael Henry Christ (Registered Principal, Lynbrook, New York)** was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Christ failed to respond to NASD requests for information.

**Keith Robert Cottrell (Registered Representative, Washington, D.C.)** was censured, fined \$25,000, and

barred from association with any NASD member in any capacity. The sanctions were based on findings that Cottrell failed to respond to NASD requests for information.

**Dennis Wayne Cowden (Registered Representative, Pittsburgh, Pennsylvania)** was censured, suspended from association with any NASD member in any capacity for two months, and required to requalify by exam before again becoming registered in any capacity. The sanctions were based on findings that Cowden recommended and effected securities transactions for the accounts of public customers without having reasonable grounds to believe that such transactions were suitable based on the information disclosed by the customers concerning their financial situations and needs.

**Rudolph Crockett, Jr. (Registered Representative, Westerville, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$925,000, barred from association with any NASD member in any capacity, and required to pay \$179,642 in restitution to a member firm. Without admitting or denying the allegations, Crockett consented to the described sanctions and to the entry of findings that he received funds totaling \$179,642 from public customers. The NASD determined that Crockett deposited these funds into accounts under his control without the knowledge or permission of the customers and used the funds for his own benefit without their knowledge, authorization, or consent.

**Glenn Adam Davis (Registered Principal, West Palm Beach, Florida)** was censured, fined \$75,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Davis executed unauthorized

transactions in a public customer's account.

**Carlton Case Ellis (Registered Principal, Mercer Island, Washington)** was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam in all capacities before again being employed in the securities industry. The sanctions were based on findings that Ellis participated in private securities transactions without giving his member firm prior written notification. Ellis also signed a letter agreement on behalf of his member's clearing firm without authority to do so.

**Gregory Marclafau Hawkins, Jr. (Registered Representative, Mission Viejo, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$112,900, barred from association with any NASD member in any capacity, and ordered to pay \$7,580 in restitution to a public customer. Without admitting or denying the allegations, Hawkins consented to the described sanctions and to the entry of findings that he solicited and sold to a public customer an investment in a business entity he formed away from his member firm. Although the customer gave Hawkins \$20,000 for investment purposes, the customer received a promissory note evidencing only a \$10,000 investment in the company. In addition, the NASD found that Hawkins proceeded to convert approximately \$7,580 of the customer's funds to his personal use and benefit. The above-described transactions were effected outside the regular course and scope of his employment with his member firm, and Hawkins failed to provide prior written notice to, or obtain written approval from, his firm.

**Kirby Michael Hryn (Registered Representative, Clearfield, Pennsylvania)** submitted a Letter of

Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$18,000 in restitution to defrauded investment club members. Without admitting or denying the allegations, Hryn consented to the described sanctions and to the entry of findings that he converted approximately \$18,000 from members of an investment club, of which he was also a member, without the consent or authority of the club members.

**James Andrew Hyde (Registered Principal, Niwet, Colorado)** submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Hyde consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in a timely manner.

**Ann Wei Ping Lo (Registered Principal, New York, New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lo failed to appear for an on-the-record interview.

**James Dean Loeffelbein (Registered Representative, Bucyrus, Kansas)** 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 one day. Without admitting or denying the allegations, Loeffelbein consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm.

**Smail Loutfi (Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$213,437.31, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Loutfi consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf.

**Robert Gregory McCormack (Registered Principal, Ft. Myers, Florida)** was censured, fined \$60,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that McCormack conducted a securities business while not registered. McCormack also forged a registered representative's signature on a new account application and failed to respond to NASD requests for information.

**Arleigh Clayton Merrill (Registered Representative, Jacksonville, Florida)** was censured, fined \$17,500, and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Merrill effected a private securities transaction and guaranteed a customer against a loss.

**Norman Mathias Merz (Registered Principal, Brookfield, Wisconsin)** was censured, fined \$110,000, and barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) affirmed the sanctions following review of a Chicago District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Merz engaged in private securities transactions without prior written notice to, and approval from, his member firm. Merz also failed to give prompt written notice to his firm

of compensation received from outside business activities.

**Donerval Kevin Moreland (Registered Representative, San Clemente, California)** was censured, fined \$65,000, barred from association with any NASD member in any capacity, and ordered to pay \$25,000 plus interest in restitution to a public customer. The sanctions were based on findings that Moreland recommended, offered, and sold securities without being properly registered. Furthermore, Moreland recommended securities to a public customer without having reasonable grounds for believing the securities were suitable for the customer. Moreland also failed to respond to NASD requests for information about his sales practices.

**Vincent Michael Nunez (Registered Representative, Staten Island, New York)** was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge to the NASD all monies he earned in the securities industry before becoming registered, in the amount of at least \$5,151. The sanctions were based on findings that Nunez arranged to have an impostor take the Series 7 exam on his behalf. Nunez also failed to respond to NASD requests to appear for on-the-record interviews.

**Donald Charles Panek (Registered Representative, Fort Madison, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Panek consented to the described sanctions and to the entry of findings that he participated in private securities transactions without prior written notice to, and written approval and/or acknowledgment from, his member firms.

**James Basil Peters (Registered Representative, Oxnard, California)** was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify as a general securities representative. The NAC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Peters forged the signature of a bank branch manager on documents submitted to his firm that falsely reflected purchases involving new funds and thereby increased Peters' commission payout.

**Christopher John Plucinski (Registered Representative, Stevenson Ranch, California)** submitted an Offer of Settlement pursuant to which he was censured, fined \$255,000, barred from association with any NASD member in any capacity, and ordered to pay \$782.17 in restitution to a member firm. Without admitting or denying the allegations, Plucinski consented to the described sanctions and to the entry of findings that he received \$35,000 from a public customer for investment purposes. According to the findings, Plucinski did not apply the funds as directed by the customer, and instead, converted the funds to his own use and benefit by depositing the funds into his bank account, and writing personal and business checks on the funds without the customer's knowledge or consent.

**Donald Eugene Radle (Registered Principal, Springfield, Missouri)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Radle failed to respond to NASD requests to appear for an on-the-record interview.

**Kirk Francis Ruffler (Registered Representative, Perrineville, New Jersey)** was censured, fined

\$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ruffler failed to respond to NASD requests for information.

**Randel Arthur Russell (Registered Representative, Wheeling, West Virginia)** 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 six months. Without admitting or denying the allegations, Russell consented to the described sanctions and to the entry of findings that he received cash from a public customer intended for deposit into a money market account and failed to handle the funds properly. According to the findings, Russell placed the funds in a non-secure location and certain funds were lost. The findings also stated that Russell accepted checks intended for employee contributions to a company-sponsored Simple Individual Retirement Account (IRA) and failed to forward those checks promptly to the mutual fund company for investment.

**Russell Marlowe Ryan (Registered Representative, Hempstead, New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ryan failed to respond to NASD requests to appear for on-the-record interviews.

**Steven Paul Sanders (Registered Principal, Jericho, New York)** and **Daniel Mark Porush (Registered Principal, Oyster Bay Cove, New York)**. Sanders was censured, fined \$25,000, and barred from association with any NASD member in any capacity, and Porush was censured, fined \$250,000, and barred from association with any NASD member in any capacity. The SEC affirmed

the sanctions following appeal of a December 1996 NBCC decision. The sanctions were based on findings that Sanders charged excessive markups in the sale of warrants as a consequence of his member firm's domination and control of the market for those securities. In addition, Porush failed to establish and enforce supervisory requirements that might have prevented the markup violations.

**Steven Albert Seager (Registered Representative, Geneseo, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$275,000, barred from association with any NASD member in any capacity, and required to pay \$49,935.37 in restitution to a member firm. Without admitting or denying the allegations, Seager consented to the described sanctions and to the entry of findings that he caused loans totaling \$49,935.37 to be made against the life insurance policies of public customers. According to the findings, Seager caused the checks for these loans to be mailed to a post office box under his control, endorsed the checks, and used the proceeds for his own benefit without the prior authorization or consent of the customers.

**Wallace Efford Sheely (Registered Principal, Gulfport, Mississippi)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$6,800, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Sheely consented to the described sanctions and to the entry of findings that he exercised discretion in the individual accounts of public customers without prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm.

**Daniel Wright Sisson (Registered Principal, Menlo Park, California)** was censured, fined \$35,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam as a general securities representative. The NAC imposed the sanctions following review of a San Francisco DBCC decision. The sanctions were based on findings that Sisson recommended trades that were unsuitable as to size and frequency in the accounts of public customers.

**Chad Robert Soerens (Registered Representative, Middleton, Wisconsin)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Soerens failed to respond to NASD requests for information.

**Gerald James Stoiber (Registered Representative, Mokena, Illinois)** was censured, fined \$450,000, suspended from association with any NASD member in any capacity for six months, and required to pay \$450,000 in restitution to public customers. The SEC affirmed the sanctions following appeal of a March 1996 NBCC decision, and following dismissal of an appeal to the U.S. Court of Appeals. The sanctions were based on findings that Stoiber engaged in private securities transactions while failing to give prior written notification to his member firm of his intention to engage in such activities.

**Steve Tabaluyan (Associated Person, Palatine, Illinois)** 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, with the right to reapply for association with an NASD member firm three years from the date of the effectiveness of

the bar. Without admitting or denying the allegations, Tabaluyan consented to the described sanctions and to the entry of findings that he altered his Series 6 test results to show that he passed the exam, when in fact, he failed the exam, and presented the altered results to his member firm.

**Carlos Christopher Tellez (Registered Representative, Darmstadt, Germany)** submitted an Offer of Settlement pursuant to which he was censured, fined \$13,000, and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Tellez consented to the described sanctions and to the entry of findings that he misused \$155,000 belonging to a public customer. According to the findings, Tellez deposited the funds in his personal business account, failed to purchase mutual fund shares for the customer, and failed to promptly return the funds to the customer as requested.

**Steven Harry Vornea (Registered Representative, Brookville, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$700,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vornea consented to the described sanctions and to the entry of findings that he acted as principal of his member firm while failing to register as a principal with the NASD. The findings also stated that Vornea caused his firm and its registered representatives to purchase securities before the completion of each of the distributions. Furthermore, the NASD found that Vornea, through his direct and indirect actions, caused his firm to engage in numerous sales practice abuses including, but not limited to, baseless price predictions or guaran-

tees, misrepresentations about issuers, failures to execute customer orders, and requiring customers to purchase aftermarket shares as a condition of receiving initial public offering units, and other high pressure tactics. In addition, the NASD determined that Vornea, through his direct and indirect actions, caused his firm and its registered representatives to manipulate the prices of securities in aftermarket trading, and as a result, the firm generated over \$6 million in illegal profits. Vornea also failed to supervise the activities of his member firm's registered representatives to ensure compliance with applicable securities laws, regulations, and NASD rules.

**John Jeffrey Walker (Registered Representative, Covington, Kentucky)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Walker failed to respond to NASD requests for information.

**Andrew Neal Watson (Registered Principal, Raleigh, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$125,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Watson consented to the described sanctions and to the entry of findings that he misappropriated \$19,137.78 from his member firm by arranging to have himself paid unauthorized increases in his salary.

**Todd Richard Woods (Registered Representative, Columbus, Ohio)** 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 60 days. Without admitting or denying the allegations,

Woods consented to the described sanctions and to the entry of findings that he forged the signature of a public customer onto documents that caused the customer's IRA accounts to be transferred to another firm, without the prior knowledge or consent of the customer.

## Individuals Fined

**Lance Reed Dalton (Registered Representative, Isle Of Palms, South Carolina)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$22,400. Without admitting or denying the allegations, Dalton consented to the described sanctions and to the entry of findings that he engaged in numerous purchase and sale transactions in various securities without having reasonable grounds for believing that such recommendations were suitable for the customers and accounts in view of the frequency of the recommended transactions; the risks associated with the recommended transactions; and the customers' financial situations, objectives, circumstances, and needs.

**William H. Gerhauser, Sr. (Registered Principal, Surrey, Great Britain)** and **William C. Gerhauser, Jr. (Registered Principal, Brentwood, New York)** were censured and fined \$15,000, jointly and severally. In addition, William H. Gerhauser was required to requalify by exam as a financial and operations principal, and William C. Gerhauser was required to requalify by exam as a general securities principal. The SEC imposed the sanctions following appeal of a November 1997 NBCC decision. The sanctions were based on findings that the Gerhausers, acting on behalf of a member firm, conducted a securities business while failing to maintain adequate net capital. The firm, acting through William H. Gerhauser, filed

inaccurate FOCUS Part I and IIA reports, failed to maintain accurate books and records, and failed to give telegraphic notice of a net capital deficiency.

### 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 January 20, 1999. The findings and sanctions imposed in the decision 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*.

#### **Roger Harry Chlowitz (Registered Principal, Northridge, California)**

was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chlowitz failed to respond to NASD requests for information and to provide documents.

Chlowitz has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

#### **Robert Jay Kendzierski (Registered Representative, Erie, Pennsylvania)**

was censured, fined \$80,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kendzierski converted \$6,000 in funds given to him by a public customer by receiving checks totaling \$10,000 from the customer to be deposited in an interest-bearing insurance policy. Kendzierski altered the checks made payable to his member firm and wrote his name instead on the payee line of the checks, converted \$6,000 of the funds to his own use and benefit. Also, Kendzierski made two payments to repay the customer for

\$1,000 and \$5,050, and in an attempt to conceal his conversion, he backdated the \$5,050 check. Kendzierski appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

**Terry Don Rader (Registered Principal, Dallas, Texas)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rader failed to respond to NASD requests for information.

Rader has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

#### **Jerome Edward Rosen (Registered Representative, Miami, Florida)**

was censured, fined \$62,000, and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Rosen engaged in anti-competitive harassment of another Market Maker by making a series of telephone calls to the broker in which he attempted to harass the broker for engaging in competitive trading and entering competitive quotations, and otherwise attempted to improperly influence and/or interfere with the broker's competitive activities. Rosen also made certain threatening statements to the broker. The findings also stated that Rosen backed away from a specific order another broker placed with him at his quoted bid or offer for a Nasdaq SmallCap<sup>SM</sup> security.

Rosen has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

### 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.

#### **Ralph Charles Altomare (Registered Representative, Bellevue, Washington)**

was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers without the prior authorization and consent of the customers.

#### **Daniel Richard Howard (Registered Representative, Cambridge, Massachusetts)**

was named as a respondent in an NASD complaint alleging that he recommended and initiated purchase and sales transactions in the securities account of a public customer without having reasonable grounds for believing that the recommendations and resulting transactions were suitable for the customer in view of the size, frequency, concentration of speculative securities; the nature of the recommended transactions; and in light of the customer's financial situation, investment objectives, circumstances, and needs. The complaint also alleges that Howard falsely answered a question on his Form U-4 and failed to update his Form U-4 to reflect that he was the subject of an NASD investigation in connection with his recommendation of unsuitable securities to a customer.

#### **Damon Todd Lazar (Registered Representative, Plainview, New York)**

was named as a respondent in an NASD complaint alleging that he knowingly or recklessly made numer-

ous material misrepresentations of fact to a public customer in connection with his recommendation to purchase common stock. The complaint also alleges that the misrepresentations were material to the investment decision of the customer and caused him to refrain from executing sales of his position in the common stock. The customer was thereby lulled by Lazar into a false sense of security with respect to his position in the common stock.

**John Anthony Massaro (Registered Representative, Smithtown, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations, failed to disclose material facts, and made fraudulent price predictions to public customers in connection with his solicitation to customers to purchase securities. The complaint also alleges that Massaro effected transactions in the accounts of public customers without the prior authorization of the customers. The complaint alleges that Massaro failed to execute sell orders as instructed by public customers. The complaint also alleges that Massaro failed to respond to NASD requests for information.

### **Firms Suspended/Canceled**

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Alden Capital Markets, Inc.**, New York, New York (January 13, 1999)

**American Freedom Securities, Inc.**, Rochester, New York (January 13, 1999)

**Ash Financial Corp.**, Great Neck, New York (January 13, 1999)

**Cassidy & Co., Inc.**, Blue Bell, Pennsylvania (January 13, 1999)

**Elswick, Banks and Associates, Inc.**, Atlanta, Georgia (January 13, 1999)

**Fisher Hill Securities Corporation**, San Francisco, California (January 13, 1999)

**Fundamental Service Corporation**, New York, New York (January 13, 1999)

**J. Robbins Securities, L.L.C.**, New York, New York (January 13, 1999)

### **Suspensions Lifted**

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

**Northbridge Financial Services**, Ann Arbor, Michigan (December 18, 1998)

### **Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Awards**

**Bryant, Steven Ernest**, Pompano Beach, Florida (January 13, 1999 - January 15, 1999)

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