

NASD NOTICE TO MEMBERS 97-36

NASD Interpretive Letters

Suggested Routing

- Senior Management
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Executive Summary

The Office of General Counsel, NASD Regulation, Inc. (NASD RegulationSM) and Office of General Counsel, The Nasdaq Stock Market, Inc. (Nasdaq[®]) have prepared a compilation of select interpretive letters that have been issued by the respective NASD[®], NASD Regulation, and Nasdaq Offices of General Counsel (OGC), as well as other departments within NASD Regulation and Nasdaq. The compilation includes a broad sample of interpretive letters covering significant and reoccurring interpretive issues presented to the NASD over the last several years. These select interpretive letters will be made available to the members and the public upon written request, and will also reside on the NASD Regulation Web page (www.nasdr.com). Included with this Notice, as Exhibit A, is an index, by NASD rule number, of select interpretive letters as of May 1997.

Interpretive Letter Process

As part of its regulatory responsibilities, the OGC of the NASD, NASD Regulation, and Nasdaq and other departments within NASD Regulation and Nasdaq issue written responses to select interpretive requests seeking interpretive guidance to NASD Rules, NASD By-Law provisions, and procedural rules. These letters are considered staff advisory letters and reflect the opinions of the staff and should be helpful to persons requesting interpretive guidance. Since these letters reflect staff opinions only, they are not binding on the respective Boards of the NASD, NASD Regulation, and Nasdaq. See NASD Regulation and Nasdaq interpretive letter disclaimer which is included as Exhibit B to this Notice. Furthermore, all interpretive letters issued since the reorganization of the NASD into separate operating subsidiaries originate from either the staff of NASD Regulation or Nasdaq. All interpretive letters

issued prior to that time were issued by the staff of the NASD.

Policy Issues— Confidentiality Policy

The OGC staff of NASD Regulation and Nasdaq will select certain interpretive letters from time to time and make them available to the members and the general public. In general, to preserve confidentiality prior to the announcement of this policy, previously issued interpretive letters by the OGC of NASD, NASD Regulation, and Nasdaq and other departments have been afforded confidential treatment, that is, the member-specific information has been redacted from the staff's response.

As of May 20, 1997, all future interpretive letters written by the OGC of NASD Regulation and Nasdaq and other departments will not receive confidential treatment, unless a special request is made to the staff. This special request should accompany the interpretive request and must describe the reasons supporting confidential treatment. The staff will make the confidentiality determination and communicate its response to the requester prior to preparing the interpretive response. All interpretive letter requests received by the staff prior to this date will be made publicly available in a redacted format, that is, the name of the firm, requester, and other sensitive or proprietary information will be deleted from the letter prior to publication. Please note that this confidentiality policy only applies to the interpretive letter project and protects only voluntary disclosure of information by the OGC staff of NASD Regulation, Nasdaq, and other departments.

Public Availability

Interpretive letters included in the index of select interpretive letters will

be made available to NASD members and the public, upon written request. All written requests should be submitted to:

Interpretive Letter Administrator
Office of General Counsel,
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006.

In addition, the staff of NASD Regulation has published selected interpretive letters on the NASD Regulation Web page (www.nasdr.com) and plans to supplement this database with new letters on a periodic basis. Nasdaq anticipates publishing their index and select list of interpretive letters sometime in June 1997.

Questions regarding this *Notice* may be directed to John Ramsay or David A. Spotts, Office of General Counsel, NASD Regulation, at (202) 728-8071, or Thomas Gira or Andrew Margolin, Office of General Counsel, Nasdaq, at (202) 728-8294.

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Exhibit A

NASD Regulation, Inc. Index of Interpretive Letters May 1997

I. MEMBERSHIP AND REGISTRATION RULES

NASD Rule 1020 (Formerly Schedule C, Part II) - Registration of Principals

- 02/19/97 Registration requirements of a member if a registered principal begins consulting relationship with the member as a compliance officer.
- 11/27/95 Registration requirements of a member for persons responsible for actively supervising the employees of member broker/dealer.

II. CONDUCT RULES

NASD Rule 2110 (formerly Article III, Section 1)

Free-Riding and Withholding

- 01/28/97 Holding period requirement under the Free-Riding and Withholding Interpretation for common stock purchased through a directed share program by employees, directors, and associated persons of the member and its subsidiaries.
 - 11/15/96 Participation of U.S. underwriters in the multinational offering of shares under NASD IM-2110-1(b)(8) and NASD Rules 2740(c) and 2750.
- Business Conduct and Selling Concessions
- 12/22/88 Cash rebates issued to pension plan customers with respect to secondary market transactions in outstanding securities.

NASD Rule 2310 (Formerly Article III, Section 2)

Recommendations to Customers

- 03/04/97 Staff clarification of *NASD Notice to Members 96-60* regarding a member's suitability obligation under NASD Rule 2310 with respect to certain investment company transactions.
- 01/23/97 Staff clarification of *NASD Notice to Members 96-60* regarding a member's suitability obligation under NASD Rule 2310.
- 01/23/97 Staff clarification of *NASD Notice to Members 96-60* regarding a member's suitability obligation under NASD Rule 2310.

Recommendations and Books & Records

- 05/18/93 Suitability responsibilities of a discount broker/dealer when a customer is trading in options contracts.

- 11/13/90 Application of *NASD Notice to Members 90-52* to member firms who do not recommend securities transactions to their customers, but limit their business to accepting unsolicited orders from customers.

NASD Rule 2420 (Formerly Article III, Section 25)

Dealing with Non-Members

- 04/11/97 Requirements of NASD Rule 2420 to broker/dealer arrangement to pay certain commissions and SEC Rule 12b-1 fees to accounts of various employee benefit plan customers.

NASD Rule IM-2420 (Formerly Article III, Section 25)

Continuing Commissions Policy

- 12/23/96 Staff interpretation of the continuing commissions policy codified in NASD IM-2420.
- 11/20/96 Staff interpretation of the continuing commissions policy codified in NASD IM-2420.

NASD Rule 2440 (Formerly Article III, Section 4)

Fair Prices and Commissions

- 05/02/96 Member's use of minimum commissions per trade or per share and the use of standardized commission schedules.

NASD Rule 2740 (Formerly Article III, Section 24)

Business Conduct, Selling Concessions, and Dealing with Non-Members

- 11/15/96 Participation of U.S. underwriters in the multinational offering of shares under NASD IM-2110-1(b)(8) and NASD Rules 2740(c) and 2750.

NASD Rule 2860 (Formerly Article III, Section 33)

- 02/24/93 Whether a proposed standby purchase agreement entered into between affiliate of a member and an issuer in connection with a public offering of the issuer's common stock could constitute an option.

NASD Rule 3010 (Formerly Article III, Section 27)

- 04/11/97 Application of NASD Rules to the sale of group variable products.
- 08/13/96 Requirements of member firms to establish a schedule for and conduct inspections of Offices of Supervisory Jurisdiction and branch offices.
- 08/09/96 Minimum requirements under NASD Rule 3010 if a member centralizes its supervisory oversight function over the firm's employees who are both acting as registered representatives and as investment advisers.

NASD Rule 3110 (Formerly Article III, Section 21)

Business Conduct and Books & Records

11/01/95 Requirements of member firms in maintaining do-not-call lists under NASD Rule 3110.

NASD Rule 3030 (Formerly Article III, Section 43)

Transactions for or by Associated Persons, Private Securities Transactions and Outside Business Activities

09/15/94 Requirements under NASD Rule 3030 with investment seminar activities conducted by dually registered persons that charge fees from participants.

NASD Rule 3040 (Formerly Article III, Section 40)

Business Conduct, Supervision, Private Securities Transactions, and Outside Business Activities

12/16/96 Applicability of NASD Rules to registered representatives of subsidiary bank of member broker/dealer.

Private Securities Transactions

07/23/96 The applicability of NASD Rule 3040 to situations in which associated persons are proposing to receive selling compensation.

Transactions for or by Associated Persons, Private Securities Transactions and Outside Business Activities

09/27/94 The applicability of Section 40 (Rule 3040) to situations in which a financial plan is delivered to a customer without an execution of a securities transaction.

08/05/94 Clarification of *NASD Notice to Members 94-44* to situations in which a dually registered person maintains discretionary trading authority, determines portfolio changes, and prepares trade instructions for customer accounts and charges the accounts an asset-based fee.

NASD Rule 3070 (Formerly Article III, Section 50)

05/28/96 Applicability of NASD Rule 3070 to the operations of a mutual fund variable product distributor broker/dealer with a separately registered transfer agent.

05/28/96 Applicability of Rule 3070 to the operations of a mutual fund and variable product distributor broker/dealer.

NASD Rule 3370 (Formerly Article III, Section 1)

09/18/96 Affirmative determination for short sales under NASD Rule 3370.

Exhibit B

NASD Regulation and Nasdaq Interpretive Letters Disclaimer:

In an effort to assist member firms, securities professionals, lawyers, and others having an interest in the rules administered by the National Association of Securities Dealers, Inc., and its subsidiaries, the staff of NASD Regulation, Inc. and Nasdaq have selected for publication a number of staff interpretive and general informational letters. In publishing these letters, NASD Regulation and Nasdaq have not attempted to identify or publish all letters that have been issued on a particular subject. Similarly, NASD Regulation and Nasdaq do not attempt to review letters, once they have been published, for the purpose of identifying or removing those that may have become outdated or superseded.

All interpretive positions are staff positions, unless, otherwise indicated. Staff-issued interpretive letters express staff views and opinions only and are not binding on the NASD, Nasdaq, or NASD Regulation, their respective Boards of Directors/Governors; any representation to the contrary is expressly disclaimed. The letters are provided only for the purpose of providing general guidance on the staff's views as to the application of particular NASD rules under specific circumstances. Members, associated persons, and their counsel should consider the need for further guidance as to the application of NASD rules to their own unique circumstances.

To reflect current policy, all interpretive letters selected for publication after May 20, 1997, generally will be published in their entirety without redaction. All letters published prior to that date will reflect the redaction of certain personal, confidential, or identifying information (e.g., name and addresses of persons and organizations, names of member customers, amounts of transactions, financial data, etc.).