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

notice to members 83-20

May 2, 1983

TO: All NASD Members and Other Interested Persons

RE: Quarterly Checklist of Notices to Members

Following is a list of NASD Notices to Members issued during the first quarter of 1983. Requests for copies of any notice should be accompanied by a self-addressed label and may be directed to: NASD Administrative Services, 1735 K Street, N.W., Washington, D. C. 20006.

Notice Number	Date	Topic
83-1	January 6, 1983	Real-Time Transaction Reporting in NASDAQ NMS Securities
83-2	January 11, 1983	Effect of Tax Law Changes on NASD Qualification Examinations
83-3	January 19, 1983	SEC Approves Amendments to Rule 17f-2
83-4	January 20, 1983	Real-Time Transaction Reporting in Additional 100 NASDAQ NMS Securities Effective February 8, 1983
83-5	January 27, 1983	Holiday Settlement Schedule - February 1983
83-6	January 31, 1983	Proposed Amendments to the Uniform Practice Code to Extend Applicability of the Code to Secondary Market Transactions in Unit Investment Trust Securities
83-7	February 3, 1983	Solicitation of Comments on SEC Proposed Anti-Internalization Rule
83-8	February 4, 1983	Amendments to Association's By-Laws
83-9	February 14, 1983	Appointment of SIPC Trustee for Bell & Beckwith, Toledo, Ohio

83-10	February 22, 1983	The Tax Equity and Fiscal Responsibility Act of 1983
83-11	February 22, 1983	Formation of Federal Task Group on Regulation of Financial Services
83-12	March 8, 1983	Clarification of NASD Filing Requirements for Offerings Made Pursuant to SEC Rule 415
83-13	March 18, 1983	Request for Comments on Amendments to Appendix F Concerning Sales Incentives for Direct Participation Programs
83-14	March 29, 1983	Holiday Settlement Schedule - April 1983

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

notice to members 83-21

May 5, 1983

TO: All NASD Members

RE: Gerald Greenspan

The New York Regional Office of the Securities and Exchange Commission has asked the NASD to provide members with a notice regarding the activities of Gerald Greenspan outlined below.

Mr. Greenspan was permanently enjoined by the United States District Court (S.D.N.Y.) from further violations of the federal securities laws in 1960, 1975 and 1980. The 1980 injunction requires Mr. Greenspan, among other things, to disclose the prior court orders entered against him before purchasing any securities. In 1979 and 1980 he was convicted of criminal contempt for violating the provisions of those injunctions and sentenced to a 6 month and 2 year prison sentence, respectively.

Greenspan's activities include:

1. Purchasing stocks from brokers with checks drawn on bank accounts with insufficient funds or drawn on non-existent bank accounts; and

2. Purchasing shares of stock in Hiller Aviation Corp. at numerous brokerage firms causing the appearance of artificial trading.

Greenspan's activities have resulted in losses to the brokers who had to sell out his accounts. Over a short span of time in 1977 Greenspan issued approximately $125,000 in "bad" checks, and immediately upon release from prison in 1979, Greenspan again issued approximately $55,000 in "bad" checks.

Greenspan is a heavyset male Caucasian approximately 58 years old. Prior to imprisonment, he was a self-employed tax consultant. He has used aliases such as "Jay Greene," "Gerry Greenspan," "Jack Greene" and "Jerry Greenspan." Most recently he used the name "Jay Goldberg." He frequently uses the name "Thelma" as a reference.

He has supplied brokers with residence addresses at 2418 Bragg Street, Brooklyn, New York; Constellation de Fabron, Lyre, Nice 66220, France; and addresses in Fort Lee and Union City, New Jersey. Most recently, he used the address of 500 Central Avenue (Apt. 1704) Union City, New Jersey 07087.

By reason of the fact that Gerald Greenspan was released from prison on February 8, 1983, and since his previous pattern indicates a likelihood of further violations, registered representatives should be apprised of the aforementioned facts.

Should Mr. Greenspan open or attempt to open an account with any member firms, they should contact Seth T. Taube, Chief, Branch of Enforcement #2, Securities and Exchange Commission, at (212) 264-1628.

Please duplicate this Notice and distribute to all branch offices and appropriate departments.

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

notice to members 83-22

May 11, 1983

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

RE: Real-Time Transaction Reporting in Additional 57 NASDAQ NMS Securities Effective May 24, 1983

On Tuesday, May 24, 1983, 57 securities will join the 225 already trading in the NASDAQ National Market System. As a result, real-time trade reporting will be required in these securities commencing on that date.

These securities were selected from applications received from those companies with issues satisfying the voluntary designation criteria contained in Rule 11Aa2-1. The selection was made on the basis of the date the application was received by the NASD (first in-first on).

The 57 securities joining the NASDAQ NMS on May 24, 1983, are:

AFBK	Affiliated Bankshares of Colorado, Inc.	Boulder, Colorado
ABEV	Allegheny Beverage Corporation	Baltimore, Maryland
ADIT	Anadite, Inc.	Chicago, Illinois
APOG	Apogee Enterprises, Inc.	Minneapolis, Minnesota
AZBW	Arizona Bancwest Corporation	Phoenix, Arizona
ABAN	Atlantic Bancorporation	Jacksonville, Florida
ATWD	Atwood Oceanics, Inc.	Houston, Texas
AUXT	Auxton Computer Enterprises, Inc.	Orlando, Florida
BPII	BPI Systems, Inc.	Austin, Texas
BIOC	Biochem International Inc.	Waukesha, Wisconsin
BREN	Brenco, Inc.	Petersburg, Virginia
CLNP	Callon Petroleum Company	Natchez, Mississippi
CHYC	Chyron Corporation	Melville, New York
COUR	Coeur d'Alene Mines Corporation	Wallace, Idaho
CGEN	Collagen Corporation	Palo Alto, California

CACCB	Colonial Life & Accident Insurance Company Cl. B	Columbia, South Carolina
CNSL	Consul Corporation	Eden Prairie, Minnesota
CLSR	Control Laser Corporation	Orlando, Florida
CRIM	Crime Control, Inc.	Indianapolis, Indiana
DDES	Data-Design Laboratories	Cucamonga, California
ERLY	Early California Industries, Inc.	Los Angeles, California
ECIN	Electronics, Missiles & Communications, Inc.	White Haven, Pennsylvania
FNBF	Florida National Banks of Florida, Inc.	Jacksonville, Florida
HYBR	Hybritech Incorporated	San Diego, California
INTR	Intermec Corporation	Lynnwood, Washington
JBBB	JB's Restaurants, Inc.	Salt Lake City, Utah
KROY	Kroy Inc.	St. Paul, Minnesota
LEXD	Lexidata Corporation	Billerica, Massachusetts
MNTL	Manufacturers National Corporation	Detroit, Michigan
MOIL	Maynard Oil Company	Dallas, Texas
MWCH	Monchik-Weber Corporation (The)	New York, New York
MOTR	Motor Club of America	Newark, New Jersey
NDAC	National Data Communications, Inc.	Dallas, Texas
NAUG	Naugles, Inc.	Fullerton, California
NRRD	Norstan, Inc.	Plymouth, Minnesota
NWNL	Northwestern National Life Insurance Co.	Minneapolis, Minnesota
PANS	Pansophic Systems, Inc.	Oak Brook, Illinois
PCST	Precision Castparts Corp.	Portland, Oregon
RAGN	Ragen Corporation	North Arlington, New Jersey
SEAG	Sea Galley Stores, Inc.	Mountlake Terrace, Washington
SERF	Service Fracturing Company	Pampa, Texas
SFOK	Sooner Federal Savings and Loan Association	Tulsa, Oklahoma
SOVR	Sovereign Corporation	Santa Barbara, California
SPDY	Spectradyne Inc.	Richardson, Texas
STAF	Staff Builders, Inc.	New York, New York
SLTG	Sterner Lighting Systems Incorporated	Winsted, Minnesota
SSSS	Stewart & Stevenson Services, Inc.	Houston, Texas

TERM	Terminal Data Corporation	Woodland Hills, California
TDAT	Third National Corporation	Nashville, Tennessee
TOCM	TOCOM, Inc.	Irving, Texas
TCTY	Twin City Barge, Inc.	So. St. Paul, Minnesota
UTLC	UTL Corporation	Dallas, Texas
UNFI	Unifi, Inc.	Greensboro, North Carolina
VGCI	Veta Grande Companies, Inc. (The)	Northridge, California
WECO	Washington Energy Company	Seattle, Washington
WNER	Winners Corporation	Brentwood, Tennessee
ZENT	Zentec Corporation	Santa Clara, California

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

Sincerely,

Gordon S. Macklin
President

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

notice to members 83-23

May 11, 1983

TO: All NASD Members and Municipal Securities Bank Dealers

ATTN: All Operations Personnel

RE: Memorial Day Trade Date - Settlement Date Schedule

Securities markets and the NASDAQ System will be closed on Monday, May 30, 1983, in observance of Memorial Day. "Regular-Way" transactions made on the business day preceding that day will be subject to the following schedule.

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

Trade Date		Settlement Date		*Regulation Date	
May	23	May	31	June	2
	24	June	1		3
	25		2		6
	26		3		7
	27		6		8
	31		7		9

* * *

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 regarding this notice may be directed to the Uniform Practice Department at (212) 839-6257.

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* 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
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1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 83-24

May 19, 1983

IMPORTANT

OFFICERS, PARTNERS AND PROPRIETORS

TO: All NASD Members

RE: Request for Vote on Proposed Corporate Financing Rule

LAST VOTING DATE IS JUNE 20, 1983

The National Association of Securities Dealers, Inc. (the "Association") is submitting for membership vote a proposed new section of the Rules of Fair Practice which, if adopted, would replace the current Interpretation of the Board of Governors -- Review of Corporate Financing pursuant to Article III, Section 1 of the Rules of Fair Practice.

On April 15, 1981, the Association requested comments on the proposed corporate financing rule (Notice to Members 81-16). The new rule was approved by the Association's Board of Governors on March 19, 1982 (with subsequent changes approved on March 8, and March 18, 1983), and now requires approval by the membership. If approved, it must be filed with and approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934, as amended.

The text of the proposed rule is attached to this notice. The authority for this proposal is contained in Section 15A of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o-3) and Article VII of the Association's By-Laws. A discussion of the background and purpose of the new rule, a subsection-by-subsection analysis, a summary of the comments received and the procedures required for adoption of the rule appear below. References to section numbers are to the revised and renumbered sections as they appear in the attached text.

BACKGROUND AND PURPOSE

Article III, Section 1 of the Association's Rules of Fair Practice obligates members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their businesses. In the early 1960's the Association began reviewing underwriting terms and arrangements of securities offerings in which members were participating. The Association's review was intended to determine whether those terms and arrangements were in compliance with the broad standard of fairness in Article III, Section 1. By 1970, the criteria for determining fairness and reasonableness had become more defined and were incorporated into the Interpretation of the Board of Governors - Review of Corporate Financing (the "Interpretation").

The Interpretation requires that most public offerings of securities in which members participate be filed with the Association's Corporate Financing Department (the "Department") for review. The Interpretation makes it a rule violation for a member or associated person to participate in a public offering if any of the underwriting terms or arrangements are unfair or unreasonable. Guidelines utilized in determining fairness and reasonableness are provided, but the guidelines generally lack specificity.

The language of the Interpretation has not been amended since the early 1970's and no longer accurately reflects all current industry practices. The language is also presented in a manner which sometimes makes it difficult for members and their counsel to clearly understand the requirements to which they are subject. Over the past several years, various clarifications of the policies embodied in the Interpretation have been rendered but these have never been incorporated into the language of the Interpretation.

For these reasons, the Association now proposes to replace the Interpretation with a new rule of fair practice. The new rule is intended to codify and clarify existing Association policy and procedures and in some cases implement new standards of fairness. The new rule was developed by the Corporate Financing Committee (the "Committee") and a subcommittee thereof over a period of several months and was approved by the Association's Board of Governors. The publication of the new rule was the culmination of several years' efforts by the Association to revise, update and recodify policies relating to corporate financing issues.

SUBSECTION-BY-SUBSECTION ANALYSIS OF PROPOSED CORPORATE FINANCING RULE

Subsection (a): Definitions - This subsection incorporates definitions of "affiliate," "public offering," and "underwriter" into the rule. These terms are not defined in the Interpretation, but the proposed definitions are based on generally accepted concepts. The definition of "person related to an underwriter" which is found in the Interpretation is clarified to reflect present Association reading of the definition as including persons performing a service for the issuer which is normally performed by an underwriter.

Subsection (b): Underwriting Compensation and Arrangements - Subsection (b)(1) of the proposed rule first states a prohibition against any member or associated person participating in a public offering if the terms or arrangements

are unfair or unreasonable. This prohibition is analogous to that currently found in the Interpretation. Subsection (b)(2)(A) of the rule prohibits such persons from receiving an unfair or unreasonable amount of underwriting compensation.

Subsection (b)(2)(B) explains how the amount of underwriting compensation is determined by the Association. The explanation contained in subsection (b)(2)(B) codifies existing practices and references subsection (b)(3) which lists items of compensation. Subsection (b)(2)(C) requires that all items of underwriting compensation be disclosed in the prospectus or offering circular.

Subsection (b)(2)(D) is important in that it lists factors considered in determining whether a proposed amount of underwriting compensation is fair and reasonable. The factors listed generally restate those now found in the Interpretation. Subsection (b)(2)(E) expressly states the Association's policy that more compensation is permitted for offerings with greater risk but lower percentages of compensation are permitted for large gross dollar amount offerings.

Subsection (b)(2)(F) expands upon the concept of risk used in subsections (b)(2)(D) and (E) and lists factors to be considered in determining the amount of risk being assumed by an underwriter.

Proposed subsection (b)(3) of the rule deals generally with items of compensation. Subsection (A) sets forth a list of items which are typically included as underwriting compensation, although it is clearly stated that "all other items of value received or to be received by an underwriter or related person ... in connection with or related to an offering shall be included" as compensation. The list of items contained in this subsection include all of the items currently stated in the Interpretation as well as other items generally included as compensation but heretofore not specifically enumerated. Wholesaler's fees, special sales incentive items, rights of first refusal, and demand registration rights are among such items. In particular, it should be noted that compensation to be received by an underwriter or related person as a result of the exercise of warrants or similar securities distributed as part of the offering would be considered as underwriting compensation if the exercise occurs within 12 months following the effective date.

Subsection (b)(3)(B)(i) provides that all items of compensation received pursuant to an agreement entered into within 12 months prior to an offering will be presumed to be underwriting compensation but that such a presumption may be rebutted on the basis of evidence satisfactory to the Association to support a finding that the compensation was not in connection with the public offering. Subsection (b)(3)(B)(ii) provides that all items of compensation received pursuant to an agreement entered into more than 12 months prior to an offering will be presumed not to be underwriting compensation but items received prior to such 12-month period may be included as underwriting compensation on the basis of evidence satisfactory to the Association to support a finding that the compensation was in connection with the public offering.

Subsection (b)(3)(B)(iii) clarifies and recodifies the factors used to determine whether securities are received in connection with an offering and are therefore underwriting compensation. This subsection provides a basis for rebutting the presumptions in subsection (b)(3)(B)(i) and (b)(3)(B)(ii) that particular securities are to be included or excluded in computing underwriting compensation. Factors to be

used in determining whether securities are includable as underwriting compensation are specifically set forth and explained. Those factors are generally analogous to the factors presently contained in the Interpretation.

Subsection (b)(3)(C) provides the basis for excluding financial consulting and advisory fees where an on-going relationship between the issuer and the underwriter is demonstrated. Subsection (b)(3)(D) clarifies that expenses customarily borne by an issuer, even when paid through an underwriter, will not be included as underwriting compensation.

Subsection (b)(4) clarifies and recodifies the method used for determining the value assigned to securities received as underwriting compensation. In this regard, subsection (b)(4)(A) provides that securities shall be valued on the basis of the difference between the cost of the securities and either the proposed public offering price or, in case of securities with a bona fide independent market, the market price on the date of acquisition. Furthermore, subsection (b)(4)(B) lists the factors to be considered in the valuation of options, warrants, or convertible securities. Subsection (b)(4)(C) states that a lower value shall generally be assigned if securities are, or will be, restricted from sale, transfer, assignment or other disposition for a period of up to two years beyond the one-year period of restriction set forth in subsection (b)(6)(A)(i).

Subsection (b)(5) lists terms and arrangements which are presumed to be unfair and unreasonable. The arrangements described generally reflect present Association policy, although in several instances the specified arrangements have never been codified as presumptively unfair and unreasonable.

Particular attention is directed to items (i) through (ix) under subsection (b)(5)(A) which contain specific arrangements that are presumed to be unfair and unreasonable. These provisions restrict the allocation of overhead as expense allowances, the payment of fees prior to commencement of an offering, the duration of certain rights of first refusal and warrants or options, the exercise or conversion terms of certain securities, the receipt of any indeterminate compensation, the receipt of any over-allotment option greater than 15 percent, the receipt of certain compensation for offerings which are not completed, and the receipt of certain securities which are convertible or exercisable on terms more favorable than those received by the public.

Subsection (b)(5)(*)(x) contains the present "ten percent rule" in modified form. The Interpretation provides that underwriters may not receive an amount of securities as underwriting compensation which is greater than ten percent of the number of shares being offered. The present language, however, is unclear as to offerings of warrants, options or convertible securities. The Association believes that members should be permitted to receive securities as underwriting compensation irrespective of the nature of the security offered to the public. The proposed language would therefore make no distinction among various types of securities but would limit the securities received as compensation to ten percent of the number or dollar amount of the securities offered.

The proposed provisions of subsection (b)(5)(A)(xi) represent a new clarification of Association standards of fairness in connection with the exercise or conversion of warrants, options, or convertible securities. The receipt by a member

and certain other persons of any compensation or expenses as a result of the exercise or conversion of such securities would be presumed to be unfair and unreasonable in enumerated circumstances. The circumstances described in items (1) through (4) of subparagraph (xi) are intended to assure that compensation is not received unless exercise or conversion will profit the investor, the investor retains the discretion to accept or reject the transaction, the investor is informed of the arrangements for compensation, the investor has not initiated the exercise or conversion, and the investor has designated in writing the broker/dealer which is to receive the compensation.

The foregoing conditions are viewed by the Association as necessary to avoid abuses in this area. The Association has witnessed a number of proposed arrangements which provide compensation of varying amounts and under varying circumstances to broker/dealers upon public investors' exercise or conversion of securities. In most instances, these arrangements appear to be attempts to secure greater amounts of underwriting compensation than normally considered fair. The payment of such compensation also represents potential conflicts between the investor's best economic interests and the broker/dealer's possible gain. Subsection (b)(5)(A)(xi) should assure the fairness and reasonableness of compensation arrangements for the exercise or conversion of securities.

Subsection (b)(5)(B) of the proposed rule recodifies existing procedures for excluding certain securities when calculating the amount of securities which may be received as underwriting compensation for purposes of the ten percent rule found in subsection (A)(x). Subsection (b)(5)(C) also recodifies existing requirements and states that securities constituting unreasonable underwriting compensation received by an underwriter or related person shall be returned at cost and without recourse.

Under subsection (b)(5)(D), the presumption that underwriting terms or arrangements are not in compliance with the standards of the rule may be rebutted and therefore found fair and reasonable in exceptional or unusual cases upon written application to the Association. This is a codification of existing practice.

Subsections (b)(6)(A) and (B) set forth a recodification of the Association's longstanding "lock-up" policy. This policy requires securities received as underwriting compensation to be restricted from sale, transfer, assignment, or hypothecation for one year, except under certain limited circumstances. Certificates of such securities are required to bear a legend describing the restriction.

Subsection (b)(6)(C) addresses possible abuses which may occur when broker/dealers make venture capital investments. This paragraph prohibits a member or person associated with a member who has acquired securities in a privately held issuer from selling those securities during the initial public offering and for a period of 12 months following the effective date of the offering.

Subsection (c): Filing Requirements - Subsection (c) codifies existing requirements for the filing of offerings with the Association without substantial change. Subsection (c)(1) prohibits members and associated persons from participating in offerings unless required documents have been filed with the Association. The paragraph also clarifies that "participation in a public offering" is intended to be broadly construed to include assistance in the preparation of documents, per-

formance of advisory functions and the distribution of securities on any basis.

Subsection (c)(2) states technical procedures for filing and (c)(3) lists offerings which need not be filed. The latter subsection codifies existing practice and clarifies the language of the Interpretation in some respects. The new language clarifies, for example, that Form S-3 "shelf" registrations need not be filed.

Subsection (c)(4) reaffirms Association policy to treat filings confidentially. Subsection (c)(5) sets forth the parties responsible for filing in various circumstances. Both of these paragraphs only restate present policy.

Subsection (c)(6)(A) lists those documents which must be filed. The subsection generally tracks present requirements except for the fact that fewer copies of documents are required.

Subsection (c)(6)(B) incorporates certain language providing guidance as to supplemental information which the Association expects to be filed with the offerings. Such an approach codifies existing procedures and in some respects continues the requirements of the Interpretation. A new requirement is set forth in item (ii) which requires a statement of the basis for, and the underwriter's intended application of, any non-accountable expense allowance greater than three percent of the offering proceeds.

Subsections (c)(6)(C) and (c)(6)(D) contain new requirements. Subsection (c)(6)(C) requires that amendments to filed documents be marked to show changes, i.e., "red-lined." The Association believes this change will benefit all members filing offerings by expediting the review of each. Subsection (c)(6)(D) codifies the present requirement to notify the Association when an offering becomes effective and adds a requirement for such notice whenever an offering is withdrawn or abandoned. The latter requirement would enable the Association to keep abreast of the status of all offerings, thereby assuring that resources are directed to those which are being actively pursued.

Subsection (c)(7) codifies within the substantive rule the means of computing filing fees.

Subsection (d): Code of Procedure - Proposed subsection (d) incorporates into the new rule those procedures presently used on an informal basis to provide a review by hearing subcommittees and standing committees of the Association's Board of Governors of determinations made by the Department with respect to underwriting arrangements. These procedures provide for a hearing on the record, a written determination, and a right of appeal to a standing Board committee. In a departure from present practices for hearings of this nature, costs could be assessed. Costs are now assessed in other types of Association hearings.

The Code does not provide for any review beyond standing Board committees. This is consistent with the Association's policy that determinations by the staff and Committees regarding underwriting arrangements constitute opinions as to fairness and reasonableness and probable compliance with Association rules. Such a determination does not, however, constitute a finding of a rule violation; such a finding is made only by a District Business Conduct Committee, the National Business Conduct Committee, and the Board of Governors following formal

complaint procedures. To permit Board review of opinions as to fairness would arguably taint the disciplinary process and place members in double jeopardy. This policy is explained in the Code of Procedure.

COMMENTS RECEIVED

Fourteen letters of comment were received on the new corporate financing rule. Approximately a third of the commentators offered general comments regarding regulatory philosophy and the need for a corporate financing rule. Of those offering such general comments, most supported the effort to clarify the Association's requirements and recodify the Interpretation. Others were concerned that such an effort would lead to confusion as the new rule would require new interpretation and might result in more onerous regulation of investment bankers.

Some commentators, primarily smaller broker/dealers and their counsel, indicated that additional reliance on competition and free market forces was in order. They felt that competitively negotiated underwriting arrangements in the context of the disclosure requirements of federal securities law and merit regulation by state authorities provide sufficient protection for issuing companies and public investors. Several felt that additional specific detail on how the rule will be applied would provide useful guidance for members and their counsel. Numerous commentators urged the Association to disclose those amounts of compensation considered fair and the value assigned to various non-cash items of compensation.

A number of commentators suggested that the Association refrain from regulating allocations of underwriting compensation among syndicate members. In fact, such regulation was never contemplated. Underwriting compensation arrangements are reviewed and evaluated in the aggregate and allocations among members are not reviewed.

With respect to the specific provisions of the rule, one commentator noted that the definition of "affiliate" in subsection (a)(1) varies from that in Schedule E in that no percent-of-ownership tests are included as the basis of presumed control. The definition was written in that manner on the assumption that there is not the same need for specificity in the corporate financing rule as in Schedule E.

Another commentator suggested that the definition of "affiliate" be revised to more closely parallel the definition used by the SEC which utilizes direct or indirect control to determine affiliation. Language to effectuate this change has been inserted.

Two commentators suggested redefinition of "person related to the underwriter" to limit application to persons offering professional services who are "affiliated with" or functioning "at the direction of" the underwriter. It was concluded that those changes would unduly restrict the scope of this definition.

The rationale for not making this distinction can be seen clearly in the manner in which the term "underwriter and related person" is used in the review of underwriting compensation. Any services of an investment banking or financial consulting nature rendered in connection with a public offering contribute toward bringing the offering to pass and the provision of such services by persons other

than the underwriter should reduce the time, effort and the consequent cost expended by the underwriter in preparing the offering. The Association's underwriting compensation limits were established to permit reasonable compensation for all such services and the permissible compensation to the underwriter should be accordingly adjusted downward to reflect lower costs borne by him.

To state this position in another way, compensation to "related persons" for services rendered in connection with the offering should be carved from maximum permissible underwriting compensation. This reflects the belief that the total cost of distributing a public offering should be reasonable, irrespective of how the distribution-related fees are divided among various parties. The proposed language was an attempt to more explicitly reflect this policy by including within the definition persons who have "performed a service for the issuer in connection with the offering which service is normally performed by an underwriter".

This application of the definition of "underwriter and related persons" has been endorsed on numerous occasions by the Committee and by hearing subcommittees. Modification of this application would allow an underwriter to contract out investment banking services to independent contractors and to negotiate compensation to the maximum permissible level at a subsequent point. Such a practice would amount to an increase in compensation for services in the distribution. Such a practice would also make it most difficult to apply compensation standards equitably among members.

A commentator suggested clarifying that all references in the definition to services performed included only "professional" services. The definition was not intended to be so limited. In view of the apparent confusion, language has been added to clarify that finders and financial consultants and advisors are included in the new definition just as they are in the present definition.

Several commentators suggested that "public offering" be defined so as to exclude public offerings made outside the United States to non-U.S. citizens, e.g. Euro-offerings. Language has been inserted to limit the definition to offerings made "within the United States or its territories."

Some suggestions were made to explicitly exclude from this definition offerings made pursuant to Section 4(6) of the 1933 Act (relating to certain private offerings) and Sections 3(a)(7) and (10) of the Act (relating to securities issued in connection with certan bankruptcy proceedings). There appears to be a sound basis for excluding offerings pursuant to Section 4(6). Followng enactment of that provision, the Association has been advising members that such offerings would be deemed private offerings for filing and review purposes. Language amending the definition of "public offering" to codify this interpretation has been inserted.

The Corporate Financing Department very seldom receives filings or requests for exemptions for public offerings involving bankruptcies. It is therefore questionable whether it is necessary to specifically exempt all offerings under Sections 3(a)(7) and (10) of the 1933 Act or whether it is not more prudent to consider each such offering on a case-by-case basis.

Finally, it was suggested the the expression "straight debt" in Section (a)(3) should be redesignated "nonconvertible debt" to conform with the usage of

Section (c)(3)(D). That change has been made.

The new rule would incorporate the definition of "underwriter" contained in the 1933 Act. A commentator suggested that the proposed definition be changed to also incorporate SEC rules and regulations adopted under the Act. There appears to be no sound basis for doing so, particularly in light of the difficulty in dealing with future SEC rules or future SEC interpretations of present rules.

Subsection (b)(2) contains a general description of the means for determining the fairness of underwriting compensation. Several commentators urged that the Association publish the amounts of compensation considered fair and the values placed on non-cash items. Commentators indicated that the provisions of the rule were too vague to provide adequate guidance to members in assessing the fairness and reasonableness of underwriting arrangements which they negotiate. The Association carefully weighed these comments and concluded that it would be inappropriate to publish specific amounts of compensation considered to be per se "fair". To do so might lead to abuses whereby higher levels of compensation than otherwise justified might be negotiated on the basis of an NASD "approved" scale.

Nevertheless, the Board of Governors concluded that broker/dealers should be entitled to greater guidance as to the amounts of compensation deemed fair and reasonable. Accordingly, the Association has published the overall average levels of compensation which would be expected for various sizes and types of offerings, based on a study of offerings filed. (See Notice to Members 83-15 (April 8, 1983).)

The lack of specificity in the relationship between risk and compensation also drew several comments. The manner in which the Association determines risk was considered to be unclear as was the permissibility of various levels of compensation at various risk levels.

One commentator considered the Association's practices in determining risk to be in error. That commentator indicated that corporate financing transactions for large, seasoned issuers were more risky than small new issues in terms of the underwriter's capital exposure and declining market risk. The premises underlying the Association's view of permissible amounts of underwriting compensation run contrary to this position. Another commentator indicated that an additional factor should be considered in determining underwriting risk in subsection (b)(2)(F): the risk inherent in the issuer's business.

Subsection (b)(3) sets forth items of compensation normaly included in computing total underwriting compensation. As with subsection (b)(2), commentators generally felt that subsection (b)(3) did not offer sufficient specific detail on compensation standards and valuation techniques. In particular, commentators requested detailed guidance regarding evaluation methods for first refusal rights, demand registration rights, securities "lock-ups", and compensation standards for managing or structuring an underwriting arrangement.

A number of comments concerned subsections (b)(3)(B)(i) and (ii) which establish a presumption that compensation received pursuant to agreements entered into within 12 months prior to the filing of the registration statement is in connec-

tion with a public offering. One commentator asked that this be made a rebuttable presumption, based on the factual details on any particular transaction. Language has been inserted to effectuate this change.

Several commentators indicated that after-the-fact review of securities acquisitions by the underwriter and related persons to determine a connection to the offering under the criteria of subsection (b)(3)(B)(iii) leads to an unjustified bias toward connection. They argued that the uncertainty of a future public offering and the critically necessary role of the member as venture capital investor are not appropriately weighed. These commentators appear to be overlooking the fact that the criteria for determining a connection to an offering in the new rule are simply codifications of existing practice.

Subsection (b)(3)(C) relating to financial consulting and advisory fees drew considerable comment. Several commentators indicated that financial consulting fees for bona fide financial consulting services should not be attributed to underwriting compensation in a public offering.

Several other commentators offered suggestions for modifying subsection (b)(3)(C). One suggested that the basis for rebutting the presumption of a connection with a public offering be generalized to apply to any underwriting arrangement. Thus the procedure of subsection (b)(3)(C) would be available to all underwriting compensation items rather than being limited to financial consulting and advisory fees.

Another commentator suggested that routine investment banking services such as those for mergers and acquisitions be explicitly excluded from attribution to underwriting compensation in a public offering.

Subsection (b)(5) contains a listing of those underwriting terms and arrangements which are viewed by the Association as presumptively unfair and unreasonable. Most of the arrangements listed have long been treated as unreasonable under Association policy and their inclusion in the new rule only represents a codification and clarification of existing policy.

One longstanding policy, that relating to overallotment options, has been changed as incorporated into the rule, however. The Association has consistently held overallotment options of greater than ten percent to be presumptively unreasonable. On March 18, 1983, the NASD Board of Governors approved a change to increase the size of presumptively fair overallotment options to fifteen percent of the offering amount. This change was seen as necessary in view of the increased volatility of securities markets. The new fifteen percent policy is included in the rule as now proposed.

Subsection (b)(6) contains the Association's "lock-up" on underwriter's warrants and other securities deemed to be underwriting compensation. The subsection retains the prohibition against transfer for one year following the offering.

All commentators on subsection (b)(6)(A)(i) felt that the present practice of allowing transfer of securities to officers and partners should be continued. Several commentators indicated that the category eligible for transfer should be broadened to include directors and employees of the underwriter, underwriter's

counsel and other professionals retained by the underwriter to provide services in connection with the public offering.

One commentator queried why more onerous regulation should be placed on professionals employed by the underwriter than those employed by the issuer. This commentator apparently failed to focus upon the limits of the Association's jurisdiction and the Association's policy of limiting underwriting compensation paid to the "underwriter and related persons".

The Association has followed a practice of requiring that securities received as underwriting compensation be retained for a one year period in the hands of members or other responsible officials of members who are subject to the Association's jurisdiction. This prevents a "bail out" by members during volatile aftermarket periods and thus reduces incentives for aftermarket manipulation.

Apparent abuses in the transfer of underwriter's warrants have recently arisen. Some firms specializing in initial public offerings of low-priced securities reportedly have been quickly transferring warrants to salespersons in proportion to their sales and to groups of other employees, including clerical staff members. These transfers have been facilitated in some cases by making certain employees nominal officers of the firm. Language has been added to restrict the transfer of securities received as underwriting compensation to "bona fide officers or partners of an underwriter" so as to clarify that securities cannot be transferred to persons who are designated as officers solely for the purpose of receiving the securities.

Members may recall that a rule filing has been made with the Securities and Exchange Commission to delete in its entirety the Policy of the Board of Governors regarding "Venture Capital and Other Investments by Broker/Dealers Prior to Public Offerings". The Commission staff has expressed concern that members acting in a venture capital capacity might have a conflict of interest by acting as selling shareholders in the initial public offering of a company in which they had made an investment if the member participates in the offering. Language has been added in subsection (b)(6)(C) addressing this potential problem. The new language prohibits members and specified associated persons from selling their holdings in a company as part of the initial public offering or for 12 months thereafter if the member participates in the offering.

Subsection (c) sets forth documents to be submitted and procedures to be followed in filing offerings and, like the remainder of the proposed rule, essentially codifies existing policy. Many of the persons commenting on this subsection suggested that the exemptions from the Association's filing requirements be expanded.

The Association has considered on a number of occasions over the last decade the appropriateness of the filing requirements under the Interpretation and the requirements have been maintained for a number of reasons. First, the focus of the Association review on the fairness of underwriting terms and arrangements is one that is not duplicated by other regulatory authorities who are primarily interested in the adequacy of disclosure or the financial condition of the issuer. The focus on compliance with the NASD Rules of Fair Practice and By-Laws provides an oversight of member's compliance in their investment banking activity that could not be easily duplicated.

Second, the scope of the Association's filing requirements has been determined on the basis of market considerations and represents the minimum amount of regulatory oversight considered necessary. In numerous cases, it has been determined that filings were unnecessary because market forces would assure fair compensation and arrangements. This explains differences in filing requirements between negotiated and competitively bid offerings of the same issuer. In the past, decisions to exempt particular types of offerings were made after an analysis of the unique considerations for that type of offering. The new exemption for "shelf" offerings registered on Form S-3 was adopted after such a process. In that connection, the Association will be publishing a proposal in the near future to exempt all offerings on SEC Form S-3 from NASD filing requirements.

One commentator indicated that subsection (c)(5)(A) should be altered to allow a filing of required documents "within two business days" after filing with the SEC or other authority. It was suggested that this would particularly benefit west coast underwriters. Another commentator suggested requiring filing "as soon as possible" after SEC filing. Balancing the need for early processing against concerns for member convenience, it was deemed appropriate to require filing no later than one business day after filing with the SEC or other authority. Language to effectuate this change has been added.

A number of commentators indicated that subsection (c)(6) should further reduce the number of copies of documents required to be filed. The number of copies required in the new rule (generally two) is the minimum needed by the Association.

Several commentators suggested that subsection (c)(6)(A)(vi) which refers to other documents as requested should specify all supplemental information and documents which might be required as now set out in the "Supplemental Requirements" section of the Interpretation. While the new rule as proposed was drafted to minimize detail in setting out filing requirements, there may be merit in reinserting some details on frequently requested information. Language setting forth these supplemental requirements has been inserted in subsection (c)(6)(B).

Finally, a number of commentators requested that the requirements of subsection (c)(7)(B) for payment of filing fees in the form generally of cash or a certified check be eased since all funds will clear during the registration period. Language to make this change has been included in the rule.

Subsection (d) contains a code of procedure for hearings and other reviews of the Department's determination of offerings filed. One commentator suggested that the Corporate Financing Department's role in rendering an opinion regarding the fairness of the underwriting arrangement should be incorporated into the rule. Subsection (d) is intended to provide a right of review from a Department action. It was concluded that it would be cumbersome to describe the Department's internal administrative procedure in the rule.

PROCEDURES FOR ADOPTION OF RULE

The authority for this proposal is contained in Section 15A of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o-3) and Article VII of the Association's By-Laws.

On April 15, 1981, the Association requested comments on the corporate financing rule (Notice to Members 81-16). The rule was approved by the Association's Board of Governors on March 19, 1982 and amended on March 8 and 18, 1983, and now requires approval by the membership. If approved, it must be filed with and approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934, as amended.

* * * *

The proposed corporate financing rule hereto attached merits your immediate attention. Please mark the 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 20, 1983.

The Board of Governors believes this proposal to be necessary and appropriate and recommends that members vote their approval.

Any questions regarding this Notice should be directed to Dennis C. Hensley, Vice President, Corporate Financing, at (202) 728-8258.

Sincerely,

S. William Broka

S. William Broka
Secretary

Text of Proposed Corporate Financing Rule */

Article III, Section : Underwriting Terms and Arrangements

Subsection (a): Definitions

When used in this section, the following terms shall have the meanings stated below:

(1) "affiliate" means a person directly or indirectly controlling, controlled by, or under common control with the entity in question;

(2) "person related to an underwriter" or "related person" means an affiliate of the underwriter or a person who has performed a professional service for the underwriter in connection with the offering in question, or has performed a service for the issuer in connection with the offering which service is normally performed by an underwriter, including, but not limited to, financial consulting or advisory services and services resulting in the introduction of the issuer to the underwriter;

(3) "public offering" means any primary or secondary distribution of securities made within the United States or its territories pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings pursuant to a merger or acquisition, nonconvertible debt offerings, and all other securities distributions of any kind whatsoever except any offering made pursuant to an exemption under Section 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended;

(4) for purpose of this section only, "underwriter" means any person who has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking.

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*/ If approved by the Association's members and the Securities and Exchange Commission, this rule will be added as a new section under Article III of the NASD Rules of Fair Practice and will replace in its entirety the Interpretation of the Board of Governors — Review of Corporate Financing adopted under Article III, Section 1 of the Rules of Fair Practice.

Subsection (b): Underwriting Compensation and Arrangements

(1) General

No member or person associated with a member shall participate in any manner in any public offering of securities in which the terms or arrangements relating to the distribution of the securities are unfair or unreasonable as determined by application of this section.

(2) Amount of Compensation

(A) No member or person associated with a member shall receive an amount of underwriting compensation in connection with a public offering which is unfair or unreasonable.

(B) For purposes of determining the amount of underwriting compensation, all items of compensation received or to be received from the issuer or an affiliate of the issuer by an underwriter or related person in connection with the offering as determined pursuant to paragraph (b)(3) shall be included.

(C) All items of underwriting compensation shall be disclosed in the prospectus or offering circular.

(D) For purposes of determining whether the amount of underwriting compensation is fair and reasonable, the following factors, as well as any other relevant factors and circumstances, shall be taken into consideration:

(i) the gross dollar amount of the offering;

(ii) the type of offering, whether the offering is being underwritten and, if so, the type of commitment, e.g., "firm commitment," "best efforts," or "best efforts all or none", to which an underwriter is subject;

(iii) the type of securities being offered;

(iv) the amount of risk being assumed by an underwriter and related persons;

(v) the nature and amount of underwriting compensation received or to be received by an underwriter or related person;

(vi) the existence of any affiliate relationship between the issuer and an underwriter or related person; and

(vii) the absence of arm's-length bargaining or the existence of a conflict of interest between the issuer and underwriter or related person.

(E) The amount of compensation (stated as a percentage of the dollar amount of the offering) which is considered fair and reasonable generally will vary directly with the amount of risk to be assumed by an underwriter and related persons and inversely with the gross dollar amount of the offering.

(F) The amount of risk being assumed by an underwriter and related persons shall be determined by considering the following factors:

(i) the type of security being offered and the amount of effort required to distribute such a security,

(ii) the anticipated duration of the offering period,

(iii) whether the offering is an initial public offering, and

(iv) any other factors deemed relevant by the Association.

(3) Items of Compensation

(A) For purposes of determining the amount of underwriting compensation received or to be received by an underwriter or a related person pursuant to paragraph (b) (2) the following items and all other items of value received or to be received by an underwriter or related person from the issuer or an affiliate of the issuer in connection with or related to an offering shall be included:

(i) underwriter's discount, commission, or concession;

(ii) expenses incurred by an underwriter or related person payable by the issuer or from the proceeds of the offering, to or on behalf of an underwriter or related person;

(iii) fees and expenses of underwriter's counsel;

(iv) finder's fees;

(v) wholesaler's fees;

(vi) financial consulting and advisory fees, whether in the form of cash, securities, or any other item of value;

(vii) stock, options, warrants, and other securities;

(viii) special sales incentive items;

(ix) any right of first refusal provided to an underwriter or related person to underwrite or participate in future offerings by the issuer;

(x) a right provided to an underwriter or related person to require the issuer upon demand to register securities on behalf of the underwriter or person in the future without any expense to them; and

(xi) commissions, expense reimbursements, or other compensation to be received by an underwriter or related person as a result of the exercise or conversion within 12 months following the effective date of the offering of warrants, options, convertible securities, or similar securities distributed as part of the offering.

(B)(i) All items of value received or to be received from an issuer or an affiliate by an underwriter or related person pursuant to an agreement or other arrangement entered into during the 12-month period immediately preceding the filing with the Association of the registration statement or similar documents will be presumed to be underwriting compensation received or to be received in connection with the offering, provided, however, that such presumption may be rebutted on the basis of evidence satisfactory to the Association to support a finding that the receipt of an item is not in connection with the offering.

(ii) Items of value acquired by an underwriter or a related person pursuant to an agreement or other arrangement entered into more than 12 months immediately preceding the date of filing with the Association of the registration statement or similar document or items acquired at any time by persons other than an underwriter or related person will be presumed not to be underwriting compensation, provided, however, that items received or to be received pursuant to an agreement or other arrangement entered into prior to such 12-month period may be included as underwriting compensation on the basis of evidence satisfactory to the Association to support a finding that receipt of the item is in connection with the offering.

(iii) In determining whether securities are includable in underwriting compensation, the Association shall give consideration to the following factors:

(1) any disparity between the price paid and the offering or market price at the time of acquisition, with a greater disparity tending to indicate that the securities constitute compensation;

(2) the length of time between the date of acquisition of the

securities and the date of filing of the registration statement or similar document, with a shorter period of time tending to indicate that the securities constitute compensation;

(3) the amount and type of securities acquired, with a larger amount of readily marketable securities tending to indicate that the securities constitute compensation;

(4) the amount of risk assumed, with a lesser amount of risk tending to indicate that the securities constitute compensation;

(5) the presence or absence of arm's-length bargaining between the proposed issuer and the proposed underwriter or related person, with an absence of arm's-length bargaining tending to indicate that the securities constitute compensation;

(6) the existence of a potential or actual conflict of interest, with the existence of such a conflict tending to indicate that the securities constitute compensation; and

(7) the relationship of the receipt of the securities by the underwriter or related person to purchases by unrelated purchasers on similar terms at approximately the same time with an absence of similar purchases tending to indicate that the securities constitute compensation.

(C) Notwithstanding the provisions of subparagraph (A)(vi) hereof, financial consulting and advisory fees may be excluded from underwriting compensation upon a finding by the Association, on the basis of evidence satisfactory to it that an ongoing relationship between the proposed issuer or affiliate and the proposed underwriter or related person has been established at least 12 months prior to the filing of the registration statement or similar document with the Association or that the relationship, if established subsequent to that time, was not entered into in connection with the offering, and that actual services have been or will be rendered which were not or will not be connected with or related to the offering.

(D) Expenses customarily borne by an issuer, such as printing costs, registration fees, "blue sky" fees, and accountant's fees, shall be excluded from underwriter's compensation whether or not paid through an underwriter.

(4) Valuation of Non-Cash Compensation

For purposes of determining the value to be assigned to securities received as underwriting compensation, the following criteria and procedures shall be applied:

(A) securities shall be valued on the basis of the difference between the

cost of such securities to the recipient and either (i) the proposed public offering price or, (ii) where a bona fide independent market exists for the security, the market price on the date of acquisition;

(B) in the case of options, warrants, or convertible securities, consideration shall also be given to the terms of the options, warrants, or convertible securities; the difference between the initial exercise or conversion price and either (i) the proposed public offering price of the options, warrants, or convertible securities or the underlying security, or (ii) where a bona fide independent market exists for the options, warrants, convertible securities, or the underlying security, the market price on the date of acquisition; the date on which the options or warrants first become assignable or transferable; and any other relevant factors; and

(C) a lower value shall generally be assigned if securities, and, where relevant, underlying securities, are, or will be, restricted from sale, transfer, assignment or other disposition for a period of up to two years beyond the one-year period of restriction required by paragraph (b)(6)(A)(i).

(5) Unreasonable Terms and Arrangements

(A) Without limiting the generality of the foregoing paragraphs hereof, the following terms and arrangements, when proposed in connection with the distribution of a public offering of securities, shall be presumed to be unfair and unreasonable:

(i) any accountable expense allowance granted by an issuer or an affiliate to an underwriter or a related person which includes payment for general overhead, salaries, supplies, or similar expenses of the underwriter incurred in the normal conduct of business, except a disclosed fee to be received by an underwriter for performing specific services in connection with structuring or managing the offering;

(ii) any payment of commissions or fees by an issuer or an affiliate directly or indirectly to an underwriter or a related person prior to commencement of the public sale of the securities being offered;

(iii) any right of first refusal granted by an issuer or an affiliate to an underwriter or a related person regarding future public offerings, private placements or other financings which has a duration of more than five years from the effective date of the offering;

(iv) the receipt by an underwriter or related person of underwriting compensation consisting of any option or warrant which has a duration of more than five years from the effective date of the offering;

(v) the receipt by an underwriter or related person of underwriting compensation consisting of any option, warrant or convertible security which is exercisable or convertible at a price below either

the public offering price of the underlying security or, if a bona fide independent market exists for the security or the underlying security, the market price at the time of receipt;

(vi) the receipt by an underwriter or a related person of any item of compensation for which a value cannot be determined at the time of the offering;

(vii) any overallotment option granted to an underwriter or related person providing for the overallotment of more than fifteen percent of the amount of securities being offered, computed excluding any securities offered pursuant to the overallotment option;

(viii) the payment of any compensation by an issuer or an affiliate to an underwriter or related person in connection with an offering of securities which is not completed according to the terms of agreement between the issuer and underwriter; provided, however, that the reimbursement of out-of-pocket accountable expenses other than sales commissions actually incurred by the underwriter or related person shall not be presumed to be unfair or unreasonable under normal circumstances;

(ix) the receipt by an underwriter or related person of convertible securities, warrants, or options as underwriting compensation which are convertible or exercisable on terms more favorable than the terms of the securities being offered to the public;

(x) the receipt by an underwriter or related person of securities which constitute underwriting compensation in an aggregate amount greater than ten percent of the number or dollar amount of securities being offered to the public;

(xi) the receipt, pursuant to an agreement entered into at any time before or after the effective date of a public offering of warrants, options, convertible securities or units containing such securities, by a member, a person associated with a member, or a person related to an underwriter of any compensation or expense reimbursement in connection with the exercise or conversion of any such warrant, option, or convertible security in any of the following circumstances:

(1) the market price of the security into which the warrant, option, or convertible security is exercisable or convertible is lower than the exercise or conversion price;

(2) the warrant, option, or convertible security is held in a discretionary account at the time of exercise or conversion;

(3) the arrangements whereby compensation is to be paid are not disclosed both in the prospectus or offering circular by which the warrants, options, or convertible securities are offered to the public, if any agreement exists as to such arrangements at

that time, and in a prospectus or offering circular provided to securityholders at the time of exercise or conversion; or

(4) the exercise or conversion of the warrants, options or convertible securities is not solicited by the underwriter or related person, provided however, that any request for exercise or conversion will be presumed to be unsolicited unless the customer states in writing that the transaction was solicited and designates in writing the broker/dealer to receive compensation for the exercise or conversion.

(B) In calculating the amount of securities being offered for purposes of determining compliance with the provisions of subparagraph (A)(x) hereof, the following shall be excluded:

(i) any securities deemed to constitute underwriting compensation;

(ii) any securities issued or to be issued pursuant to an over-allotment option; and

(iii) in the case of a "best efforts" offering, any securities not actually sold.

(C) In the event that an underwriter or related person receives securities deemed to be underwriting compensation in an amount constituting unfair and unreasonable compensation pursuant to subparagraph (A)(x) hereof, the underwriter or person shall return any excess securities at cost and without recourse.

(D) Notwithstanding the foregoing provisions of this subsection, the presumption that terms and arrangements not in compliance with the requirements specified herein are unfair and unreasonable may be rebutted in exceptional or unusual cases in which a member, upon written application provides evidence satisfactory to the Association to support a finding that such terms and arrangements are fair and reasonable giving consideration to the particular facts and circumstances surrounding the offering.

(6) Restrictions on Securities

(A) No member or person associated with a member shall participate in any public offering which does not comply with the following requirements:

(i) securities deemed to be underwriting compensation under this rule shall not be sold, transferred, assigned, pledged or hypothecated by any person, except as provided in subparagraph (B) for a period of one year following the effective date of the offering for which the securities were received; provided, however, that securities deemed to be underwriting compensation may be transferred to

bona fide officers or partners of an underwriter and securities which are convertible into other types of securities or which may be exercised for the purchase of other securities may be so transferred, converted or exercised if all securities so transferred or received remain subject to the restrictions specified herein for the remainder of the initially applicable time period; and

(ii) certificates or similar instruments representing securities restricted pursuant to subparagraph (i) hereof shall bear an appropriate legend describing the restriction and stating the time period for which the restriction is operative.

(B) The provisions of subparagraph (A) notwithstanding, the transfer of any security by operation of law or by reason of reorganization of the issuer shall not be prohibited by this paragraph.

(C) No member or officer, director, general partner or controlling shareholder of a member which participates in the intital public offering of an issuer's securities and which beneficially owns any securities of said issuer at the time of filing of the offering shall sell those securities during the offering or sell, transfer, assign, or hypothecate those securities for one year following the effective date of the offering; provided, however, that subparagraph (C) shall not apply to an offering by a member of its securities which is made pursuant to Schedule E of the By-Laws.

Subsection (c): Filing Requirements

(1) General

No member or person associated with a member shall participate in any manner in any public offering of securities unless documents and information as specified herein relating to such offering have been filed with and reviewed by the Association for compliance with this section. For purposes of this section, participation in a public offering shall include participation in the preparation of offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis, or participation in any advisory capacity related to the offering.

(2) Means of Filing

Documents or information required by this rule to be filed with the Association shall be considered to be filed only upon receipt by the Association at its Executive Office.

(3) Excepted Offerings

The provisions of paragraph (1) notwithstanding, documents and information shall not be required to be filed with respect to offerings of the following types of securities:

(A) securities which are defined as "exempt securities" in Section 3(a)(12) of the Securities Exchange Act of 1934, as amended;

(B) securities of investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as a "closed-end company" in Section 5(a)(2) of that Act;

(C) variable contracts as defined in Article III, Section 29(b)(1) of the Rules of Fair Practice;

(D) nonconvertible debt securities or preferred stock which is rated "B" or better by a national rating agency recognized by the Association;

(E) securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the Public Utility Holding Company Act of 1935, as amended;

(F) securities registered as part of a "shelf" registration, provided that said securities are registered with the Securities and Exchange Commission on registration statement Form S-3 or a similar form promulgated in lieu of Form S-3 and are issued by an issuer which presently meets the issuer requirements of Form S-3 as those requirements were in effect on March 1, 1983, and, provided further, that said securities are reasonably expected to be offered pursuant to Rule 415 adopted under the Securities Act of 1933, as amended, as that rule was in effect on March 1, 1983;

(G) private offerings which are exempt from registration under Section 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended; and

(H) tender offers made pursuant to Regulation 14D adopted under the Securities Exchange Act of 1934, as amended, as that regulation was in effect on March 1, 1983.

(4) Confidential Treatment

The Association shall accord confidential treatment to all documents and information required by this section to be filed and shall utilize such documents and information solely for the purpose of review by the Corporate Financing Department to determine compliance with the provisions of this section or for other regulatory purposes deemed appropriate by the Association.

(5) Requirement for Filing

(A) Any member acting as a managing underwriter or in a similar capacity with respect to an offering of securities subject to this section shall file the documents specified in paragraph (6) with the Association no later than one business day after those documents are filed with the Securities and Exchange Commission or other federal or state agency for review or approval.

(B) Any member or person associated with a member which anticipates participating in an offering of securities other than in a capacity subject to subparagraph (5)(A), shall ascertain prior to such participation whether the documents specified in paragraph (6) have been filed with and reviewed by the Association; if such documents have not been so filed, the member or associated person shall not participate in the offering until such documents have been filed with and reviewed by the Association.

(C) Any member acting as a managing underwriter or in a similar capacity which has been informed of a determination by the Association that the terms or arrangements of a proposed offering are unfair or unreasonable shall notify all other members proposing to participate in the offering of that determination at a time sufficiently prior to the effective date of the offering as to permit each member to determine whether to proceed with its participation in the offering.

(6) Documents and Information to be Filed

(A) The following documents shall be filed with the Association with respect to each offering of securities subject to this section:

(i) two copies of the registration statement or similar document and any amendments thereto;

(ii) three copies of the preliminary prospectus or similar document and any amendments thereto, including the final prospectus;

(iii) two copies of any underwriting agreement, agreement among underwriters, and selling group agreement, or similar documents, and any amendments thereto;

(iv) two copies of any agreements between the issuer and any member or person associated with a member participating in the distribution which agreements relate to the receipt by such member or person of any item of value which may be deemed to be underwriting compensation under this section;

(v) in the case of offerings of partnership interests, two copies of the partnership agreement and any amendments thereto; and

(vi) other documents requested by the Association.

(B) Any person filing documents pursuant to subparagraph (6)(A) shall provide the following information with respect to the offering in question:

(i) an estimate of the public offering price;

(ii) a statement of the basis for, and the underwriter's intended application of, any non-accountable expense allowance greater than three percent of the offering proceeds; and

(iii) a detailed explanation of any agreement or other arrangement entered into during the 12-month period immediately preceding the filing of the offering with the Association which agreement or arrangement provides for the transfer of any warrants, options, or other securities from the issuer or any affiliate of the issuer to an underwriter or related person which shall include at a minimum the following:

(1) the date of the agreement, arrangement, or transfer;

(2) the price at which the securities were or are to be transferred; and

(3) the parties to the agreement, arrangement, or transfer.

(C) Any person filing amended documents pursuant to subparagraph (6)(A) shall clearly indicate additions and deletions made to the prior document.

(D) Any person filing documents pursuant to subparagraph (6)(A) shall file with the Association written notice that the offering has been declared effective or approved by the Securities and Exchange Commission or other agency within 12 hours following such declaration or approval or that the offering has been withdrawn or abandoned within three business days following the withdrawal or decision to abandon the offering.

(7) Filing Fees

(A) The initial documents relating to any offering filed with the Association pursuant to this section shall be accompanied by a filing fee equal to $100 plus .01% of the gross dollar amount of the offering, not to exceed a fee of $5100. The amount of filing fee may be rounded to the nearest dollar.

(B) Filing fees shall be paid in the form of cash, check, or money order payable to the National Association of Securities Dealers, Inc.

(C) Amendments to the initially filed documents which increase the number of securities being offered shall be accompanied by any additional

amount of filing fee required by applying subparagraph (7)(A) to the amended gross dollar amount of the offering.

(D) The provisions of Rule 457 adopted under the Securities Act of 1933, as amended, as that rule was in effect on March 1, 1983, shall govern the computation of filing fees for all offerings filed pursuant to this rule, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with subparagraphs (7)(A), (B) or (C).

Subsection (d): Code of Procedure for Handling Corporate Financing and Direct Participation Program Matters

(1) Purpose

This Code of Procedure is adopted pursuant to the authority of the Board of Governors set forth in Article IV, Section 2(b), and Article VII, Sections 1 and 3(b), of the By-Laws and is prescribed to provide a procedure for review of determinations by the Association's staff regarding compliance with Association rules relating to corporate financing and direct participation program matters by which any person is aggrieved.

(2) Application by Aggrieved Person

Any person aggrieved by a determination of the Corporate Financing Department rendered pursuant to any rule or regulation of the Association relating to underwriting terms or arrangements may make application for review of such determination. In exceptional or unusual circumstances, a member may request conditionally or unconditionally an exemption from such rules or regulations. The Director of the Corporate Financing Department may, of his own initiative, request review of the fairness or reasonableness of any terms and arrangements proposed in documents filed pursuant to this section. Applications for review will be accepted only with respect to offerings for which a registration statement or similar document has been filed with the appropriate federal or state regulatory agency; provided, however, that a hearing committee may waive the requirement for filing prior to review upon a finding that such review is appropriate under the circumstances.

(3) Application for Review

Any person making application for review pursuant to paragraph (d)(2) (hereinafter referred to in this subsection as "applicant") shall request such review in writing and shall specify in reasonable detail the source and nature of the aggrievement and the relief requested. The applicant shall state whether a hearing is requested and shall sign the written application. All applications shall be directed to the Corporate Financing Department at the Association's Executive Office.

(4) Notice of Hearing

Any applicant shall have a right to a hearing before a hearing committee constituted as provided in paragraph (5). The hearing committee may request a hearing on its own motion. A hearing shall be scheduled within ten days following receipt by the Association of the written application for review, or as soon thereafter as practicable, at a location determined by the hearing committee. Written notice of the hearing shall be sent to the applicant at the earliest practicable date, stating the date, time, and location of the hearing.

(5) Hearing Committee and Procedure

(A) Any hearing pursuant to this section shall be before an individual or individuals designated by the Association, who shall be persons engaged in the investment banking or securities business. Any applicant shall be entitled to appear at, and participate in, the hearing, to be represented by counsel, and to submit any relevant testimony or evidence. A representative of the Association shall be entitled to appear at, and participate in, the hearing, to be represented by counsel, and to submit any relevant testimony or evidence. Upon agreement of the applicant, representatives of the Association, and the hearing committee, a hearing may be conducted by means of a telephonic or other linkage which permits all parties to participate simultaneously in the proceeding.

(B) In the event that no applicant requests a hearing, the hearing committee shall review the matter on the record before it. Any applicant and the Association shall be entitled to submit any relevant written testimony or evidence to the hearing committee.

(6) Requirement for Written Determination

The hearing committee shall render a determination as to all issues which the committee finds to be relevant as soon as practicable following conclusion of the hearing or, in cases in which a hearing is not requested, completion of the committee's review of the record. The hearing committee may determine whether proposed arrangements are fair and reasonable and in compliance with applicable rules and regulations. The determination of the hearing committee shall be issued in writing. A copy of the determination shall be sent to each applicant.

(7) Review by Committee of Board

(A) Any person aggrieved by a determination of a hearing committee shall have a right to have that determination reviewed by the appropriate standing committee of the Board of Governors. With respect to

matters relating to offerings other than offerings of direct participation programs, the Corporate Financing Committee shall be the appropriate committee. With respect to matters relating to offerings of direct participation programs, the Direct Participation Programs Committee shall be the appropriate committee.

(B) Any person seeking a review of a determination of a hearing committee shall submit a written request for such review to the Association within fifteen days following issuance of the hearing committee's written determination. Any such person shall submit with the written request for review a written statement specifying the portion of the hearing committee's determination for which review is requested and the relief sought. Any such person may submit written testimony or evidence for consideration by the committee. Representatives of the Association may also submit written testimony or evidence to the committee.

(C) Pursuant to a request duly made, the appropriate standing committee of the Board of Governors will review the determination of a hearing committee, giving consideration to all parts of the record which the Board committee finds relevant. The Board committee shall render a determination as to all issues which the committee finds to be relevant. The determination of the Board committee shall be issued in writing. A copy of the determination shall be sent to each person requesting review.

(8) Assessment of Costs

A hearing committee may, in its discretion, assess costs of a hearing against any person requesting the hearing.

(9) Nature of Determination

Any determination by a hearing committee or standing committee rendered pursuant to this section shall constitute the opinion of that committee as to compliance with applicable Association rules, interpretations or policies and shall be advisory in nature only. No such determination shall constitute a finding of a violation of any rule, interpretation or policy. A finding of a violation shall be made only by a District Business Conduct Committee pursuant to the Code of Procedure for Handling Trade Practice Complaints.

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

notice to members 83-25

May 27, 1983

TO: All NASD Members and Other Interested Persons

RE: Request for Comments on Amendment to Corporate Financing Filing Requirements

The National Association of Securities Dealers, Inc. ("Association" or "NASD") is requesting comments on proposed amendments to the Corporate Financing filing requirements which would exempt from those requirements all debt and equity securities registered with the Securities and Exchange Commission ("SEC" or "Commission") on Registration Statement Form S-3. The exemption for debt securities registered on Form S-3 would replace the present NASD exemption for debt rated "B" or better by a recognized rating service. The background and details of the amendment are discussed below.

BACKGROUND

For several years, the Association has required its members to file most public offerings with the Corporate Financing Department for a review of the underwriting terms and arrangements. Those filing requirements presently appear in the Interpretation of the Board of Governors — Review of Corporate Financing ("Corporate Financing Interpretation") under Article III, Section 1 of the Rules of Fair Practice (NASD Mannual (CCH) para. 2151 at page 2024).

In Notice-to-Members 83-24 (May 19, 1983), the Association submitted to the membership for vote a new Corporate Financing Rule ("Rule") which, when approved by the SEC, will replace the Corporate Financing Interpretation. Subsection (c)(3)(F) of the Rule exempts from the filing requirements securities registered as part of a "shelf" registration on Form S-3 issued by a registrant which meets the requirements of Form S-3 as those requirements were in effect on March 1, 1983.

Historically, the Association, through its filing requirements, has tried to identify offerings in which review of the underwriting terms and arrangements would be most meaningful. The filing requirements currently encompass most public offerings of equity and debt securities which involve member participation.

Offerings of debt securities rated "B" or better by a recognized rating service are exempt from the filing requirements. This reflects the nature of the debt market during the late 1960's when the filing requirements were developed. At that time, most outstanding debt was rated "B" or better. There was a small amount of debt rated below "B" which was of significantly lesser quality. The exemption from the filing requirements for debt rated "B" or better reflects a determination that market forces could be relied upon to assure the fairness of underwriting terms and arrangements.

Recently, the Association has reexamined its filing requirements in light of the adoption by the SEC of the Form S-3 eligibility criteria. Form S-3 is the most streamlined of SEC registration statement forms and permits issuers to incorporate by reference substantial amounts of information from annual reports and other periodic filings. The Commission devoted substantial resources to identifying those securities and issuers which were widely followed and subject to sufficiently meaningful market forces as to assure that adequate information was readily available in the marketplace.

To use Form S-3, both the registrant and the transaction must meet specified qualifications. Form S-3 may be used by a U.S. registrant which has been a reporting company for 36 months prior to the filing, and has made timely filings for 12 months preceding the filing date. In addition, neither the registrant nor its subsidiaries may have defaulted in the payment of required dividends or any material obligations since the end of its last audited year.

Form S-3 may be used for primary offerings of such registrants which have outstanding voting stock held by non-affiliates with an aggregate market value of $150 million, or alternatively, $100 million aggregate market value and annual trading volume of three million shares. Primary offerings by qualified registrants of "investment grade" non-convertible debt and preferred securities may also be registered on Form S-3. Investment grade debt is defined as those securities rated by a nationally recognized statistical organization in the four highest categories (e. g. "AAA" through "BBB" by Standard & Poor's). Secondary offerings of outstanding securities by any person other than the issuer may be registered on Form S-3 if the securities are quoted on NASDAQ or listed on a national securities exchange. Finally, rights offerings, dividend and interest reinvestment plans, and offerings of securities upon conversion and the exercise of warrants may be registered on Form S-3.

Having observed the operation of the integrated disclosure system for over a year, the Corporate Financing Committee and Board of Governors have concluded that it is appropriate to amend the NASD filing requirements to reflect the new structure of SEC registration requirements.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments significantly alter present NASD filing requirements for both debt and equity securities. With respect to equity offerings, i.e. offerings which have any attribute of equity ownership, the number of offerings which would be required to be filed would be substantially reduced. Currently, most equity offerings are required to be filed with the Association. Under the proposed amendment, any equity offering registered with the SEC on Form S-3 (or an equivalent successor form) will no longer be required to be filed. As explained

above, primary offerings of equity securities can generally be registered on Form S-3 when the issuer has outstanding voting stock held by non-affiliates with an aggregate market value of $150 million or such stock has an aggregate market value of $100 million and a trading volume of three million shares. The market value and trading volume requirements are inapplicable to preferred offerings, rights offerings, dividend and interest reinvestment plans and offerings upon conversion and the exercise of warrants.

With respect to debt offerings, i.e. offerings with no equity characteristics, the proposed amendments would require a greater number of such offerings to be filed than at present. Under the present Corporate Financing Interpretation, any public offering of "straight debt" rated "B" or better by a nationally recognized rating agency is exempt from filing. This reflects the experience with respect to debt securities which existed at the time the filing requirements were developed in the late 1960's. At that time, most outstanding debt was rated as "investment grade" with any debt rated below "B" signifying lesser quality. The volume of issues rated "B" or better which were below "investment grade", e.g. issues rated "B" or "Ba" by Moody's or "B" or "BB" by Standard & Poor's, was small. It was concluded that market forces, particularly competition regarding money market rates, were sufficient that those forces could be relied upon to assure fairness of underwriting compensation and arrangements.

In today's market, however, the nature of debt instruments is significantly different. There has been a proliferation of types and levels of quality debt. The Corporate Financing Committee concluded, therefore, that it was appropriate to review the Association's filing requirements for debt instruments in view of these evolving changes. As part of this process, it was noted that the SEC has devoted substantial effort in identifying a class of debt securities which could reasonably be permitted to utilize Form S-3. As explained above, this includes securities in which at least one nationally recognized statistical rating organization has rated in one of its four highest categories (e.g. "AAA", "AA", "A", or "BBB" by Standard & Poor's).

Pursuant to the proposed amendment, the present exemption for debt rated "B" or better would be eliminated. In its place, an exemption for debt registered on Form S-3 (or an equivalent successor form) would be adopted. Generally speaking, therefore, debt instruments rated "B", "BB" or "Ba" would become subject to NASD filing requirements. It is believed that it is appropriate to subject these instruments to review by the Association to assure the fairness and reasonableness of their overall underwriting terms and arrangements.

In recommending this proposed change, the Corporate Financing Committee concluded that the competitive market forces which ordinarily affect a public offering by an issuer qualified to use Form S-3 are effective in assuring that the underwriting terms and arrangements generally are fair and reasonable. In addition, the Committee noted that rapid access to the marketplace has become increasingly critical for certain issuers and that such access has been facilitated by SEC policies which permit offerings to become effective without detailed review. The Association has long been committed to expediting its review of offerings where rapid market access was critical. It is therefore appropriate that the Association take steps to assure ready access to the marketplace so long as investor protection is assured.

It is important to note that the proposed amendments relate only to filing requirements and do not constitute exemptions from the substantive requirements

of the Corporate Financing Interpretation or the proposed Rule. Members will still be expected to assure compliance with those requirements in any offerings in which they participate. Additionally, the proposed exemptions relate only to filing requirements under the Corporate Financing Interpretation (and proposed Corporate Financing Rule); these exemptions do not extend to offerings which are subject to Schedule E to Article IV, Section 2 of the NASD By-Laws concerning offerings by members of their own securities or those of affiliates.

The text of the proposed amendments is attached. It is assumed that the new Corporate Financing Rule will become effective prior to, or concurrently with, the proposed amendment and the language of the amendment is therefore shown as a change to that Rule.

REQUEST FOR COMMENTS

The authority for this proposal is contained in Section 15A of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o-3), and Article VII of the Association's By-Laws.

The Association is requesting comments on the proposed amendments prior to final Board consideration. All comments received during this comment period will be reviewed by the Corporate Financing Committee and changes to the amendments will be recommended as deemed appropriate. The Board of Governors will then consider the amendments again. If the Board approves the amendments, they must be filed with, and approved by, the Securities and Exchange Commission before they become effective.

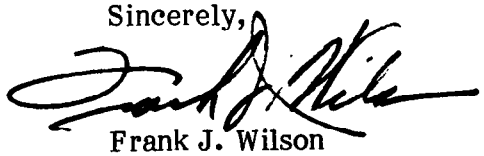
All written comments should be addressed to the following:

S. William Broka, Secretary
National Association of Securities Dealers, Inc.
1735 K Street, N. W.
Washington, D. C. 20006

All comments must be received by June 24, 1983. All comments received will be made available for public inspection.

Any questions regarding this notice may be directed to Dennis C. Hensley of the Corporate Financing Department at (202) 728-8258.

Sincerely,



Frank J. Wilson
Executive Vice President
Legal and Compliance

Attachment

Text of Proposed Amendment */

Subsection (c): Filing Requirements

(1) General

No member or person associated with a member shall participate in any manner in any public offering of securities unless documents and information as specified herein relating to such offering have been filed with and reviewed by the Association for compliance with this section. For purposes of this section, participation in a public offering shall include participation in the preparation of offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten or any other basis, or participation in any advisory capacity related to the offering.

. . .

(3) Excepted Offerings

The provisions of paragraph (1) notwithstanding, documents and information shall not be required to be filed with respect to offerings of the following types of securities:

(A) securities which are defined as "exempt securities" in Section 3(a)(12) of the Securities Exchange Act of 1934, as amended;

(B) securities of investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as a "closed-end company" in Section 5(a)(2) of that Act;

(C) variable contracts as defined in Article III, Section 29(b)(1) of the Rules of Fair Practice;

(D) ~~nonconvertible debt securities or preferred stock which is rated "B" or better by a national rating agency recognized by the Association;~~

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*/ New material is underlined; deleted material is stricken. Changes shown are to the proposed corporate financing rule as submitted for approval by the NASD membership on May 19, 1983. (See Notice-to-Members 83-24.)

(E)(D) securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the Public Utility Holding Company Act of 1935, as amended;

(F)(E) securities registered ~~as part of a "shelf" registration, provided that said securities are registered~~ with the Securities and Exchange Commission on registration statement Form S-3 or a similar form promulgated in lieu of Form S-3 ~~and~~ are issued by an issuer which presently meets the issuer requirements of Form S-3 as those requirements were in effect on March 1, 1983; ~~and provided further, that said securities are reasonably expected to be offered pursuant to Rule 415 adopted under the Securities Act of 1933, as amended, as that rule was in effect on March 1, 1983;~~

(G)(F) private offerings which are exempt from registration under Section 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended; and

(H)(G) tender offers made pursuant to Regulation 14D adopted under the Securities Exchange Act of 1934, as amended, as that regulation was in effect on March 1, 1983.

NASD

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

May 12, 1983

TO: All NASD Members and Selected NASDAQ Companies

RE: SEC Government-Business Forum on Small Business Capital Formation

As you may know, the NASD has long been involved in efforts to improve the environment for small business financing. In this regard, the NASD participates in a wide variety of cooperative efforts on both a regular and on an ad hoc basis. One such effort involves participation in the Securities and Exchange Commission's Government-Business Forum on Small Business Capital Formation (the "Forum").

The SEC is under mandate pursuant to the Small Business Investment Incentive Act to conduct an annual forum in order to develop suggestions that will assist small businesses in the capital formation process. The Forum is organized by an Executive Committee chaired by SEC Commissioner John R. Evans and comprised of representatives of government agencies, major small business organizations and other individuals and groups concerned about small business. The first Forum, which was conducted in 1982, resulted in the presentation of 37 recommendations to a joint congressional/small business hearing and is the subject of considerable legislative and regulatory activity.

This year, the Executive Committee has announced plans to conduct a series of five local forums during June and July. A panel of Executive Committee members, including representatives of key federal agencies and departments, will conduct each local forum. During the forums, small business persons, bankers, financial advisers, venture capitalists, pension fund managers and other interested parties will be given an opportunity to present their views on problems and specific proposed remedies relating to tax, credit, access to financial institutions, securities and other areas of importance in the capital formation process. Each participant will be required to submit a written summary or outline of his presentation five days in advance of an appearance at a forum. This summary will facilitate an informed dialogue between the Executive Committee members and those making presentations. Later this year, the Executive Committee will prepare its report of the local forums, including proposed legislative and regulatory recommendations, to be presented to Congress and appropriate regulatory agencies.

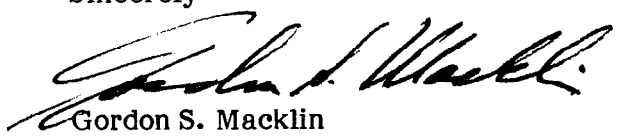
The local forums will be conducted in the following cities:

- **Washington** (during the week of June 6);
- **Houston** (during the week of June 13);
- **St. Louis** (during the week of June 20);
- **San Francisco** (during the week of June 27); and,
- **Boston** (during the week of July 11).

Persons or groups interested in participating in a local forum should contact Paul A. Belvin, Forum Staff Director, or H. Steven Holtzman, Forum Special Counsel, at (202) 272-2644, or write to the following address:

1983 Small Business Forum
Office of Small Business Policy
U. S. Securities and Exchange Commission
450 Fifth Street, N. W.
(Stop 3-11)
Washington, D. C. 20549

Sincerely



Gordon S. Macklin
President