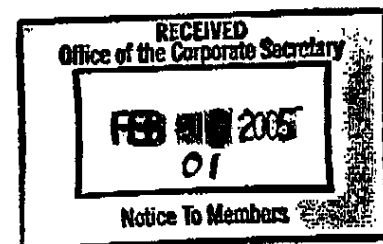


**SUTTER SECURITIES INCORPORATED**

January 31, 2004

Barbara Z. Sweeney
Office of the Corporate Secretary
NASD
1935 K Street NW
Washington, DC 20006-1500

Re: Request for Comment 04-83 - Fairness Opinions Issued by Members

Dear Ms. Sweeney:

Sutter Securities Incorporated appreciates the opportunity to address the NASD's request for comments as to whether to propose a rule concerning conflicts of interest when members provide fairness opinions. Sutter provides fairness opinions as part of its investment banking services. From 1970 through 1995, I was Chairman of the Valuation Committee at Bear, Stearns & Co. Inc., where I supervised all fairness opinions issued by the firm. I am also the author of several book chapters on fairness opinions.

The issue of disclosing conflicts of interest in fairness opinions is an appropriate and timely matter for the NASD to consider. It has become common industry practice for members who advise companies in M&A and other corporate control transactions also to be asked to render fairness opinions to the Board of Directors. In many cases, there is no additional fee charged for providing the fairness opinion. When a member is to receive a substantial fee contingent on closing, there is a presumptive conflict of interest in rendering a fairness opinion on the transaction. Prominent disclosure of the opinion-giver's conflict of interest would be appropriate and would be informative to public investors. Explicit public reference to the potential conflict of interest could have the constructive effect of encouraging corporate directors to engage independent member firms to provide fairness opinions.

In addition, there are other situations in which opinions rendered by members may be affected by potential conflicts of interest. One situation is when a company's financial advisor is asked to provide an "inadequacy opinion" in response to an unwelcome, unsolicited bid; the advisor may be under pressure from incumbent management to oppose the bid. Another situation is when a member that is engaged to render a fairness opinion to a Special Committee in a non-arms'-length transaction has a prior relationship with interested parties, or is seeking future business from the interested parties.

Disclosure requirements should also be applied to these situations. Again, disclosure might induce directors to engage independent members.

On a related issue, the NASD should require members to disclose when their opinion letters in public documents have not been updated. Unfortunately, it has become common practice for opinion letters that are included in proxy statements, information statements, or tender offer documents to be dated as of the date the opinion was first rendered, even though the documents sent to shareholders may be dated several weeks or even months later. Changes in market conditions and/or in the performance and prospects of individual companies often impact the fairness of a transaction.¹ It is inappropriate for investors to be supplied with an opinion that might no longer be valid as of the mailing date. In the absence of a requirement for updating, prominent disclosure that an opinion has not been updated and may no longer be valid would be useful to investors. The disclosure might persuade directors to demand that opinions be appropriately updated.

Thank you for the opportunity to comment. If you have any questions, please call me at (415) 352-6336.

Sincerely yours,



Gilbert E. Matthews, CFA
Chairman
Sutter Securities Incorporated

¹ See Gilbert E. Matthews, "Fairness Opinions: Common Errors and Omissions," in *The Handbook of Business Valuation and Intellectual Property Analysis*, R. Reilly and R. Schweihs, eds. (McGraw Hill, 2004), pp. 230-1.