

# Notice To Members

National Association of Securities Dealers, Inc.

May 1991

## Number 91-24

### Suggested Routing:\*

- |   |  |  |                                    |
|---|--|--|------------------------------------|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit                | <input type="checkbox"/> Operations              | <input type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance            | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options                 | <input type="checkbox"/> Systems   |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal                     | <input checked="" type="checkbox"/> Registration | <input type="checkbox"/> Trading   |
| <input type="checkbox"/> Institutional                | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research                | <input type="checkbox"/> Training  |

\*These are suggested departments only. Others may be appropriate for your firm.

## MAIL VOTE

**Subject: Proposed New Rule Re: Suspension or Cancellation of Registration for Failure to Pay Fees, Dues, or Other Assessments; Last Voting Date: June 4, 1991**

### EXECUTIVE SUMMARY

The NASD invites members to vote on a proposed amendment to Article VI, Sections 3 and 4 of the By-Laws to provide for the suspension or cancellation of the registration of an associated person in the event of nonpayment of fees, dues, or assessments.

### BACKGROUND

Article VI of the NASD By-Laws generally provides the Board of Governors with the authority to charge fees, dues, and assessments to members, issuers, and persons using facilities and systems operated or controlled by the NASD. Section 3 of that Article currently authorizes the NASD, after providing written notice, to suspend or cancel the membership of any member that fails to pay any fees, dues, assessments, or other charges. Failure to pay forum fees associated with the arbitration process operated by the NASD may result in the suspension or cancellation of a firm's membership. Section 3, however, does not apply to associated persons who fail to pay fees, dues, or assessments.

Section 2 of Article V of the Rules of Fair

Practice authorizes the NASD, after providing written notice, to revoke the registration of an associated person who has failed to pay any fine or cost imposed in connection with disciplinary proceedings or proceedings conducted under the Code of Procedure. At present, however, no provision of the NASD's By-Laws, Rules of Fair Practice, Code of Arbitration Procedure, or Code of Procedure provides for the suspension or cancellation of an associated person's registration for the failure to pay arbitration forum fees. Moreover, the number of associated persons who fail to pay forum fees is increasing.

### EXPLANATION

The NASD is proposing to amend Sections 3 and 4 of Article VI of the By-Laws to suspend or cancel after 15 days notice, in writing, the registration of any associated person who has failed to pay fees, dues, assessments, or other charges owed for the use of facilities or systems operated or controlled by the NASD.

The NASD Board of Governors believes that this rule change is warranted to protect the integrity of the arbitration process and the marketplace, and to provide uniformity in the treatment of associated persons failing to pay fees. Thus, the Board believes the proposed amendment is necessary and

appropriate and recommends that members vote their approval. Please mark the attached ballot according to your convictions and return it in the enclosed, stamped envelope to The Corporation Trust Company. Ballots must be postmarked **no later than June 4, 1991.**

Questions regarding this notice may be directed to Craig L. Landauer or Maureen Eisenberg, Office of the General Counsel, at (202) 728-8291 or (202) 728-8245, respectively.

**PROPOSED CHANGES TO ARTICLE VI OF THE NASD BY-LAWS**

(Note: Proposed new language is underlined.)

Dues, Assessments and Other Charges

\* \* \* \* \*

**Suspension or Cancellation of Membership or Registration for Non-Payment of Dues**

**Sec. 3.** The Corporation after fifteen (15) days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments or other charges or for failure to furnish any information or reports requested pursuant to Section 2 of this Article.

**Reinstatement of Membership or Registration**

**Sec. 4.** Any membership or registration suspended or canceled under this Article may be reinstated by the Corporation upon such terms and conditions as it shall deem just; provided, however, that any applicant for reinstatement shall possess the qualifications required for membership in the Corporation.

# Notice To Members

National Association of Securities Dealers, Inc.

May 1991

## Number 91-25

### Suggested Routing:\*

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|---|--|---------------------------------------|--|
| <input checked="" type="checkbox"/> Senior Management | <input checked="" type="checkbox"/> Internal Audit     | <input type="checkbox"/> Operations   | <input type="checkbox"/> Syndicate           |
| <input type="checkbox"/> Corporate Finance            | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options      | <input type="checkbox"/> Systems             |
| <input type="checkbox"/> Government Securities        | <input checked="" type="checkbox"/> Municipal          | <input type="checkbox"/> Registration | <input type="checkbox"/> Trading             |
| <input type="checkbox"/> Institutional                | <input checked="" type="checkbox"/> Mutual Fund        | <input type="checkbox"/> Research     | <input checked="" type="checkbox"/> Training |

\*These are suggested departments only. Others may be appropriate for your firm.

**Subject: Request for Comments on Proposed Amendments to Article III, Sections 26 and 29 of The NASD Rules of Fair Practice Re: Cash and Noncash Compensation Received by Members in Connection With the Sale of Investment Company Securities and Variable Contracts; Last Date for Comments: June 4, 1991**

### EXECUTIVE SUMMARY

The NASD requests comments on proposed amendments to Article III, Sections 26 and 29 of the NASD Rules of Fair Practice. The amendments would revise, simplify, and add a recordkeeping requirement to subsection (l) of Section 26 and add a similar requirement (new subsection (h)) to Section 29.

### BACKGROUND

In July 1989, the NASD Board of Governors, in *Notice to Members 89-51*, requested comment on proposed amendments to subsection (l), Article III, Section 26 of the NASD Rules of Fair Practice that would have revised and simplified the rule and added a recordkeeping requirement. The NASD received six comment letters, and the Board decided not to proceed further with the adoption of the amendments at that time because it wished to give further consideration to the issue of whether members should be prohibited from receiving noncash sales incentives for the sale of investment company securities and variable contracts similar to the prohibitions contained in Section 5(e) to Appendix F,

Article III, Section 34 of the Rules of Fair Practice, which applies to direct participation programs.

The Board has now decided not to recommend prohibiting such noncash sales incentives and also considers, on the recommendation of the Variable Contracts Committee, that a requirement similar to subsection (l) of Article III, Section 26 should be added to the Variable Contracts Rule (Article III, Section 29 of the NASD Rules of Fair Practice).

The proposed amendments in this notice are essentially the same as those contained in *Notice to Members 89-51*.

### PROPOSED AMENDMENTS

Although the main purpose of the proposed amendments is to adopt a recordkeeping requirement for members with respect to noncash sales incentives, the amendments also provide an opportunity to revise the rule to reflect current practices in the offer of investment company securities.

The major requirement of the current rule, which is prospectus disclosure of compensation, cash and noncash, is retained, as are the disclosure requirements with respect to "special deals."

The requirement that a member must be given the opportunity to take cash in lieu of a noncash

concession has been eliminated since experience indicates that it is rarely used.

Subsection (b)(7) — Definitions

The current rule governs the relationship between underwriters of and dealers in investment company securities with respect to concessions paid by the former to the latter for the retail sale of investment company securities. This is because the rule was adopted before the advent of asset-based and deferred sales charges, when the method of paying dealers was the reallowance to a dealer by an underwriter of part of the front-end sales charge.

Nowadays, payments to dealers may emanate from front-end, deferred, and asset-based sales charges and may be paid by underwriters and investment companies.

Thus, the term "dealer concession" in the current rule is no longer appropriate and has been replaced by the term "compensation." "Compensation" is intended to encompass every kind of payment received by a member for retailing investment company securities, regardless of the source of the payment or the payor.

The term "cash compensation" is defined to include any kind of payment in cash, by check, and by electronic means. "Non-cash compensation" is defined to include any payment received by a member that is not cash compensation. The noncash compensation items that are often used in the industry are included in the definition.

All the persons and entities likely to be payors are defined collectively as "offerors."

Subsection (1)

Since the revised definitions section defines "compensation" and "offeror," most of current paragraph (1)(1) is superfluous. It has been replaced by an introductory sentence stating that the rule applies to the sale of investment company securities.

Paragraph (1)

This is a new paragraph that will require members to keep records of the receipt and distribution of all compensation, cash and noncash, from offerors. It is anticipated that this requirement will enhance a member's ability to control the flow of noncash sales incentives from offerors to registered representatives.

Paragraph (2)

The current rule prohibits an underwriter or its associated persons from paying a concession directly to an associated person of a member. Payments must be made to a member for distribution to its representatives. Since today, payments may be made by entities other than an underwriter who are not NASD members (e.g., a mutual fund) the paragraph has been revised to prohibit associated persons of members from accepting compensation for selling investment company securities from anyone other than the member with which they are registered.

In situations where compensation is in the form of merchandise, board and lodging, travel vouchers, or tickets, it would be difficult, in some circumstances, for the compensation to be routed physically through a member firm. Compliance with the rule in these situations would require that the offer be directed to the member, that the member decide whether to accept or reject the offer, and that the member record any such noncash compensation received by its registered representatives.

Paragraph (3)

This is the same provision as in the current rule with minor language changes. It prohibits a member or persons associated with a member from receiving compensation in the form of securities of any kind. The three kinds of securities — stock, warrants, and options — that appear in the current rule have been omitted in the proposed amendment. They are redundant because the rule refers to "securities of any kind." It is interesting to note that the kinds of securities most likely to be offered — mutual funds or investment management company stock — are not named in the current rule.

The proposed amendments omit the provision in the current rule that a member must be given an opportunity by the underwriter to accept cash in lieu of a noncash concession. Experience indicates that this option is rarely, if ever, chosen by a member.

Paragraph (4)

The current rule is primarily a disclosure rule. The concept of an "item of material value" is used to determine whether there must be disclosure of a concession in the prospectus. The current rule lists some items that are and some that are not considered to be items of material value.

Prior to the adoption of the current rule, the NASD had a "special deals" interpretation. From time to time, members would inquire whether a particular item was considered to be a "special deal." If it was, it was prohibited. When the current rule was being developed, it was decided to include some of the special deals that had been prohibited by interpretation as items of material value subject to disclosure in the prospectus. Similarly, those that were of limited material value and had not been prohibited were included as items not required to be disclosed in the prospectus.

The proposed amendments do not contemplate using the concept of an "item of material value" because the term "compensation" is intended to cover all forms of compensation (including, for example, loans and overrides) that a member or its associated persons may be offered for selling investment company securities.

Paragraph (5)

This paragraph describes two items that are not required to be disclosed in prospectuses provided they are not conditioned on sales. Those items are gifts of not more than \$100 per person per annum and payments to members to defray the cost of educational and training meetings held at an appropriate business location. Both of these items are deemed to be compensation and would be subject to the recordkeeping requirement in paragraph (1). The Investment Companies Committee is requesting the submission of comments addressing the burden imposed on members by this recordkeeping requirement.

Paragraph (6)

This paragraph reiterates the provisions of the current rule (paragraph (4)) with minor language changes.

**SUMMARY**

The primary intent of the proposed amendments is to introduce a recordkeeping requirement. The fundamental purpose of the rule, to require disclosure in prospectuses of all forms of compensation paid to members for selling investment company securities to the public, is retained. The prohibitions against associated persons receiving compensation directly from offerors without the knowledge and agreement of their member firms is also retained.

In addition, the proposed amendments revise and simplify many of the current rules' provisions and modernize them to reflect current practices utilized in the investment company industry in compensating NASD members for the retail sale of investment company securities.

Currently, Section 29 does not contain a similar section dealing with cash and noncash compensation. In proposing that similar rule amendments be added to Section 29, the language has been changed where necessary to accommodate procedures and language used in the variable contracts industry. Moreover, the recordkeeping and disclosure requirements proposed to be adopted in Sections 26 and 29 differ from the prohibitions contained in Section 5(e) to Appendix F, Article III, Section 34 of the Rules of Fair Practice that apply to noncash sales incentives in connection with the sale of direct participation programs.

The NASD encourages all members and other interested parties to comment on the proposed amendments to Article III, Sections 26 and 29, of the Rules of Fair Practice. Comments should be forwarded to Stephen Hickman, Office of the Secretary, National Association of Securities Dealers, Inc., 1735 K Street, NW, Washington, D.C. 20006-1506. Comments should be received by June 4, 1991.

Questions concerning this notice should be directed to A. John Taylor, Vice President, Investment Companies/Variable Contracts, at (202) 728-8328.

**PROPOSED AMENDMENT TO ARTICLE III,  
SECTION 26 OF THE NASD  
RULES OF FAIR PRACTICE**

(Note: New text is underlined; deleted text is in brackets.)

Definitions

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[(b)(7) "Associated person of an underwriter," as used in subsection (1) of this section, shall include an issuer for which an underwriter is the sponsor or a principal underwriter, any investment adviser to such issuer, or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such underwriter, issuer, or investment adviser.]

(b)(7) The terms "offeror," "cash compensation" and "non-cash compensation" as used in subsection

(1) of this section shall have the following meanings:

"Offeror" shall mean an investment company, an adviser to an investment company, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

"Cash compensation" shall mean compensation received by member in cash, by check and by electronic means and shall include loans and overrides.

"Non-cash compensation" shall mean any form of compensation received by members that is not cash compensation, including but not limited to merchandise, gifts and prizes, and payment of travel expenses, meals and lodging.

\* \* \* \* \*

[Dealer concessions]

[(1)(1) No underwriter or associated person of an underwriter shall offer, pay or arrange for the offer or payment to any other member in connection with retail sales or distribution of investment company securities, any discount, concession, fee or commission (hereinafter referred to as "concession") which:]

[(A) is in the form of securities of any kind, including stock, warrants or options;]

[(B) is in a form other than cash (e.g., merchandise or trips), unless the member earning the concession may elect to receive cash at the equivalent of no less than the underwriter's cost of providing the non-cash concession: or]

[(C) is not disclosed in the prospectus of the investment company. If the concessions are not uniformly paid to all dealers purchasing the same dollar amounts of securities from the underwriter, the disclosure shall include a description of the circumstances of any general variations from the standard schedule of concessions. If special compensation arrangements have been made with individual dealers, which arrangements are not generally available to all dealers, the details of the arrangements, and the identities of the dealers shall also be disclosed.]

[(2) No underwriter or associated person of an underwriter shall offer or pay any concession to an associated person of another member, but shall make such payment only to the member.]

[(3)(A) In connection with retail sales or distribution of investment company shares, no underwriter or associated person of an underwriter shall

offer or pay to any member or associated person anything of material value, and no member or associated person shall solicit or accept anything of material value, in addition to the concessions disclosed in the prospectus.]

[(B) For purposes of this paragraph (1)(3), items of material value shall include but not be limited to:]

[(i) gifts amounting in value to more than \$50 per person per year.]

[(ii) gifts or payments of any kind which are conditioned on the sale of investment company securities.]

[(iii) loans made or guaranteed to a non-controlled member or person associated with a member.]

[(iv) wholesale overrides (commissions) granted to a member on its own retail sales unless the arrangement, as well as the identity of the member, is set forth in the prospectus of the investment company.]

[(v) payment or reimbursement of travel expenses, including overnight lodging, in excess of \$50 per person per year unless such payment or reimbursement is in connection with a business meeting, conference or seminar held by an underwriter for informational purposes relative to the fund or funds of its sponsorship and is not conditioned on sales of shares of an investment company. A meeting, conference or seminar shall not be deemed to be of a business nature unless: the person to whom payment or reimbursement is made is personally present at, or is en route to or from, such meeting in each of the days for which payment or reimbursement is made; the person on whose behalf payment or reimbursement is made is engaged in the securities business; and the location and facilities provided are appropriate to the purpose, which would ordinarily mean the sponsor's office.]

[(C) For purposes of this paragraph (1)(3), items of material value shall not include:]

[(i) an occasional dinner, a ticket to a sporting event or the theater, or comparable entertainment of one or more registered representatives which is not conditioned on sales of shares of an

investment company and is neither so frequent nor so extensive as to raise any question of propriety.]

[(ii) a breakfast, luncheon, dinner, reception or cocktail party given for a group of registered representatives in conjunction with a bona fide business or sales meeting, whether at the headquarters of a fund or its underwriter or in some other city.]

[(iii) an unconditional gift of a typical item of reminder advertising such as a ballpoint pen with the name of the advertiser inscribed, a calendar pad, or other gifts amounting in value to not more than \$50 per person per year.]

[(4) The provisions of this subsection (1) shall not apply to:]

[(A) Contracts between principal underwriters of the same security.]

[(B) Contracts between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.]

[(C) Compensation arrangements of an underwriter or sponsor with its own sales personnel.]

Member Compensation

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

(1) A member shall maintain records of all compensation, cash and non-cash, received from offerors and the distribution by the member of any such compensation to its associated persons. The records shall include the names of the offerors, the names of the associated persons and the amount and nature of the compensation received and distributed.

(2) Except as described in paragraph (5), no associated person of a member shall accept any compensation, cash or non-cash, from anyone other than the member with which the person is associated.

(3) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(4) Except as described in paragraph (5), no member shall accept any compensation, cash or non-cash, from an offeror unless such is described in the current prospectus of the investment company. When special compensation arrangements

are offered by an offeror to a member, which arrangements are not made available on the same terms to all members who distribute the investment company securities of the offeror, a member shall not enter into such arrangements unless the name of the member and the details of the arrangements are disclosed in the prospectus.

(5) Notwithstanding the provisions of subsections (2) and (4) of this section, the following items of compensation may be accepted and are not required to be disclosed in a prospectus provided that they are not conditioned on sales or the promise of sales:

(a) Gifts by an offeror to associated persons of members, with the approval of the member, that do not exceed \$100 in value per annum, per person.

(b) Payment or reimbursement by offerors to members in connection with training or educational meetings where the location is appropriate to the purpose of such meetings, which would ordinarily mean a business location where the offeror or the member has an office.

(6) The provisions of this Section (1) shall not apply to:

(a) Compensation arrangements between principal underwriters of the same security.

(b) Compensation arrangements between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.

(c) Compensation arrangements between a member and its own associated persons.

**PROPOSED AMENDMENT TO ARTICLE III,  
SECTION 29 OF THE NASD  
RULES OF FAIR PRACTICE**

(Note: New text is underlined.)

Definitions

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(b)(3) The terms "offeror," "cash compensation" and "non-cash compensation" as used in subsection (h) of this Section shall have the following meanings:

"Offeror" shall mean a separate account of an insurance company, an adviser to a separate ac-



count of an insurance company, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

"Cash compensation" shall mean compensation received by members in cash, by check and by electronic means and shall include loans and overrides.

"Non-cash compensation" shall mean any form of compensation received by members that is not cash compensation, including but not limited to merchandise, gifts and prizes, and payment of travel expenses, meals and lodging.

\* \* \* \* \*

#### Member Compensation

(h) In connection with the sale and distribution of variable contracts:

(1) A member shall maintain records of all compensation, cash and non-cash, received from offerors and the distribution by the member of any such compensation to its associated persons. The records shall include the names of the offerors, the names of the associated persons and the amount and nature of the compensation received and distributed.

(2) Except as described in paragraph (5), no associated person of a member shall accept any compensation, cash or non-cash, from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements, agreed to by a member, where an insurance company maintains a commission account as a ministerial service for a member and, on behalf of the member, pays commission checks from such an account directly to associated persons of the member.

(3) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(4) Except as described in paragraph (5), no member shall accept any compensation, cash or non-cash, from an offeror unless such is described in the current prospectus of the variable contract. When special compensation arrangements are offered by an offeror to a member, which arrangements are not made available on the same terms to all members who distribute the variable contracts of the offeror, a member shall not enter into such arrangements unless the name of the member and the details of the arrangements are disclosed in the prospectus.

(5) Notwithstanding the provisions of subsections (2) and (4) of this section, the following items of compensation may be accepted and are not required to be disclosed in a prospectus provided that they are not conditioned on sales or the promise of sales:

(a) Gifts by an offeror to associated persons of members, with the approval of the member, that do not exceed \$100 in value per annum, per person.

(b) Payment or reimbursement by offerors to members in connection with training or educational meetings where the location is appropriate to the purpose of such meetings, which would ordinarily mean a business location where the offeror or the member has an office.

(6) The provisions of this Section (h) shall not apply to:

(a) Compensation arrangements between principal underwriters of the same security.

(b) Compensation arrangements between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.

(c) Compensation arrangements between a member and its own associated persons.



# Notice To Members

National Association of Securities Dealers, Inc.

May 1991

## Number 91-26

### Suggested Routing:\*

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|---|--|--|------------------------------------|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit                | <input type="checkbox"/> Operations              | <input type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance            | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options                 | <input type="checkbox"/> Systems   |
| <input type="checkbox"/> Government Securities        | <input checked="" type="checkbox"/> Municipal          | <input checked="" type="checkbox"/> Registration | <input type="checkbox"/> Trading   |
| <input type="checkbox"/> Institutional                | <input checked="" type="checkbox"/> Mutual Fund        | <input type="checkbox"/> Research                | <input type="checkbox"/> Training  |

\*These are suggested departments only. Others may be appropriate for your firm.

## Subject: SEC Approval of Amendment Re: Use and Disclosure of Member Names

### EXECUTIVE SUMMARY

The Securities and Exchange Commission (SEC or "Commission") has approved an amendment to Article III, Section 35 of the NASD Rules of Fair Practice that establishes standards regarding the use and disclosure of member names in public communications, including business cards and letterhead. The amendment reflects the NASD's concern that members of the public may be confused by public communications that either fail to refer to an NASD member firm by its registered name or include unclear references to both

NASD member firms and entities that are not NASD members. Unless the identity of and the products offered by an NASD member firm are made clear in such communications, there is a possibility that the public will be confused or misled regarding which entity is, in fact, offering securities. The amendment seeks to address this problem by establishing both general and specific standards governing the manner in which member names must be disclosed in communications with the public. The text of the amendment follows this notice.

### BACKGROUND AND SUMMARY

The amendment establishes standards regarding the use and disclosure of member names in public communications, including business cards and letterhead. The change reflects the concern of the Board of Governors that members of the public may be confused by public communications that either fail to refer to an NASD member firm by its registered name or include unclear references to both NASD member firms and entities that are not NASD members. The amendment is based on the premise that, unless the identity of and the products offered by an NASD member firm are made

clear in such communications, there is a possibility that the public will be confused or misled regarding which entity is, in fact, offering securities. The revision seeks to address this problem by establishing both general and specific standards governing the manner in which member names must be disclosed in communications with the public.

The proposed amendment was submitted to the membership for comment in 1988. In response to the comment letters received, significant modifications were made to the proposed amendment. Consult *Notice to Members 88-65* and *89-22* regarding the differences between the amendment as

originally proposed and as approved by the membership. The proposed amendment was filed with the SEC April 25, 1990, and was published for comment in the *Federal Register*. In response to comment letters received by the SEC, the NASD made further modifications to the amendment that were approved by the membership. Consult *Notice to Members 90-62* regarding these modifications. The revised version of the amendment was filed with the SEC January 28, 1991. The SEC approved the amendment March 27, 1991, in Exchange Act Release No. 34-29016.

The general standards contained in the amendment require, among other things, that the names of NASD members be disclosed clearly and prominently; that when multiple entities are named in one communication, the nature of the relationships, if any, between the NASD member and the named entities, and the products offered by each entity be clear; and that when an individual and multiple entities are named in one communication, the nature of the individual's relationship with the NASD member be clearly identified. The general standards also prohibit communications from including references to nonexistent degrees or designations, and bar the use of bona fide degrees or designations in a misleading manner when referring to individuals.

### SPECIFIC STANDARDS

In addition to general standards, the amendment sets forth a number of specific standards to address certain recurring problem areas.

■ **Fictional Names** — Under the amendment, members may voluntarily use fictional or DBA designations in communications when the DBA name has been filed with the NASD and the SEC on the Form BD and is the only name under which the member is recognized. In cases in which a state or other regulatory authority requires a member to use a DBA (e.g., because the member's NASD-approved name was deemed too similar to that of another corporation registered in the state), the amendment permits the member to use the DBA only in the jurisdiction that requires its use. With respect to required use of DBA names, the amendment also requires that, whenever possible, the member use the same DBA name in every jurisdiction that requires the use of a DBA. In addition, the amendment requires, with respect to a required DBA, that members clearly disclose both the name

of the member as set forth on the Form BD and the fact that the firm is using a DBA designation in the particular state or jurisdiction.

■ **Generic Names** — Under certain circumstances, the amendment permits members to use altered versions of the firm name to promote certain areas of a member firm's business or to use an "umbrella" tag line to promote name recognition. The amendment allows the use of generic names so long as the member name is clearly and prominently disclosed, the relationship between the generic name and the member is clear, and there is no implication that the generic is the name of the registered broker-dealer.

■ **"Division of" Designations** — With respect to use of "division of" and similar designations, the amendment permits members to designate a portion of their business in this manner only when the designation is used with respect to a bona fide division of the member (i.e., a division that results from a merger or acquisition, or a functional division that conducts a specialized aspect of the member's business). The amendment also requires that the member name be clearly and prominently disclosed, and that the division be clearly identified as a division of the member.

■ **"Service of" and "Securities Offered Through"** — With respect to the use by financial planners or other nonmember entities of phrases such as "service of" or "securities offered through" followed by the name of a member firm, the amendment requires that the name of the member be clearly and prominently disclosed. In addition, it mandates that the securities function be clearly identified as a function of the member rather than of the financial planning or other entity that also is named in the communication.

■ **Derivative Names** — Under certain limited circumstances, the amendment permits a member to use a "derivative" of its name, without also including the member's full name, if: (1) the derivative name is used to promote a specific area of the firm's business, and (2) use of the derivative would not be misleading in context. Thus, for example, if a member firm uses a "derivative" name to promote its investment banking business, the firm might be permitted to omit the full firm name from typical "tombstone" advertisements on the ground that the use of a derivative would not be misleading in the context of advertisements that are primarily directed to an institutional, nonretail audience

that will not be confused by the absence of the full broker-dealer name.

**EFFECTIVE DATE**

In order to provide members with sufficient time to consume existing supplies of such business stationery as letterhead, business cards, confirmation forms, and similar printed material, the amendment will not take effect with respect to such printed business stationery until November 1, 1991. In all other respects, the amendment becomes effective June 1, 1991.

Questions concerning this notice can be directed to R. Clark Hooper, Director, NASD Advertising Department, at (202) 728-8330, or Anne H. Wright, Senior Attorney, NASD Office of the General Counsel, at (202) 728-8815.

**TEXT OF AMENDED ARTICLE III, SECTION 35 OF NASD RULES OF FAIR PRACTICE**

(Note: New language is underlined; deleted language is in brackets.)

**COMMUNICATIONS WITH THE PUBLIC**  
Sec. 35.

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(d) Standards Applicable to Communications with the Public

(1) General Standards

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(C) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of [paragraph] subsections (d) and (g) of this [s]Section.

(2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply:

(A) Necessary Data: Advertisements and sales literature shall contain the name of the member, unless such advertisements and sales literature comply with subsection (g) of this Section. Sales literature shall contain the name of the person or firm preparing the material, if other than the mem-

ber, and the date on which it is first published, circulated or distributed [(except that, in advertisements, only the name of the member need be stated and except also that, in any so-called "blind" advertisement used for recruiting personnel, the name of the member may be omitted)]. If the information in the material is not current, this fact should be stated.

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\*

(g) Standards Applicable to the Use and Disclosure of the NASD Member's Name

(1) In addition to the provisions of subsection (d) of this Section, members' public communications shall conform to the following provisions concerning the use and disclosure of member names. The term "communication" as used herein shall include any item defined as either "advertising" or "sales literature" in subsection (a) of this Section. The term "communication" shall also include, among other things, business cards and letterhead.

(2) General Standards

(A) Any communication used in the promotion of a member's securities business must clearly and prominently set forth the name of the NASD member. This requirement shall not apply to so-called "blind" advertisements used for recruiting personnel or to those communications meeting the provisions of subsection (g)(3) of this Section.

(B) If a nonmember entity is named in a communication in addition to the member, the relationship, or lack of relationship, between the member and the entity shall be clear.

(C) If a nonmember entity is named in a communication in addition to the member and products or services are identified, no confusion shall be created as to which entity is offering which products and services. Securities products and services shall be clearly identified as being offered by the member.

(D) If an individual is named in a communication containing the names of the member and a non-member entity, the nature of the affiliation or relationship of the individual with the member shall be clear.

(E) Communications that refer to individuals may not include, with respect to such individuals, references to nonexistent or self-conferred degrees or designations, nor may such communications make reference to bona fide degrees or designa-

tions in a misleading manner.

(F) If a communication identifies a single company, the communication shall not be used in a manner which implies the offering of a product or service not available from the company named.

(G) The positioning of disclosure can create confusion even if the disclosures or references are entirely accurate. To avoid confusion, a reference to an affiliation (e.g., registered representative) shall not be placed in proximity to the wrong entity.

(H) Any reference to memberships (e.g., NASD, SIPC, etc.) shall be clearly identified as belonging to the entity that is the actual member of the organization.

(3) Specific Standards

The foregoing standards set forth in subsections (g)(1) and (g)(2) shall apply to all communications unless at least one of the following special circumstances exists, in which case the standards set forth herein would supersede the standards in subsections (g)(1) and (g)(2).

(A) Doing Business As: An NASD member may use a fictional name in communications provided that the following conditions are met:

(i) Non-Required Fictional Name: A member may voluntarily use a fictional name provided that the name has been filed with the NASD and the SEC, all business is conducted under that name and it is the only name by which the firm is recognized.

(ii) Required Fictional Name: If a state or other regulatory authority requires a member to use a fictional name, the following conditions shall be met:

(1) The fictional name shall be used to conduct business only within the state or jurisdiction requiring its use.

(2) If more than one state or jurisdiction requires a firm to use a fictional name, the same name shall be used in each, wherever possible.

(3) Any communication shall disclose the name of the member and the fact that the firm is doing business in that state or jurisdiction under the fictional name, unless the regulatory authority prohibits such disclosure.

(B) Generic Names: An NASD member may use an "umbrella" designation to promote name recognition, provided that the following conditions are met:

are met:

(i) The name of the member shall be clearly and prominently disclosed;

(ii) The relationship between the generic name and the member shall be clear; and

(iii) There shall be no implication that the generic name is the name of a registered broker/dealer.

(C) Derivative Names: An NASD member may use a derivative of the firm name to promote certain areas of the firm's business, provided that the name of the member is clearly and prominently disclosed. Absent such disclosure, the following conditions must be met:

(i) The name used to promote a specific area of the firm's business shall be a derivative of the member name; and,

(ii) The derivative name shall not be misleading in the context in which it is being used.

(D) "Division of": An NASD member firm may designate an aspect of its business as a division of the firm, provided that the following conditions are met:

(i) The designation shall only be used by a bona fide division of the member. This shall include:

(1) a division resulting from a merger or acquisition that will continue the previous firm's business; or

(2) a functional division that conducts or will conduct one specialized aspect of the firm's business.

(ii) The name of the member shall be clearly and prominently disclosed.

(iii) The division shall be clearly identified as a division of the member firm.

(E) "Service of/Securities Offered Through": An NASD member firm may identify its brokerage service being offered through other institutions as a service of the member, provided that the following conditions are met:

(i) The name of the member shall be clearly and prominently disclosed.

(ii) The service shall be clearly identified as a service of the member firm.

(F) Telephone Directory Line Listings, Business Cards and Letterhead: All such listings, cards or letterhead shall conform to the provisions of Article III, Section 27(g)(2) of the Rules of Fair Practice.

# Notice To Members

National Association of Securities Dealers, Inc.

May 1991

## Number 91-27

### Suggested Routing:\*

- |   |  |  |                                    |
|---|--|--|------------------------------------|
| <input checked="" type="checkbox"/> Senior Management | <input checked="" type="checkbox"/> Internal Audit     | <input type="checkbox"/> Operations              | <input type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance            | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options                 | <input type="checkbox"/> Systems   |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal                     | <input checked="" type="checkbox"/> Registration | <input type="checkbox"/> Trading   |
| <input type="checkbox"/> Institutional                | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research                | <input type="checkbox"/> Training  |

\*These are suggested departments only. Others may be appropriate for your firm.

### Subject: SEC Approval of Amendment to Article III, Section 28 of the Rules of Fair Practice Re: Associated Person Notifying Employer Prior to Opening Securities Account With Another Member

#### EXECUTIVE SUMMARY

The Securities and Exchange Commission (SEC) has approved an amendment to Article III, Section 28 of the NASD Rules of Fair Practice requiring an associated person to notify the employer member in writing prior to opening an account or placing an initial order with the executing member and to notify the executing member in writing of the employment relationship that exists with the employer member. The text of the amendment, which takes effect June 1, 1991, follows this notice.

#### BACKGROUND

Prior to the approval of this amendment by the SEC, Article III, Section 28(c) required a registered representative, before opening an account or executing trades at a firm other than his or her employer, to inform the executing member firm of his or her status as an associated person. This provision did not, however, require the notice to be in writing. In addition, there was no specific provision in the Association's Rules of Fair Practice that required the registered representative to inform his

or her employer member that he or she was executing trades through another firm.<sup>1</sup> Section 28(c) placed the burden on the executing member to notify the employer member and to provide duplicate confirmations or such other information as is required by the employer member.

The NASD believes that requiring such notification by the associated person will provide additional assurances that the registered representative, the employer member firm, and the executing member firm have satisfied their respective obligations under the federal securities laws and the Rules of Fair Practice. Furthermore, the NASD believes that placing the burden of notification on the employee will prevent the likelihood that the notification inadvertently will be overlooked by the executing member in light of other existing regulatory obligations. The NASD acknowledges that there may be circumstances dictating that an associated person hold an account with someone other than his or her employer member, and this amendment would not serve to prevent that. On the contrary, it would merely require notification of the existence of such an account.

<sup>1</sup>The transactions subject to Section 28 are not considered to be private securities transactions that need to be approved by the employing member pursuant to Article III, Section 40 of the Rules of Fair Practice.

**EXPLANATION**

The amendment requires an associated person to provide notice *in writing* (1) to his or her employer prior to opening or placing an initial order in a securities account with another member, and (2) to the executing member of his or her association with the employer member. This amendment will require notice only prior to the opening of an account and the execution of the initial order. Written notification will not be required for any subsequent trades.

The NASD believes that the amendment will prevent instances in which trades may be made by associated persons on inside information because the employer member was not aware of the existence of the account with another member. The amendment will assist in lessening the occurrence of insider trading by providing the employer member with more complete knowledge of its associated persons' trading activities and consequently an enhanced ability to protect material nonpublic information. The amended notification requirement will assist employer members in creating and enforcing internal compliance procedures and will facilitate more direct and early detection of the existence of potential rule violations.

The SEC approved the amendment on March 6, 1991, in SEC Release No. 34-28945. However, in order to provide sufficient time for members to establish internal procedures to process the information provided in the written notification, the NASD is delaying implementation of the amended notification requirement. Therefore, an associated

person's obligation to comply with the amended notification requirement will not start until June 1, 1991. Any accounts opened prior to that date will be subject to the requirements of Section 28(c) prior to this amendment.

Questions concerning this notice may be directed to P. William Hotchkiss, Director, Surveillance, at (202) 728-8235.

**SECTION 28 TO ARTICLE III OF THE NASD RULES OF FAIR PRACTICE**

(Note: New text is underlined; deleted text is in brackets.)

Transactions for or by Associated Persons

Sec. 28

\* \* \* \* \*

**Obligations of Associated Persons Concerning an Account with a Member.**

(c) A person associated with a member, prior to opening [who opens] an account or placing [places] an initial order for the purchase or sale of securities with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the [employer] other member; provided, however, that if the account was established prior to the association of the person with the employer member, the associated person shall notify both [the executing] members in writing promptly after becoming so associated.



# Notice To Members

National Association of Securities Dealers, Inc.

May 1991

## Number 91-28

### Suggested Routing:\*

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|---|--|--|--|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit                | <input checked="" type="checkbox"/> Operations   | <input type="checkbox"/> Syndicate           |
| <input type="checkbox"/> Corporate Finance            | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options                 | <input type="checkbox"/> Systems             |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal                     | <input checked="" type="checkbox"/> Registration | <input type="checkbox"/> Trading             |
| <input type="checkbox"/> Institutional                | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research                | <input checked="" type="checkbox"/> Training |

\*These are suggested departments only. Others may be appropriate for your firm.

### Subject: Availability of the Series 17 Limited Registered Representative Examination to Qualify Persons Registered With The Securities Association of the United Kingdom As NASD General Securities Representatives

#### EXECUTIVE SUMMARY

Members may now opt to use a new test, the Series 17 Limited Registered Representative Examination, to qualify some candidates as NASD General Securities Representatives. To be eligible, a candidate must hold a registration in good standing as a representative with The Securities Association of the United Kingdom (TSA). In a cooperative effort with the NASD and TSA, the New York Stock Exchange (NYSE) based the development of the Series 17 on the Series 7 exam. The 90-question 120-minute Series 17 examination drops the duplicate test questions formerly present for a TSA registrant. Up to now, TSA registrants had to pass the Series 7 examination to become registered in the United States.

rities Association of the United Kingdom (TSA) to opt to more efficiently qualify as a NASD General Securities Representative. To do so, the candidate must pass a modified general securities representative qualification examination. The New York Stock Exchange (NYSE) has completed development of the modified test, the Series 17 Limited Registered Representative Examination.

The Series 17 is a 90-question, 120-minute shortened version of the full Series 7 examination. It drops the duplicate questions present on the TSA examination. Note that neither the Series 17 nor the TSA examination covers municipal securities activity. Therefore, before the representative engages in the solicitation, purchase, and/or sale of municipal securities as defined in Section 3(a)(29) of the Securities Exchange Act of 1934, a General Securities Representative who qualifies using the new Series 17 examination must apply for registration as a Municipal Securities Representative and pass the Series 52 Municipal Securities Representative Examination.

#### EXPLANATION

NASD *Notice to Members 90-69* in October 1990 announced Securities and Exchange Commission approval of an amendment to Schedule C of the NASD By-Laws. That amendment allows a person registered and in good standing with The Securities

The Central Registration Depository (CRD) system employs the status code "IE" for International Examination, for a registered General Securities Representative using the Series 17 as a qualifying examination. Only NASD or NYSE affiliates may hold "IE" status. A member may re-



quest the "IE" position code and the Series 17 examination by filling in the "Other" line in question 11 on page 1 of Form U-4. The testing fee for the Series 17 is \$65.

When CRD processes the request, it will create a status line for the candidate within the employment record of the requesting firm. CRD will initially flag the registration request as deficient for the Series 17 ("S17") and as deficient for a foreign exam ("FOR"). This is in addition to any other filing deficiencies that may exist on the status line. CRD will communicate directly with TSA to receive test scores and verify disciplinary history. CRD must post passing grades for the Series 17 and the TSA exams to the candidate's exam history. The member must clear all other filing deficiencies. Only then may the NASD or NYSE

*manually* approve the registration.

The NASD's PLATO Professional Development Centers now offer the Series 17 examination through the normal appointment-making process. The NASD's non-U.S. paper and pencil centers will offer the Series 17 exam by appointment beginning with the regular (third-Saturday) May administrations.

Members may order a study outline for the Series 17 examination by telephoning the NASD Book Order Department at (301) 590-6578. Please direct questions on the application process to the Member Services Phone Center at (301) 590-6500. Members may direct other questions on the Series 17 Limited Registered Representative Examination program to David Uthe in the Qualifications Department at (301) 590-6695.

# Notice To Members

National Association of Securities Dealers, Inc.

May 1991

## Number 91-29

### Suggested Routing:\*

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|--|--|--|---|
| <input type="checkbox"/> Senior Management     | <input checked="" type="checkbox"/> Internal Audit     | <input checked="" type="checkbox"/> Operations | <input checked="" type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance     | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options               | <input checked="" type="checkbox"/> Systems   |
| <input type="checkbox"/> Government Securities | <input checked="" type="checkbox"/> Municipal          | <input type="checkbox"/> Registration          | <input checked="" type="checkbox"/> Trading   |
| <input type="checkbox"/> Institutional         | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research              | <input type="checkbox"/> Training             |

\*These are suggested departments only. Others may be appropriate for your firm.

### Subject: Memorial Day — Trade Date-Settlement Date Schedule

Securities markets and the Nasdaq system will be closed on Monday, May 27, 1991, in observance of Memorial Day. "Regular way" transactions made on the preceding business days will be subject to the settlement-date schedule listed below.

Trade Date	Settlement Date	Reg. T Date*
May 17	May 24	May 29
20	28	30
21	29	31
22	30	June 3
23	31	4
24	June 3	5
27	Markets Closed	—
28	4	6

Brokers, dealers, and municipal securities dealers should use these settlement dates for purposes of clearing and settling transactions pursuant to the NASD Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of these settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (212) 858-4341.

\*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within seven (7) business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column entitled "Reg. T Date."