National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-12

March 8, 1983

TO: All NASD Members and Other Interested Persons

RE: Clarification of NASD Filing Requirements for Offerings Made Pursuant to SEC Rule 415

Recent changes to certain Securities and Exchange Commission ("SEC" or "Commission") requirements for the filing of public offerings have raised interpretive questions concerning the Association's filing requirements. In 1982, the SEC adopted new forms for registering securities, Forms S-1, S-2, and S-3, as well as new eligibility criteria for those forms. The Commission also adopted, on a temporary basis, Rule 415 governing the offering of securities on a delayed or continuous basis ("shelf" offerings). Unlike its predecessor rule, Rule 415 permits issuers to make shelf offerings of securities to the public.

The Association is issuing this notice to clarify that offerings registered on Form S-3 and distributed pursuant to Rule 415 are not required to be filed with the Association for review.

BACKGROUND

The new SEC registration forms establish new categories of issuers. In order to qualify to register on Form S-3, an issuer must meet a float and/or volume, or investment grade debt test and must have been a reporting company for three years with no payment default since its last fiscal year. Issuers which have been reporting companies for three years but do not meet the float, volume or investment grade test must register on Form S-2, with other issuers required to register on Form S-1.

The Interpretation of the Board of Governors — Review of Corporate Financing ("Corporate Financing Interprepation") under Article III, Section 1 of the Rules of Fair Practice (NASD Manual (CCH) Para. 2151) requires that most public offerings be filed with the Association for a review of the underwriting terms and arrangements. In the past, certain types of offerings have been exempted from the filing requirements where market forces or other constraints were present to assure the fairness and reasonableness of underwriting terms and arrangements, including specifically the amount of underwriting compensation. These exemptions were most recently clarified in 1981, prior to the adoption of Rule 415. (See Notice to Members 81-17 (April 15, 1981).)

An exemption from NASD filing requirements has long been recognized for:

> "shelf" registrations filed with the Commission on Form S-16 which do not involve an underwriting agreement. (Notice to Members 81-17 (April 15, 1981) at 3.)

This exemption was adopted because it was believed that NASD advance review of these transactions would serve little regulatory purpose. In the absence of an underwriting arrangement, a "shelf" distribution was expected to take the form of a series of brokerage transactions, with compensation limited to normal brokerage commissions. In the case of an issuer qualified to register on a Form S-16, the amount of such brokerage commissions would ordinarily be determined under very competitive circumstances. By limiting the exemption to securities registered on Form S-16, the Association could reasonably assume that the issuer would be closely followed and that the market would efficiently determine a fair price for the securities being issued.

With the replacement of Form S-16 by Form S-3 (with certain revised criteria) and the adoption of Rule 415, the NASD Corporate Financing Committee ("Committee") has now reviewed the existing exemption to determine its applicability under the changed rules. In considering the changes in the qualification requirements for Form S-3 as compared to a Form S-16, the Committee determined that the rationale for extending the exemption to issuers qualified for Form S-16 is equally applicable to issuers qualified to use Form S-3. Indeed, the Commission's adoption of the integrated disclosure system seems to provide greater support for the Association's reliance upon market forces to assure fair compensation and pricing.

In comparing offerings under Rule 415 with those "shelf" offerings which were exempted under the prior policy, the Committee concluded that Rule 415 transactions on Form S-3 are comparable to "shelf" offerings on Form S-16, except that offerings may be made by the registrant, which was not generally permissible before. The Committee noted that offerings under Rule 415 on Form S-3 generally do not involve traditional underwriting arrangements, with securities usually offered in broker's transactions which are virtually indistinguishable from ordinary secondary trades. Based on observation of market activity under Rule 415, the Committee concluded that market pressures often result in the amount of underwriting compensation being determined through a virtual competitive bidding process which helps to achieve its reasonableness. The Committee noted that, even in those transactions which eventually include a traditional underwriting agreement, the competitive pressures which come into play in the negotiations preceding the execution of that agreement usually can be relied upon to achieve the overall fairness of the arrangement.

CLARIFICATION OF EXEMPTION

In view of the above considerations, the Association is issuing this Notice to clarify the scope of the exemption presently available to offerings under Rule

federal register

Monday
February 7, 1983

Part V

Office of the Vice President

Federal Regulation of Financial Services; Request for Comments

OFFICE OF THE VICE PRESIDENT

Federal Regulation of Financial Services

AGENCY: Office of the Vice President.

ACTION: Request for comments.

SUMMARY: The Task Group on Regulation of Financial Services is undertaking a study of the problems of the existing system of Federal regulation of financial institutions and services. Within a period of approximately nine months the Task Group intends to complete its review of the current regulatory system and to make a report to the President concerning any desirable areas for change.

In order to gather the information necessary for this study and to encourage public participation in the process all interested parties are being invited today to present their views on the issues discussed below, or on any other relevant issues they may wish to bring to the attention of the Task Group.

DATE: Comments must be received by March 14, 1983.

ADDRESS: Interested parties are invited to submit two copies of written data, views, or arguments concerning the problems of the existing Federal regulatory structure and suggesting alternatives to the Task Group on Regulation of Financial Services, Room 1060, Department of the Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Richard C. Breeden, Deputy Counsel to the Vice President (202-456-6445).

SUPPLEMENTARY INFORMATION: On December 13, 1982, Vice President George Bush announced the formation of a Task Group on Regulation of Financial Services, charged with reviewing the Federal government's regulatory structure for finanical institutions and proposing any desirable legislative changes to the existing system.

The Vice President of the United States is Chairman of the Task group. Other members are the Secretary of the Treasury (Vice-chairman); the Attorney General; the Director of the Office of Management and Budget; the Chairman of the Council of Economic Advisers; the Assistant to the President for Policy Development; the Chairman of the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, National Credit Union Administration, Securities and Exchange Commission and Commodity Futures Trading Commission; and the Comptroller of the Currency.

Need for Regulatory Relief and Reorganization

The current system of Federal regulation of financial institutions and services is highly complex, and the type and nature of regulatory requirements vary significantly among different types of institutions and the products they may offer. This situation has developed as a result of an historic series of piecemeal changes to the system. As the financial system itself became more complex with the appearance of new types of financial intermediaries, markets and products, the regulatory system became correspondingly more complex with the creation of new agencies or the expansion of historic agency responsibilities.

Although each part of the current system may have been created in response to specific problems or perceived needs, recent trends in the financial system as a whole have highlighted problems with the current regulatory structure. These include:

1. *Differential Treatment.* As many types of institutions and the products which they offer have become more similar and come into increasingly direct competition with one another, differences in regulatory controls are much more likely to influence artificially the behavior of savers, investors of consumers. In some cases, such as interest rate limitations, the effect of differences in regulatory controls may be so great as to induce significant shifts of consumer behavior, and thereby to alter materially the opportunities of the competing institutions. In addition to altering competitive advantages artificially, differences among regulatory agencies which may have common or overlapping jurisdiction can prevent transactions which might overwise occur or sharply increase non-productive overhead in order to comply with conflicting government policies. Finally, to the extent that historic types of institutions become more similar, there may be less justification for continuing to maintain entirely separate regulatory agencies.

2. *Excessive Regulatory Controls.* In some areas particular regulatory requirements, whether created by statute or regulations, may impose costs which far exceed any public benefits derived therefrom. For example, depository institutions are currently required to obtain regulatory approval in advance before conducting certain types of ordinary corporate activities, such as opening or closing offices, forming holding companies or engaging in types

of activities which are expressly permitted. Such requirements could be repealed or modified simply to require notice to the appropriate regulatory authority. The current system may also impose inordinately burdensome record keeping or information collection requirements, excessive or ambiguous disclosure obligations and many other highly detailed controls which result in substantial costs to borrowers, savers or investors. Excessive regulatory controls may exist both with respect to types of transactions as well as basic operations of certain types of institutions.

3. *Overlap and Duplication.* In some areas the jurisdictions of regulatory agencies may in fact overlap so that institutions may be forced to adhere to multiple sets of operating requirements, accounting or record-keeping policies and reporting obligations, as well as being subjected to multiple examinations or supervisory reviews. Such duplication may consume significant employee and officer time, as well as require unnecessarily large expenditures for internal or external professional services.

4. *Agency Responsiveness.* For a variety of reasons significant delays may occur in obtaining regulatory approval for otherwise permissible transactions or activities. For example, delays may be created because of confusion as to whether a given agency has jurisdiction, or in resolving opposing viewpoints of two or more agencies which possess concurrent jurisdiction. Such delays may represent a significant burden for institutions which seek to respond to competitive developments, take advantage of business opportunities or reduce activities in a given area. In addition to raising the costs of individual transactions significantly, general regulatory policies of an agency may also raise the cost of normal operations through unnecessary paperwork or other similar requirements in particular areas. The costs of delays and reporting requirements may have a disproportionately severe impact on smaller institutions.

5. *Difficulties in Management of Shared Responsibilities.* The existing allocation of agency responsibilities frequently requires that several agencies cooperate when addressing certain financial institution issues. Problems of failing institutions, the regulation of bank holding companies and their subsidiaries, mergers and acquisitions, efforts to develop inter-agency uniformity in examinations and the deregulation of interest rate controls are all cases in point. Problems of inter-agency coordination may unnecessarily delay favorable resolution of such issues, imposing needless costs on the institutions and their customers and undermining confidence in the financial system.

6. *Overlap and Conflict between State and Federal Requirements.* Because of the dual system for chartering and supervising depository institutions, Federal controls over state-chartered entities may represent an unnecessary layer of regulation and an area where greater deference could be given to state regulatory responsibilities.

Previous Reorganization Proposals

Since the late 1930s numerous proposals have been put forward by both governmental bodies and private groups for reorganization of the Federal agencies regulating commercial banks and other depository institutions. For example, in 1949 the Commission on Organization of the Executive Branch of Government (the Hoover Commission) suggested that: (1) The Office of the Comptroller of the Currency (OCC) more properly belonged under the Federal Reserve Board than in the Treasury Department; (2) the functions of the Federal Deposit Insurance Corporation (FDIC) should be transferred to the Federal Reserve System (FRS); and (3) all Federal bank supervision should be combined, preferably in the FRS. In 1961, the Commission on Money and Credit recommended that the supervisory functions of the OCC and the FDIC be transferred to the FRS. In 1971, the Hunt Commission recommended that: (1) An "Administrator of National Banks" assume the OCC's supervisory responsibilities; (2) an "Administrator of State Banks" assume the supervisory responsibilities of the FRS and the FDIC; and (3) a "Federal Deposit Guarantee Administrator" assume the FDIC's insurance responsibilities. In 1975, the FINE Study recommended combining the supervisory and examination functions of the FDIC, FRS, OCC, the Federal Home Loan Bank Board (FHLBB) and the National Credit Union Administration (NCUA) into a single "Federal Depository Institutions Commission." In 1981, legislation (S. 1721) was proposed which would have consolidated the FDIC, the Federal Savings and Loan Insurance Corporation (FSLIC) and the National Credit Union Share Insurance Fund (NCUSIF) into one Federal deposit insurance fund. Finally, the Futures Trading Act of 1982 (H.R. 5447) largely resolved a jurisdictional dispute over financial futures between the Securities and Exchange Commission and Commodity Futures Trading Commission. The Act codified an agreement reached a year earlier between the two Commissions on a range of issues which, among other things, clarified the statutes administered by the agencies and set forth procedures enhancing cooperation between the agencies.

The reorganization proposals enumerated above, although by no means exhaustive, suggest the scope and nature of the proposals for Federal regulatory reorganization to date. While these proposals have generally centered on depository institutions, ongoing developments in the financial services markets suggest that this restricted focus is no longer appropriate, as depository and non-depository institutions have come to take on similar powers and compete in the same markets.

Traditional Arguments For and Against Reorganization

Arguments For: Proponents of reorganization have based their case on a variety of considerations, among which the following have frequently been cited:

1. Elimination of the duplication of activities among the several agencies will permit cost savings and enhance operating efficiency for the private sector.

2. Having fewer agencies would clearly fix responsibility for regulation of financial institutions and provide a focal point for Administration, Congressional, and public concerns regarding regulatory policy.

3. Agency reorganization would facilitate the handling of problem institution cases, which frequently require extensive coordination among several regulatory agencies.

4. Reorganization would remove inconsistencies in the regulation of bank holding companies and their subsidiary banks. Under the existing system, the FRS regulates all bank holding companies, while one of the other agencies usually has responsibility for the banking subsidiaries. Thus, it is difficult for a single agency to get a complete picture of the relationship between holding company and subsidiary, and the institution as a whole is subjected to at least two different sets of rules and regulators.

5. The existing division of responsibilities among agencies permits differential treatment of different institutions, giving rise to inequities. The several agencies have differed among themselves in their policies toward mergers and in their supervisory practices and requirements. According to some observers, the multi-agency

structure tends to foster a "competition in laxity" as one agency or another seeks to maintain or increase it share of regulated institutions by adopting a more permissive regulatory posture.

Arguments Against: Arguments against reorganization have generally centered on the following themes:

1. Creation of fewer agencies would tend to concentrate power within a reduced number of government entities, raising the danger of arbitrary or inflexible behavior. Agency pluralism may be useful, since it subjects the regulators to checks and balances. A related commonly-voiced concern is that concentrating Federal regulation would tend to favor Federally chartered institutions over state-chartered institutions, thus undermining the "dual banking system" and "states rights." The power of a single Federal regulator, chartering and supervising all national institutions and regulating all Federally insured state-chartered institutions, would quickly dwarf that of state regulatory authorities even for state-chartered institutions.

2. Agency diversity increases the chances that innovative approaches to policy problems will emerge. The exchange of ideas resulting from different approaches to similar problems and sometimes even competition among regulators to achieve basic regulatory innovations may be superior to the single agency approach. A sole regulator, not subject to challenge from other agencies, might tend to be entrenched, conservative and shortsighted. In addition, there is a danger that its regulatory policies would tend to favor the type of institution making up the bulk of its regulatees.

3. The existing structure in any case works quite well despite its apparent cumbersomeness. Coordination among the agencies has improved, and little more of consequence could be achieved through consolidation or other extensive reorganization. Potential cost savings through consolidation are minimal.

4. Recent major legislative changes should be absorbed before structural changes in the regulatory system are considered.

The Impact of Deregulation of Financial Institutions

Deregulation of financial institutions is bringing about changes both in the functions of the regulatory agencies and in the structure of the country's financial system. At the same time, significant private sector innovations—such as the development of financial conglomerates which may offer credit, real estate, brokerage and insurance services, among others—also call into question the appropriateness of the current Federal regulatory structure. While the precise details of the future cannot be known, it is reasonable to expect three broad sets of changes to be particularly relevant to questions of agency structure.

First, most restrictions on prices and products offered by depository institutions will end. As a result, many if not all of the legal distinctions between the traditional categories of these institutions will disappear, although individual institutions may continue to specialize.

Second, the distinctions between depository and other financial services institutions will continue to erode, as depositories increasingly enter activities traditionally limited to investment banking, brokerage and insurance firms and vice-versa.

Third, depository institutions will continue to expand their geographic scope of operations through increased electronic services, expansion of subsidiary activities and expanded inter-state branching as a result of merger and acquisition activity.

The foregoing changes will tend to intensify the problem of inequities arising from the current differential treatment of financial institutions. They will also cause increasingly severe problems of conflicting regulatory policies and duplication as more and more institutions become subject to multiple regulatory agencies. Without modification, however, the current system may be unable to resolve the conflicts and inequities which have already occurred among financial institutions, and such problems can only be expected to worsen over time.

In sum, ongoing and prospective changes in the regulatory and economic environments appear to strengthen the traditional arguments for agency reorganization, transfers of regulatory authority or elimination of regulatory controls on particular activities. In a deregulated environment characterized by more diversified institutions, there may be a much greater need for a system which can flexibly accomodate new products and services and technological developments, while at the same time providing consistency and uniformity in agency treatment of financial institutions. Under these circumstances, greater coherence among regulatory agencies and a more precise definition of agency responsibilities may be much more important to the overall integrity and efficiency of financial markets than has previously been the case.

Comments: In order to gather information pertinent to this study the Task Group on Regulation of Financial Services invites representatives of the financial services industries, the broader business community, governmental and community bodies and interested members of the general public to present their views. Two copies of written comments on the issues discussed above, and other relevant concerns, would be appreciated. The following outline of issues and options may be helpful to respondents, although it should not be considered exhaustive of the possibilities the Task Group or respondents to this notice may consider.

Problems, Issues and Options of Financial Regulatory Agency Structure

I. Goals of Financial Regulation

The goals and purposes underlying the regulation of financial institutions, instruments, and markets in the United States have been identified by various observers to include the following:

1. Assuring safety and soundness of financial institutions, and of the financial system as a whole, both to protect individual depositors and to avoid or limit secondary effects of a failed institution.

2. Avoiding conflicts of interest, fraud, and consumer abuses.

3. Promoting orderly markets to encourage savings and capital formation and to support macro-economic stability.

4. Avoiding excessive concentrations of economic and financial resources.

Should these goals be reappraised in light of emerging realities in the marketplace?

Has the evolution of the financial system changed the weight that public policy should place on these goals? Are there additional goals that should receive new attention in the framing of government regulatory policies and in organizing the financial regulatory agencies? Would other less costly regulatory approaches achieve these or alternative goals?

II. Assessment of the Existing Structure

1. *Differential Treatment.*—Are there differences in policies and procedures among the several regulatory agencies which result in differential treatment of institutions engaged in similar activities or which, absent unnecessary restrictions, would engage in similar activities? Are there overlapping responsibilities which may give rise to significant jurisdictional or policy conflicts among agencies or create dual jurisdictions with actual or potential conflict in operating requirements?

2. *Excessive Regulatory Controls.*—What specific regulatory or legislative controls or other requirements, procedural or substantive, could be eliminated, reduced or modified to reduce overall costs, increase efficiency or promote better services for consumers? What does compliance with current regulatory requirements cost on an annual basis, as a percentage of operating expenses or in absolute dollars? Give as much detail as possible concerning the costs of compliance with particular statutes or regulatory programs.

3. *Overlap and Duplication.*—Are there unnecessary costs and inefficiencies entailed by the performance of similar or identical functions by different regulatory agencies? What specific areas of duplication result in higher costs, excessive paperwork or record-keeping or reduced competitive activity?

4. *Agency Responsiveness.*—Does the complexity of the existing structure cause confusion or undue delay in completing transactions or otherwise impose unnecessary costs or burdens on the institutions and public which must deal with the agencies? In what specific areas do current regulatory controls result in unnecessary delays in completing ordinary transactions?

5. *Management of Shared Responsibilities.*—Do different agencies work together effectively in areas where their statutory responsibilities require such cooperation—as in regulating bank holding companies and their subsidiaries, administering securities margin regulations or handling problem institution cases? Do current inter-agency coordinating groups, such as the Depository Institutions Deregulation Committee (DIDC) and Federal Financial Institutions Examination Council (FFIEC) reduce or increase costs and efficiency? Do inter-agency agreements such as that between the Securities and Exchange Commission and the Commodity Futures Trading Commission offer a means of resolving jurisdictional tensions in other areas?

6. *State and Federal Requirements.*—In which areas do Federal controls over state-chartered entities represent an unnecessary layer of regulation?

7. What aspects of the current regulatory system are most important to preserve?

III. Reform Issues and Options

1. *Reorganization of Depository Regulators.*—If reorganization is called for, what agencies should be included or excluded and what regulatory functions should any such agency or agencies perform? Should reorganization result in a new regulatory authority lodged in one of the existing agencies or in a newly created one? If the latter, what form should the new agency take, how should it be administered and how should it be integrated, if at all, with other parts of the government? If reorganization results in a reduction of the current number of agencies, which should be the surviving regulatory agencies and what should be the scope of their authorities? Is regulation by function feasible instead of regulation by institutions? Finally, if a substantial reorganization of structure is desirable, should changes be introduced in stages, or in one comprehensive measure?

2. *Organizational Issues Pertaining to Non-Depository Regulators.*—What reorganization, consolidation or coordination would be desirable between the regulatory agencies dealing with securities trading, commodity futures trading and/or depository institutions? Does the current system adequately identify agency responsibilities and priorities in the event of conflicting rules or policies among such agencies?

3. *Deposit Insurance.*—Should any or all of the three Federal deposit insurance funds be consolidated? Please indicate the reasons for or against merging the funds. Is it appropriate to consider the Securities Investor Protection Corporation in this regard? What is the appropriate role for the deposit insurance agencies in the regulation of depository institutions and their holding companies?

4. *Coordinating Mechanism.*—Apart from or in addition to agency reorganizations, could increased regulatory effectiveness be obtained through the creation or elimination of interagency committees? Alternatively, could the current system be improved by transferring particular responsibilities to different agencies or by designating primary agencies in particular areas in the event of conflict? Should enforcement of consumer protection laws continue to be divided among agencies, or centralized in one consumer-oriented agency, e.g., the Federal Trade Commission (FTC)?

5. *Elimination of Regulatory Overlap and Conflict.*—To what extent can the problems of the existing structure be rectified without new organizational arrangements—for example, through statutory changes designed to define more clearly the respective areas of responsibility of the different agencies? Should depository institution regulators have authority over mergers and acquisitions by regulated institutions, and if so to what extent?

6. *Monetary Authority Regulatory Role.*—What involvement in regulation of financial institutions is necessary to execute responsibilities for monetary policy, to act as the lender of last resort and to provide a framework for stability of the overall system? What information and experience with the ongoing activities of institutions is required to fulfill these roles and can this information or experience be obtained other than by direct regulation of banks and holding companies?

7. *Securities Regulation Issues.*—To what extent should the current system for establishing margin requirements and practices be changed? What changes would be desirable in current laws and regulations governing investment companies and investment advisors to reduce costs to consumers or to harmonize such regulation with pooled investment media maintained by insurance companies or depository institutions? In what other ways should current regulatory controls over securities issuers, underwriters or markets be reduced?

8. *Additional Regulatory Relief Possibilities.*—Apart from or in addition to agency reorganization, what current regulatory or statutory restrictions on financial institutions or their holding companies should be eliminated or modified to reduce direct and indirect costs to consumers, to improve the services available to the public or for any other reason? (Please be specific.) What safeguards against conflicts of interest, harmful intra-company transactions or unsafe practices by depository institutions and their holding company affiliates would be preferable to current regulatory controls, reporting requirements and examinations? Could improved public disclosure replace certain agency reporting and regulatory requirements?

IV. Other

Dated: February 3, 1983.

Richard C. Breeden,

Deputy Counsel to the Vice President.

[FR Doc. 83-3292 Filed 2-4-83; 8:45 am]

BILLING CODE 4810-25-M

THE VICE PRESIDENT
WASHINGTON

February 15, 1983

Mr. Norman T. Wilde, Jr.
Chairman
Nat. Assn. of Sec. Dealers
1735 K St., N.W.
Washington, D.C. 20006

Dear Mr. Wilde:

As you may know, the Administration has formed a Task Group on Regulation of Financial Services to review the existing system of Federal regulation of financial institutions and services. In addition to myself, as chairman, members of the Task Group include the Secretary of the Treasury (Vice Chairman), the Attorney General, the Director of the Office of Management and Budget, the Chairman of the Counsel of Economic Advisers, the Assistant to the President for Policy Development, the Chairmen of the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, Securities and Exchange Commission, Commodity Futures Trading Commission and National Credit Union Administration, and the Comptroller of the Currency.

Although the participants in the Task Group are all members of the government, we are extremely interested in the views of interested organizations and individuals concerning the issues which we intend to review. We particularly hope to obtain information on how much it costs institutions, and thereby consumers, to comply with the plethora of statutory and regulatory requirements which comprise the current system. We also hope to obtain specific suggestions on how best to reform or streamline the federal regulatory structure, including areas in which the role and responsibilities of self-regulatory institutions could be enhanced.

In order to obtain outside analysis of these and other issues, the Task Group recently published a request for public comments in the Federal Register, a copy of which is enclosed with this letter. We believe it is very important to obtain responses not just from industry groups, but also from the largest possible number of individuals, institutions and organizations with different perspectives. Consequently, I am writing to request your assistance by informing your members of our request for public comments and urging as many of them as possible to respond individually or collectively.

It will not be easy to change a system which is so complex, and which so directly affects such a critical sector of our economy. Nevertheless, I am convinced that by streamlining the current system and removing duplication and unnecessary governmental requirements we can obtain potentially enormous benefits for consumers and institutions. This can only be accomplished with your assistance and support, however, and I sincerely request your participation in this very important endeavor.

Sincerely,

George Bush

Enclosure

NASD
National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000
notice to members 83-13

March 18, 1983

TO: All NASD Members and Other Interested Persons

ATTENTION: Direct Participation Programs Department

RE: Request For Comments on Amendments to Appendix F Concerning Sales Incentives for Direct Participation Programs

The Association's Direct Participation Programs Committee ("Committee") has become concerned about the continuing proliferation of sales incentives provided by the sponsors of public direct participation programs. The Committee and the Board of Governors have approved a proposed amendment to Appendix F to Article III, Section 34 of the Rules of Fair Practice ("Appendix F") which would place additional restrictions on incentive programs. The purpose of this notice is to solicit public comment on that amendment.

BACKGROUND

Appendix F contains restrictions on two different types of sales incentives, those paid directly to salespersons by sponsors and those paid by sponsors to broker-dealers. Subsection 5(e) regulates direct payments to individual associated persons of members and limits those incentives to $50 per person per year. Any incentive item paid in connection with an offering must be counted as underwriting compensation and arrangements regarding its receipt must be disclosed in the offering materials.

Subsection 5(f) of Appendix F permits sales incentives to be provided by program sponsors to broker-dealers if certain criteria are met. In summary, a fair market value must be established for incentive items, the value of all items must be included as underwriting compensation, arrangements for payment of the items must be disclosed, the manner of disposition of the items must be controlled solely by the receiving member, and the value of the items must be reflected on the books and records of the recipient member as underwriting compensation.

Notwithstanding these restrictions, there has been a proliferation of incentive programs, many of which utilize direct appeals to salespersons with offers of trips to exotic locations or elaborate selections of merchandise. Because these programs offer prizes only in a non-cash form and use direct appeals, it is often difficult for broker-dealers to adequately control salespersons' participation in the programs. As a result, broker-dealers may have increased pressure to distribute programs which might otherwise be deemed unsuitable. Salespersons may also be tempted to place less emphasis on suitability considerations in recommending particular programs to their customers.

Although Appendix F requires recordation, there is some question as to whether the value of non-cash incentive items is reflected on the books and records of all broker-dealers as additional underwriting compensation. There is also concern about the adequacy of disclosure in prospectuses of the details on some programs.

For all of the above reasons, the Committee concluded that it is necessary to amend Appendix F as described below.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments to Appendix F would revise both Subsections 5(e) and (f). The amendment to Subsection 5(e) is technical in nature and is intended to clarify the subsection's present requirements.

The amendment to Subsection 5(f) would require that all sales incentives and bonuses be paid directly by a sponsor, affiliate, or program to a member and that such incentives and bonuses be paid only in the form of cash. Incentives and bonuses could be paid only if any distribution of the incentives or bonuses to associated persons is controlled solely by the recipient member. This provision is intended to permit broker-dealers to distribute sales incentives in any manner or to retain the incentives at the firm level. Broker-dealers would be free, however, to use the cash incentives to purchase trips or merchandise offered at group rates by sponsors.

The present requirement for disclosure of arrangements relating to the proposed payment of incentives would be made more explicit. Under the amendment, arrangements relating to the proposed payment of incentives or bonuses, including the formula or formulae used to determine the amount of the incentive or bonus would be required to be disclosed in the prospectus or offering document. Public investors will thus be informed as to the schedule by which salespersons and their firms are receiving incentives.

The remaining proposed changes to Subsection 5(f) are conforming in nature.

The text of the proposed changes is attached and is marked to indicate the amended language.

REQUEST FOR COMMENTS

The Association's Board of Governors is given the authority to adopt changes to Appendix F (without a vote of the membership) by Article III, Section 34 of the Rules of Fair Practice. The Board contemplates adopting the proposed amendments pursuant to that authority.

the amount of incentive or bonus, are disclosed in the prospectus or similar offering document; and

~~(4)~~ ~~the manner of receiving all such items and their subsequent disposition, whether to associated persons or otherwise, is controlled solely by the member in a manner which enables the member to properly supervise its associated person; and~~

(4) ~~(5)~~ the value of all ~~such items~~ incentives and bonuses is reflected on the books and records of the recipient member as compensation received in connection with the offering.

NASD
National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-14

March 23, 1983

TO: All NASD Members and Municipal Securities Bank Dealers

ATTN: All Operations Personnel

RE: Holiday Settlement Schedule

Securities markets and the NASDAQ System will be closed on Good Friday, April 1, 1983. "Regular-Way" transactions made on the business days immediately preceding that day will be subject to the following schedule.

Trade Date-Settlement Date Schedule
For "Regular-Way" Transactions

Trade Date		Settlement Date		*Regulation T Date	
March	25	April	4	April	6
	28		5		7
	29		6		8
	30		7		11
	31		8		12
April	4		11		13

The foregoing settlement dates should be used by brokers, dealers, and municipal securities dealers for purposes of clearing and settling transactions pursuant to the Association's Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice. Questions concerning the application of these settlement dates to a particular situation should be directed to the Uniform Practice Department of the NASD at (212) 839-6257.

* Pursuant to Section 4(c)(2) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a 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 4(c)(6), make application to extend the time period specified. The date members must take such action is shown in the column entitled "Regulation T Date".

—NASD—

National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006
(202) 728-8000

March 23, 1983

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D. C. 20549

Attention: Mr. George A. Fitzsimmons, Secretary

Re: File No. S7-951

Members of the Commission:

The National Association of Securities Dealers, Inc. ("Association" or "NASD") is pleased to offer comments on the proposal contained in Securities Exchange Act Release No. 19187 (the "Release") to adopt revisions to Rule 12g3-2 (17 CFR 240.12g3-2) under the Securities Exchange Act of 1934 (the "Act") that would, inter alia, terminate the availability of that exemptive rule for foreign issuers with securities quoted on NASDAQ. The net effect of the proposal would be to require full registration with the Commission under Section 12(g) of the Securities Exchange Act of 1934 for all NASDAQ foreign issuers. This proposal has been considered by the Association's Ad Hoc Committee on Foreign Securities and Board of Governors and their views are set forth below.

In sum, the Association opposes the adoption of the amended rules because it believes the underlying premise of the amendment, i.e., voluntary entry into the United States securities markets by NASDAQ issuers, is in error and because the release does not articulate any demonstrated need for the change. More importantly, however, we believe the imposition of a requirement to register under Section 12(g) for the inclusion of foreign securities on NASDAQ would result in a mass exodus of these securities from the system. In this connection, our Ad Hoc Committee has representatives from ADR sponsoring banks of virtually all the ADR's on the system and it is their unqualified opinion that most if not all of the underlying issuers, in addition to the non-ADR issuers, will not register and thereby subject themselves to SEC jurisdiction. Further, over the past one and one-half years the Ad Hoc Committee has addressed the question of adequate disclosure by foreign issuers on the system and made proposals, subsequently approved by the Commission, Release No. 34-19455, which attempted to address previously expressed

Commission concerns. These amendments to our rules only became effective on January 27, 1983 and require broader disclosure than previously, certified financials and other regulatory improvements. Their impact is yet unknown. We suggest, therefore, that before any further changes are made to foreign issuer requirements on NASDAQ the rules be given an opportunity to work and to be observed for effectiveness in eliminating the concerns expressed by the Commission.

"VOLUNTARY" ENTRY INTO U.S. CAPITAL MARKETS

The Commission's proposal is based upon the assumption that foreign issuers "voluntarily" seek inclusion in the NASDAQ System and will choose registration rather than risk deletion from the System. We believe both premises are in error. The net effect will be an exodus of foreign issues from NASDAQ, with a resultant impact upon current and prospective shareholders precisely opposite to the Commission's intended purpose.

As to the issue of voluntariness, until very recently (January 1981) foreign issues were included in NASDAQ without the necessity of any affirmative application by the issuer. Even today, no formal application process is in effect. Rather, a simple letter from the issuer requesting inclusion will suffice. With respect to ADR's, the inclusion of which are sought by depositary banks, a letter of non-objection to inclusion by the underlying foreign issuer will suffice. The element of voluntariness is absent even as to the required NASDAQ issuer fees which may be paid by ADR banks. Thus, a substantial number of foreign issues and ADR's now included in the NASDAQ System got there through no voluntary action of any kind on the part of the foreign issuer. Even the "bare bones" application requirement since January of 1981 (a letter of request), does not apply to ADR's which will be placed on the system upon application by a sponsoring depositary bank with no objection from the issuer. Accordingly, we do not believe the concept of "voluntary" entry into NASDAQ by foreign issuers has been established or adequately supports the implementation of this proposal. Also, any analogy to exchange listing to support the concept is in error. Many times such call for undertakings and representations to be made by the issuer, among other things. The Commission states its objective in making the proposal is to restore the "availability of the information-supplying exemption to its intended purpose" of not requiring the "burdens of registration and of the attendant obligations upon foreign issuers that had not voluntarily entered the U.S. capital markets." It is submitted that the "intended purpose" still applies to most NASDAQ foreign issues.

Aside from considerations of voluntariness, we believe the potential impact of the proposal must be closely considered including whether the net effect will be a reduction in the amount of information available to investors, lessened liquidity of the holdings of existing investors and wider quotation spreads.

Commission will not have to face procedural burdens which it might face under the provisions of the bill as introduced. 2/

In 1965, prior to the adoption of current Rule 12g3-2 implementing the exemptive provision of the statute, the Commission presented a very broad regulatory proposal for comment. This proposal would have required more specific and regular reporting by exempt issuers, would have applied sanctions against traders who traded foreign securities that were neither registered nor exempt, and would have required broker/dealers to furnish information to the SEC and the NASD regarding exempt foreign issuers. These proposals were commented on by persons and companies to be directly affected by the rules and by foreign governments. Among other comments, the Commission was advised that the proposals may violate international law, would have presented technical difficulties in superimposing the SEC requirements on the issuers' existing domestic law, and would have had the effect of retarding the development of effective regulation in the home countries of the issuers. In the face of such criticism, the Commission adopted the much narrower Rule 12g3-2, the so-called information-supplying exemption which is available to foreign issuers as long as they supply to the Commission that information required in their home country.

The exemption provided by Rule 12g3-2 has been in effect for approximately fifteen years. During this period, relatively few specific instances of abuse have been communicated to the NASD by the Commission staff. Rather, such communications centered upon inadequacies in the substance and presentation of certain of the information required under the rule, as well as the jurisdictional authority of the Commission with respect to foreign issuers, to wit, it can only suspend an issuer for one 10 day suspension period under Section 12(k) of the Act. Only relatively recently has the general application of the exemptive provision of the rule to foreign issuers emerged as a problem and been communicated to the Association.

The primary thrust of the Commission staff's earlier concerns as expressed to the Association was that promoters of certain of the foreign companies on NASDAQ may have been taking advantage of the absence of 1934 Act reporting regarding their companies and the increased exposure NASDAQ companies enjoy to create order demand and unjustifiable price levels. We recognize this problem with respect to certain foreign issuers and have attempted to deal with it in our amended rules referred to above which the Commission has approved. We are unaware of any generalized problem with respect to foreign issues that would justify the proposal which applies not only to those issues in respect to which concern has been expressed but also to the many high quality foreign issues on the NASDAQ system.

To the extent that concern was expressed generally with respect to the amount and quality of disclosure by foreign issuers and other jurisdictional problems, the Association responded with revisions to its rules which provide greater disclosure of information and assure its availability to

2/ H. Rep. No. 1418, 88th Congress, 2nd Session, 11 (1964).

the fullest extent possible within the United States. Thus, our new rules require certified financial statements by issuers and the dissemination of material information to investors. Also, in respect to the Commission's jurisdictional concerns, the Association's new rules attempted to provide a vehicle for coordination with the Commission to prevent the continued trading of a foreign security which has been the subject of a 10 day suspension by the Commission. Our new rule makes such a suspension grounds for complete removal from the NASDAQ system. In making the determination whether under such circumstances to revoke or suspend a foreign issuer from NASDAQ, the Association pledges its complete cooperation and coordination with the Commission's Division of Enforcement. We believe many of the Commission's concerns can be alleviated in this manner. The Association's new rules also require that a foreign issuers' domiciliary regulator, i.e. exchange, coordinate its activities with the Associtión in order for <u>any</u> of that foreign exchange's listed securities to remain on NASDAQ. The effect of this provision, which was directly related to the Commission's earlier concerns, is yet to be seen.

* * * *

To summarize the above, most NASDAQ issuers have not voluntarily entered the United States marketplace. Given that and the advice of people we believe to be expert in the area of foreign securities in the United States marketplace, it is our view that many, if not most, foreign issuers on NASDAQ will leave the system rather than submit to Section 12(g) registration. We recognize and accept that there may be problems as to certain issuers but such does not exist across the broad spectrum of NASDAQ foreign issuers generally. Therefore, the more restrictive rule should not be adopted. As to the problem issuers, in addition to awaiting experience under our new rules, a concentrated joint effort by our respective enforcement staffs we believe would be most productive and effective. Perhaps, as well, there are regulatory approaches that can yet be explored by the Association. In this connection, we would like to join with your staff in attempting to define such an approach short of full Section 12(g) registration. We believe this would result in achieving the ends desired by the Commission, preserve the presence of foreign issues on NASDAQ and be in the public interest.

Very truly yours,

Frank J. Wilson
Executive Vice President
and General Counsel

IMPACT OF PROPOSAL

The Association believes implementation of this proposal will result in the withdrawal of substantial numbers of foreign issuers from the NASDAQ System. Even assuming the validity of the Commission's voluntariness premise, which we do not concede, if the proposal is adopted Section 12(g) registration would not be required as to the withdrawn issues and they could still be traded over-the-counter. The natural result of this would be (1) impairment of liquidity for shares of those issues, (2) a widening of spreads and deterioration in the quality of the execution of transactions, (3) a reversal of the advances made with respect to the quality of disclosure by foreign issuers as evidenced by the NASD's new rules, and (4) a removal of the withdrawing foreign issues from the NASDAQ Market Surveillance umbrella. Surveillance by the Association would continue, of course, but in a general way rather than in the more intensive, sophisticated manner presently performed as a result of the technology in the NASDAQ System. Thus, as to the withdrawing issues there would be a reduction in regulatory protection for the investing public. This seems hardly to be a step forward in the regulation of foreign issuers. Also, the effect on the holdings of existing investors in the withdrawn issues could, and in our view would, be substantial.

Our views on withdrawal are not lightly made and they are not NASD staff conclusions formulated on a basis of resistance to change or to reducing the number of securities on NASDAQ. Rather, they represent the conclusions of our Ad Hoc Committee members possessing expertise in the area of foreign securities trading and sponsorship of ADR's. Correspondence received from dealers in foreign securities, ADR banks, and counsel for foreign issuers also support that concusion as does direct contact with various foreign issuers. Our Ad Hoc Committee is comprised of representatives of the following institutions or broker/dealers: Morgan Guaranty Trust Co., Irving Trust Co., Goldman, Sachs & Co., Carl Marks & Co., Inc., Sherwood Securities Corp., and Merrill Lynch, Pierce, Fenner & Smith Incorporated. The unanimous opinion of these Committee members is that adoption of a requirement for the registration of foreign issuers under Section 12(g) would clearly result in the withdrawal of most, if not all, substantial foreign issuers from the NASDAQ System.

NO DEMONSTRATED NEED FOR RULE AMENDMENT

Perhaps additional regulation of foreign issuers whose securities are traded in the United States is necessary. However, the Association does not believe the Commission should adopt its very far reaching proposal without first demonstrating the need for such in relation to the broad spectrum of foreign securities on NASDAQ and what, in our view, appears to be an inconsistency with Congressional intent.

Congress, in adopting the Securities Acts amendments of 1964 (1964 Act), which first mandated Section 12 registration of over the counter securities and attendant disclosure requirements, was nevertheless concerned with maintaining the existing markets in foreign securities. In this connection, the Senate in its report on the 1964 Act stated:

> To prevent the securities of such issuers from being traded in the U.S. markets would seriously effect American holders of millions of dollars of such foreign securities.
>
> . . . As already noted, the Commission has administered the Exchange Act so as to avoid undue interference with the trading markets for foreign securities in the United States. It is assumed that the Commission will treat over-the-counter foreign issuers in essentially the same way. 1/

In the Senate version of the 1964 Act, the magnitude of the concern for continuation of trading of such securities was manifested by the fact that an absolute exemption from registration would have been provided for foreign securities traded in the United States. The bill would have authorized the Commission to remove the exemption as to particular issuers or classes of issuers if the exemption as to them was found no longer to be in the public interest or consistent with the protection of investors.

In the House version of the bill, which was ultimately adopted into law, the Senate's provisions which were originally part of the House bill were altered by reversing the exemption procedurally. Thus, foreign securities were not exempted <u>except</u> by Commission rule, regulation or order which finds such exemption to be in the public interest and consistent with the protection of investors. In changing the approach, the House did not intend to modify the position with respect to the preservation of existing trading markets for foreign securities. Rather, the amendment was made merely to mitigate procedural burdens upon the Commission. On this point, the House report stated:

> By giving the Commission broad exemptive authority and empowering it to deal flexibly with the problem, the Commission will be able to weigh the various considerations and to exempt, partially or completely, foreign securities and certificates of deposit therefor (or classes of such securities and certificates) when such action is appropriate. By making the procedural change, the Committee feels that, in covering foreign securities that should be covered, the

1/ S. Rep. No. 379, 88th Congress, 1st Session, 29-30 (1963).

83-15

NASD

April 8, 1983

TO: All NASD Members and Other Interested Persons

RE: Underwriting Compensation Received by Members in Public Corporate Offerings

In 1981, the Association's Corporate Financing Committee undertook a study of total underwriting compensation for public offerings of corporate securities in connection with the development of a new corporate financing rule. The proposed new Corporate Financing Rule was published for comment on April 15, 1981 (Notice to Members 81-16). In commenting on that proposal, several persons suggested that the Association provide more specific guidance on generally accepted levels of underwriting compensation. The Association believes it may be helpful to members and their counsel to receive data on the typical amount of underwriting compensation received for various sizes and types of public offerings. The Association is therefore publishing this information today and expects to publish similar information from time to time in the future.

Before discussing the methodology used to derive this information, one fact must be emphasized. All references to compensation here are to total underwriting compensation as computed by the Association, and not only to cash discounts or commissions. As normally computed by the NASD, underwriting compensation includes the dollar value of all of the following:

- cash discounts or commissions;
- expense reimbursements and non-accountable expense allowances;
- warrants and other securities received by the underwriter within 12 months prior to, and in connection with, the offering;
- underwriter's counsel's fees;
- finder's fees;
- rights of first refusal; and,

AMOUNTS OF
UNDERWRITING COMPENSATION *

Gross Dollar Amount of Offering (stated in millions)	Amounts For Initial Firm Commitment Offerings	Amounts For Secondary Firm Commitment Offerings	Amounts For Initial Best Efforts Offerings
$0 - $1 million	14.0	8.38	15.10
$1 million - $2 million	13.74	8.33	14.74
$2 million - $3 million	13.53	8.29	14.38
$3 million - $4 million	13.22	8.24	14.02
$4 million - $5 million	12.96	8.19	13.67
$5 million - $6 million	12.70	8.15	13.31
$6 million - $7 million	12.44	8.10	12.95
$7 million - $8 million	12.18	8.05	12.59
$8 million - $9 million	11.92	8.01	12.24
$9 million - $10 million	11.66	7.96	11.88
$10 million - $11 million	11.40	7.91	11.52
$11 million - $12 million	11.14	7.87	11.17
$12 million - $13 million	10.88	7.82	10.81
$13 million - $14 million	10.62	7.77	10.45
$14 million - $15 million	10.36	7.73	10.09
$15 million - $20 million	9.06	7.50	8.31
$20 million - $25 million	7.76	7.27	6.52
$25 million - $30 million	**	7.04	**
$30 million - $35 million	**	6.81	**
$35 million - $40 million	**	6.58	**
$40 million - $45 million	**	6.31	**
$45 million - $50 million	**	6.08	**

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* This table contains the results of a regression analysis of an overall population and not mathematical averages for each category. This data should be considered only in connection with the explanation of methodology which is contained in the attached notice.

** An insufficient number of offerings were filed in this classification to derive a reliable result.

- all other items of value received in connection with the offering.

To determine the typical levels of underwriting compensation cleared by the Association, the study reviewed all corporate offerings filed during a randomly selected nine-month period. A total of 407 offerings were included and categorized as follows:

(1) initial public offerings underwritten on a firm commitment basis;

(2) initial public offerings underwritten on a "best efforts" basis; and,

(3) offerings other than initial public offerings underwritten on a firm commitment basis.

Records of the Corporate Financing Department were utilized to determine the total amount of compensation attributable to each offering and the dollar amount of securities registered. For each category of offerings, a regression analysis was performed to identify the level of compensation which would be expected for a typical offering in each size category.

The findings of the study are set forth in the attached table which lists the amount of compensation for various sizes and types of offerings. It should be noted that the amounts shown do not represent the amount of compensation actually received in any one offering or the mathematical average for all offerings of a particular size. Also, they are based on the maximum amount of compensation which underwriters proposed to receive. The actual compensation received could have been less.

Any questions concerning this notice may be directed to Dennis C. Hensley or Harry E. Tutwiler at (202) 728-8258.

Sincerely,

Gordon S. Macklin
President

Attachment

NASD notice to members 83-16

NOT AVAILABLE AT THIS TIME

NASD
National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-17

April 14, 1983

TO: All NASD Members

RE: Amendments to Rules Governing Transactions Executed for Persons Associated with Another Member

The Securities and Exchange Commission has approved amendments to Article III, Section 28 of the Association's Rules of Fair Practice and the amendments are hereby declared effective as of May 1, 1983. These amendments were previously approved by the Association's Board of Governors and by a vote of the membership.

Section 28 addresses the responsibilities of members to avoid adversely affecting the interests of other members when executing transactions for persons associated with such other members. It requires written notice to "employer members" as well as the provision of duplicate confirmations and/or statements, if requested.

The amendments to the Rule accomplish several distinct results. First, the basic notification requirements of the Rule has been extended to transactions or accounts over which associated persons exercise discretion, as well as accounts in which such associated persons have a financial interest. For example, an account for a relative of a registered representative of another member is subject to the reporting requirements if the registered representative places the orders for the account.

Secondly, the Rule as amended places an affirmative obligation on persons associated with another member to notify the "executing member" of such association. This requirement will facilitate compliance by such executing members with the notification requirements of Section 28, as well as the "Free-Riding and Withholding" Interpretation and the requirement, in Article III, Section 21(b) of the Rules of Fair Practice, that such association be recorded. The amended Rule specifies that this notification requirement applies even if the associated person has another occupation or affiliation (e.g. insurance agent, real estate broker, etc). The amended Rule also makes it clear that the notification requirement applies to accounts which exist at the time the person becomes associated with a member, as well as to new accounts. Members should therefore take appropriate steps to advise their associated persons of their obligation to notify other members of their association with respect to both existing and prospective accounts.

The Rule has also been amended to provide an exemption from the notification requirements for transactions in redeemable securities of registered investment companies (e.g. mutual funds, unit investment trusts and variable contracts). It does not appear that such transactions present the same potential for adverse impact on an employer member as might exist with respect to other transactions and the notification requirement appears to be unnecessarily burdensome with respect to such transactions. A comparable exemption has been adopted with respect to the reporting requirements of the Private Securities Transaction Interpretation of Article III, Section 27 of the Rules of Fair Practice.

Finally, in accordance with the Association's continuing project of updating rules and codifying interpretations, the prior Board of Governors' Interpretation of Section 28 has been incorporated into the Rule and the Interpretation has been repealed.

Questions about the proposed amend~~ments~~ should be directed to Robert L. Butler at 1735 K Street, N.W., Washington, D.C. 20006 (Telephone Number (202) 728-8329).

Sincerely,

Frank J. Wilson

Frank J. Wilson
Executive Vice President
Legal and Compliance

Article III, Section 28

of the Rules of Fair Practice

(as effective 5/1/83)

Determine Adverse Interest

(a) A member ("executing member") who knowingly executes a transaction for the purchase or sale of a security for the account of a person associated with another member ("employer member"), or for any account over which such associated person has discretionary authority, shall use reasonable diligence to determine that the execution of such transaction will not adversely affect the interests of the employer member.

Obligations of Executing Member

(b) Where an executing member knows that a person associated with an employer member has or will have a financial interest in, or discretionary authority over, any existing or proposed account carried by the executing member,the executing member shall:

(1) notify the employer member in writing, prior to the execution of a transaction for such account, of the executing member's intention to open or maintain such an account;

(2) upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to such account; and

(3) notify the person associated with an employer member of the executing member's intention to transmit the information required by paragraphs (1) and (2) of this subsection (b).

Exemption for Transactions in Investment Company Shares

(c) The provisions of subsection (b) of this section shall not be applicable to transactions in variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, as amended, or to accounts which are limited to transactions in such securities.

Obligations of Person Associated with a Member

(d) A person associated with a member who opens an account or places an order for the purchase or sale of securities with any other member, shall, where such associated person has a financial interest in such transaction and/or any discretionary authority over such account, notify the executing member of his or her association with an employer member, regardless of any other function, capacity, employment or affiliation of such associated person. If the account is established prior to the association of such person with an employer member, the associated person shall notify the executing member promptly after becoming so associated.

NASD
National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-18

April 22, 1983

TO: All NASD Members and NASDAQ Level 2 and Level 3 Subscribers

RE: 43 Additional Securities Are Mandated Into National Market System

On Tuesday, May 10, 1983, 43 securities will join the 182 already trading in the NASDAQ National Market System. These securities have met the requirements for NMS mandatory designation, which include an average trading volume of 600,000 shares a month for six months through March and a bid price of $10 on the last five days in March. As required by SEC Rule 11Aa2-1, all issues meeting the mandatory designation requirements at the end of each quarter automatically are added to the National Market System within 45 days of the quarter ending date.

The 43 securities joining the NASDAQ NMS on May 10 are:

AGSC	AGS Computers, Inc.	Mountainside, NJ
ASKI	ASK Computer Systems, Inc.	Los Altos, CA
ARWS	Air Wisconsin, Inc.	Appleton, WI
AMSK	American Solar King Corporation	Waco, TX
APCI	Apollo Computer, Inc.	Chelmsford, MA
BRNO	Bruno's, Inc.	Birmingham, AL
CGAC	CGA Computer Associates, Inc.	Marlboro, NJ
CRHB	C.P. Rehab Corp.	New York, NY
COMM	Communications Industries, Inc.	Dallas, TX
CDIT	Computer Devices, Inc.	Burlington, MA
CMSV	Comserv Corporation	Mendota Heights, MN
EYES	CooperVision, Inc.	Palo Alto, CA
DATC	Data Card Corporation	Minneapolis, MN
DAIO	Data I/O Corporation	Redmond, WA
DATM	Datum, Inc.	Anaheim, CA
DNIC	Diasonics, Inc.	Milpitas, CA
EBII	Electro-Biology, Inc.	Fairfield, NJ
EMLX	Emulex Corporation	Costa Mesa, CA
FINX	Fingermatrix, Inc.	N. White Plains, NY
FNNG	Finnigan Corporation	San Jose, CA
FSYS	Fortune Systems Corporation	Belmont, CA
FRMT	Fremont General Corporation	Los Angeles, CA

GENS	Genetic Systems Corporation	Seattle, WA
GENSW	Genetic Systems Corporation (warrants)	Seattle, WA
GNEX	Genex Corporation	Rockville, MD
IDPY	Information Displays, Inc.	Armonk, NY
IMMC	International Mobile Machines Corporation	Philadelphia, PA
KASL	Kasler Corporation	San Bernardino, CA
LDBC	LDBrinkman Corporation	Kerrville, TX
MCCAB	Mobile Communications Corporation of America (Class B)	Jackson, MS
NEWP	Newport Corporation	Fountain Valley, CA
OCGT	OCG Technology, Inc.	New York, NY
QNTM	Quantum Corporation	Milpitas, CA
RMTK	Ramtek Corporation	Santa Clara, CA
SWBB	Save-Way Industries, Inc.	Hialeah, FL
SOCR	Scan-Optics, Inc.	E. Hartford, CT
SLCN	Silicon Systems, Inc.	Tustin, CA
SPEC	Spectrum Control, Inc.	Erie, PA
SCTC	Systems & Computer Technology Corporation	Malvern, PA
TELV	TeleVideo Systems, Inc.	Sunnyvale, CA
ULTR	Ultrasystems, Inc.	Irvine, CA
UACI	United Artists Communications, Inc.	San Francisco, CA
VLSI	VLSI Technology, Inc.	San Jose, CA

Any questions regarding this notice should be directed to Donald H. Bosic, Assistant Director, NASDAQ Operations, at (202) 728-8043. Questions pertaining to the trade reporting rules should be directed to Leon Bastien (202) 728-8202.

Sincerely,

John T. Wall
Executive Vice President
Member and Market Services

NASD
National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-19

April 27, 1983

TO: All NASD Members, NASDAQ Foreign Issuers and Other Interested Persons

RE: Approval of Revisions to Qualification Requirements of Foreign Issues on NASDAQ

The NASD has adopted revisions to Section C of Part II of Schedule D under Article XVI of the By-Laws which contains eligibility and authorization requirements for inclusion of foreign issues on the NASDAQ System. These revisions to the qualification requirements were formulated in response to the strong concern expressed by the Securities and Exchange Commission regarding continued quotations in NASDAQ of foreign securities exempt from the registration provisions of Section 12(g) of the Securities Exchange Act of 1934 pursuant to Rule 12g3-2(b) thereunder. As a result, a study of factors surrounding the inclusion of foreign securities on NASDAQ was conducted by the Association's Ad Hoc Committee on Foreign Securities and the Association's Board of Governors.

The Commission believed that the promoters of certain of the foreign companies on NASDAQ take advantage of the absence of complete disclosure regarding their companies and the increased exposure NASDAQ companies enjoy to create order demand and unjustifiable price levels. Furthermore, the Enforcement Division of the Commission has emphasized the difficulty it encounters when attempting to bring enforcement actions against such companies because of the lack of jurisdiction.

The NASD Board recognized the problems which the Commission had but decided against requiring full Section 12(g) registration in attempting to achieve the desired results. The Association believed that requiring full registration would result in many sound and reputable companies being removed from the NASDAQ System merely because many foreign issuers do not want to be subject to the SEC's jurisdiction rather than because of any improper activity or motives on their part. Nevertheless, the Board was concerned about the effects on the credibility of the NASDAQ System which the referred to activities would have and adopted the alternative qualification requirements hereinafter described which it believed would address the primary concerns expressed by the Commission staff.

Under the revised qualifications requirements, securities exempted from registration pursuant to Rule 12g3-2(b) will be permitted to be included in NASDAQ only if financial information, independently certified in accordance with generally accepted accounting practices of the issuer's country of domicile, is made available on a timely basis to shareholders and the Association by the issuer. Such information is considered to be a basic component of disclosure necessary for the protection of the investing public. The responsibility for assuring that audited financials are received by shareholders in the United States would lie with the foreign issuer (or the underlying foreign issuer in the case of ADR's) but that responsibility may be discharged by an ADR bank or broker/dealer acting on behalf of the issuer. The Association will maintain, on its premises, a file of such documents for each foreign issuer to facilitate member and public access to this important information.

The revisions also require a foreign issuer, in order for its security to remain on NASDAQ, to promptly disclose any material information to the public which may effect the value of the security or influence investors' decisions by attempting to disseminate such information in the United States through international wire services or similar media.

The requirements also provide that exempted foreign securities which meet the foregoing requirements shall be subject to deletion from NASDAQ if over-the-counter trading is suspended by the Commission under Section 12(k) of the Exchange Act. This provision is designed to respond to the Commission's dilemma presented by the provisions of the 1934 Act, and certain judicial determinations, preventing it from suspending a company from trading for more than one ten-day period in most instances notwithstanding the nature of the improper activity discovered. It is believed that deletion from NASDAQ would have an effect comparable to a mandated cessation of trading by the Commission. The proposed deletion from NASDAQ would only be invoked, however, upon a finding that such action would be consistent with the public interest. Thus, the issuer company in respect to which a deletion is proposed would be entitled to a hearing before a committee of the Association.

A requirement has also been implemented that foreign issuers whose principal marketplace fails to coordinate its regulatory activites with the Association will not be permitted on the system, or if on, will be removed.

The Association believes that with these additional requirements of certified financial statements, disclosure of material information, removal from the system in the case of a Section 12(k) suspension where the public interest so requires or removal where foreign issuers' principal marketplace fails to coordinate its regulatory activities with the NASD will go a long way toward enhancing the quality of the NASDAQ market for foreign securities. At the same time, foreign companies will not be forced to subject themselves to Commission jurisdiction in order to stay on NASDAQ.*/ The Association also believes that foreign issuers should be provided additional time within which to comply with that portion of the qualification requirements concerning the filing of certified financial information. This will assure each issuer an adequate opportunity to make arrangements for the preparation and submission of the appropriate documentation. Accordingly, that portion of the qualification requirements calling for receipt of an annual balance sheet and statement of operations independently certified (or the equivalent) in accordance with the generally accepted accounting practices of the issuer's country of domicile, will not become effective until August 1, 1983. All remaining elements of the qualification requirements applicable to foreign issuers are effective immediately. Questions regarding the meaning or applicability of these requirements should be addressed to Robert E. Aber, Assistant General Counsel, at (202) 728-8290.

Sincerely,

Frank J. Wilson

Frank J. Wilson
Executive Vice President
and General Counsel

Attachments

*/ It should be noted, however, that the Commission has proposed a rule in Release No. 34-19187 which would require all foreign issues or ADR's included in the NASDAQ System to be registered with the Commission in accordance with the provisions of Section 12(g) of the Securities Exchange Act of 1934. Although the formal comment period ended March 11, 1983, it is expected that at least several weeks will elapse before this proposal can be formally considered by the Commission. It is, therefore, possible that comments received after this date can and will be considered. All such comments should refer to File No. S7-951 and be sent to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. A copy of the Association's comment letter in opposition to the Commission's proposal is attached.

TEXT OF AMENDMENTS TO SCHEDULE C OF PART II OF SCHEDULE D

(Language to be deleted is bracketed,
language to be added is underlined)

C. Rules for Authorized Foreign Securities and American Depositary Receipts

1. A security shall be eligible to be an authorized security if it is:

a. issued by a foreign issuer where either the issuer is required to file reports pursuant to Section 15(d) of the Securities Exchange Act or the security is exempt from registration under Section 12(g) of that Act by reason of the applicability of Rule 12g3-2(b) promulgated by the Securities and Exchange Commission, or

b. an American Depositary Receipt or similar security issued in respect of a security authorized under Subdivision (a) of this paragraph 1.

2. Notwithstanding a security's exemption from registration pursuant to Rule 12g3-2(b), a security of a foreign issuer (or an ADR or similar security issued with respect thereto) shall not be eligible to be an authorized security:

a. if the issuer of such security, and in the case of ADR's the issuer of the security underlying the ADR, does not timely make available to its shareholders and, upon application for authorization and annually thereafter the Corporation does not receive, a balance sheet and statement of operations independently certified (or the equivalent) in accordance with the generally accepted accounting practices of the issuer's country of domicile; or

b. if the principal marketplace of the issuer's securities does not coordinate regulatory activities with the Corporation sufficiently to assure a fair and orderly market in the security and protection of investors and the public interest.

[2.]3. An eligible security shall not be authorized, and an authorized security shall be subject to suspension or termination of authorization, if:

a. at any time there is a failure to comply with the eligibility standards set forth in paragraphs 1 and 2 above;

[a.] b. it shall have been suspended from being traded over-the-counter by the Securities and Exchange Commission pursuant to Section [15(c)(5)] 12(k) of the Securities Exchange Act and the Corporation shall determine that the public interest requires suspension or termination of authorization as an authorized security;

[b.] c. there shall have been a failure by the issuer promptly to disclose to the public by attempts to disseminate in the United States through international wire services or similar disclosure media [through the press] any material information which may affect the value of its securities or influence investors' decisions;

[c.] d. there shall have been a failure to comply with any obligation of any person regarding filing or disclosure of information material to the issuer or the security, whether the obligation arises uner a federal or state statute or rule and the Corporation shall determine that the public interest requires suspension;

[d.] e. there shall have been a failure by the issuer to pay the NASDAQ Issuer Quotations Fee as specified in Section III hereof;

[e.] f. in the case of a security not yet authorized, there shall be fewer than three market makers registered; in the case of an authorized security there shall be fewer than one market maker registered;

[f.] g. in the case of an authorized security, the average daily volume reported by market makers during the first 90 calendar days after authorization is less than 500 shares per day;

[g.] h. the principal amount outstanding shall be less than $10,000,000 in the case of a convertible debt security eligible but not authorized or $5,000,000 in the case of an authorized convertible debt security;

[h.] i. the issuer's total assets shall be less than $2,000,000 in the case of an eligible security not yet authorized or $750,000 in the case of an authorized security;*/

[i.] j. the issuer's total capital and surplus shall be less than $1,000,000 in the case of an eligible security not yet authorized or $375,000 in the case of an authorized security;*/

[j.] k. in the case or rights or warrants, the underlying security is not an authorized security.

*/ Until August 24, 1982, the minimum amounts for authorized securities shall be $500,000 total assets and $250,000 total capital and surplus.