

# NASD NOTICE TO MEMBERS 96-9

## SEC Approves NASD Proposal Relating To Third-Market Trading In IPOs Of Exchange-Listed Securities

### Suggested Routing

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### Executive Summary

On December 20, 1995, the Securities and Exchange Commission (SEC) approved a proposed Rule change by the NASD<sup>®</sup> that prohibits NASD members from executing over-the-counter transactions in an exchange-listed security that is the subject of an initial public offering (IPO) until the security has opened for trading on the exchange that lists the security. The Rule change is effective immediately.

### Background And Description

To promote the fair and orderly distribution and pricing of exchange-listed securities that are subject to an IPO, the NASD proposed, and the SEC approved, an amendment to Section 4 of Schedule G to the NASD By-Laws that provides that NASD members may not execute over-the-counter transactions (*i.e.*, third-market transactions) in exchange-listed securities that are the subject of an IPO until the exchange listing the security has first opened the security for trading. Under the proposal, a security is deemed to be first opened for trading on the listing exchange when the exchange disseminates an opening transaction in the security via the Consolidated Tape.

Although it has been common practice for participants in the third market to refrain from trading an exchange-listed IPO security until the exchange listing the IPO opens the security for trading, there have been isolated instances where trading in an exchange-listed IPO has begun in the third market before it has begun trading on the market listing the security.

While the NASD has found no evidence that the trading of IPOs in the third market has had any detrimental market effect, the NASD believes prohibiting the trading of exchange-listed IPOs in the third market until the primary market is open is a prudent precautionary step that is consis-

tent with the orderly distribution and pricing of IPO securities.

Questions regarding this Rule change should be directed to NASD Market Surveillance, at (301) 590-6080, or Thomas R. Gira, Assistant General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8957.

### Text Of Amendments

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

### Schedule G

#### Sec. 1. Definitions

(a) through (f) No change.

(g) The term "over-the-counter transaction" shall mean a transaction in an eligible security effected otherwise than on a national securities exchange.

(h) A security is subject to an "initial public offering" if: (1) the offering of the security is registered under the Securities Act of 1933; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering was not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934.

#### Sec. 4. Trading Practices

(a) through (h) No change.

(i) No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.

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